

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS

5
6 Hearing

7
8 March 23, 2007
Jefferson City, Missouri
9 Volume 30

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

14
15 JUDGE MORRIS L. WOODRUFF, Presiding
16 DEPUTY CHIEF REGULATORY LAW JUDGE

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18 JEFF DAVIS, Chairman,
STEVEN GAW, Commissioner,
19 ROBERT CLAYTON, Commissioner,
CONNIE MURRAY, Commissioner
20 LINWARD "LIN" APPLING, Commissioner

21
22 REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR
Midwest Litigation Services
23 3432 W. Truman Boulevard, Suite 207
Jefferson City, MO 65109
24 (573) 636-7551
25

A P P E A R A N C E S

For Staff of the Missouri Public Service Commission:

Mr. Kevin Thompson, General Counsel.
Mr. Steven Dottheim,
Mr. Nathan Williams.
Mr. Denny Frey,
Mr. Steven Reed,
Mr. David Meyer,
Ms. Jennifer Heintz,
Missouri Public Service Commission
P.O. Box 360
200 Madison Street
Jefferson City, MO 65102
(573) 751-7489

For Office of Public Counsel and the Public:

Mr. Lewis Mills
Office of the Public Counsel
P.O. Box 2230
200 Madison Street
Jefferson City, MO 65102

For Union Electric Company:

Mr. James B. Lowery
Mr. William Powell
Smith Lewis, LLC
111 S. 9th Street, Suite 200
Columbia, MO 65201
(573) 443-3141

Mr. Thomas Byrne, Attorney at Law
Ms. Wendy Tatro, Attorney at Law
MC-1310
1901 Cheauteau Avenue
St. Louis, MO 63103
(314) 554-2514

Mr. Robert J. Cynkar,
Attorney at Law
Cuneo Gilbert & LaDuca, LLP
507 C Street N.E.
Washington, D.C. 20002

1 For Union Electric Company:

2 Mr. James Fischer
3 Fischer & Dority
4 101 Madison Street, Suite 400
5 Jefferson City, MO 65101
(573) 636-6758

6 For State of Missouri and Department of Economic
7 Development:

8 Mr. Douglas Micheel, Asst. Attorney General
9 Mr. Robert E. Carlson
221 W. High Street
P.O. Box 899
Jefferson City, MO 65102
10 (573) 751-445

11 For Department of Natural Resources:

12 Mr. Todd Iveson
13 Assistant Attorney General
P.O. Box 899
14 221 W. High Street
Supreme Court Building
15 Jefferson City, MO 65102
16 (573) 751-3640

17 For Missouri Industrial Energy Consumers:

18 Ms. Diana Vuylsteke
Bryan Cave, LLP
19 211 N. Broadway, Suite 3600
St. Louis, MO 63102
20 (314) 259-2543

21 For Missouri Energy Group:

22 Ms. Lisa Langeneckert
23 The Stoker Partnership, LLP
911 Washington, #700
24 St. Louis, MO 63101
25 (314) 641-5158

1 For The Commercial Group:

2 Mr. Rick D. Chamberlain
3 Behrens, Taylor, Wheeler & Chamberlain
4 6 N.E. 63rd Street, Suite 400
5 Oklahoma City, OK 73105
(405) 848-1014

6 For Noranda Aluminum, Inc.:

7 Mr. Stuart W. Conrad
8 Finnegan, Conrad & Peterson
9 1209 Penntower
3100 Broadway
10 Kansas City, MO 64111
(816) 753-1122

11 For AARP and Consumers Council of Missouri:

12 Mr. John Coffman
13 Attorney at Law
821 Tuxedo Boulevard
14 St. Louis, MO 63119
(314) 424-6779

15 For Missouri Association for Social Welfare:

16 Ms. Gaylin Rich Carver
17 Hendren & Andrae
221 Bolivar Street
18 Jefferson City, MO 65101
(573) 636-8135

19
20 For Missouri Retailers Association:

21 Mr. Samuel E. Overfelt
22 Attorney at Law
618 E. Capitol Avenue
23 Jefferson City, MO 65101
(573) 636-5128

24
25

1

For Laclede Gas Company:

2

Mr. Michael C. Pendergast

3

Attorney at Law

720 Olive Street

4

St. Louis, MO 63101

(314) 342-0532

5

6 For Aquila:

7

Mr. J. Russell Mitten

Brydon, Swearengen & England

8

312 East Capitol Avenue

Jefferson City, MO 65102

9

10

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

2 JUDGE WOODRUFF: Okay. Let's come to order,
3 please. Good morning, everyone, and welcome back to the
4 AmerenUE electric rate case hearing.

5 I hope you all enjoyed your afternoon away from
6 the hearing room and hope it was a productive afternoon
7 for everyone.

8 To start out today, I believe we're ready to go
9 with the Pinckneyville and Kinmundy issue as well as the
10 Peno Creek issue.

11 I noticed that the witnesses, Mr. Voytas and
12 Mr. Kind, are on both issues. Did you wish to cross them
13 at the same time or keep it separate?

14 MR. MILLS: I'd prefer to keep it separate.
15 There are enough similarities, and yet enough differences,
16 I think it would be confusing if we try to fix them
17 together.

18 JUDGE WOODRUFF: Okay. That's fine. We'll
19 start off with Pinckneyville and Kinmundy. Does anyone
20 wish to make opening statements on that? All right.

21 MR. POWELL: May it please the Commission.

22 OPENING STATEMENT

23 BY MR. POWELL:

24 Q Good morning. My name is Bill Powell. Jim
25 Lowery and I are partners representing AmerenUE in this

1 proceeding, and this is my first appearance before the
2 Commission. I apologize in advance for my voice. I'm the
3 fourth of four people in my family to come down with this
4 illness. Unfortunately, it struck me this morning.

5 We have a long section in our prehearing brief
6 on the Pinckneyville and Kinmundy issue that appears on
7 pages 61 through 72. It's long because this issue has a
8 long history. This issue, in act, was a part of two prior
9 cases before this commission, the 2002 earnings case,
10 which resulted in a stipulation and agreement, and the
11 2004 Metro East case.

12 This issue was the primary focus of a 2003 FERC
13 case which had extensive proceedings, including an
14 eight-day hearing in which this Commission Staff
15 intervened.

16 We have various exhibits to offer from those
17 three prior cases so the Commission will have a full
18 picture on the issue and on the determinations that were
19 made in those cases. We also, of course, have live
20 testimony from AmerenUE witness Rick Voytas.

21 The parties who are in dispute on this issue are
22 the company on one side and OPC and the State on the other
23 side. Earlier in this case, Staff, through witness Steve
24 Rackers, also favored a downward adjustment in rate base
25 because of the price paid for these combustion turbine

1 generators or CTGs.

2 But Staff has now withdrawn from that position
3 and now seeks no such adjustment. If you look at the
4 reconciliation which has been filed on this issue, you see
5 no adjustment in the Staff column. The value of this
6 issue in revenue requirement among those still having the
7 dispute is between seven and \$8 million per year,
8 depending on the return on equity proved.

9 In the interest of brevity, which I gather has
10 an increasing value in this proceeding, I had planned to
11 stop about here. But since we've learned that Mr. Rackers
12 will not be here today when this issue was set and I had
13 planned a much more extensive cross-examination for him
14 than for the other witnesses, I feel I need to go ahead
15 and expand a little in this opening statement so that the
16 Commission has a better chance of understanding it given
17 the piece-meal presentation that we are now dealing with.

18 I'd like to give a chronological description of
19 the history of this issue first, and I will try to be
20 brief.

21 The 2002 case before this Commission was settled
22 by a comprehensive settlement and the stipulation and
23 agreement, which was fully adopted by the Commission with
24 the strongly worded concurrence by Commissioner Gaw
25 imposed a rate freeze until just before this case was

1 filed, and it also imposed certain requirements for
2 acquisition of generating capacity by AmerenUE.

3 The company took this commitment that it had
4 made and the reasoning behind it to heart. One provision
5 in the stipulation and agreement was that AmerenUE was to
6 acquire an additional 700 megawatts of new, regulated
7 generating capacity. And the agreement approved by the
8 Commission permitted that requirement to be met by
9 purchasing generating units from an affiliate, quote, at
10 net book value.

11 What you have before you in this issue is the
12 case of AmerenUE acquiring from an affiliate new,
13 regulated generating capacity uniquely suited to serve
14 UE's customers highly reliable and valuable for that
15 purpose for reasons explained in the testimony. And that
16 purchase was made at net book value.

17 AmerenUE worked on a program of implementing the
18 agreement they had made with this Commission -- or the
19 agreement they made, which the Commission approved.
20 They issued a request for proposals and evaluated all of
21 the generating units that were offered to them in
22 response, which was a fairly small number.

23 They evaluated them as to suitability,
24 performance and several other matters explained in the
25 evidence. And then they identified the Pinckneyville and

1 Kinmundy units as the most desirable and the most useful
2 to serve their customers. And the net book value as it
3 today was found to be a good value and maybe even below
4 market value for units like these.

5 AmerenUE believed that it got a very good deal
6 from their affiliate, AEG, as Mr. Voytas explains in his
7 testimony. They reached that agreement in 2003. The
8 actual transfer of ownership didn't occur until 2005,
9 though, because of a nearly two-year delay resulting from
10 the unsuccessful bidders intervening in the FERC
11 proceeding in which approval of the transfer was sought.

12 Before discussing what was decided in the FERC
13 proceeding, I want to make mention this Commission's 2004
14 case, which directly involved this issue as well. That
15 case, which is commonly called the Metro East case,
16 involved an argument over what was called the least cost
17 alternative analysis.

18 Both Mr. Voytas, who is testifying in this case
19 for the company, and Mr. Kind, who is testifying in this
20 case for OPC, gave testimony on that issue and on the
21 subject issue of the proper price to use for transferring
22 CTG generation.

23 Dr. Proctor of Staff also testified on that
24 subject. Mr. Kind argued for a price of \$390 per kilowatt
25 for CTGs, and Mr. Voytas presented the figure \$471 per

1 kilowatt at that time for transfers of CTG generating
2 units.

3 Dr. Proctor's testimony unequivocally sided with
4 Mr. Voytas of the company. And the Commission did so as
5 well. So that case, among other things, set a price for
6 transfers of CTG units, and that approved price was \$471
7 per kilowatt.

8 This Commission's 2002 case required acquisition
9 of generating capacity and permitted that acquisition to
10 be from an affiliate at net book value. The 2004 case
11 approved an exact dollar figure for transfers of CTGs
12 between companies, and that number was \$471 per kilowatt.

13 Mr. Rackers, the Staff witness on this issue,
14 has calculated the price for the transaction, which is now
15 before you for consideration as \$439.50 per kilowatt,
16 obviously, much lower than the \$471 number previously
17 approved.

18 In the FERC proceeding where AmerenUE was
19 seeking approval for transfer of Pinckneyville and
20 Kinmundy to AmerenUE, very extensive testimony comprising
21 many boxes and eight days of live hearings happened.

22 And Administrative Law Judge issued an opinion
23 in excess of 100 pages. And, ultimately, FERC approved
24 this transfer finding that there was no affiliate abuse,
25 that an adequate request for proposals had been conducted,

1 and, essentially, that the transfer was on fair terms and
2 in the public interest.

3 Much of the focus in that case, at least
4 initially and perhaps still with Mr. Kind at least, was a
5 sort of offer that was really a feeler from NRG to sell
6 its Audrain plant to AmerenUE.

7 The nature of that communication and the nature
8 of that plant was discussed in detail, and it clearly is
9 dissimilar to and inferior to Pinckneyville and Kinmundy
10 for AmerenUE's purposes. And it was especially so back in
11 2003 when the feeler was made when there was an offer, at
12 what price that plant could actually have been obtained in
13 2002, and all the reasons that it was unsuitable and
14 unusable as a facility for serving the needs of Ameren at
15 that time were explored in great detail in the FERC
16 proceedings.

17 All of those same things are explained again
18 here in Mr. Voytas' testimony. After the FERC approval
19 was finally obtained and UE's position was upheld, the
20 acquisition finally happened. It happened at net book
21 value.

22 And as I mentioned, the net book value at which
23 the transfer occurred, as calculated in this case by
24 Mr. Rackers, was \$439.50 per kilowatt being well below the
25 \$471 price approved in the Metro East case.

1 Perhaps all of these facts are part of why
2 Mr. Rackers and Staff are no longer supporting a downward
3 adjustment in rate base associated with the acquisition of
4 Pinckneyville and Kinmundy. It's not completely clear why
5 shortly before this hearing began Staff decided it would
6 no longer support such an adjustment. And we may not know
7 fully until Mr. Rackers is able to be here and testify
8 next week.

9 And in any event, the reconciliation which is on
10 file shows no adjustment by Staff for this issue. All
11 that really leaves before the Commission, then, from the
12 parties still in conflict on this issue is the extensive
13 testimony of Mr. Voytas and the very brief testimony of
14 Mr. Kind and Mr. Brosch. We'll be probing those on
15 cross-examination. Thank you.

16 JUDGE WOODRUFF: Thank you. Staff?

17 MR. DOTTHEIM: Thank you.

18 OPENING STATEMENT

19 BY MR. DOTTHEIM:

20 MR. DOTTHEIM: This is not the typical opening
21 statement. As Mr. Powell indicated, the Staff originally
22 did file direct testimony on this issue. The Staff
23 proposed an adjustment. Mr. Rackers had filed testimony
24 shortly before or several days before about the prehearing
25 brief was due in this proceeding.

1 The Staff advised the company that the Staff
2 would not be pursuing this issue and the -- the Staff
3 adjustment unfortunately -- and it's probably confusing on
4 my part, not communicating or miscommunicating the
5 availability of -- of Mr. Rackers.

6 Originally, this issue had been scheduled at a
7 different point in the hearing. Mr. Rackers is not
8 available today. He's available next week. He will be
9 available on -- on Tuesday to take the stand.

10 The company has indicated they would like to
11 cross-examine, ask Mr. Rackers some questions, and he will
12 be available then on Tuesday after the -- the depreciation
13 issues that are scheduled for that day.

14 There still are adjustments pending before the
15 Commission from the Office of Public Counsel and the State
16 being represented by the Attorney General's office. Thank
17 you.

18 JUDGE WOODRUFF: Thank you, Mr. Dottheim.
19 Public Counsel?

20 OPENING STATEMENT

21 BY MR. MILLS:

22 MR. MILLS: Good morning. May it please the
23 Commission. Mr. Powell gave you a somewhat lengthy
24 history of some other cases in which Peno -- I'm sorry --
25 Pinckneyville and Kinmundy have come up.

1 However, I don't believe there's any
2 disagreement among the parties that the issue in this case
3 is about the Missouri Public Service Commission
4 determining the value of assets that UE got from an
5 affiliate. That determination has never been made in any
6 of these previous cases.

7 That's what this issue is about. That's what
8 we're here for today. Those cases touched on
9 Pinckneyville and Kinmundy. They did not establish a
10 value for rate-making purposes in Missouri. They didn't
11 even try to.

12 The Metro East case, for example, the number
13 that Mr. Powell cited in the Metro East case was not
14 designed to evaluate the -- the value for rate-making
15 purposes of Pinckneyville and Kinmundy.

16 It was designed to -- to allow the Commission to
17 use a cost benefit analysis for purposes of the Metro East
18 transfer. The cases at FERC -- or the case at FERC was
19 not about establishing value for rate-making for Missouri
20 retail rates. It was about establishing whether or not
21 this purchase would have any impact on market power. This
22 issue has never been determined.

23 Public Counsel's evidence will show that the
24 price paid by UE for these two generating stations was
25 above market value and not compliant with the Commission's

1 affiliate transaction rule.

2 Now, with respect to market value, if you've
3 ever had your house appraised, you know that determining
4 market value is not an exact science. It's probably more
5 fraught with judgment calls than determining return on
6 equity for a utility company. And like return on equity
7 for a utility company, it's usually the case that a
8 simpler approach is the better.

9 Ryan Kind, in his testimony, used the approach
10 of taking a pool of acquired similar generation and taking
11 a blended price for that acquired generation to establish
12 a market price that could be established for Pinckneyville
13 and Kinmundy.

14 Now, Mr. Powell spent a great deal of his
15 opening statement talking about the testimony of
16 Mr. Rackers, which Mr. Rackers is no longer supporting,
17 and I don't know whether will ever become part of the
18 record in this case.

19 Mr. Powell didn't spend a whole lot of time on
20 the testimony of Mr. Kind, and, in fact, Mr. Voytas didn't
21 spend a lot of testimony responding to Mr. Kind. And I
22 think the record will reflect that -- that Mr. Kind's
23 analysis is largely unchallenged by Union Electric, and I
24 urge the Commission to adopt it. Thank you.

25 JUDGE WOODRUFF: Thank you. Opening for the --

1 CHAIRMAN DAVIS: Can I ask Mr. Mills just a
2 question or two real quick?

3 JUDGE WOODRUFF: Certainly.

4 CHAIRMAN DAVIS: So the issue on these plants --
5 what is the legal issue in your opinion on these plants,
6 Mr. Mills, just so we're clear?

7 MR. MILLS: The value of these plants has to be
8 set for determining the rate base of this company.

9 CHAIRMAN DAVIS: Right.

10 MR. MILLS: Public Counsel asserts that the
11 actual paid value is not the appropriate value to use for
12 rate-making purposes. And Public Counsel also asserts
13 that because of the fact that this is an affiliate
14 transaction, it deserves extra scrutiny.

15 CHAIRMAN DAVIS: Right. And you're saying that
16 the affiliate -- where it's an affiliate transaction the
17 Commission should use the lesser of book value or fair
18 market value?

19 MR. MILLS: Correct.

20 CHAIRMAN DAVIS: And Mr. Kind's blended --
21 blended price based on the other comparable purchases at
22 -- at roughly the same time is better represented --
23 better represented -- representative of the price paid
24 than that which Ameren is actually reporting and
25 requesting in going to rate base; is that right?

1 MR. MILLS: Yes. Your Honor, could I amend my
2 opening statement to include that? Yes. That's exactly
3 what I'm saying.

4 CHAIRMAN DAVIS: Okay. All right. Thank you,
5 Mr. Mills.

6 MR. MILLS: Thank you.

7 JUDGE WOODRUFF: All right. For the State?

8 OPENING STATEMENT

9 BY MR. MICHEEL:

10 MR. MICHEEL: May it please the Commission. The
11 State of Missouri has also offered an adjustment in this
12 case respecting the Pinckneyville and Kinmundy transfer of
13 the plant from the corporate affiliate Ameren Energy
14 Generating Company, and that testimony is found in the
15 direct testimony of Mr. Brosch at pages 52 through 58.

16 And in his opening, Mr. Powell referred to
17 Mr. Brosch's testimony on the issue as brief. And that's
18 true. It is brief. But it is concise and succinct, and
19 the adjustment that Mr. Brosch proposed is different in
20 type, in method than the adjustment offered by the Office
21 of Public Counsel.

22 In contrast to the Office of the Public
23 Counsel's adjustment, Mr. Brosch looked at eight different
24 single cycle combustion turbines that were -- that --
25 sales that were reported to have taken place between

1 non-affiliate buyers and sellers and came to the
2 conclusion that that price was lower.

3 The theory of the State's adjustment is the same
4 theory as the Office of Public Counsel. And I'm not going
5 to go through that. But I did want to comment on --
6 Mr. Brosch's testimony in the case is -- is so brief on
7 this issue. And it's brief because the company filed no,
8 zero, no rebuttal to Mr. Brosch's different position.

9 You can read high. You can read low in
10 Mr. Voytas' rebuttal testimony, and there is not one
11 question and answer with respect to Mr. Brosch's
12 adjustment. It has gone unchallenged in the pre-filed
13 testimony.

14 Certainly, the company is entitled to
15 cross-examine Mr. Brosch. But we had no reason to file
16 surrebuttal testimony because our direct case was not
17 rebutted. Perhaps they agree with us.

18 I want to stress a point that -- that Chair
19 Davis made that this is an affiliate transaction and that
20 affiliate transactions under our law, via our rules,
21 deserves heightened scrutiny. And I also want to stress
22 the fact -- and you're right. There's a long sore history
23 with Pinckneyville and Kinmundy.

24 But this is the first time we've determined what
25 these assets should be when they're placed in rate base

1 and the price of those assets.

2 And I think when you critically look at the
3 documents both from the Federal Energy Regulatory
4 Commission and what happened in the Metro East transfer
5 and all of these other what I'll call satellite cases,
6 there was no rate-making determination made there.

7 And implore this Commission to look at the
8 evidence that's going to be presented in this case for
9 purposes of setting rates to determine what the
10 appropriate price should be.

11 And I think after you've heard that evidence and
12 looked at the undisputed evidence of Mr. Brosch, you'll
13 determine that the company's \$471 per KW price is
14 overstated and an appropriate adjustment needs to be made.

15 JUDGE WOODRUFF: Thank you. Any other parties
16 wish to offer an opening statement? All right. Then
17 we'll proceed to the first witness, which I believe is
18 Mr. Voytas.

19 JUDGE WOODRUFF: Good morning, sir. Would you
20 raise your right hand, and I'll swear you in as a witness.

21 RICHARD VOYTAS,
22 being first duly sworn to testify the truth, the whole
23 truth, and nothing but the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. POWELL:

26

1 JUDGE WOODRUFF: All right. You may inquire.

2 Q (By Mr. Powell) As I understand it, we're not
3 going through identifying information or any such. This
4 is Mr. Rick Voytas, the company witness on this issue and
5 also on the Peno Creek issue.

6 For the Commission's benefit, Mr. Voytas has --
7 I believe it's four pieces of testimony on file in this
8 case. And for reference, they are already numbered as
9 Exhibit No. 52 -- I'm sorry -- 58, which is the direct
10 testimony of Richard A. Voytas dated July 3, 2006,
11 pertaining to the subject of weather normalization.

12 Exhibit No. 59, which is the supplemental direct
13 testimony of Richard A. Voytas containing updated weather
14 normalization information, and that is dated September 29,
15 2006.

16 There are both HC and NP versions of Exhibit
17 No. 60, which is the rebuttal testimony of Richard A.
18 Voytas pertaining to Pinckneyville, Kinmundy and Peno
19 Creek.

20 And then Exhibit No. 61 is the rebuttal
21 testimony of Richard A. Voytas dated January 31st,
22 pertaining to weather normalization.

23 And since he is a witness in the Peno Creek
24 issue as well, I'll wait to offer those in evidence, but I
25 have the copies here for the court reporter.

1 JUDGE WOODRUFF: All right. Go ahead.

2 Q (By Mr. Powell) As I understand it, Mr. Voytas,
3 you have no corrections to your testimony; is that
4 correct?

5 A That's correct.

6 MR. POWELL: All right. Then I tender the
7 witness for cross examination.

8 JUDGE WOODRUFF: All right. All right. Do any
9 parties wish to cross-examine Mr. Voytas? Looks like --
10 the State is the first.

11 CROSS-EXAMINATION

12 BY MR. MICHEEL:

13 Q Good morning, Mr. Voytas.

14 A Good morning.

15 Q Is it correct that the Union Electric
16 acquisition of Pinckneyville and Kinmundy closed in May of
17 2005?

18 A That's correct.

19 Q Specifically, it was closed May 2nd, 2005,
20 correct?

21 A I know it was May. I don't know the specific
22 date.

23 MR. MICHEEL: I need to get an exhibit marked,
24 your Honor

25 JUDGE WOODRUFF: Sure.

1 MR. MICHEEL: And it would be two -- 518, maybe?

2 JUDGE WOODRUFF: Five -- actually 520.

3 MR. MICHEEL: Okay.

4 Q (By Mr. Micheel) Mr. Voytas, I've handed you
5 what's been marked for purposes of identification as
6 Exhibit 520. And that is AmerenUE's supplemental response
7 to AG/UTI Data Request 291, is it not?

8 A Yes, it is.

9 Q And did you prepare that response?

10 A Yes, I did.

11 Q And does it indicate there that the
12 Pinckneyville station, the asset transfer agreement, was
13 dated May 2nd, 2005?

14 A Yes, it does.

15 MR. MICHEEL: I would move the admission of
16 Exhibit 520, your Honor.

17 JUDGE WOODRUFF: All right. Exhibit 520 has
18 been offered into evidence. Are there any objections to
19 its receipt?

20 Mr. POWELL: No, your Honor.

21 JUDGE WOODRUFF: Hearing none, it will be
22 received into evidence.

23 (Exhibit No. 520 was offered and admitted into
24 evidence.)

25 Q (By Mr. Micheel) Are you -- you're familiar,

1 are you not, Mr. Voytas, with the Commission's affiliate
2 transactions rules?

3 A Yes, I am.

4 Q And are you aware that under those rules Union
5 Electric is supposed to pay no more than the lowest of
6 either the cost to construct an asset or the fair market
7 value of that asset when it's being transferred from an
8 affiliate?

9 A I am.

10 Q And, indeed, this was an affiliate transaction,
11 was it not?

12 A It was.

13 MR. MICHEEL: I need to get another exhibit
14 marked, your Honor. It will be Exhibit --

15 MR. MILLS: 521.

16 MR. MICHEEL: 521.

17 JUDGE WOODRUFF: Yes.

18 Q (By MR. Micheel) Mr. Voytas, I've handed you
19 what's been marked for purposes of identification as
20 Exhibit 521. That is UE's response to Data Request
21 AT/UTI 265. Have you seen this data request before?

22 A Yes, I have.

23 Q And it's signed there by Mr. Moehn?

24 A Yes, it is.

25 Q And if I understand it, Mr. Moehn is your direct

1 boss?

2 A Yes, he is.

3 Q Okay. Does that data request indicate it was
4 early 2003 when AmerenUE made the decision to purchase the
5 Pinckneyville and Kinmundy CTG plants?

6 A Yes, it does.

7 MR. MICHEEL: With that, your Honor, I would
8 move the admission of Exhibit 521.

9 JUDGE WOODRUFF: 521 has been offered. Are
10 there any objections to its receipt? Hearing knob, it
11 will be received into evidence.

12 (Exhibit No. 521 was offered and admitted into
13 evidence.)

14 Q (By Mr. Micheel) Is it correct that the market
15 value for CTG plants was beginning to decline in 2003 and
16 2004?

17 A It's difficult to answer that question for a
18 multiple of factors. The main factor was the thinness of
19 the market for those assets.

20 Q Let me ask you this: Was -- was AmerenUE able
21 to buy some CTG plants at a discount to book value
22 recently?

23 A Yes.

24 MR. MICHEEL: Okay. Your Honor, I need to get
25 another exhibit marked.

1 JUDGE WOODRUFF: All right. It will be 522.

2 Q (By Mr. Micheel) Mr. Voytas, I've handed you
3 what's been marked for purposes of identification as
4 Exhibit 522. And that is your -- AmerenUE's response to
5 AG/UTI 293; is that correct?

6 A Yes, it is.

7 Q And that -- that question sought additional
8 information regarding other comparable CTG transactions,
9 did it not, in part?

10 A Yes, it did.

11 Q And the answer there indicated the company has
12 no additional documentation to provide, did it not?

13 A Yes, it does.

14 Q And you answered that, did you not? I mean,
15 you're the one -- or no. Mr. Moehn prepared that, did he
16 -- did he not?

17 A Yes, he did.

18 Q And are you familiar with this answer?

19 A Yes, I am.

20 MR. MICHEEL: With that, your Honor, I would
21 move the admission of Exhibit 522.

22 JUDGE WOODRUFF: All right. 522 has been
23 offered. Are there any objections to its receipt?
24 Hearing none, it will be received into evidence.

25 (Exhibit No. 522 was offered and admitted into

1 evidence.).

2 Q (By Mr. Micheel) If I could just have one
3 moment, sir.

4 A Sure.

5 Q Thank you very much for your time, Mr. Voytas.

6 JUDGE WOODRUFF: Thank you. Cross, then, for
7 Public Counsel?

8 MR. MILLS: Yes. Thank you.

9 CROSS-EXAMINATION

10 BY MR. MILLS:

11 Q Good morning, Mr. Voytas.

12 A Good morning.

13 Q Is the Peno -- I'm sorry. I'm going to -- bear
14 with me because I'm going to say Peno Creek or start to
15 say Peno Creek probably on several occasions when I mean
16 to say Pinckneyville and Kinmundi.

17 Is the Pinckneyville and Kinmundy issue
18 addressed anywhere other than Exhibit 6, your rebuttal
19 testimony?

20 A I believe my surrebuttal -- my rebuttal
21 testimony is the only place the issue was addressed.

22 Q Okay. That's --

23 A From me.

24 Q That's what I'm going to be asking you questions
25 about. Do you have a copy of that with you?

1 A Yes, I do.

2 Q Okay. Now, if I can get you to refer to the
3 first page of your testimony, and I'm looking specifically
4 at the last sentence on that page --

5 A I'm sorry. I'm still -- still getting -- yes.
6 I'm there.

7 Q Is it your testimony that the Pinckneyville and
8 Kinmundy transaction complied in all respects with the
9 Commission's affiliate transaction rule?

10 A It's my testimony that the company showed
11 through a competitive bidding process that the acquisition
12 of Kinmundy and Pinckneyville was at or below market. I'm
13 sorry. Was at the lower of cost or market.

14 Q Okay. But that really wasn't my question. My
15 question is, is it your testimony that that transaction
16 complied in all respects with the affiliate transaction
17 rule?

18 A I'm -- I'm struggling with this answer because I
19 want to say yes. And I want to say yes because of the
20 letter of resource notification that we filed with both
21 Staff and the Office of Public Counsel that notified them
22 of the competitive bidding process as well as the market
23 alternatives that were analyzed.

24 On the other hand, the reason I want to say no
25 is because I am not responsible for making the -- I

1 believe the acronym is the CAM filing with this Commission
2 for those transactions. So I can't speak to that part.
3 But the part that addresses lower of cost or market and
4 documentation to support that, the answer is yes.

5 Q So your testimony here is simply that you
6 believe the transaction took place at the lower of cost or
7 market, not that the company complied with all aspects of
8 the affiliate transaction rule; is that correct?

9 MR. POWELL: Objection. That mischaracterizes
10 his testimony.

11 MR. MILLS: Well, I'm trying to get him to
12 characterize his testimony. I'm trying to get him to
13 clarify whether he's saying they did or they didn't comply
14 with the rule, and I haven't gotten a yes or no. And I'm
15 not sure I'm going to.

16 A Mr. -- Mr. Mills I don't know if you're going to
17 either. Again, the problem is that I understand the rule
18 and I understand the portion of the rule that I'm
19 responsible for that I feel is fully compliant. But the
20 filing aspects of it, which another department handles
21 that I'm not responsible for, I can't speak to that.

22 Q (By Mr. Mills) Okay. So let me give you
23 another option. If you can't say yes or no, can you say I
24 don't know?

25 A Because there's another aspect to it, I think

1 that's a fair characterization.

2 Q Okay. Now, did UE issue an RFP in connection
3 with obtaining Pinckneyville and Kinmundy?

4 A Yes.

5 Q And when was that RFP issued?

6 A The RFP was issued in August of 2001.

7 Q Okay. And when did -- when was the price set
8 for that acquisition?

9 A When was the price set for that acquisition?

10 Q Uh-huh.

11 A The bids were received shortly thereafter, and
12 the price was set at that point.

13 Q So sometime in 2001 the price was set?

14 A Sometime between August and December of 2001.
15 Correct.

16 Q Okay. Did the market price for combustion
17 turbine generation change between 2001 and May 2005 in the
18 market?

19 A I don't know.

20 MR. MILLS: I'd like to have an exhibit marked.

21 JUDGE WOODRUFF: All right. You're up to 435.

22 Mr. Mills, this is stamped Highly Confidential. Do you
23 know if, in fact, it is highly confidential?

24 MR. MILLS: I'll ask the Union Electric folks to
25 tell me.

1 MR. MICHEEL: I'm not certain why it would be.
2 It's historical data.

3 MR. MILLS: I don't know of any reason why it
4 would be, but it was stamped that way when the DR was
5 responded to, I believe.

6 JUDGE WOODRUFF: I'll ask the witness, do you
7 know if this should be highly confidential?

8 MR. VOYTAS: I don't believe it is.

9 JUDGE WOODRUFF: All right.

10 MR. MILLS: And, Judge, I don't know if you've
11 noticed, but I have very sensibly conceded all numbering
12 authority to you. I think -- I think we will all be much
13 better off with that.

14 JUDGE WOODRUFF: This is 435.

15 MR. MILLS: This is 435?

16 JUDGE WOODRUFF: Yes.

17 MR. MILLS: Thank you.

18 Q (By Mr. Mills) Now, Mr. Voytas, do you
19 recognize the -- the cover page of this as a data request
20 from Steve Carver at Utilitech and the response by your
21 boss, Michael Moehn?

22 A Yes, I do.

23 Q Are you familiar with the Excel files that are
24 attached to that?

25 A I'm familiar with the Excel files. I believe

1 they may have been attached in a different form and these
2 have been reconfigured, but I am familiar with the files.

3 Q These, in fact, I believe, were contained in
4 Mr. Brosch's testimony, and these are simply full-page
5 printouts of those so it's easier to see what's going on.

6 A Okay.

7 MR. MILLS: Your Honor, at this time, I'd like
8 to offer Exhibit 435 into the record.

9 JUDGE WOODRUFF: 435 has been offered. Any
10 objections to its receipt? Hearing none, it will be
11 received into evidence.

12 (Exhibit No. 435 was offered and admitted into
13 evidence.)

14 Q (By Mr. Mills) Now, if I can get you to turn
15 to the very last page of that exhibit, which is labeled
16 AG-UTI-094, plant sales, Excel as part of the chart. Do
17 you know what the acronym CTG generally stands for in this
18 context?

19 A I believe it stands for Combustion Turbine
20 generation.

21 Q And CC?

22 A I believe it stands for Combined Cycle.

23 Q Okay. And on this chart, the blue diamonds are
24 representative of sales of CTGs; is that correct?

25 A That's what the chart says.

1 Q Okay. And does the blue line that runs through
2 the middle of the chart show that prices for CTGs declined
3 steadily through the period of 2002 through 2005?

4 A It appears, based on -- this is the chart, based
5 on the numbers from the preceding page, which came from
6 magazine articles that have no details on the -- on the
7 specifics of the transaction, I think then, yes, that's --
8 that looks to be correct.

9 Q Okay. Now --

10 A I --

11 Q No. I have no question pending. Question B --
12 or the B part of the request of this DR --

13 A Yes.

14 Q -- asks Union Electric to provide all studies,
15 reports, analyses, spreadsheets, work papers and other
16 documents prepared by or for Mr. Moehn or the company to
17 track and evaluate the range of recent market sales of
18 peaking plants. And do you believe that this DR was --
19 was replied to completely and honestly?

20 A I believe it may have been too honest of a
21 response. What we have a --

22 Q Okay. That's -- that's a yes or no question.
23 You can -- you can have your attorney ask you on
24 redirect --

25 A Okay.

1 Q -- to explain that more?

2 A Yes, we did --

3 Q But you believe it was completely and honestly?

4 A Yes, we do.

5 Q Okay. Thank you. And -- and so that the
6 information that was provided in response to -- to Part B
7 is all studies, reports, analyses, spreadsheets, work
8 papers and other documents prepared by or for Mr. Moehn in
9 this context?

10 A I'm sorry. Can you repeat your question?

11 Q Yes. So is it your testimony that the
12 information provided in response to this DR is, in fact,
13 all studies, reports, analyses, spreadsheets, work papers
14 and other documents prepared by or for Mr. Moehn or the
15 company to track and evaluate the range of recent market
16 sales and peaking plant -- of peaking plants? I just read
17 that from the DR itself.

18 A This -- this study represents the database --

19 Q I'm not asking you what this study represents.
20 I'm asking you whether your response to Part B was a true
21 and correct response and it included all of those things I
22 just read from the question.

23 A That's correct.

24 Q Thank you. Now, I -- I started out with a few
25 questions about affiliate transaction rules. And just --

1 just so I understand your involvement in the process and
2 your familiarity with the rule, can you tell me what
3 training you've had from UE for what the affiliate
4 transaction rule entails and how to comply with it?

5 A The -- there's -- there's code of conduct
6 training extensively at UE. It's both FERC and, I
7 believe, there was a State component to it in prior years.

8 I have not been up-to-date on the State
9 component in the past year. I know I've been up-to-date
10 on the FERC component at least once. But I have received
11 training. I can't give you the exact month and year.

12 Q And -- and you -- I think you mentioned code of
13 conduct. Is that specifically discussed in the Missouri
14 affiliate transaction rule?

15 A The FERC section does not.

16 Q Okay. I would assume that would be correct.
17 Does the State section?

18 A The State section, I believe -- the -- the
19 training that I had was in the 2003 era. And I don't
20 recall all the aspect of that training.

21 Q Okay. So at least since 2003, you have had no
22 training in the affiliate transaction rules; is that
23 correct?

24 A That's correct.

25 Q And you don't recall for sure whether in 2003

1 you did or didn't?

2 A I recall that I did in 2003.

3 Q Okay. Now, you've got a fair amount of
4 testimony -- or -- or a fair amount of information in your
5 testimony concerning a -- an FERC case; is that correct?

6 A That's correct.

7 Q Does the FERC set Missouri retail rates?

8 A No, they do not.

9 Q Does it make decisions about the values of rate
10 base assets for Missouri retail rate-making?

11 A No, they do not.

12 Q Now, specifically in your rebuttal testimony,
13 can you identify the portions of that testimony where you
14 respond to Mr. Kind about Pinckneyville and Kinmundy?

15 A On page 27, line 1.

16 Q Okay. There was -- there is a question and
17 answer there at the top of page 27. Is that the only
18 portion of your testimony that -- that talks about
19 Mr. Kind?

20 A Relative to the Kinmundy, Pinckneyville?

21 Q Yes.

22 A That's correct.

23 Q Okay. Now, going back towards the beginning of
24 your testimony, page 2, lines 9 to 11, you state that
25 Mr. Rackers uses the -- the Venice cost; is that correct?

1 A I'm sorry. What line numbers?

2 Q Page 2, lines 9 to 11. You state, "He relies
3 upon the cost of the Venice combustion turbine generator
4 additions as the pay basis for his assertion that AmerenUE
5 could build additional CTG capacity at a lower cost." Is
6 that what your testimony says?

7 A My testimony says his reasoning is two-fold, and
8 one of those aspects is exactly that -- the Venice cost.

9 Q Okay. And we'll get to the second fold in a
10 minute.

11 A Okay.

12 Q Does Mr. Kind use the Venice cost in his
13 analysis?

14 A No.

15 Q Okay. Now, the second fold, as you call it, is
16 a letter from NRG that Mr. Rackers uses as his basis to
17 assert that the company would have purchased CTG capacity
18 at a lower price; is that correct?

19 A That's correct.

20 Q Does Mr. Kind use that letter from NRG as the
21 basis for his adjustment?

22 A Mr. Kind's testimony is as a second
23 recommendation. OPC recommends using the 2002 Audrain
24 offer price of \$312.50 a KW.

25 Q What is your understanding of the term secondary

1 recommendation?

2 A It means one of two.

3 Q Okay. We can look it up in the dictionary.

4 Does secondary sometimes imply second also in terms of
5 preference?

6 A It could.

7 Q Did you not understand from reading Mr. Kind's
8 testimony that this was a secondary recommendation in
9 terms of his second preferred alternative?

10 A He thought of both of them as equal.

11 Q Okay. Mr. Kind will be on the stand later.
12 Perhaps he can clarify that for you.

13 A Okay.

14 Q But at least in terms of his -- of his pri --
15 primary recommendation, Mr. Kind does not rely on the
16 letter from NRG; is that correct?

17 A That's correct.

18 Q Okay. Now, further down on page 2, specifically
19 at lines 23 continuing on through page 4, Line 4 is
20 essentially the arithmetic that Mr. Rackers uses to create
21 his adjustment; is that correct?

22 A That's correct.

23 Q And with respect to Mr. Kind's primary
24 recommendation, is that the arithmetic that Mr. Kind uses?

25 A It's different.

1 Q I'm sorry. Can you -- can you clarify the
2 answer? What is different?

3 A Mr. Kind's methodology is different.

4 Q Okay. So the arithmetic that Mr. Rackers uses
5 that you describe on page 2, line 23 through page 3, line
6 4 is not the same arithmetic that Mr. Kind used?

7 A That's correct.

8 Q Now, on page 3, lines 12 through 19, you're
9 discussing a question that Mr. Rackers was posed and
10 responded to in a deposition; is that correct?

11 A I'm sorry. Can you give me the line references?

12 Q Page 3, lines 12 through 19.

13 A Yes.

14 Q Did Mr. Kind get posed a similar question in his
15 deposition?

16 A I don't know.

17 Q Do you know -- well, then I take it you wouldn't
18 know what his answer would be if he was, do you?

19 A In regards to his deposition?

20 Q Yes.

21 A I do not know what his answer would be.

22 Q Okay. Page 3, lines 20 through 22, you talk
23 about Mr. Rackers attendance at semi-annual resource
24 planning meetings. Is that what you're talking about in
25 your testimony?

1 A That is.

2 Q Is Mr. Kind's attendance pretty good at those
3 meetings?

4 A It is.

5 Q For many years, he has rarely, if ever, missed
6 one of those meetings; is that true?

7 A That's an accurate statement.

8 Q Now, this -- I'm going to ask you some questions
9 about Peno Creek here, and -- and although I may be
10 confused at some point, I think it has some bearing on the
11 Pinckneyville and Kinmundy issue.

12 A Okay.

13 Q On page 4, line 13, you're talking about the
14 installed cost of the Peno Creek plant at \$570 per
15 kilowatt; is that correct?

16 A Yes, it is.

17 Q Is -- is the -- is the company's proposed value
18 570 or 550? I thought I had soon both: For Peno Creek.

19 Q For Peno Creek?

20 A My understanding is that the installed cost in
21 2002 was \$570 per KW.

22 Q And that's the number that you proposed to
23 include for rate base in this case; is that correct?

24 A For Peno Creek?

25 Q Yes.

1 A I did not set the net book value. I don't know
2 what that value is today.

3 Q Don't know. Okay. But are you aware that there
4 is an issue in this case about what the appropriate value
5 of Peno Creek for rate-making purposes is?

6 A I'm aware that OPC witness Ryan Kind brought up
7 that issue. Yes.

8 Q Okay. And isn't it possible that Mr. Rackers
9 knew about that issue when he filed his test -- his direct
10 testimony?

11 A I don't know.

12 Q Mr. Kind raised that issue in his direct
13 testimony, filed at the same time as Mr. Rackers filed
14 Mr. Rackers' direct testimony; is that not correct?

15 A I don't know the date of the respective filings,
16 but I know that Mr. Kind raised that issue in his filing.

17 Q In his direct filing?

18 A Correct.

19 Q Okay. And what you're talking about here, it --
20 I'm sorry -- at -- at page 4, line 13 and the sentence
21 that actually starts on 12 and goes on through line 14 is
22 Mr. Rackers' direct testimony; is that correct?

23 A That's correct.

24 Q Okay. Now, on page 4, lines 21 through 23, are
25 you referring to Mr. Rackers' deposition there?

1 A Yes, I am.

2 Q Okay. Did Mr. Kind get similar questions in his
3 depositions about letters of intent indicative of pricing
4 proposals and definitive agreements?

5 A I don't know.

6 Q Okay. Then would you know how Mr. Kind answered
7 those questions in his deposition if he was posed them?

8 A I don't know.

9 Q Okay. So it's -- it's not your testimony here
10 on page 4 that Mr. Kind's deposition revealed his lack of
11 knowledge about these three topics, is it?

12 A It is not.

13 Q Okay. Now, page 5, I believe, line 7, you refer
14 to a -- a FERC case, Case No. EC-03-53-00; is that
15 correct?

16 A That's correct.

17 Q And just so we don't have to say those numbers
18 over and over again, is that the only FERC case you talk
19 about in your testimony?

20 A Yes, it is.

21 Q If I refer to the FERC case and had some
22 questions about it, will you understand that that's the
23 case I'm talking about?

24 A I will.

25 Q Okay. Does the EC designation in that case

1 number mean anything? Is that an electric complaint?

2 A I don't know.

3 Q Okay. Do you know who started that case?

4 A I don't remember.

5 Q Do you know the purpose of that case?

6 A Yes, I.

7 Q Okay. And what was that purpose?

8 A It's more correct to say what were the purposes.

9 It was a multi-faceted case. Ultimately, it was decided
10 -- it was a case to prove whether or not the acquisition
11 of Kinmundy and Pinckneyville was in the public interest.

12 And then from there, it took a little bit of two
13 public approaches. One was from the perspective of NRG
14 when this acquisition was a more cost effective
15 acquisition and had the energy Audrain plant. And the
16 other perspective was from the perspective of the other
17 party to the case, the electric supplier, our supplier
18 associates, ETSA, who took the position that for wholesale
19 markets to develop, it would be more optimum in IOU,
20 Investment Owned Utilities like AmerenUE, to enter into
21 power purchase agreement.

22 Q I was actually looking for something simpler.
23 Is it true that that was a case in which UE was hoping to
24 get approval of the Pinckneyville and Kinmundy
25 acquisition? Was that -- was that one of the ultimate

1 results that UE sought from FERC?

2 A Can you rephrase your -- or tell me again your
3 question, please.

4 Q Did UE want FERC to approve the acquisition of
5 Pinckneyville and Kinmundy in that case?

6 A UE needed FERC approval of Kinmundy and
7 Pinckneyville. Yes.

8 Q All right. And they sought it in this case?

9 A That's correct.

10 Q Okay. Now, page 5, lines 14 to 16, does either
11 Mr. Rackers' testimony or his deposition reveal whether
12 Mr. Kind read and understood the FERC filings?

13 A It does not.

14 Q Okay. Now, what -- at lines 14 through 19,
15 you're talking about some issues, one of those
16 specifically at line 17 is the real price rather than the
17 indicative price that NRG was willing to sell the Audrain
18 plant in the 2002/2003 time frame; is that correct?

19 A That's correct.

20 Q If Mr. Kind does not rely on the indicative
21 price in his primary proposal in this case to the extent
22 that Mr. Rackers did, those issues would not flaw
23 Mr. Kind's testimony to the extent that you assert that
24 they flaw Mr. Rackers' testimony; is that correct?

25 A Ignoring the secondary recommendation, that's

1 correct.

2 Q Okay. On page 5, line 23, continuing on at page
3 6, line 4, does Mr. Kind indicate that market prices for
4 existing operational CTG facilities in 2002 are comparable
5 to those in 2006?

6 A Indirectly, yes.

7 Q And how does he do that?

8 A The decision to acquire the Kinmundy and
9 Pinckneyville assets were made in 2002. And by using a
10 2006 weighted average price, in my mind, that implies that
11 there's a link between the 2006 weighted average price and
12 the price in 2002 when the decision was made to acquire
13 the facility.

14 Q But you don't believe that the 2002 price and
15 the 2006 prices were comparable, did you?

16 A No, I don't.

17 Q And, in fact, Public Counsel Exhibit 535 -- 435
18 clearly shows that they were not. Is that not correct?

19 A That exhibit tends to show that there is a
20 downward sloping to that line.

21 Q And does that downward sloping to that line mean
22 that the prices were not comparable in 2002 and 2006?

23 A It does not.

24 Q It does not mean that they're not comparable?

25 A I'm sorry. Tell me your -- please ask me the

1 question again.

2 Q I asked whether this chart showed that the
3 prices were or were not comparable. And your answer
4 referred to the downward sloping line. But you didn't
5 specifically say whether this chart shows that they're not
6 comparable. Does this chart -- that -- that shows the
7 prices in 2006 are priced in 2002?

8 A That chart does show that.

9 Q Okay. Now, I believe you stated earlier that
10 you closed the Pinckneyville and Kinmundy transactions in
11 May 2005; is that correct?

12 A That's correct.

13 Q When did you begin discussing an RFP that led to
14 the purchase of Audrain, Goose Creek and Raccoon Creek?

15 A The summer of 2001.

16 Q Okay.

17 MR. MILLS: I'd like to mark an exhibit.

18 JUDGE WOODRUFF: Sure. It will be 436.

19 JUDGE WOODRUFF: Mr. Mills, again, this is
20 stamped Highly Confidential. Do we know again if it's
21 actually highly confidential?

22 A I believe it is. This was provided to us in the
23 IRP case, EO-2006-0240.

24 JUDGE WOODRUFF: All right.

25 MR. MILLS: And it was provided as a highly

1 confidential document in that case.

2 JUDGE WOODRUFF: Okay. I will make it 46-HC
3 then.

4 MR. MILLS: Yeah.

5 Q (By Mr. Mills) Mr. Voytas, I've handed you a
6 copy of what's been marked as Exhibit 436-HC. Can you
7 identify that that is Public Counsel Data Request 531 in
8 your most recent integrated resource planning case,
9 EO-2006-0240?

10 A Yes. I can verify that.

11 Q And the response was prepared by Edward J.
12 Kammerer; is that correct?

13 A That's correct.

14 Q Does Mr. Kammerer work for you?

15 A Yes, he does.

16 Q And, in fact, the very first page of this
17 exhibit, there is the initials EJK for Edward J.

18 Kammerer/RAV for Richard A. Voytas; is that correct?

19 A I'm sorry. Where are you at?

20 Q The first page in the response. Down at the
21 bottom.

22 A I'm at the first -- oh, I see. Yes, it does.

23 Q And you believe that RAV are your initials?

24 A They are.

25 MR. MILLS: Okay. Your Honor, I'd like to --

1 I'd like to get this admitted, but before we go into
2 highly confidential questions about it, so -- I haven't
3 laid a whole lot of foundation, but I'm going to go ahead
4 and offer it now and see if there's any needed, highly
5 confidential portions of it need be any objection.

6 JUDGE WOODRUFF: 436 has been offered. Any
7 objections to its receipt? Hearing none, it will be
8 received into evidence.

9 (Exhibit No. 436 has been offered and admitted
10 into evidence.)

11 MR. MILLS: Okay. Now I do believe we need to
12 go in-camera.

13 JUDGE WOODRUFF: All right. At this point, we
14 need to go in-camera.

15 MR. CONRAD: And, Judge, I don't know if it
16 matters, but the screen back here is not on. Does that
17 mean anything or does the absence of it mean anything?

18 JUDGE WOODRUFF: Apparently, we're still
19 transmitting form -- up to the world because I've been
20 getting e-mails commenting about it or have -- have not
21 gotten any e-mails saying they're not getting it. I'm not
22 sure what happened to the screen, but we'll check on it
23 today.

24 MR. MILLS: And how are the reviews today?
25 Never mind. I don't want to know.

1 REPORTER'S NOTE: At this point, an in-camera
2 session was held, which is contained in Vol. 31, pages
3 3102 through 3108.

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

2 CONTINUED CROSS-EXAMINATION OF RICHARD VOYTAS

3 BY MR. MILLS:

4 Q (By Mr. Mills) Now, in returning to your
5 rebuttal testimony, and I'm talking about page 6, line 21
6 -- and I believe the gist of your statement there is that
7 comparing summer net capacity to name plate capacity is an
8 apples to oranges comparison; is that correct?

9 A That's correct.

10 Q Is comparing summer net to summer net an okay
11 comparison? In fact, that's what you recommend.

12 A Yes. Based on the same conditions. That's
13 correct.

14 Q Okay. Is comparing name plate to name plate
15 okay?

16 A For purposes of resource planning with the
17 summer peaking utility? No.

18 Q Okay. Now, page 7, lines 22 to 23, first you're
19 discussing three different types of CTGs, aero
20 derivatives, small frames and large frames, correct?

21 A That's correct.

22 Q And you say each type has different capabilities
23 and cost structures; is that correct?

24 A That's correct.

25 Q Could they also have different load times in

1 terms of getting receipt from the unit from the
2 manufacturer?

3 A Depends upon the market.

4 Q Do they now?

5 A I believe they do.

6 Q Did they in 2006?

7 A I don't have any information to support that.

8 Q How about 2005?

9 A I don't know.

10 Q 2004?

11 A I don't know.

12 Q 2003?

13 A I don't know.

14 Q Do you have any information in any year as to
15 whether or not the lead team for manufacturers on
16 different types of CTGs was different?

17 A Yes, I did. In 2000, 2001 and 2002.

18 Q Okay. And in that period, were the load times
19 to aero derivatives shorter than those for large frames?

20 A That's my understanding.

21 Q Okay. And how much shorter were they? How much
22 shorter were they?

23 A I don't know.

24 Q Now, on -- on page 9, line 4, you talk about the
25 Pinckneyville unit, and you say they're small frame units

1 rated at 36 megawatts each. Is that a summer net rating?

2 A That is.

3 Q And do you know whether the units at Goose Creek
4 and Raccoon Creek are dual fuel capable?

5 A Are dual fuel capable?

6 Q Yes.

7 A I know that they have a limited amount of
8 piping. But other than that, they are not. They are not
9 in terms of they have do not have the proper fuel nozzles
10 nor the storage facilities to handle dual fuel.

11 Q But the Kinmundy plant is?

12 A That's correct.

13 Q Okay. Now, on page 10, line 9, all the way
14 through page 13, line 20, in his primary recommendation,
15 does Mr. Kind use UE's cost of adding CTGs at Venice for
16 support for disallowance?

17 A No, he does not.

18 Q Does he use the cost of adding CTGs at Venice
19 for supports for disallowance in his secondary
20 recommendation?

21 A No, he does not.

22 Q The discussion from page 10, line 9 through page
23 13 line 20 does not have anything to do with Mr. Kind's
24 position in this case; is that correct?

25 A That's correct.

1 Q Then let's skip ahead to page 15 at line 5.

2 You're quoting from Mr. Rackers in his deposition. And
3 Mr. Rackers has used the word running; is that correct?

4 A That's correct.

5 Q Is running a term of art in the electric utility
6 business?

7 A I don't know. A plant operates. A plant runs.
8 To me, they all mean the same. If it's a term of art, I
9 -- I don't know.

10 Q Okay. So is it your testimony that it is -- it
11 is incorrect to call a plant that has passed its start-up
12 tests a running plant?

13 A The term running, to me, means commercially in
14 commercial operation.

15 Q I thought you just said that's not a term of art
16 to your understanding.

17 A No. But running, to me, a plant operates or
18 runs, to me, it means it's in commercial operation.

19 Q It could mean to someone else that it passed its
20 start-up tests, could it not?

21 A I don't know.

22 Q Okay. Is there a term of art for a plant that
23 is tested and ready to begin commercial operations that
24 hasn't yet sold any -- any power into the grid?

25 A I don't know.

1 Q Would you call it a running plant?

2 A Give me the circumstances again.

3 Q The plant is tested and ready to begin

4 commercial operations, say, the very next day. Is that a

5 running plant?

6 A Does the plant have firm transmitting and output

7 capability.

8 Q Sure?

9 A It does.

10 Q So it is a running plant?

11 A If it has firm transmission output capability.

12 Q Okay. Now, page 15, line 15 through page 19,

13 Line 4 --

14 A I'm sorry. Page 15 --

15 Q Page 15, line 15.

16 A Line 15.

17 Q Continuing on through page 19, Line 4. Is that

18 section of your testimony a discussion of transmission

19 capability and transmission constraint?

20 A Yes, it is.

21 Q Okay. Are you a transmission expert?

22 A No, I'm not.

23 Q Now, page 19, lines 14 to 15, you consider the

24 language there as a -- as an indicative pricing proposal;

25 is that correct? You're quoting from the NRG letter at

1 lines 14 to 15?

2 A May I have just one second, please?

3 Q Sure.

4 A I think I was just citing the words exactly
5 submitted by the NRG person who wrote the letter where it
6 says, This indicative proposal is valid through August
7 30th, 2002.

8 Q Okay. But that -- that section at pages -- at
9 lines 14 to 15 is a quote from the -- from the NRG letter;
10 is that not correct?

11 A Well, if the -- if the word that we're focusing
12 on is indicative, yes, that's directly from the letter.

13 Q No. Actually, I'm focusing on the quotations on
14 lines 14 to 15 of page 19. And maybe your line numbers
15 are different from my mine, but --

16 A No. Not 14 and 15.

17 Q Okay. Is that particular sentence from the
18 letter what you consider to be an indicative pricing
19 proposal?

20 A This particular sentence?

21 Q Yes.

22 A Yes.

23 Q Okay. Now, what would have happened if an
24 authorized UE representative had sent a letter back the
25 next day saying, Okay, we'll take it?

1 A I don't know.

2 Q Okay. So you'd be speculating as to whether or
3 not this was a real price or not?

4 A I'd be speculating as to whether that was a real
5 price or not.

6 Q You consider it an indicative price, but you
7 don't know whether or not they would have sold at that
8 price had UE said, We'll buy it at that price, do you?

9 A I don't know the terms and conditions
10 surrounding that price, no.

11 Q So your answer to my question was no?

12 A If I knew the terms and conditions associated
13 with that price it may be yes. But without knowing that,
14 the answer is no.

15 Q Okay. Now, is the actual purchase price that UE
16 paid for -- to the Audrain unit highly confidential? I
17 don't believe it is, but I want to be sure.

18 A I think you're asking the wrong person. But I
19 have seen it in public, so I assume that it is not.

20 Q Well, let's look, for example, at page -- of
21 your rebuttal testimony, 535, line 29. There you're
22 talking about the offer price for 2005. Do you know
23 whether or not that's the purchase price?

24 A That is the purchase price.

25 Q Okay. And that's not highly confidential?

1 A No.

2 Q Okay. Now, what does that translate into in a
3 -- in terms of dollars per kilowatt if we assume a 578,000
4 kilowatt rating?

5 A \$199 a KW.

6 Q Okay. Now, at page 20 of -- of your rebuttal
7 testimony, at line 22, the -- this is a -- this is a
8 quotation from Mr. Reid at NRG, I believe, in -- in the
9 FERC proceedings; is that correct?

10 A That's correct.

11 Q And according to that quotation, Mr. Reid was
12 confident he could sell Audrain for \$391 a kilowatt,
13 right? Wasn't he?

14 A Yes.

15 Q His confidence was misplaced, wasn't it?

16 A At that time?

17 Q At any time. Was NRG ready to sell that price
18 at that price -- that plant at anything close to that
19 price at that time or any other time?

20 A I don't know what negotiations NRG had.

21 Q Did they sell that plant at that price or
22 anything close to that price at any time?

23 A No, they did not.

24 Q In fact, they sold it for something barely half
25 that price; is that not correct?

1 A That's correct.

2 Q Okay. So was his confidence misplaced?

3 A I don't know if it was or if it wasn't. This
4 price, if that asset had been --

5 Q If you don't know, you don't know. That's okay.

6 A I don't know.

7 Q Okay. Turning to page 22, line 16, is your
8 objection to Mr. Rackers' valuation there essentially that
9 he based his adjustment on a price per kilowatt based on
10 one particular proposal?

11 A No. My point in that particular Q&A was the
12 fact that it was a discreet estimate as opposed to a
13 change of estimates.

14 Q In this case, will the Commission be able to a
15 assign a range of rate base values for the Pinckneyville
16 and Kinmundy plant?

17 A The Commission -- the Commission, in my opinion,
18 should consider a range based on the characteristics of
19 those plants in determining the value of this specific
20 transaction, yes.

21 Q So when they set the rate, they're going to set
22 rates based on a value of a plant from X to Y and rates
23 will change from X to Y?

24 A No. When they set rates, they'll say, For aero
25 derivative type plants, this is a fair value. For large

1 frame plants of this type, this is a fair value. And that
2 -- in my opinion, that would be a way to look at it.

3 Q So for the Pinckneyville and Kinmundy plant in
4 particular, the Commission will have to establish a
5 discreet rate price -- or excuse me -- a discreet value
6 for rate-making purposes?

7 A I believe the Commission will have to look at
8 the unique characteristics of the Pinckneyville plant and
9 assign a price and look at the unique characteristics of
10 the Kinmundy plant and assign a price for those.

11 Q A discreet price for each of those?

12 A At the end of the day.

13 Q Okay. Now, at line 20 and continuing on on page
14 22, you're talking about market pricing expert, are you
15 not?

16 A Yes, I am.

17 Q And in that case, other than the -- the one
18 expert whose -- whose testimony that UE didn't like,
19 Mr. Rujotevich, if I pronounced that correctly, did all
20 the experts look at a number of similar transactions to
21 derive a range of prices?

22 A The experts looked at a number of transactions
23 of CTGs.

24 Q Right.

25 A I don't believe there was an aero derivative in

1 any of those. Were they similar? No. Were they CTGs?

2 Yes.

3 Q But they all looked at a number of tractions to
4 try to establish a market price?

5 A Yes, they did.

6 Q Okay. And do you agree that that's the best
7 approach?

8 A I believe that is an approach. The best? I
9 don't know.

10 Q Okay. Do you know of a better one?

11 A I would look at multiple approaches. I would
12 look at market price. I would look at market modeling. I
13 would look at cost, replacement costs, and I'd consider
14 all of that and look at those ranges, but I would use a
15 wide variety of prices.

16 Q Do you --

17 A Wide variety of the methodologies.

18 Q Do you think Mr. Rujotevich's -- I'll get the
19 spelling to the court reporter -- market modeling was an
20 appropriate approach?

21 A Do I think it was?

22 Q Yes.

23 A I think it gave values that according to his
24 models and his assumptions were valid.

25 Q Okay. Now, at page 24 of your testimony, you

1 have a table. Is the -- is the first column in that table
2 that's headed Audrain County -- is that the NRG plant in
3 Audrain County?

4 A It is.

5 Q And there, it shows a -- a sale price in dollars
6 per kilowatt of \$508 per kilowatt?

7 A Yes, it does.

8 Q Is that the same plant that earlier in your
9 testimony you implied had only salvage value?

10 A Yes.

11 Q Okay. And what does that table show for the
12 online date of Audrain?

13 A May of 2000.

14 Q Okay. Is Audrain a -- I'm sorry. Is "online" a
15 term of art in the electric utility business?

16 A I don't know. It means something to me. I
17 don't know if it's a term of art.

18 Q Okay. Is it a more precise term than the term
19 "running" that we talked about earlier?

20 A I can't really distinguish.

21 Q Okay. Now, can you please tell me, the units
22 that are shown on that table, can you categorize them as
23 small frame, large frame and aero derivative? I believe
24 the unit description is in the very bottom row.

25 A These are large frame.

1 Q All of them?

2 A The one plant that I've got some hesitation on
3 is the Man Chief Power Station. It's an SWPCV84.3A-1.
4 However, there are two units. The total capacity at the
5 plant in this memo is 275 megawatts. So that's roughly
6 140 megawatts per unit. That should be a large frame,
7 also.

8 Q Okay. Column 2, the Madison generating station
9 and Cyncap (ph.) 7, the -- the unit description on the
10 bottom row says, It's a GEPP721EA and Unavail. What does
11 "unavail" mean in purposes -- in the context of this
12 table?

13 A On this particular transaction, our
14 understanding is that there's two different types of
15 units. And we knew one. We didn't know the other type.

16 Q So out of the 11 units in that column, how many
17 of them do you not know what they are?

18 A I don't know.

19 Q At least some of them, you don't know what type
20 of units they are; is that correct?

21 A Subject to check and going back and looking at
22 the database from which this came, at this point, that's
23 correct.

24 Q Okay. Now, in your discussion bottom of page
25 24, specifically line 7, and then continuing on to page

1 25, Line 4, how many separate companies are you talking
2 about there?

3 A Nine.

4 Q Are any of those companies in financial
5 distress?

6 A Today, at the day during these transactions?
7 What time period?

8 Q Today.

9 A I don't know.

10 Q Line 14 on page 24 refers to Calpine. You have
11 no knowledge of the current state of Calpine's finances?

12 A Do I have knowledge?

13 Q Yes.

14 A No, I do not know the state of their finances
15 today.

16 Q Okay. And you don't -- you don't have any
17 information about any of these companies as to how they're
18 doing these days?

19 A As to their financial balance sheets?

20 Q Not specifically. As to whether or not they're
21 doing well or doing poorly.

22 A No. I don't have that information.

23 Q Okay. Now, at page 26, lines 19 through 25, is
24 that a quote from a FERC Administrative Law Judge's
25 initial decision?

1 A It is.

2 Q Has there been a final decision since then?

3 A I don't know if my legal parlance is correct.

4 But the FERC petition was -- approved the ALJ's initial
5 decision. So has there been a final decision? Based on
6 my understanding of the way FERC works, yes.

7 Q Did they approve all of the words in their
8 initial decision that you're quoting here?

9 A I don't remember.

10 Q Now, the discussion at page 27, line 12 through
11 page 28, line 20, first of all, is this -- is this a
12 quotation, or is this your paraphrasing of what that FERC
13 ALJ's initial decision said?

14 A No. This is directly from the initial decision.

15 Q Okay. So those findings were set forth in this
16 -- in this exact bulleted manner in the initial decision?

17 A The initial decision was 90-plus pages long. I
18 believe this was very close. Whether it was 99 or 100
19 percent, I -- I don't -- I don't know that right now.

20 Q So you don't know whether this is an exact
21 quote?

22 A Well, yeah. I do. It is an exact quote. It's
23 from the bullet that she put in her initial decision.

24 Q Okay. Okay. And do you know whether this exact
25 quote appears in the final decision?

1 A I don't remember.

2 Q Okay. Now, on page 28, lines 24 through 28, you
3 do not have any discussion there of Mr. Kind or his
4 analysis, do you?

5 A I'm sorry. We are on page 28. What are the
6 lines?

7 Q Page 28, lines 24 through 28.

8 A I was specifically speaking to Mr. Rackers'
9 testimony.

10 Q And you don't mention Mr. Kind or Mr. Kind's
11 analysis there, do you?

12 A I do not.

13 Q Now, the next section is essentially about Peno
14 Creek, and we're going to -- I'm going to skip over that
15 for now. Page 36, lines 7 through 9 is my reference. And
16 my question to you is, did Mr. Kind testify that UE should
17 have bought Audrain for \$200 million?

18 A Are you talking in this proceeding or in prior
19 proceedings?

20 Q At any time.

21 A My recollection is that Mr. Kind thought that
22 the company should have purchased the Audrain facility for
23 200 million in his testimony sponsored in Metro East. And
24 that's subject to check. It's -- it's' memory.

25 In this particular instance, this was a

1 secondary recommendation.

2 Q I'm sorry. What was that bit at the end? We'll
3 go back to the Metro East thing. But what -- what did you
4 say at the end of your last answer?

5 A On the \$200 million?

6 MR. MILLS: Can I have that read back, the end
7 of his last answer, please?

8 (The previous answer was read back.)

9 Q (By Mr. Mills) Okay. We'll go back to the
10 Metro East. What do you mean by in this particular
11 instance -- instance, that was a secondary recommendation?

12 A Can you go back to your original question? I'm
13 a little bit confused. Insofar as it's addressing the 200
14 million, that number appears in Mr. Kind's testimony in
15 this case. And I'm -- I think I'm confused as to whether
16 we're referring to this case, the Audrain -- I'm a little
17 bit confused as to the question.

18 Q We can start over, and I'll break it down. In
19 this case, it's Mr. Kind testimony that UE should have
20 bought the Audrain facility for \$200 million?

21 A Indirectly, yes.

22 Q How -- how do you indirectly testify to
23 something, Mr. Voytas?

24 A May I read page 35, line 25 of Mr. Kind's
25 testimony?

1 Q Sure.

2 A "The \$200 million initial offer price of NRG to
3 UE is shown towards the bottom of the first page of the
4 letter." At this particular point --

5 Q Are you still reading from Mr. Voytas'
6 testimony, or are you explaining?

7 A No. I stopped.

8 Q Well, I --

9 A At this particular point.

10 Q Are you going to explain to me how he indirectly
11 testifies to the fact that UE should have bought the
12 Audrain for \$200 million?

13 A Well, to the extent that the secondary
14 recommendation is based on an offer of Audrain to be
15 bought for 200 million and applied that same dollar per KW
16 figure to the acquisition price of Kinmundy and
17 Pinckneyville, in my mind, there is an indirect
18 connection.

19 Q Are you familiar with the way the market price
20 analysis for the value of a plant is done?

21 A Certainly.

22 Q The analytic number of transactions sales that
23 have taken place in attempts to create a market value from
24 those plant sales; is that correct?

25 A That's one approach.

1 Q The market value analysts require the company
2 they're valuating to actually purchase all of those
3 plants?

4 A No, they don't.

5 Q Okay. And does Mr. Kind ever directly say that
6 UE -- well, AmerenUE should have bought the Audrain
7 facility for \$200 million?

8 A He does not directly say that.

9 Q So that's something that you are inferring from
10 what he actually said in his testimony; is that correct?

11 A That's correct.

12 Q Okay. Now, page 36, line 15, what was in play
13 at that time that would have forced UE to buy that plant
14 at that time?

15 A What was in place that time -- at that time was
16 the fact that NRG preferred to negotiate this transaction
17 at FERC because it failed to do so directly with the
18 company.

19 Q So is it your testimony that you think that
20 because of that FERC case that we were talking about, you
21 -- FERC may have forced you to buy that Audrain plant?

22 A No. FERC -- FERC would not have forced us to
23 buy the Audrain plant.

24 Q Okay. What -- what or who would have -- or who
25 could have forced you to buy that plant?

1 A Well, the direct result of the FERC case is if
2 the -- Kinmundy and Pinckneyville transaction was not
3 approved the options are limited. Audrain would obviously
4 float up to the top of the list, so your options become
5 narrower.

6 Q So are you saying that if the FERC had not
7 approved the Pinckneyville/Kinmundy transaction you would
8 have bought that plant that only had salvage value?

9 A No. I'm saying if that had been the case, we
10 would have started from scratch and looked at all options.

11 Q Okay. Okay. Let's -- let's look at another
12 word on that line 15 on page 36. You say that you refuse
13 to be forced to buy that plant. Who -- who did you
14 refuse?

15 A NRG.

16 Q So you think it was NRG that was trying to force
17 you to buy that plant?

18 A In the context of the FERC proceeding?

19 Q In any context. It's your testimony.

20 A In the context of the FERC proceeding, yes, I
21 do.

22 Q Okay. So that's the context you're talking
23 about here that the NRG and the FERC proceeding was trying
24 to force you to buy the NRG plant and you refused?

25 A That's correct.

1 Q Okay. So are you saying that UE went out of its
2 way to structure a unique transaction to get low cost
3 power for its ratepayers? If you -- if you read on in your
4 answer there on -- in the middle of page 36, specifically
5 down at the answer on line 21, AmerenUE should be
6 commended for the transaction it was ultimately able to
7 negotiate with NRG?

8 A Correct.

9 Q Okay. Is that the sort of thing that regulated
10 utilities should do?

11 A Sure.

12 Q Do regulated utilities, in fact, have a duty to
13 do that?

14 A They have a duty to do that. This one was a
15 little bit -- had a little bit more to it than -- than
16 just the normal course of the -- resource acquisition
17 transaction.

18 Q Yeah. Okay. Page 38 -- and -- and,
19 specifically, at -- at line -- the -- the question
20 beginning at line 10 and the following answer: Did Aquila
21 eventually declare bankruptcy?

22 A I don't know what their current financial status
23 is.

24 Q Okay. Now, on page 38 at the -- at the answer
25 that begins on line 18, is that the -- is that the RFP

1 that we were talking about earlier with respect to Exhibit
2 -- the exhibit that was the -- I believe it was 435.

3 A OPC's data request from the integrated resource
4 plan case.

5 MR. POWELL: 436.

6 Q (By Mr. Mills) Thank you. 436.

7 A I believe it is.

8 Q And that's -- I'm not going to get into -- any
9 -- any details on that because it's highly confidential.
10 But on page 40 that -- the last substantive answer before
11 you say, Does that conclude your testimony, is it your
12 testimony there that the results of that RFP are useful in
13 evaluating the Pinckneyville and Kinmundy values?

14 A Useful -- useful if used properly, correct.
15 Correct.

16 MR. MILLS: Okay. Your Honor, may I have a
17 minute?

18 JUDGE WOODRUFF: Sure.

19 MR. MILLS: Or are we due for a break?

20 JUDGE WOODRUFF: We are due for a break.

21 MR. MILLS: Why don't we go ahead and take a --
22 if you don't mind, we can take a break, and I'll wrap up.

23 JUDGE WOODRUFF: We are due for break. We'll
24 come back at 10:45.

25 JUDGE WOODRUFF: Well, let's go ahead and get

1 started again. Go ahead, Mr. Mills.

2 Q (By Mr. Mills) Mr. Voytas, I'm basically done.
3 I just have a couple of questions that I'm not sure I
4 asked very clearly. When were the prices for the
5 acquisition of the NRG and Aquila generating assets
6 negotiated with NRG and Aquila?

7 A In the period of time between which the RFP was
8 issued, July of 2005 and the time that the transactions
9 closed.

10 Q Was the -- was the transaction filed -- did you
11 file for approval of the transaction with FERC on December
12 28th, 2005?

13 A I'm sorry. Were we talking about the Aquila and
14 the NRG transactions or the Kinmundy and Pinckneyville
15 transactions?

16 Q My question was about the energy and the
17 Audrain, Goose Creek and Raccoon Creek transactions.

18 A Okay. Can you take me through those again?

19 Q Yes. When were the prices for those negotiated?

20 A The prices for those assets were negotiated
21 between the time that the RFP was issued in July of 2005
22 and the time that the transactions were closed in spring
23 of 2006.

24 Q Okay. Did you file for FERC approval of those
25 transactions?

1 A I don't know.

2 Q Okay. But assume with me that you did file for
3 FERC approval. Would the prices have been known before
4 that application was filed?

5 A Would what prices have been known before?

6 Q Would you file for FERC approval of a
7 transaction for which you did not have a final price?

8 A No.

9 Q Okay. Now, way back at the beginning of my
10 cross-examination, I asked you a question about trends and
11 prices for combustion turbines. Do you recall that?

12 A I recall that.

13 Q And you said at that point that you didn't know
14 whether prices had changed between 2002 and 2006; is that
15 correct?

16 A That's correct.

17 Q Okay. Are you a marking -- market pricing
18 expert for purposes of determining the fair market value
19 of a specific CTG at a specific point in time?

20 A What do you mean by expert?

21 Q Well, do you believe that you qualify as an
22 expert to testify on that topic?

23 A I believe that we've acquired sufficient market
24 data through various RFPs to have a good feel for what
25 that is.

1 Q Have you ever filed testimony at FERC as a
2 market value expert on the value of a CTG?

3 A The question is have I ever filed testimony at
4 FERC on the market value of a CTG asset?

5 Q Have you ever filed as an expert on that topic
6 with FERC?

7 A My direct testimony in the FERC case that we're
8 referring to in this case has got a market assessment of
9 some transactions in it, but I did not say that I was a
10 market expert.

11 Q Okay. So would your answer be yes or no?

12 A My answer is that at FERC, I have filed market
13 testimony. I don't know if I'm an expert or not, if that
14 makes me an expert or not.

15 Q Okay. Now, returning to -- to page 36 of your
16 rebuttal testimony -- and we were talking for a while
17 about the -- the line 15 section about the possibility of
18 UE being forced to buy the Audrain facility in 2002. Is
19 that -- do you recall those questions?

20 A Yes, I do.

21 Q What -- was the FERC proceeding that we've been
22 talking about today underway in 2002?

23 A My recollection is that the FERC proceeding was
24 in 2003.

25 Q Okay. And, in fact, it bears a case number,

1 EC-03 that would seem to indicate that; is that correct?

2 A That's correct.

3 MR. MILLS: Okay. That's all the questions I
4 have. Thank you.

5 JUDGE WOODRUFF: All right. Thank you. Any
6 cross-examination from Staff?

7 MR. DOTTHEIM: No questions from Staff.

8 JUDGE WOODRUFF: All right. We'll come up for
9 questions from the Bench. Commissioner Gaw?

10 CROSS-EXAMINATION

11 BY COMMISSIONER GAW:

12 Q Good morning, Mr. Voytas.

13 A Good morning, Commissioner.

14 Q I believe that Mr. -- it's Mr. Moehn; is that
15 correct? Or Moehn?

16 A Mr. Moehn.

17 Q That's what I thought it was.

18 A My -- my boss.

19 Q Yes.

20 A Mr. Moehn.

21 Q I think he told me to ask you some questions
22 about -- about demand response. Does that make sense?

23 A That makes perfect sense.

24 Q Good. Well -- so I'll relieve you of your -- of
25 the inquiry that you've been having for a while and let

1 you talk about something else for a minute.

2 A Okay.

3 Q How would that suit you?

4 A That would suit me fine.

5 Q I thought so. Let me -- let me ask you what
6 your background is in regard to what you can tell me about
7 demand response to -- to give me a perspective on how --

8 A Sure.

9 Q -- what you do and --

10 A Sure. I have been active in the demand response
11 field since 1995. In 1995, I was promoted to the
12 supervisor -- Engineering Supervisor position of Demand
13 Side Planning at AmerenUE at the time. And so I've been
14 quite active since that time.

15 We have initiated -- AmerenUE has initiated
16 multiple pilots in the '90s. We continue to do so today.
17 I'm active on the Demand Response Coordinating Council.
18 We've just assumed executive positions on the Executive
19 Board of that particular organization.

20 And we're actively participating in MISO and the
21 Demand Response Task Force. And we'd like to be working
22 with the organization of MISO states as we proceed to look
23 at opportunities to expand demand response.

24 Q I like hearing that. Now, I want to -- what I
25 want to know about -- about where we are today in -- in

1 regard to the demand response and UE centers -- centers
2 around at least initially the retail side and -- in -- in
3 what is available currently focusing mainly on industrial
4 and commercial customers for a moment.

5 Q What tariffs are out there and -- and what --
6 what generally do they provide as options for industrial
7 or commercial users?

8 A Tariffs on the books right now today?

9 Q Yes.

10 A The -- the basic products, and subject to check,
11 are voluntary curtailment products. I believe they're
12 Ryder L and M. And they're -- we have a -- a marketing
13 name for it called our Customer Energy Exchange Program.

14 But, basically, it's a program where customers
15 have the right to -- to elect to reduce their load in
16 return for market price for their power -- for their
17 power.

18 We have approximately 200 customers signed up
19 for this particular program, and those 200 customers
20 represent well over 200 megawatts of load.

21 Q okay. Now, that -- when you say -- I want to
22 understand a little better about what you're saying to me.
23 They -- they are able to get market price for their -- for
24 their energy. Is -- what do you mean by that?

25 A Well, these -- these customers are signed up to

1 the program, and we have a -- a web site where customers
2 can go on a daily basis and see what the price for the
3 next day is.

4 Q Okay.

5 A And they can elect to reduce load based on those
6 price signals that they receive.

7 Q And is that for -- for the next day in its
8 entirety? Is it a one-day price? Is it an hourly price?
9 It is a five-minute price?

10 A It's a one-day hourly price.

11 Q One-day hourly price. So I get -- I get an idea
12 of what price I will pay for each hour of that next day?

13 A That's correct.

14 Q Okay. All right. And how close is it to what
15 the price would be -- how could you set that price? Let
16 me just ask you that.

17 A The -- it's been a while since I've gone to the
18 web site and used it. But the price comes directly from
19 the MISO market.

20 Q Okay.

21 A So it's the direct fee from the MISO market.

22 Q All right. And is it -- is it a -- it -- is it
23 -- it's not the wholesale price, the price at MISO, is it?
24 Or is it some -- some relative of that or some add-on to
25 that? Do you know?

1 A Subject to check, the folks who run the group,
2 we've realigned recently in my organization. But my
3 understanding is -- this is strictly from my -- it's now a
4 derivative of the MISO day ahead hourly price.

5 Q And so if they want -- if they're on that
6 tariff, is that -- if they decide to shut down and be
7 interrupted during that next day, then they get paid from
8 UE?

9 A That's correct.

10 Q That particular price?

11 A That load reduction.

12 Q Okay.

13 A Times those -- times that price for those hours.
14 And that's their payment. That's correct.

15 Q Okay. Now, does that include the -- the
16 transmission charges that would be involved with
17 delivering that energy? Do you know?

18 A I -- I don't know the answer to that question.

19 Q That's okay. I'm trying to get a -- a grasp of
20 what -- what particularly that is in regard to that
21 charge. Is it something -- if I go to the MISO web site,
22 I can do that today right now. I could look at it, and I
23 could get the -- the day ahead price for tomorrow.

24 A That's correct.

25 Q And I could see -- see what that price is on an

1 hourly basis, but there are different -- different
2 increments of that price on that -- on that web site, the
3 -- if -- if I -- if I'm looking at some of those prices --
4 one column of the prices might include certain congestion
5 costs and other things, if I remember correctly?

6 A Yes.

7 Q Is there any way that you could -- that I could
8 understand a little better -- I know you can't do that
9 probably from the stand at this moment. But is there
10 something that you can do to get me a better idea --

11 A We can.

12 Q -- about what price we're talking about here?

13 A We can. I'll get you that information. I'll
14 get you -- so that you can actually go to the web site and
15 see the piece parts. And we'll get that taken care of.
16 That's not a problem.

17 Q That may be helpful. Now, when they are --
18 agree to be interrupted, are they agreeing -- can they --
19 can they choose to be interrupted for an hour as opposed
20 to the entire day?

21 A Yes.

22 Q And if they -- in regard to that access to that
23 -- that particular tariff, when they do that, under that
24 particular scenario, do they get a different price from --
25 from the regular tariff price for whatever customer class

1 they're in, or is it basically pay the regular price, but
2 if you agree to be interrupted you can get this money
3 credited back to your account?

4 A That's correct.

5 Q Do you know?

6 A That's correct. You're on a regular tariff
7 outside the hours that you agree to be interrupted.

8 Q Okay. How -- and you say that's been a fairly
9 successful tariff, right? Or no?

10 A There's high enrollment in the program.

11 Q All right.

12 A But in terms of usage, the usage is low.

13 Q Why do you think that is?

14 A Market price.

15 Q Okay.

16 A What we've experienced when we first started the
17 -- this particular program, 2000 -- 1999, 2000, market
18 price spikes, those thousand dollars, 2000 type prices.

19 Q Right.

20 A What our -- our -- received from -- our -- our
21 folks who work directly with the -- the large customers is
22 that the price signals something north of \$150 a megawatt
23 hour.

24 Q Yes.

25 A Seems to be the trigger point for interest in

1 this particular product.

2 Q Okay.

3 A With the opening of the -- the MISO Day 2
4 markets, those prices don't hit those levels very often
5 anymore, at least not like we saw in 1999 and 2000. So I
6 guess just from, you know, just cursory evidence, the
7 reason for the -- the lack of -- of hit by customers I
8 think are primarily due to market prices.

9 Q What did you do before the Day 2 market opened
10 in '05 about setting those prices? How did customers know
11 what those prices were?

12 A At that point, our -- our pricing group was
13 involved in setting those prices. And it was a -- it was
14 a more qualitative approach in setting those prices using
15 the market information that we had as a company. I -- I
16 -- I don't have the exact procedure. I can get you that
17 -- that early year's procedure how we did it, but I don't
18 have that with me.

19 Q Okay.

20 A Would you like to see that?

21 Q Yes. I would like to see that as well. Do you
22 know whether or not the customers that are engaged in that
23 program are reducing load by -- by just cutting back on --
24 or completely interrupting their -- their load so that --
25 so that they're, as a plant or other things, shutting

1 down, or are they switching over to their own generation?

2 A By in large, the customers are achieving those
3 load reductions by reducing load and by not switching on
4 their own generation.

5 Q Do you know what the -- have you all done any
6 research into what -- what the price tends to need to be
7 in the -- in the instance of -- of having a load actually
8 utilize its own site-distributed generation, and what --
9 at what price does that become attractive for them?

10 A We haven't done that study recently. We've done
11 that study -- I was involved in that study in the 1990s,
12 but we haven't done it recently. The -- our experience
13 has been for the AmerenUE industrial customers, if you go
14 back 15 years ago, we had approximately approximately 100
15 megawatts of customers with self-generating capabilities.

16 Q Yes.

17 A Today, that number is about ten.

18 Q Why is that? What's caused that change?

19 A I -- it's -- it's primarily two things. It's
20 related to the cost of the equipment and the cost of the
21 fuel.

22 Q Okay. So in -- you're -- I guess what you're
23 saying is that the cost of the generation equipment has
24 gone up and the cost of the fuel to run it has gone up?

25 A Typically, the cost of the fuel is -- is natural

1 gas or oil or gasoline.

2 Q Okay. Well, they have -- during those higher
3 prices, we're talking about natural gas prices setting the
4 market clearing price anyway, so what is the difference --
5 what is it that causes the -- the switch over?

6 Did they not get any credit at all for not
7 utilizing the transmission and distribution system during
8 the time when they're using their own generation on site?
9 Is that still a charge they're paying anyway? Or do you
10 know?

11 A Commissioner, I don't -- there's so few
12 customers with self-generation capability that I just
13 don't know the answer to that question.

14 Q Okay. What about with regard to -- when we say
15 self-generation, I've been really talking about a separate
16 generator that would just be started up at certain times
17 like diesel or natural gas generator.

18 A Sure. Sure.

19 Q But what about -- what about plants or
20 industries that have co-generation capability? When
21 you're talking about that 10 megawatts, is that including
22 them as well?

23 A Yes. Co-generation, that -- those plants are
24 plants that have a high steam load.

25 Q Yes.

1 A And an example, a former UE customer, now Metro
2 East customer, the -- the oil refineries in the Alton,
3 Illinois area, they had large, large steam loads, and they
4 were co-generating for years.

5 They've shut down their co-generation
6 facilities. But the problem -- not the problem. But the
7 circumstances that most of our industrial customers have
8 is that there is nobody with large steam loads.

9 A refinery is one of those exceptions. But
10 absent that, there are not too many large steam loads in
11 the AmerenUE industrial customer mix.

12 Q Okay. This is a refinery; is that -- is that
13 correct? That's --

14 A No.

15 Q Oh, there's not?

16 A There are no more refineries in AmerenUE.

17 Q Okay.

18 A We have a lot of cement companies. We have an
19 aluminum refinery, but none --

20 Q Are they doing co-generation at any of those
21 facilities?

22 A Not that I'm aware of.

23 Q Okay. Have you done any research or study about
24 those -- those areas where they have significant amounts
25 of co-generation or the -- have you done any research on

1 that?

2 A In 1997 and 1999, we were working very closely
3 with Shell, and we were going to their Houston
4 headquarters to see if there was any potential to build a
5 large plant.

6 I'm talking about a 600 megawatt plant at that
7 refinery, which in the day was about a 40 or 50-year-old
8 refinery.

9 Q Okay.

10 A And we went through quite a bit of economics.
11 And in the day, that was a few years back. But in the
12 day, we had the economic analysis showed that natural gas
13 prices north of about \$3 per million BTU, the economics
14 went a bit south on that product -- project.

15 And that -- in response to your question, that
16 was the last time that I was personally involved in those
17 type of studies. But that was extensive in that day.

18 Q Okay. Are you -- if there were -- if there were
19 studies and work going on at AmerenUE in regard to this
20 issue, you would be involved in it, wouldn't you?

21 A Yes, I would.

22 Q Just generally speaking, on demand side
23 management itself, what currently do you have ongoing in
24 that regard? And that's -- to me, that's a broader
25 category --

1 A Okay.

2 Q -- than -- than demand response, so --

3 A Sure. On demand side management, I -- I used
4 that as an umbrella term for both demand response and
5 energy efficiency.

6 Q Yes. That's fine. I understand it when you say
7 it that way.

8 A Since we've been talking a little bit, if I --
9 if I could just give you a few more blurbs on demand side
10 and then go into energy efficiency?

11 Q That would be great. If there's more for you to
12 tell me, that would be good.

13 A Right now, as part of a planning process,
14 participative process with AmerenUE stakeholders facility,
15 Office of Public Counsel, the Staff, the Department of
16 Natural Resources, the Sierra Club and the Industrial
17 Intervenors are working with us on putting our programs
18 together right now for the future.

19 And some of the things that we have today, some
20 of these projects stem from the 2002 rate case stipulation
21 and agreement. We're going to be building on those and
22 using those.

23 But things that have been especially successful,
24 some of the -- the commercial information and education
25 program, the program that we call LEED, Leadership and

1 Energy Environmental Design, that has been a tremendous
2 success in terms of getting the commercial bidding
3 community to put sustainable design plans in their new
4 buildings, and there's been some presentation and -- that
5 have been granted and things of that nature. But that's
6 been a tremendous, tremendous success.

7 On the residential side, I think Mr. Moehn
8 talked a little bit about a pilot that we conducted in
9 2004 and 2005 years, and I'm going to flip-flop now to
10 talk about demand response.

11 Q Okay.

12 A But this was a critical peak price, residential
13 use, experiment pricing we did in those years, and we got
14 results that were very encouraging. Of a household, a
15 typical residence in St. Louis area on a peak summer day
16 will use five to six KW.

17

18 And with technology, when we gave customers
19 technology options, we were able to achieve peak demand
20 reductions in the 1.3 KW area. Tremendous, tremendous
21 success. Now there's no cost associated with getting that
22 response. But some tremendous, tremendous successes were
23 in that area.

24 Some of the things that we want to look at -- I
25 -- can I get a -- a pamphlet?

1 Q Sure.

2 A Thank you. Put my glasses back on.

3 MR. LOWERY: I don't know if you need this,
4 Rick, but you sounded like you might need a drink of
5 water.

6 MR. VOYTAS: Thank you, Jim.

7 A Some of the other programs that also stem from
8 the 2002 collaborative was a refrigerant or buy-back
9 program, a program very similar to the one we had done in
10 the 1990s, light bulb program. That's been a
11 well-received program.

12 We have an energy tool kit program, which is
13 basically a web site audit for our mass market customers
14 to go to that and make some -- some tips to be more energy
15 efficient.

16 Another program that's very successful with our
17 commercial customers is a commercial audit program. We
18 recently had a -- a -- a meeting at -- at our headquarters
19 with our -- our commercial audit partners for this program
20 to kick off this program.

21 And, basically, we're using them as our main
22 Delivery mechanism. They have a host of the commercial
23 customers, and we're encouraging customers through rebates
24 on the audit itself as well as rebates after they install
25 some of the representations that result from the audit.

1 And that program has got roughly \$250,000 allocated to it.
2 That will be concluded sometime probably in July of this
3 year.

4 Other programs that have been very successful in
5 the -- the information and education area, we have a
6 building operators certification program, again, designed
7 for our commercial building managers on how they can be
8 more energy efficient. And that's been well received and
9 well attended.

10 Of course, we've got the low income
11 weatherization programs that have been around for some
12 time. And we're going to be building on a lot of these.
13 Some -- some neat ideas are -- are starting to bloom for
14 the future. We can go there, too.

15 Q What -- yeah. What -- what is it that -- that
16 -- that you view as a -- as a goal? Is there -- is there
17 a goal for meeting certain -- certain reductions in demand
18 going forward in the future as a part of your resource
19 plan? So how does that -- how does this demand side
20 management fit into your -- your view going forward on
21 resources planning -- resource planning? Excuse me.

22 A Well, you know, a lot of it, I think depends on
23 the regulatory model that the particular state has in
24 place. In our state, we have our Chapter 22, electric
25 utility resource planning rules. And this particular

1 model is an objective based type model where we look at
2 all options, a whole universe of options.

3 We run them through the modeling process and see
4 what's most cost effective. Other utilities may have an
5 energy efficiency portfolio standard where it says in
6 order to get the modeling, you will -- 3 percent of your
7 load will be achieved through energy efficiency.

8 So there are two -- two separate models that we
9 go through here. But our objectives are not just based on
10 cost. The leadership AmerenUE, specifically Tom Voss, has
11 spoken to our -- our -- our participative group in the IRP
12 process to articulate his overarching vision for the
13 company in terms of these goals.

14 And, basically, Tom's -- Tom's thoughts,
15 over-arching thoughts, are to exhaust all of our DSM
16 potential before considering the building of another
17 plant. So those are pretty aggressive projects.

18 And Mr. Moehn, in his testimony, specified a
19 minimum funding level in that \$13 million range for year
20 one. And, again, that's set out to achieve the vision
21 that's been clearly laid out to us by -- by Mr. Voss.

22 So that's kind of the direction that we're
23 headed. Our -- our thought at this point is that we're
24 going to work within the context of the rules, but we're
25 going to work within the context to have meaningful

1 programs that achieve significant savings.

2 Q What I'm looking for, I guess, is whether or not
3 there has been a document prepared that shows the
4 expectations of how much load growth will be met by demand
5 side management, conservation, efficiency and -- and if --
6 if that's been done, is it -- has it been put into this
7 record? And if not, is there some way that we could see
8 it?

9 A Commissioner, it's -- it's just a matter of
10 timing. We're a little bit premature. In our IRP
11 process, there's five phases.

12 Q Yes. I understand.

13 A The first phase is identifying the process.
14 We've just completed that. So we've got agreement among
15 the stakeholders on the process that we're going to use to
16 analyze these options.

17 The next phase is the data acquisition phase.
18 That's going on for the next two months. The next phase
19 is the documentation, getting that potential number that
20 you're looking for.

21 Q Okay.

22 A So we will have that -- that information
23 available. But, likely, it's going to be late summer,
24 early fall before we're to that phase.

25 Q Have you -- what kind of participation did you

1 get in regard to the residential consumers on the program
2 that you mentioned earlier?

3 A On our critical peak price pilot?

4 Q Yes.

5 A Well, we limited that program. We had some
6 focus groups, and we targeted that to our -- our high
7 usage type residential customers.

8 Q Okay.

9 A But numbers we're looking at in the realm of
10 300.

11 Q Okay. So you really weren't testing to see how
12 -- how much -- what the level of interest was in the -- in
13 the footprint or the ability to retain those you initially
14 signed up? At this point, you haven't done that?

15 A That's correct. The pilot was limited to the
16 extent that what we're really after was, would customers
17 respond to that price signal? And if they did, by how
18 much and by using what type of technologies or rate
19 structure.

20 Using that information, we can build into our
21 models. But you're right. The whole customer focus
22 group, what's it take to make this proliferate? That work
23 has not been done at this point.

24 Q Has AmerenUE ever looked at the possibility of
25 offering an additional incentive for people to -- to --

1 I'm going to focus right now on -- on new construction.
2 On building new homes that meet certain efficiency
3 standards and using an incentive that says, if you meet
4 this -- this standard, we're going to let you have a lower
5 rate overall, lower basic rate?

6 A Okay.

7 Q And -- and perhaps making the difference up on
8 the other side for those new construction facilities that
9 don't meet it paying a slightly higher rate than what
10 would have otherwise been the case if there had been only
11 one?

12 A Okay. We have done pilots with residential and
13 new construction to encourage energy efficiency in homes,
14 and the one-time rebate substantial incentive in the
15 \$2,000 range.

16 Q Okay. In your specific example, have we looked
17 at some type of rate incentive to encourage that?

18 A I think that's extremely interesting concept.
19 And that's clearly part of what the EPA Energy Policy Act
20 of 2005 encouraged. And that's something that we will put
21 on part of our planning process right now. But in direct
22 answer to your question, no, that particular rate
23 structure has not been investigated.

24 Q Okay. I would be interested in knowing whether
25 or not that got examined going forward.

1 A Okay.

2 Q I don't need that answer back in this
3 proceeding. From -- from the standpoint of -- of demand
4 response on the residential side, is there a current -- is
5 there any program currently going on in regard to
6 thermostat control -- thermostat control or other things
7 of that sort, time of use rate, things of that sort for
8 the residential customer?

9 A No. That -- the pilot that we spoke of ended
10 after the summer of 2005. That likely will be in the
11 portfolio of options that we bring back, that we initiate
12 as part of the current proceedings.

13 But that part portfolio product, that terminated
14 in 2005.

15 Q Is there any discussion currently going on with
16 the major industrial and commercial customers of AmerenUE
17 about what it would take to get them involved in demand
18 response in a more active way than what you're currently
19 seeing?

20 A Part of the stipulation and agreement following
21 the 2005 case was to work in a collaborative setting with
22 the industrial customers to come up with -- the target was
23 200 megawatts of demand response reduction. So we had
24 those discussions. And I can give you my -- my view.
25 There are several members on that team, so -- but this is

1 -- this is my view.

2 Q That's fine.

3 A But it was a -- we looked at the universe of
4 options. And we looked at those in quite some detail.
5 And then we got down and we started talking about the
6 specifics. One option we looked at was a two-part
7 real-time pricing type of product.

8 And that's where there's a -- a baseline energy
9 usage above which or below which increment or decrement
10 customers would receive market type -- or pay market
11 price, receive market price signals for.

12 And we had considerable discussions with that
13 particular product with the industrial folks. And that --
14 that didn't have a whole lot of promise for the industrial
15 customers. And then my recollection is that we proceeded
16 to look at interruptible tariffs, similar to the
17 interruptible tariffs that AmerenUE had on its books in
18 the mid 1990s.

19 And those interruptible tariffs had some limits
20 on them as to the -- when interruption could occur and the
21 duration and the number of interruptions. And it had a
22 price basically based on voided cost of a combustion
23 turbine.

24 Then we began to talk about some concepts
25 related to capacity equivalence. Capacity equivalence,

1 just briefly, intermittent -- intermittent resource like
2 wind or an interruptible customer who is just going to be
3 under it for a few short hours is not the same as a CTG
4 that's available, if you will, for all of the hours of a
5 year.

6 And this is a concept that's been in the utility
7 industry for -- for a long time. I want to say forever.
8 For a long time. And we went through the actual
9 calculation and presentation on how this concept worked.

10 And we showed how certain programs have capacity
11 equivalencies that are less than one, certainly have
12 greater than one clearly in an interruptible program
13 requires that you can only be interrupted for a handful of
14 times only when there's a system emergency, that is not
15 equivalent to having a CTG.

16 And there's also some talk through a product
17 that would -- I believe that had a lot of value to our
18 industrial customers was an interruptible product coupled
19 with a buy-through provision. And I can understand that
20 from a resource planner's perspective, that doesn't look
21 like a -- a whole lot like interruptible power to me.
22 That looks like a continuous power supply.

23 So I have difficulty thinking about that in a
24 resource planning world.

25 Q Uh-huh.

1 A Long story short, we -- we really -- what we
2 really -- I think everybody understood the capacity
3 equivalence concept. And when -- we -- I think where we
4 left it -- and I stand to be corrected, but let's look at
5 some specific proposals from the industrial customers and
6 let's evaluate it under the capacity equivalence concept,
7 and we never got to that point.

8 Q Okay. You -- when we first started talking
9 about this, you -- you told me about the day ahead tariff
10 that you had. Do you have to -- do you have any tariff or
11 any agreements with -- with particular customers that
12 allow a -- a shorter incremental time frame on -- on a
13 spot price market on the same day for -- for a customer to
14 suggest to you on -- in a -- next hour I'm -- I will cut
15 back for this price? And is that something that is
16 logistically possible to do?

17 A I -- I think it would be logistically possible
18 to do. I don't know the -- the extent of discussions on
19 -- on that particular type of product that we've had. I'd
20 have to get back with you on that. I'm not well versed to
21 talk about that today.

22 Q Okay. I've heard -- I've heard that in some --
23 in some of the wholesale market places they actually have
24 -- and of course, this I'm sure some of this is -- would
25 be in -- in retail choice states. But that the -- the

1 load actually is -- is -- there is some load out there
2 that can actually respond very quickly in -- and to some
3 extent even play in the ancillary services market.

4 Is that -- I'm sure that's something that's --
5 that's not even on the table at this point in regard to
6 UE. But I -- I guess I'll ask you whether or not there is
7 that level of sophistication among any of the customers
8 that you're aware of that -- that could -- could be a part
9 of -- of that kind of demand response program at a retail
10 level.

11 A I think we're getting close there. One of the
12 things that we're -- we're getting ready to do, in fact,
13 we have an RFP drafted that our stakeholders are reviewing
14 as we speak.

15 We're going to go -- going out to aggregators,
16 industrial load aggregators, who do precisely what you
17 said, put together these various type of products and
18 those aggregate types of load to develop those.

19 Q Yes.

20 A So we're going out to get those products so that
21 we can analyze and include those in our current planning
22 process. And we'll be getting those responses in the near
23 future.

24 So I understand exactly what you're saying. But
25 the aggregators that we're going to are -- well, I mean,

1 these are national organizations that do this mainly on
2 the east and west coast right now. But we'll be working
3 with them to try to get those products defined to see what
4 we can do and see what the costs to do that are.

5 Q Okay. I think we have someone who may not
6 actually be in the room right now who is -- who is a part
7 of -- of one of the commercial group entities in here and
8 I'm going to specifically say their name, Wal-Mart, that
9 has been very active in regard to -- to demand side
10 management on the national level.

11 I'm curious about whether or not they have been
12 participating with UE in any discussions on -- regarding
13 conservation efficiency or demand side management in
14 general.

15 A Well, indirectly, Wal-Mart is extremely vocal in
16 part of the United States demand response coordinating
17 committee. And I usually sit next to the Wal-Mart
18 representative at all those meetings. So I do discuss
19 that with them very, very much.

20 In Missouri, we have not had -- I mean, Wal-Mart
21 has -- has -- Ameren UE, as a company, has not approached
22 us, at least to my knowledge, with some type of
23 discussion, some type of concept to utilize at their
24 stores. I've not seen that yet.

25 Q Okay. Maybe you could pursue that conversation

1 when you get a chance.

2 A I will do it.

3 COMMISSIONER GAW: I believe -- at -- I'll --
4 I'll stop at that, Judge, and I appreciate your -- your
5 testimony, Mr. Voytas. Thank you for that information.

6 JUDGE WOODRUFF: Thank you, Commissioner Gaw.
7 Commissioner Murray had sent me an e-mail earlier saying
8 she would have a few questions for Mr. Voytas, also, so
9 we'll -- we'll wait for her before we go back for
10 questions for recross. She may be on her way down right
11 now.

12 Before we do that, I -- I did want to bring up
13 some other matters. I know there was some discussion
14 yesterday about getting an additional stipulation and
15 agreement filed. Where are we at on that?

16 MR. DOTTHEIM: It's circulating with the parties
17 for their review.

18 JUDGE WOODRUFF: Do you expect it to be filed in
19 today?

20 MR. DOTTHEIM: I'm not certain. I would think
21 if not -- probably not today. I would think a good chance
22 early next week, very good chance.

23 JUDGE WOODRUFF: All right. Is this likely to
24 be unanimous, I assume?

25 MR. DOTTHEIM: I -- I expect -- at this point, I

1 expect it to be non-unanimous. I haven't myself heard any
2 indications of opposition.

3 JUDGE WOODRUFF: Okay. My concern, of course,
4 is that when we get the five-day -- or seven-day period
5 running, if it's filed next week, then it's beyond the --
6 the scheduled date of the hearing so --

7 MR. DOTTHEIM: Yes.

8 JUDGE WOODRUFF: So I'll encourage you, if you
9 -- if it's possible for you to file it yet today, even if
10 it's not signed by everybody.

11 MR. DOTTHEIM: Yes. Yes. Yes. Depending upon
12 how much time I'm in the room today is -- is also a factor
13 in that, so --

14 JUDGE WOODRUFF: Yes. Okay. And, Mr. Conrad, I
15 -- I've seen your e-mail that you sent around about your
16 Noranda witnesses.

17 MR. CONRAD: Yes, sir

18 JUDGE WOODRUFF: I forwarded that on to the
19 Commissioners. I've gotten response back from
20 Commissioner Appling and Commissioner Murray indicating
21 that they did not wish to question those witnesses. I
22 have not heard from the other -- other Commissioners.

23 MR. CONRAD: Thank you.

24 JUDGE WOODRUFF: Commissioner Gaw just indicated
25 he does not have any questions for them either, so I'll

1 let you know as soon as I hear from the other two
2 Commissioners.

3 MR. CONRAD: Certainly. Thank you.

4 JUDGE WOODRUFF: All right. Well, let me --

5 MR. MILLS: Judge, before we get off that topic
6 can I ask you a couple of questions?

7 JUDGE WOODRUFF: Sure.

8 MR. MILLS: First of all, one's more of a
9 statement. With respect to the stipulation that you were
10 talking to Mr. Dottheim about -- and Mr. Dottheim can
11 correct me if I'm wrong, but I believe all the parties in
12 the case have seen all the draft of -- of those documents.

13 And -- and as I understand it, the final -- the
14 final one is not terribly different from the one that has
15 been circulating for probably a couple of weeks now. So I
16 -- I think if -- from my point of view, it probably would
17 not be unduly harsh on the parties to make them respond,
18 say, five days rather than seven since they have been well
19 aware of what the provisions of the agreement are for a
20 long time.

21 JUDGE WOODRUFF: Okay. Well, let me ask the
22 parties that are here their view on that. Can the
23 Commission shorten the time for response -- or objections
24 to a stipulation and agreement? Anyone have any thoughts
25 on that?

1 MR. DOTTHEIM: I don't know that that's provided
2 for by the Commission's rule.

3 MR. CONRAD: I was just about to say the same
4 thing, even though that -- that would -- would not find
5 objection from us in shortening that. But I -- I would
6 concur with -- with Mr. Dottheim. We do have parties who
7 are not here.

8 I don't know if it helps any, Steve. It's --
9 it's not necessarily intended to be an obstacle. I just
10 got to look at that last -- go through last night. I
11 think I'm -- I am going to have a hopefully minor wording
12 suggestion there in the part that you had called out. But
13 other than that, I haven't -- I haven't gotten final
14 instructions from the client on that.

15 MR. DOTTHEIM: I don't think any of us are --
16 are really expecting problems with this stipulation and --
17 and agreement. This is another one that's outstanding
18 that may be a little bit more problematic.

19 JUDGE WOODRUFF: We talked about -- and that's
20 the --

21 MR. DOTTHEIM: Depreciation.

22 JUDGE WOODRUFF: -- depreciation one. Yes. We
23 talked about that yesterday.

24 MR. MILLS: And I --

25 JUDGE WOODRUFF: But that's not scheduled until

1 Tuesday anyway.

2 MR. MILLS: Right. And I believe that -- that
3 at some point today there will be objections to that
4 filing to request for hearing. Certainly, I will be
5 filing one.

6 And with respect to shortening the time, I,
7 agree with both Mr. Conrad and Mr. Dottheim that there is
8 not an explicit provision that allows you to shorten it.
9 You certainly can strongly encourage all the parties that
10 don't sign to -- to file something making their position
11 known sooner than the seven days.

12 JUDGE WOODRUFF: Yes.

13 MR. MICHEEL: On that, I think there's something
14 in the Commission's procedural rules that indicates that
15 for good cause, make any of the rules--

16 JUDGE WOODRUFF: There is certainly that. Yes.

17 MR. MICHEEL: So, you know, if you're looking
18 for a way to do that --

19 JUDGE WOODRUFF: Yes. All right. Well,
20 Commissioner Murray and the Chairman are down here now.
21 So, Commissioner Murray, do you have any questions for
22 Mr. Voytas?

23 COMMISSIONER MURRAY: Yes. I just have a few
24 questions.

25 CROSS-EXAMINATION

1 BY COMMISSIONER MURRAY:

2 Q How are you?

3 A I'm fine.

4 JUDGE WOODRUFF: I'm sorry, Commissioner Murray.

5 We need to change tape here for the court reporter, so

6 we're off the record for a moment.

7 (Break in proceedings.)

8 JUDGE WOODRUFF: All right. We're ready to go

9 now.

10 COMMISSIONER MURRAY: Thank you.

11 Q (By Commissioner Murray) Good -- good morning

12 again.

13 A Good morning.

14 Q In your rebuttal testimony on page 24, you have

15 a -- a chart of power plant sales.

16 A I'm there.

17 Q All right. Now, it's my understanding, and

18 correct me if I'm wrong, that the reason that the dates of

19 those sales were between May of 2001 and February of '03

20 would have been that this was the time period in which the

21 RFP was going out for Pinckneyville and Kinmundy. Is

22 that --

23 A There -- that is part of the answer. The -- I'm

24 sorry. This binder contains the contents of the RFP that

25 was issued in August of 2001 that led to the acquisition

1 or the purchase of Kinmundy and Pinckneyville plants. And
2 the actual decision to make the -- the plant purchase was
3 filed with Staff and -- and the Office of Public Counsel,
4 I believe, in January of 2003.

5 We are required to file within 120 days of the
6 time that a decision is made to acquire an asset to notify
7 the Staff and OPC of basically our decision-making
8 process, the reasons for the decision, the request of
9 rate-making treatment and a discussion of all options
10 evaluated. And that letter was sent in January of 2003.

11 Q It shows -- your testimony says January 23,
12 2003.

13 A Thank you. That's correct.

14 Q But -- and I'm not trying to be too technical
15 here, but if your decision was made -- did you say it was
16 made in the month of January of '03?

17 A We're required to submit the letter within 120
18 days of the time that the decision is made. So I -- I
19 believe in my FERC testimony, I gave that date, but it was
20 sometime prior to January, within -- within three months
21 prior to January of 2003.

22 Q Okay. Now, the -- the power plant sales that
23 are listed there, do you know when the prices would have
24 been actually set for each one of those sales?

25 A I don't know a lot about the prices. What I do

1 know is that these prices -- the prices that were
2 available in public sources -- this particular table, if
3 you go to the last column, DePair Energy Center is a prime
4 example. You see a sale price, publicly recorded sale
5 price of \$465 A KW.

6 And this particular sale at the FERC case, one
7 of the expert witnesses, Mr. Jim Metcalf from Lehman
8 Brothers in his surrebuttal file, had to make an amendment
9 that wasn't reported in, and that number was the
10 assumption of some debt -- some -- something to the tune
11 of -- I forget the -- I've got the number here with me.
12 But like 60 million.

13 When that assumption of debt was included with
14 the reported sale price, this actual plant was not \$465 a
15 KW. It was closer to \$630 a KW.

16 Another problem associated with this particular
17 plant, if you look at the last two columns, the Nina and
18 the DePair Energy Center, you'll see that the DePair
19 Energy Center was listed at \$465 a KW, based on publicly
20 available data.

21 But when you got into the details, after
22 additional information was gleaned by the appropriate
23 pricing experts, that went much higher.

24 But if I could just point you to the fact that
25 these two power plants are both located in Wisconsin.

1 They're both the identical same machines. The date of
2 sales for these two machines occurred within three months
3 of each other. And the Nina power plant is actually about
4 one year older than the DePair power plant. But if you go
5 up to the pricing, you'll see that the DePair power plant
6 didn't sell for 465. It was sold north of the \$600 a KW.

7 But that exact same power plant, even a newer
8 power plant sold for \$353 a KW. I think what that raises
9 a red flag. And that is the devil's in the details. My
10 assumption would be that there was something associated
11 with this transaction between the seller, Norant, and the
12 buyer, Alliant Energy, that's not reported in this public
13 price. Perhaps Alliant Energy agreed as part of the
14 acquisition to provide capacity to the seller for X number
15 of years, and that's why this particular price was so much
16 lower than the other.

17 But the point is that these market prices that
18 are here are just publicly reported. The devil's in the
19 details. And I think that acknowledgment of the DePair
20 Energy Center and comparing it to Nina really illustrates
21 that point effectively.

22 Q Well, that -- I was going to follow-up there and
23 ask if there is a way that we could compare the power
24 plants that are listed there with Pinckneyville Kinmundy
25 so see if you're actually comparing apples to apples.

1 A You know, it's -- it's very difficult -- I think
2 the best comparison that we may have is the comparison
3 that was issued in July of 2005 that led to the
4 acquisition of the Audrain County and the Aquila CTGs.

5 And even that is -- it's going to be
6 interesting. And I think that would be a better
7 comparison. And the reason that I say that, in that
8 comparison, several things became evident. This RFP was
9 issued to 20 bidders that was posted on web sites.

10 It was followed up. Was very well known. And
11 we got four responses. I think that speaks to the depth
12 of market and the thinness of market. Of those four
13 responses, one had severe transmission constraints. That
14 speaks to a problem that we've witnessed.

15 In the -- in the table that we've talked about,
16 we don't even know what the transmission issues are that
17 are associated with these sales. But, clearly, if there's
18 transmission limits, then the effect of capacity is less,
19 and that even raises the price more.

20 But getting back to the July of 2005 filing,
21 what we got was four responses. And in the first one, the
22 Audrain County facility, that was beyond bankruptcy. The
23 banks had taken ownership over of those particular assets.
24 And the head bank of that particular organization, they
25 had an agreement with NRG to -- NRG could work on the

1 negotiations with us, but the banks clearly owned the
2 assets. And the bank's issue of you're not getting
3 cooperation from NRG in these negotiations is talk to us.
4 We want to turn these assets over as soon as possible. So
5 it was a very, very unique distressed seller type of
6 situation.

7 The Aquila situation was similar. I think I may
8 have been asked if I knew if Aquila was bankrupt. I don't
9 know if -- what their bankruptcy status is. But I do know
10 they're in dire financial straits, that they're selling
11 their assets off -- IPP related projects and other service
12 territories and trying to focus on their core service
13 territories. So that was another asset.

14 After that, what we received was an asset that
15 had severe transmission constraints. Absent transmission
16 constraints, the price of that asset was around \$300 a KW.
17 But with transmission constraints, the price of that asset
18 exceeded \$500 a KW.

19 And the next asset was for a combined cycle
20 plant, which was not inside the MISO area, which was one
21 of the requirements of our RFP. But that asset also,
22 without knowing any of the specifics of that, was 400 --
23 without knowing the -- the specifics of the transmission
24 issues of getting that into the -- the MISO was \$495 a KW.
25 But to answer your question, the beauty here is that the

1 devil's in the details. We know the details of these
2 transactions. The transactions that are listed in table,
3 as the one we initially discussed in my testimony, those
4 are public type of sources.

5 But an actual RFP where we've got the complete
6 bids and the complete knowledge, that, now we know the
7 details. So it's a very, very difficult situation to try
8 to determine market price from numbers that are in some
9 type of industry publication.

10 Q Is -- that RFP comparison of '05 that you were
11 talking about, is that in the record somewhere?

12 A I know that was part of the work papers that I
13 submitted with -- with my testimony. I would have to -- I
14 -- and I believe it -- it's in my testimony on -- my
15 rebuttal testimony on page 38, 39 and 40.

16 Q Thank you. And then what is depicted on 436-HC
17 -- let's see. Count from the back. It would be easier, I
18 think. It's about seven pages from the back. And I'm not
19 going to ask you specific numbers or anything or -- or
20 names because I --

21 A I'm sorry.

22 MR. LOWERY: You can have mine, Rick.

23 MR. VOYTAS: Thank you.

24 Q (By Commissioner Murray) If you count from the
25 back seven pages the bidder's list in the RFP --

1 A I'm sorry. I'll still -- are we talking about
2 this specific --

3 Q Yes.

4 A Thank you.

5 MR. MICHEEL: Could you show all of us so we all
6 know what we're talking about?

7 Q (By Commissioner Murray) It's seven pages from
8 the back, that four -- 436-HC.

9 MR. MICHEEL: Thank you.

10 Q (By Commissioner Murray) And that was -- that
11 was an RFP for -- dated when and for which specific CTG
12 plant?

13 A Okay. This was the July 2005 RFP that went out
14 to owners of CTGs within the MISO that met the bid
15 requirements. And just briefly, those bid requirements
16 looking at -- looking at assets of -- I believe the
17 requirements exceed something like 50 or 60 megawatts in
18 terms of capacity and that were of a vintage of 1999 or
19 newer.

20 So what we're able to do is go to the MISO web
21 and identify those plants, which in turn then identifies
22 the bidders' list. And that's what this matrix attempts
23 to do is the process by which we identified those plants
24 within MISO that were compliant with the RFP.

25 Q Okay. And then it shows summer capacity and

1 winter capacity. Those are prices under that? What --
2 what is listed under --

3 A On those -- what those numbers represent, and
4 it's been a while, but summer capacity megawatts and
5 winter capacity megawatts. That represents the net
6 capability towering the peak summer month and peak winter
7 month. Summer months for combustion turbine generators
8 are always lower than the winter months.

9 Q All right. And you don't show anything about
10 prices on that; is that correct?

11 A No. This -- it's been a while since I've seen
12 this particular document. But this -- the intent of this
13 particular document was to show how we identified the list
14 of bidders to which we sent the RFP.

15 COMMISSIONER MURRAY: Okay. All right. I
16 believe that's all I had. Thank you.

17 MR. VOYTAS: Thank you.

18 JUDGE WOODRUFF: All right. Thank you. We'll
19 move to questions -- recross based on questions from the
20 Bench. Does anyone wish to recross based on questions
21 from the Bench? Mr. Mills?

22 RECROSS EXAMINATION

23 BY MR. MILLS:

24 Q Mr. Voytas, Commissioner Murray asked you some
25 questions about the chart on 50 -- I'm sorry -- page 24 of

1 your testimony, your rebuttal testimony. Do you have that
2 chart?

3 A Yes, I do.

4 Q Are all of the transactions shown on that chart
5 arms length transactions?

6 A I don't know. These transactions were from
7 publicly available sources, and I don't know the nature of
8 the arm's length.

9 Q Okay. Do you know whether the Synergy PSI
10 transaction shown in the -- I guess the third column, the
11 second transaction shown, do you know whether that's an
12 affiliate transaction?

13 A I believe it was.

14 MR. MILLS: Okay. No other questions. Thank
15 you.

16 JUDGE WOODRUFF: All right. Thank you. Any
17 other recross? Redirect?

18 MR. POWELL: Your Honor, just -- for your
19 understanding, I do have quite a bit of recross.

20 JUDGE WOODRUFF: Redirect, you mean?

21 MR. POWELL: Well, redirect. Yes.

22 JUDGE WOODRUFF: Let's go ahead and go for a
23 little while, and then we'll -- we'll see.

24 REDIRECT EXAMINATION

25 BY MR. POWELL:

1 Q Okay. Mr. Voytas, let me ask you first about
2 the general topic of affiliated -- the Missouri Commission
3 affiliated transaction rule about which you were
4 questioned at some length.

5 You were asked about your training and the
6 timing of that training, and you identified that as in the
7 period nine -- or in the period 2003, as I recall?

8 A That's correct.

9 Q To your knowledge, has the rule changed since
10 2003?

11 A I'm not aware that it has.

12 Q I believe I understood you to say that you are
13 not responsible for those annual CAM filings that were
14 discussed with you; is that correct?

15 A That's correct.

16 Q To your knowledge, have those filings been made?

17 A I've recently seen -- reviewed a data request
18 where I've learned that they have been made.

19 Q Except for Mr. Kind's testimony filed in this
20 case, has anyone ever questioned their adequacy that you
21 know of?

22 A Not that I'm aware of.

23 Q What is your understanding of his criticism of
24 those filings? Do you need a reference to his testimony?

25 A Yes, please.

1 Q Let me see if I can find it.

2 MR. MILLS: Your Honor, I don't know what the
3 specific question is going to be, so I don't have an
4 objection. But I will note that I had a lot questions
5 that I would have asked this witness about the CAM filing
6 had he not denounced any knowledge of the CAM filing
7 whatsoever.

8 So if this gets into much detail about the CAM
9 filing, I'm going to have to object because on my
10 questions he said he knew nothing about it.

11 JUDGE WOODRUFF: Okay. We'll see where it goes.

12 MR. POWELL: I have no intention of going into
13 much detail.

14 Q (By Mr. Powell) I'd refer you to page 35.
15 Well, I'm sorry. That's not right. You know what? In
16 fact, let's skip that because he does have reference to it
17 on two or three pages.

18 A Okay.

19 Q Let me just ask this: Just because Mr. Kind
20 might think that there is something legally or otherwise
21 deficient about one of those filings does not make it so,
22 does it?

23 A No, it does not.

24 Q To your knowledge, has any legal authority found
25 those filings to be inadequate?

1 A Not to my knowledge.

2 Q This Commission certainly has not, has it?

3 A I'm not aware.

4 Q Now, you did mention that you personally make
5 other filings with this Commission or you have made other
6 filings with this Commission about both the Peno Creek and
7 the Pinckneyville and Kinmundy acquisition; is that
8 correct?

9 A That's correct.

10 Q Well, again, this is to some extent repititious,
11 but, again, what was the nature of those filings?

12 A Well, nature of those filings is spelled out in
13 a couple of cases in Misosuri. But, basically, it's -- we
14 call it a notification of resource acquisition.

15 And within 120 days from the time of committing
16 to acquire a specific resource, we send a letter to both
17 the Staff and the Public Counsel that includes a complete
18 description of the resource and several attachments that
19 discuss, A, the process used in deciding to acquire the
20 resouce, the impact of the resource acquisition on
21 capacity reserves and the proposed rate-making treatment.

22 In addition, we talk about the entire
23 decision-making process and the evaluation of alternative
24 resources.

25 Q Do you have copies of those filings that you

1 made with respect to both Pinckneyville and Kinmundy and
2 Peno Creek with you?

3 A Yes, I do.

4 Q And let me just ask this: Did Mr. Kind or the
5 Office of Public Counsel get copies of those filings when
6 they were made?

7 A Yes.

8 Q Other than the testimony he has filed in this
9 case, has he ever questioned the adequacy or compliance of
10 those filings?

11 A Not that I'm aware of.

12 Q All right. Let me ask you a few questions about
13 -- this may be less well organized than perhaps it should
14 be, but about the various questions you were asked from
15 time to time about the request for proposals.

16 And -- well, first, focusing on the one that
17 preceded the acquisition by AmerenUE of Pinckneyville and
18 Kinmundy. Is that the request for proposals that you held
19 up a few minutes ago, the big thick book?

20 A That is correct.

21 Q All right. My understanding of Mr. Kind's
22 criticisms seems to be that it includes, at least,
23 criticism of the adequacy of that request for proposals,
24 which led to the acquisition of Pinckneyville and
25 Kinmundy. Would you agree with his characterization of

1 his testimony?

2 A No. Not at all. The -- the RFP, which was
3 issued in August of 2001, was --

4 Q Let me interrupt. We -- I think you
5 misunderstood my question.

6 A Oh, I'm sorry. Please repeat it.

7 Q Do you understand that Mr. Kind's concerns in
8 his testimony -- expressed in his testimony include
9 raising questions about the adequacy of that request for
10 proposals?

11 MR. MILLS: Your Honor, I object to this
12 question. Much of my cross-examination was designed to
13 point out that Mr. Voytas, when he had a chance to rebut
14 Mr. Kind's testimony, did not. I think it's unfair for
15 this witness to -- to neglect to rebut my witness's
16 testimony in his pre-filed testimony and then try to do so
17 on redirect.

18 Mr. Voytas spent almost all of his testimony
19 with the exception of about one sentence rebutting
20 Mr. Rackers, chose not to rebut Mr. Kind, and I don't
21 think he should be allowed to rebut Mr. Kind on the stand
22 in redirect when we have no chance to -- to counter that.

23 MR. POWELL: Your Honor, Mr. Mills, who is
24 making this objection, quizzed Mr. Voytas extensively on
25 this topic of the request for proposals.

1 MR. MILLS: And -- and my response is did --
2 well, my response is that that -- his response was that I
3 did not -- that he did not address this issue from
4 Mr. Kind's testimony. And now, essentially, this question
5 is going to be if you had chosen to rebut Mr. Voyt --
6 Mr. Kind's testimony, what would your rebuttal have been?

7 I mean, I think that's the nature of the
8 question.

9 MR. POWELL: In fact, that's not it.

10 JUDGE WOODRUFF: All right. Well, we're jumping
11 ahead of the question that's actually been asked. The
12 next question may be objectionable and -- and you may want
13 to repeat your objection at that point.

14 MR. MILLS: Okay.

15 JUDGE WOODRUFF: But first the question at this
16 point was you're asking the witness about his
17 understanding of what Mr. Kind -- Mr. Kind's criticism.

18 MR. POWELL: That's the question.

19 JUDGE WOODRUFF: Okay. You can answer that
20 question. And then we'll deal with the other objection if
21 it -- if the next question is objectionable, raise it.

22 MR. MILLS: All right.

23 A Can you repeat the question, please?

24 Q (By Mr. Powell) I'll -- I'll abbreviate. I
25 just characterized Mr. Kind's testimony in this case and

1 asked if you agreed that -- that that characterization was
2 correct, the characterization being that his filed
3 testimony in this case is critical of the request for
4 proposals issued in -- whenever it was, which led to the
5 acquisition of Pinckneyville and Kinmundy.

6 A That's correct.

7 Q Okay. And you have that request for proposals
8 with you. We've already covered that. In fact, was the
9 request for proposals which lead to Pinckneyville and
10 Kinmundy acquisition found to be adequate in the FERC
11 proceedings about which you have been asked extensively?

12 MR. MILLS: And, your Honor, there -- there is
13 no -- and I -- I hate to contradict the witness, but there
14 is no testimony about this in Mr. Kind's testimony about
15 this 2001 RFP that he's asking about.

16 So -- and I certainly didn't -- didn't ask
17 questions about it in context of Mr. Kind's criticisms.
18 So there -- there is no proper foundation for this as
19 redirect because I -- it's not in Mr. Kind's testimony.

20 MR. POWELL: Well, your Honor --

21 JUDGE WOODRUFF: Does -- go ahead and give your
22 response.

23 MR. POWELL: Well, your Honor, in fact, I may
24 have slightly misstated the context of the question I'm
25 asking now. I've now switched to the topic of the FERC

1 proceedings about which this witness was asked
2 extensively.

3 And all I'm simply asking at this point is
4 whether or not the request for proposals which led to the
5 acquisition of Pinckneyville and Kinmundy was found to be
6 adequate in those extensive proceedings.

7 JUDGE WOODRUFF: And is that question
8 objectionable?

9 MR. MILLS: Well, I -- I question its relevance
10 as to FERC's opinion as to the adequacy of those. And I
11 also think it's beyond the scope of my cross-examination.

12 JUDGE WOODRUFF: I agree. It's not relevant to
13 -- to this Commission what FERC may have or may not have
14 ruled on. So I'll sustain the objection.

15 MR. POWELL: Without argument?

16 JUDGE WOODRUFF: I'm sorry. If you wish to
17 offer further argument, go ahead.

18 MR. POWELL: Well, your Honor, as I understand
19 it, part of the criticism being voiced against AmerenUE on
20 this issue has to do with the affiliate relationship.
21 It particularly has to do with whether or not under the
22 circumstances of affiliate transactions the pricing for
23 Pinckneyville and Kinmundy, which the company is asking to
24 be included in rate base, was in any way improper under
25 affiliate rules. The FERC's affiliate rules, I would

1 suggest, are, in fact, relevant. And I would further
2 suggest that this could be more relevant to the
3 proceedings in this Commission than the FERC's opinion
4 reached after an eight-day hearing and extensive testimony
5 and their determination on the issue of whether or not
6 there were affiliate concerns under the rules. And that's
7 what I'm now getting to.

8 JUDGE WOODRUFF: Okay. Mr. Mills?

9 MR. MILLS: Well, I've got a lot to say about
10 that if you want me to. But first of all, the FERC's
11 affiliate rules are not the same as the Missouri rules,
12 and the FERC's rules don't apply here.

13 Second, and this may be one of the most critical
14 point in this issue, is that the FERC was not looking at
15 the same issues as -- as this Commission. In fact, this
16 Commission wrote -- I mean, UE wrote a letter to this
17 Commission in 2003 in con -- in the context of that
18 proceeding and said, AmerenUE agrees that the Missouri
19 Commission has the authority to fully analyze the prudence
20 of the proposed transaction included -- including, but not
21 limited to, timing of the purchase, the amount of
22 purchase, the need for the purchase and the
23 appropriateness of the purchase in light of other options,
24 including purchase on the market or acquisition of other
25 assets.

1 Further, AmerenUE questions about transmission
2 of this letter to the FERC does not in any way constitute
3 a pre-approval of rate-making treatment by the Commission,
4 nor does it prohibit or prevent any party from raising any
5 issues in any future rate-making case in which the
6 transaction is reviewed.

7 AmerenUE agrees that FERC approval of the
8 purchase and transfer of the Pinckneyville and Kinmundy
9 generating units from AEG to AmerenUE does not preempt the
10 Missouri Commission from determining the prudence of that
11 transaction or preempt the Missouri Commission from
12 directing appropriate rate-making treatment.

13 So this Commission was informed by UE that that
14 case at FERC was not going to tread on the Commission's
15 toes in any way whatsoever. And regardless of what FERC
16 thinks about their own affiliate transaction rules in the
17 context of that case has got nothing to do with setting
18 rate in this case.

19 MR. POWELL: Well your Honor, I -- I
20 respectfully suggest that it has quite a lot to do with
21 this. There are two different objections that I think
22 Mr. Mills is making. One is to relevance. And as I
23 understood the other one, it has to do with whether or not
24 FERC is controlling.

25 In the segment of the letter which he just read,

1 the company, AmerenUE, has no quarrel with the wording of
2 that letter or the content of that letter or the meaning
3 of that letter.

4 The issue before you at the moment, I believe,
5 is whether or not an eight-day proceeding regarding
6 whether or not the price of Pinckneyville and Kinmundy was
7 a fair price in the context of the public good. And the
8 rules of FERC relevance is the subject here. And as I
9 said before, I can't imagine anything more relevant.

10 JUDGE WOODRUFF: I believe your specific
11 question dealt with whether the FERC had approved this
12 under their affiliate transaction rules.

13 MR. POWELL: Right.

14 JUDGE WOODRUFF: I don't believe that --
15 certainly, this Commission is not going to be applying the
16 FERC affiliate transaction rules. We're applying this
17 Commission's affiliate transaction rules.

18 MR. POWELL: I would agree with that.

19 JUDGE WOODRUFF: Therefore, the affiliate
20 transaction you and any rules -- affiliate transaction
21 rulings of FERC and my rulings that the FERC may have made
22 on that is not relevant. The objection is sustained.

23 MR. POWELL: All right. Well, let me ask a few
24 more questions, and I may get a few more similar
25 objections, if I may.

1 Q (By Mr. Powell) Mr. Voytas, you yourself
2 participated in the FERC proceeding that's been referred
3 to here by multiple parties, did you not?

4 A Yes, I did.

5 Q What was the extent of your participation in
6 that?

7 A In addition to submitting direct, rebuttal
8 testimony, I was on the witness stand for two days, ten
9 hours as part of a team of witnesses who did that. And
10 that's -- that's primarily the extent -- extensive
11 testimony and extensive work at the hearings.

12 Q And you are not a lawyer, correct?

13 A That's correct.

14 Q What is your understanding as someone who
15 participated so extensively in that proceeding about what
16 the issues were in the proceeding?

17 A Well, again, the -- the issue --

18 MR. MICHEEL: I object to that. It's not
19 relevant to this case as to what the issues were in the
20 FERC proceeding. I mean, the issue in this proceeding is
21 what's the value that should be put in rate base for
22 Pinckneyville and Kinmundy. And what the issue was at
23 FERC has no relevance

24 JUDGE WOODRUFF: Do you wish to respond?

25 MR. POWELL: Again, your Honor, we're here after

1 three prior Commission cases, two in Missouri, one in
2 FERC, which have examined this very issue or something
3 very close to it.

4 My understanding of the rules that apply and the
5 context of this proceeding about evidentiary matters, for
6 example, is that this Commission may take official or
7 administrative notice of its own records in other
8 proceedings that are relevant or of federal agency
9 proceedings that are relevant.

10 And I am not -- I'll say again, I am not arguing
11 that they control this proceeding. The -- the company has
12 never taken that position. But for the Commission to be
13 denied access to all of the information, much of which is
14 directly relevant to the issue that we're talking about
15 here, the pricing of the -- the appropriate pricing for --
16 for the public if -- if Pinckneyville and Kinmundy would
17 be clearly erroneous.

18 JUDGE WOODRUFF: Well, erroneous or not, I'm
19 going to sustain the objection.

20 MR. POWELL: At this time, in order to make a
21 complete record, or at the moment at least what seems to
22 me as a complete record on this, I would ask the -- I
23 would ask the Commission to take official or
24 administrative notice of its own file in Case No.
25 EC-2002-1, which is sometimes referred to as the

1 over-earnings case involving AmerenUE.

2 JUDGE WOODRUFF: And is there a particular
3 document within that file?

4 MR. POWELL: I --

5 JUDGE WOODRUFF: Because I was just looking at
6 it on EFIS. There's several hundred documents.

7 MR. POWELL: Right. I'm asking at this time
8 that it take official notice of that entire file. I do
9 have two specific documents from that file that I have
10 here that I can mark and submit in direct evidence as part
11 of the record in this file -- in this case.

12 JUDGE WOODRUFF: It would certainly be helpful
13 for me if you have particular documents rather than
14 suggesting the entire -- the entire file. Mr. Mills, you
15 look like you want to say something.

16 MR. MILLS: Well, I do. And I don't -- I
17 certainly may or may not object to these specific
18 documents Mr. Powell is referring to. But I -- I think
19 without a whole lot of stretch I could raise a relevance
20 objection to some of the pages in -- in the many boxes of
21 documents from 2002-1.

22 There may be some relevant information. But
23 there clearly is a lot of irrelevant information.

24 JUDGE WOODRUFF: Clearly.

25 MR. MILLS: And I think it would be unusual and

1 -- and improper to take official notice of the entire file
2 without some specificity as to the documents Mr. Powell
3 believes are relevant.

4 JUDGE WOODRUFF: I agree. Can you specify --

5 MR. MICHEEL: And I think we should get an
6 opportunity to see those documents so we can assess for
7 ourselves, your Honor, whether or not it is necessary to
8 make a relevance objection.

9 JUDGE WOODRUFF: All right. Well, by happy
10 coincidence, it is lunch time. I suggest that the parties
11 get together during lunch. And if you can, specify which
12 documents you believe are relevant from that case, share
13 those with the other parties. We'll take that up again
14 when we come back.

15 At this time, we'll break for lunch, and we will
16 come back at -- I'll give you about an hour and ten
17 minutes, 1:20.

18 (Lunch recess.)

19 JUDGE WOODRUFF: All right. Let's come to
20 order, please. All right. We're back from lunch. And
21 there was some discussions before we came back on the
22 record. And we have actually marked a couple of exhibits.

23 Mr. Powell, why don't you just explain for the
24 record what -- what you've marked?

25 MR. POWELL: Yes, your Honor. What I've had

1 marked as Exhibit No. 116 is the stipulation and agreement
2 from the Commission's Case No. EC-2002-1. And Exhibit No.
3 117, which is the report and order approving stipulation
4 and agreement.

5 I perhaps should point out that we neglected to
6 attach to that the concurring opinion of Commissioner Gaw.
7 The exhibit will be offered merely to show that, in fact,
8 the stipulation was approved by the Commission.

9 JUDGE WOODRUFF: Okay. You're talking about the
10 stipulation concurring from Commissioner Gaw or --

11 MR. POWELL: No. I'm just saying Exhibit No.
12 117 is offered for a very limited purpose.

13 JUDGE WOODRUFF: To show that it was approved?

14 MR. POWELL: Yes.

15 JUDGE WOODRUFF: Okay. And that's the reason
16 you didn't include concurrence?

17 MR. POWELL: Right.

18 JUDGE WOODRUFF: Okay. Now, I understand.
19 Okay. And did you wish to offer those exhibits at this
20 time?

21 MR. POWELL: Yes, I would, your Honor.

22 JUDGE WOODRUFF: All right. 116 and 117 have
23 been offered. Are there any objections to their receipt?

24 MR. MILLS: Your Honor, I -- I don't see that
25 there's anything relevant -- I mean, I didn't read every

1 single word over the lunch hour, but I have -- I don't see
2 any reference in here to Pinckneyville or Kinmundy or
3 anything that appears to be relevant to this issue.

4 I mean, obviously, the Commission can take
5 official notice of any of its records. But if I didn't
6 object, there may be something in here that UE is trying
7 to -- to claim as relevant to this issue. And -- and I
8 don't want that to go unchallenged because I don't think
9 there is anything that's relevant.

10 JUDGE WOODRUFF: Mr. Powell, can you explain,
11 for the Commission's guidance as well, what is the
12 relevance about these documents?

13 MR. POWELL: Actually, your Honor, if -- I was
14 going to explore that by way of questioning about
15 Mr. Voytas. And, in fact, if he is permitted to read a
16 very discreet segment of that which does relate directly
17 to that, then I don't care whether the entire document is
18 in evidence or not.

19 JUDGE WOODRUFF: Okay. Which discreet portion
20 are you talking about?

21 MR. POWELL: That portion beginning on page 5
22 under the heading Four Timely Infrastructure Investments
23 going only through the first bullet point on page 6. And
24 I'd be happy to lay a relevance context by way of
25 introductory questions if you'll permit me.

1 JUDGE WOODRUFF: Please do so.

2 MR. CONRAD: Judge, I'm sorry. I apologize.
3 We're not taking a position on the issues before the
4 Commission. As I think we previously noted, I am always a
5 little bit, I guess, concerned when we start introducing
6 stipulations from prior cases. I'm looking here at page
7 11.

8 JUDGE WOODRUFF: Uh-huh.

9 MR. CONRAD: -- 14-A, which is not -- I don't
10 know that there is a standard of exculpatory language, but
11 that's -- that's fairly broad. I don't know that I would
12 -- would think we would have objection.

13 The -- the document is -- is there. And insofar
14 as what it seems to represent is evidence that there was a
15 stipulation, that there was a settlement, but I think
16 where you go beyond that into the content of it, then you
17 -- you have a tendency to run afoul of this 14-A
18 provision.

19 The reason I'm concerned is because we do a fair
20 amount of -- of -- of settlements, all of us do, before
21 the Commission. And if -- if we're starting down a road
22 that we start unpeeling the onion on settlements that are
23 supposedly closed book and the parties -- we're not a
24 signatory to it --

25 JUDGE WOODRUFF: Right.

1 MR. CONRAD: But, I mean, here it is. That's --
2 that's the nature of my concern. I don't know if that
3 rises to an objection. But I think your Honor perhaps
4 ought to be aware of that, take that into account.

5 JUDGE WOODRUFF: I certainly understand the
6 concern there that -- the objection -- or the stipulation
7 and agreement is what it is.

8 MR. CONRAD: Yes. Right.

9 JUDGE WOODRUFF: And the parties are not
10 necessarily bound by anything other than what's in the
11 terms of the stipulation and agreement.

12 At this point, the questioning, as I understand
13 it, is going to be merely foundation to explain in
14 Ameren's view what was relevant about this, and I'm going
15 to go ahead and allow that.

16 Q (By Mr. Powell) Mr. Voytas, you are aware of a
17 stipulation and agreement in the two cases which we've
18 just been discussing here, are you not?

19 A Yes, I am.

20 Q And as you have earlier described your
21 responsibilities for AmerenUE and its parent corporation,
22 is it true that you are intimately involved in
23 implementing any planning work and -- and generation
24 acquisition work necessary to implement the agreement that
25 AmerenUE committed itself to in that case?

1 A That's true.

2 Q Is it true that that agreement, in fact,
3 required the addition of 700 megawatts of regulated
4 generation?

5 A That's true.

6 Q It also contemplated that such acquisition would
7 be -- could be from an affiliate net book value; is that
8 true?

9 Mr. MILLS: I -- I object to that. Now we're
10 asking for the witness's interpretation of what this
11 stipulation and agreement says. I mean, it says what it
12 says. Whether that's relevant to this case or not, we
13 have yet to see.

14 I don't know that these questions are helping us
15 in terms of relevance. But now he's asking the witness to
16 interpret this document. And there's -- there's no --
17 been no indication that this witness wrote Exhibit 117 --
18 116, and I'm quite certain that he didn't write Exhibit
19 117 because I know who did.

20 So his interpretation is -- is probably not
21 terribly relevant or terribly helpful.

22 MR. MICHEEL: And -- and I would object that
23 that calls for a legal conclusion because this is a
24 stipulation and agreement you construe to like a contract,
25 and I don't think Voytas is a lawyer.

1 JUDGE WOODRUFF: I'll sustain the objection to
2 the extent there was calling for a legal conclusion. I'm
3 not sure that was the intent.

4 MR. POWELL: It certainly was not, your Honor.

5 JUDGE WOODRUFF: All right.

6 Q (By Mr. Powell) Mr. Voytas, in your position,
7 your responsibilities include, do they not, implementing
8 this agreement?

9 MR. MILLS: And I have a further objection,
10 which is that I think this is beyond the scope of anything
11 that -- that I asked on, on cross-examination.

12 And this is -- this is redirect and should be
13 limited to those topics raised on either questions from
14 the Bench or cross-examination.

15 I know Mr. Micheel didn't get into this on
16 cross, and I didn't get into this on cross, so I think
17 it's beyond the scope.

18 JUDGE WOODRUFF: I'm going to overrule that
19 objection and allow you to go forward.

20 Q (By Mr. Powell) Do you recall the question?

21 A Please repeat.

22 MR. POWELL: I'm not sure I can. Could you
23 repeat it -- or read it back, please.

24 (The previous question was read back.)

25 A They do.

1 Q (By Mr. Powell) Is it, in fact, your
2 understanding that this agreement made by AmerenUE in that
3 case contemplated that acquisition of 700 megawatts --
4 megawatts of additional regulated generation could be made
5 from an affiliate of AmerenUE at net book value?

6 MR. MILLS: And I have the same objection.
7 We're asking this witness to tell us what his
8 interpretation of this document is. And I don't think
9 that's relevant to this question of how the Commission
10 should value these plans, and I think it's way beyond the
11 scope of anything that was asked on either
12 cross-examination or questions from the Bench.

13 JUDGE WOODRUFF: All right. I think the
14 document speaks for itself. We don't really need the
15 interpretation of this witness as to what --

16 MR. POWELL: May we allow the witness to read
17 the portion of the document to which I'm referring?

18 JUDGE WOODRUFF: The -- you've already
19 referenced the document.

20 MR. POWELL: Uh-huh.

21 JUDGE WOODRUFF: And it's been offered. At this
22 point, I'll ask if anyone objects -- I may have already
23 asked this. Did anyone object to the admission of these
24 documents?

25 MR. MILLS: And, your Honor, I did.

1 JUDGE WOODRUFF: Okay.

2 MR. MILLS: I don't think -- and that's --
3 that's where we start down these questions is he --
4 Mr. Powell said he was going to ask some questions to
5 establish its relevance. And I think you've allowed him
6 considerable leeway to do that, and I think he has yet to
7 establish relevance, and I have yet as to see any
8 relevance.

9 So my -- my objection as to the relevance of
10 either of these documents remains.

11 JUDGE WOODRUFF: All right. I'm going to allow
12 the documents into evidence. The Commission can interpret
13 for itself the meaning of those -- of those terms.

14 MR. POWELL: All right. Well, rather than
15 consume time by reading a section which is in evidence,
16 I'm going to move on.

17 JUDGE WOODRUFF: All right. And for the record,
18 116 and 117 are admitted into evidence.

19 (Exhibit Nos. 116 and 117 were offered and
20 admitted into evidence.)

21 MR. POWELL: While we're struggling in this same
22 vein and walking down this way, let's wade through another
23 one.

24 JUDGE WOODRUFF: Is this another exhibit?

25 MR. POWELL: Yes.

1 JUDGE WOODRUFF: It will be 118.

2 MR. POWELL: Actually, two more, your Honor.

3 JUDGE WOODRUFF: Okay. 118 and 119. The cross
4 surrebuttal of Proctor is 118?

5 MR. POWELL: Yes. Ready?

6 JUDGE WOODRUFF: yes.

7 MR. POWELL: Your Honor, and for the other
8 parties' convenience and understanding, what's going on
9 and perhaps in formulating any objections they wish to
10 raise, I have decided to expedite this so that I will not
11 be offering it as an Exhibit No. -- what was the first of
12 the two?

13 JUDGE WOODRUFF: 118 was Dr. Proctor's
14 deposition.

15 MR. POWELL: I will not be offering that as an
16 exhibit. 119, the report and order on rehearing of
17 Commission in case number EO-2004-0108 commonly known as
18 the Metro East case, I will be offering that. And for the
19 further explanation for the parties, the only part I
20 intend to refer to and the part that I believe is relevant
21 is the second paragraph on page 24.

22 JUDGE WOODRUFF: All right. 119 has been
23 offered. Are there any objections to its receipt?

24 MR. MILLS: Yes, your Honor. This is the same
25 thing. We -- we -- we did not cross and the Bench did not

1 ask Mr. Voytas about any evaluations in the Metro East
2 case. The only time the Metro East case has come into
3 this discussion was -- I believe was in Mr. Powell's
4 opening statement.

5 This is beyond the scope of any
6 cross-examination I had. Without the opportunity to -- to
7 address this because it's coming in on redirect, we can't
8 put it in the proper context. If -- if this was -- if
9 this was an important document, Mr. Voytas could have put
10 it in his testimony.

11 We're getting this and some strained
12 interpretation of its relevance coming in on redirect when
13 we -- when we can't clarify how it is or is not relevant.
14 It's beyond the scope and not relevant, your Honor.

15 JUDGE WOODRUFF: Mr. Powell, what's the
16 relevance?

17 MR. POWELL: Mr. Voytas was asked questions
18 about the proper valuation of the Pinckneyville and
19 Kinmundy, how they were transferred, and there was also
20 discussion about the proper pricing of those plants at the
21 time of transfer prior to the FERC proceeding back in 2002.

22 The time of transfer, as was covered in multiple
23 questions, was May of 2005. The date of this order, which
24 directly addresses it and the paragraph I've cited, a
25 valuation for acquisition of CTGs is dated February 10,

1 2005. It's within just a very few months of the actual
2 acquisition that the Commission is being asked to value
3 for rate-making purposes.

4 JUDGE WOODRUFF: All right. And you're not --
5 you're not arguing that the Commission is in any way bound
6 by this?

7 MR. POWELL: I am not, your Honor.

8 JUDGE WOODRUFF: So what is the relevance of it?

9 MR. POWELL: Just to remind the Commission that
10 they approved a very specific dollar price within -- for
11 CTG acquisition within months of this.

12 JUDGE WOODRUFF: But in a different case in a
13 different context?

14 MR. POWELL: Exactly.

15 JUDGE WOODRUFF: All right. I'm assuming that
16 the objection is relevance. Is that what you said?

17 MR. MILLS: It's relevance. And, also, it's
18 beyond the scope of anything I did in cross-examination,
19 but primarily relevance.

20 MR. POWELL: I think not.

21 JUDGE WOODRUFF: I have to agree with Public
22 Counsel. 119 will not be admitted.

23 Q (By Mr. Powell) Turning to a different topic,
24 Mr. Voytas, you were, in fact, asked many questions about
25 market conditions for pricing of CTGs, were you not?

1 A Yes, I was.

2 Q And it is true, is it not, you were also asked
3 about -- that AmerenUE has added quite a bit of generating
4 capacity within the last few years?

5 MR. MICHEEL: I'm going to object to the leading
6 nature of the questions.

7 MR. POWELL: Good -- good point.

8 MR. MICHEEL: So, you know, I try to be nice
9 about it, but --

10 JUDGE WOODRUFF: I'm going to overrule that
11 objection. This seems to be preliminary matters to help
12 move things along a little bit. I'll certainly entertain
13 further objections if it goes further.

14 Q (By Mr. Powell) Is that true? Has AmerenUE
15 added quite a bit of generation in the last few years?

16 A Since the year 2000, AmerenUE has added quite a
17 bit of combustion turbine generation, that is true.

18 Q How much?

19 A In the neighborhood of 2,000 megawatts.

20 Q And among the CTG generation added in that
21 figure would include the Pinckneyville and Kinmundy
22 plants, wouldn't it?

23 A That's correct.

24 Q You were asked during multiple questions by
25 Mr. Mills, I believe it was, to look at a chart which came

1 from a data request served upon AmerenUE in this
2 proceeding, which is now in evidence as Exhibit No. 435.
3 Do you recall that?

4 A Yes, I do.

5 Q I will have some questions about that document
6 specifically. But first -- well, your testimony here a
7 while ago addressed market trends, both with respect to
8 that exhibit and with respect to other questioning,
9 including that of Commissioner Murray. Do you recall all
10 that?

11 A Yes, I do.

12 Q All right. First of all, is this difficulty in
13 determining market trends for acquisition of CTGs?

14 A Yes, there is. And that primary reason is it's
15 a very thin, very liquid market. As Commissioner Murray
16 requested, we went to page 24 of my testimony, and we
17 looked at two specific examples, the DePair Energy Center
18 that had a publicly reported price of \$460 a KW.

19 I had made some mention that that price was --
20 did not include several components that were later
21 discovered. And what I did do, is, though, I understated
22 the -- I estimated that that plant would cost
23 approximately \$600 a KW.

24 What I'd like to do is refer to the testimony of
25 James Metcalf in the FERC case to show what the actual

1 price of that particular plant was. What Mr. Metcalf
2 testifies to is -- and I will read --

3 MR. MICHEEL: Objection. Hearsay, your Honor.

4 MR. MILLS: Exactly.

5 JUDGE WOODRUFF: Do you have a response?

6 MR. POWELL: No. In fact, I'd just as soon move
7 on.

8 JUDGE WOODRUFF: All right. The objection is
9 sustained.

10 Q (By Mr. Powell) Mr. Voytas?

11 A Yes.

12 Q Back to this particular exhibit now, Exhibit No.
13 435, which included the chart with what has been referred
14 to as downward sloping lines on it?

15 A Okay.

16 Q This covers a period, as I read it, through
17 September of '05, correct?

18 A That's correct.

19 Q To the extent you know, what has happened to the
20 market trend subsequent to that?

21 MR. MICHEEL: Your Honor -- objection, your
22 Honor. I have entered into evidence Exhibit 522, and that
23 question asked referring to ATG-94 to identify any other
24 information that they had done or studies that they had
25 done, and the company answered, The company has not done

1 any of the analysis requested.

2 That data request which is now Exhibit 522 has
3 not been updated. And now this question is going to --
4 he's going to give us some more analysis. And we asked a
5 data request for that reason, got that answer. It's
6 inappropriate, your Honor.

7 JUDGE WOODRUFF: Your response?

8 MR. POWELL: I'm not asking him as an expert
9 witness. I'm asking him if he knows if there is a
10 different trend than those shown in this chart subsequent
11 to this date.

12 MR. MICHEEL: And, your Honor, he is a
13 representative of the company. And -- and the answer is,
14 The company has not done the analysis requested. And --
15 and it's -- it's respecting Data Request 94 from where the
16 chart came from. And now I'm about to get that analysis.
17 And that's why we do these data requests, your Honor.

18 JUDGE WOODRUFF: I'll sustain -- I'm going to
19 sustain the objection.

20 Q (By Mr. Powell) Looking at that specific
21 exhibit, what does the data on that exhibit -- first of
22 all, this came from Ameren, as Mr. Micheel has just
23 pointed out, correct?

24 A That's correct.

25 Q All right. What does this data represent?

1 A This data represents a compilation of magazine
2 articles that were put together in a file and the values
3 that were stated in magazine articles were put in an Excel
4 file, and that was what was in return given in response to
5 response data request for, in fact, any and all
6 information that we had relating to sales prices of CTGs.

7 Q All right. Does the data include any
8 information regarding the characteristics of the sales
9 which are reported there or the characteristics of the CTG
10 sales?

11 A No. No. We don't know anything in regards to
12 the -- the rating of the plants, whether it was a name
13 plate rating or net summer capability rating. We don't
14 know anything as to the transmission capa -- transmission
15 outlet capabilities of each of the facilities.

16 We don't know anything about any specifics of
17 the transaction, whether there was assumed debt included
18 in the transaction or whether there was a power purchase
19 agreement exception or whether there's a power purchase
20 agreementd with that transaction.

21 And, consequently, you know, these are totally
22 unscrubbed numbers. And there's just no research -- the
23 details for these transactions are not available to us.

24 Q Do they include details about the fuel type
25 before the CTGs, the -- whether they have quick start

1 capabilities or intra day cycling or the age ever the
2 plant or its reliability?

3 MR. MILLS: I object. This is leading. He's
4 giving him a list of characteristics and asking him to say
5 no, they don't. I mean, I have never heard a more leading
6 question than that.

7 MR. POWEEL: Your Honor, again, it's in an
8 effort to speed things up.

9 JUDGE WOODRUFF: I'll have to sustain the
10 objection.

11 Q (By Mr. Powell) Are there other things that
12 might be relevant to determining value to enable the
13 Commission to make a determination of value of
14 Pinckneyville and Kinmundy which are not shown on this
15 exhibit?

16 A There are many things. Just some of the things
17 that are -- are relevant, and I want to talk about
18 operational issues, also, but, for example, we don't know
19 anything about the balance of plant issues associated with
20 these assets.

21 The dual fuel capability is a prime example.
22 Dual fuel capability can add ten to \$20 million to the
23 cost of a specific facility. We don't know anything about
24 their black star capability. And we don't know anything
25 about their -- their cycling capability. But most

1 importantly, what we do know from these is that they
2 appear to be all large frame CTGs. And one of the very
3 important things about this --

4 MR. MICHEEL: I'm going to object to one of the
5 things that we do know is they're large frame CTGs. The
6 answer in 522 indicates that they did no analysis. And if
7 they did no analysis, how do they know they're large frame
8 CTGs, your Honor?

9 JUDGE WOODRUFF: Do you want to respond?

10 MR. POWELL: Well, I'm not sure what the
11 objection is.

12 MR. MICHEEL: Well, Exhibit 522 asked, you know,
13 referring to that, Tell us the characteristics -- the
14 response was, The company does not know the
15 characteristics of the plant referenced in this
16 spreadsheet.

17 Now Mr. Voytas is answering the one
18 characteristic of this plant that we know of all these
19 plants that we know are they're large frame CTGs and he's
20 about to tell us how that's so different. I -- I mean, we
21 do discovery for these purposes, your Honor.

22 JUDGE WOODRUFF: I'll sustain the objection.
23 It's also a narrative response. If you have another
24 question?

25 Q (By Mr. Powell) Do you recall being asked --

1 MR. MICHEEL: Your Honor, and I would move to
2 strike any reference because he got this large frame CTG
3 out -- to strike that so I don't see it in the brief.

4 JUDGE WOODRUFF: That will also be sustained,
5 the reference to the large frame CTG.

6 Q (By Mr. Powell) Mr. Voytas, you were also asked
7 a series of questions and discussed during your testimony
8 here today a different request for proposals associated
9 with acquisition of additional CTGs by AmerenUE. That was
10 discussed at length, was it not?

11 A Yes, it was.

12 Q You just wanted to be sure there was no
13 confusion about a couple of things from -- from that --
14 those exchanges. Do you recall the references to
15 acquisitions from Aquila?

16 A Yes, I do.

17 Q All right. And just to be clear, the
18 acquisitions AmerenUE made from Aquila were the Raccoon
19 Creek and the Goose Creek facilities; is that correct?

20 A That's correct.

21 Q So in response to that 2006 request for
22 proposals, how many plants did AmerenUE wind up acquiring?

23 MR. MILLS: I object to the form of the
24 question. There has been no 2006 RFP identified in the
25 record. So it -- to the extent that he's asking about

1 some RFP that we don't know about, it must be outside the
2 scope of my cross-examination.

3 MR. POWELL: We certainly know about it, your
4 Honor. He was asked extensively and gave extensive
5 testimony here today

6 JUDGE WOODRUFF: About the Aquila --

7 MR. POWELL: Yes.

8 JUDGE WOODRUFF: Okay. I'll allow the question.
9 -- or the answer.

10 MR. MILLS: Okay. Perhaps I was confused. That
11 was a 2005 RFP perhaps?

12 MR. POWELL: I'm sorry. I did misspeak.

13 Q (By Mr. Powell) The acquisitions were in 2006,
14 is that right, Mr. Voytas?

15 A They closed in 2006. That's correct.

16 Q But the date of the RFP was 2005 as Mr. Mills
17 indicates?

18 A That is correct.

19 Q All right. Now, back to my question, how many
20 were -- how many additional generating plants were
21 actually acquired by AmerenUE in response to the 2005 RFP?

22 A In terms of the number of plants, there were
23 three, and they were the -- the Audrain County facility,
24 the Goose Creek facility and the Raccoon Creek facility.

25 Q Two of those from Aquila and one from NRG,

1 correct?

2 A Yes. Goose Creek and Raccoon Creek were bought
3 from Aquila. And Audrain was bought from NRG.

4 Q Are you aware of any circumstances that would
5 affect the price at which AmerenUE was able to acquire
6 facilities -- generating facilities from Aquila?

7 A Yes. I'm aware that Aquila had financial
8 conditions that were not -- I don't know if they were in
9 bankruptcy or not, but I knew that they were selling their
10 assets, some of their operating reserve, some of their --
11 I'm sorry -- some of their service territories and some of
12 their power plants in order to downsize their business and
13 focus on their core.

14 So I knew they were in financial straits. I
15 didn't know if they were in bankruptcy as I was asked, but
16 I knew they were in financial straits.

17 Q And you've already covered the extreme financial
18 straits that applied to NRG at the time of the acquisition
19 of the Audrain plant; correct?

20 A That's correct. NRG was in dire financial
21 straits.

22 Q How would you characterize these three
23 acquisitions AmerenUE was able to make in 2006 in response
24 to this RFP?

25 A I would characterize these three acquisitions as

1 unique, one-time opportunities that presented themselves
2 due to the unique financial circumstances of the two
3 sellers.

4 Q Of the facilities offered in response to the
5 2005 RFP which Ameren did not acquire, what range of
6 prices were they offered in?

7 A Okay. Need to refer to my testimony.

8 Q If you recall, rather than eat up more time,
9 were they generally higher than the price at which
10 AmerenUE acquired Pinckneyville and Kinmundy?

11 A They were much higher than the price at which
12 Ameren acquired Pinckneyville and Kinmundy. And let me
13 explain that a little bit.

14 One of the plants that was offered was a
15 combined cycle plant, and that plant was in the \$500 a KW
16 range in terms of capital costs.

17 The other plant was a lower capital cost,
18 approximately 295 to \$300 a KW. But, unfortunately, that
19 plant had severe transmission outlet restraints that,
20 according to MISO, made the effective price of that plant
21 \$500 a KW approximately.

22 Q You were asked a series of questions and you
23 were directed to specific language pertaining to the
24 Audrain acquisition and the Audrain -- it's been
25 characterized as an offer. But in the wording -- the

1 words "indicative price" or "indicative proposal" were
2 used. Do you recall that --

3 A Yes, I do.

4 Q -- testimony? So we're now directing your
5 attention not to the 2005/2006 period, but the 2002
6 period. Do you know -- you yourself know from the FERC
7 proceedings or anywhere else what actual price was being
8 sought not per kilowatt hour, but for the facility itself,
9 the Audrain facility which AmerenUE later did acquire?

10 A During that specific proceeding, the NRG
11 Chairman and CEO's testimony was that price was -- that
12 plant was offered at \$391 dollars a KW. And that was
13 based on a rating of 640,000 kilowatts.

14 Q And so I'm asking you a mathematical question.
15 Is the product of those two numbers \$250 million?

16 A Approximately.

17 Q How does that compare to the actual price when
18 Ameren later acquired the facility?

19 A Ameren acquired the facility for 215 million, so
20 \$250 million less \$115 million, I believe, is \$135
21 million.

22 Q In response to questioning, I believe it was by
23 Commissioner Murray, I may remember that part wrong, but
24 in any event, you were asked questions about what your
25 recommendation to this Commission was about how they

1 should set a price for Pinckneyville and Kinmundy to be
2 included in rate. Do you recall those questions?

3 A Yes, I do.

4 Q And your answer was that you thought the
5 Commission needed to assign a discreet price separately
6 for Pinckneyville, separately for Kinmundy. Your
7 testimony does that, does it not?

8 A Correct.

9 Q And just to be sure we're clear, does your
10 testimony as to those discreet prices to be assigned match
11 up with the same numbers that Mr. Rackers had used?

12 A That's correct.

13 Q All right. And your understanding of his
14 analysis and the position you're taking is that that's the
15 transfer price in 2005, correct?

16 A That's correct.

17 Q Okay. And the recommendation contained in your
18 testimony is based upon the characterization --
19 characteristics of the generating units at Pinckneyville,
20 the generating units at Kinmundy, the request for
21 proposals back in 2002, I believe it was, and all of the
22 evidence available to the Commission regarding the value
23 of these plants; is that correct?

24 MR. MILLS: I object.

25 MR. MICHEEL: I'm going to object. It's

1 leading.

2 MR. MILLS: It's leading. Well, it is leading.

3 JUDGE WOODRUFF: It is leading, but it appears
4 to be a summary more than asking for substantial evidence
5 at this point. I'm going to overrule the objection.

6 A That's correct.

7 Q (By Mr. Powell) Okay. Do you recall the
8 questions which differentiated between a primary
9 recommendation and a secondary recommendation by Mr. Kind?

10 A Yes, I do.

11 Q The primary recommendation he's making is what,
12 if you recall?

13 A My recollection is that the primary
14 recommendation is based on the price for which the --
15 Aquila and NRG's CTGs were purchased for in 2006.

16 Q And that primary recommendation from him is, in
17 fact, lower than his secondary recommendation; is that
18 correct?

19 A That's correct.

20 Q The secondary recommendation, which is for a
21 higher price, actually represents a smaller downward
22 adjustment if it were accepted. Is that fair to say?

23 A That's fair to say.

24 Q You were asked many questions about whether
25 Mr. Kind had used the Audrain facility either in his

1 primary or secondary recommendations. Do you recall that?

2 A Yes, I do.

3 Q Did he, in fact, consider Audrain with respect
4 to both of those recommendations?

5 A Yes.

6 Q And in what way?

7 A In the price -- in the indicative price that was
8 -- from testimony from 2002 and the final closing price
9 that was done in 2006.

10 Q The indicative price you mentioned from 2002, in
11 fact, was the sole basis for Mr. Kind's secondary
12 recommendation as it's been characterized here; is that
13 correct?

14 A That's my understanding.

15 Q There were no other, if you will, data points
16 that he presented in support of that, were there?

17 A That's my understanding.

18 Q There were some questions about firm
19 transmission outlet capability. Do you recall those?

20 A Yes, I do.

21 Q With respect to the Audrain facility, did it
22 have firm transmission outlet capability in 2002?

23 MR. MILLS: Your Honor, I object. This is
24 beyond the scope of cross-examination. The only questions
25 I asked him was, Does this chunk of your testimony talk

1 about transmission issues, and I preceded that with a
2 question about, are you a transmission expert. I did not
3 get into any of this kind of detail.

4 And, in fact, I don't believe that -- that
5 Mr. Voytas is qualified to testify about this. But in any
6 event, it's beyond the scope of any -- any
7 cross-examination.

8 MR. POWELL: The wording that I'm quoting here
9 is Mr. Mills' own wording. And I'm simply asking if he is
10 aware of the characteristics of the Audrain plant in 2002
11 at the time of the indicative price proposal that was
12 explored at length in testimony here and whether there was
13 any change with respect to transmission outlet capability
14 between the time that price, if it was a price, was set,
15 and the acquisition by AmerenUE at a lower price later.
16 That's where I'm headed.

17 JUDGE WOODRUFF: I'll overrule the objection.
18 You can answer that question.

19 Q (By Mr. Powell) Did Audrain -- would you like
20 me to repeat --

21 A Please.

22 Q Did Audrain, the NRG facility, have firm
23 transmission outlet capability in the year 2002?

24 MR. MILLS: And, your Honor, before he answers,
25 can I pose additional objections here?

1 JUDGE WOODRUFF: All right.

2 MR. MILLS: Because we're in the somewhat
3 unusual position, which is sometimes the way it's done for
4 the Commission, in that we're asking a lot of questions
5 about Mr. Voytas' testimony before we have had the
6 opportunity to object to it.

7 And the reason that I asked questions about this
8 section of this testimony -- and all I asked him was does
9 this section talk about transmission capabilities and
10 transmission constraints? And he confirmed that.

11 And the reason I asked that is because when we
12 get around to objections to his testimony, I plan to
13 object to that section. I did not get into the details of
14 that section. I simply identified it as
15 transmission-related so that I can later confirm that he
16 confirmed that that section of his testimony was about
17 transmission issues with which he is not familiar.

18 So because we're in the awkward position of me
19 not having made that objection already because we haven't
20 offered the testimony, he's getting into details in a
21 section of testimony that -- that I think should properly
22 be stricken from the record and not admitted.

23 MR. POWELL: Your Honor, there was extensive
24 questioning of this witness on cross-examination about the
25 pricing, the indicative proposal in 2002. There were also

1 extensive questions having to do with the actual
2 acquisition of this very same facility.

3 JUDGE WOODRUFF: All right. It strikes me that
4 this is -- it's more of a question relating to pricing
5 than it is to the -- the details of transmission.

6 MR. MILLS: Well, if it --

7 JUDGE WOODRUFF: Although -- although the
8 question asks about transmission.

9 MR. MILLS: It does. And, in fact, it asks
10 about transmission constraint. And the only information
11 in Mr. Voytas's testimony about transmission constraint is
12 hearsay testimony for which this witness is not an expert
13 to testify on.

14 So I'm going to object to -- to all of that
15 information in his testimony. And I specifically did not
16 ask questions about it because I planned to object and ask
17 that it not be admitted into the the record. So it can't
18 be within the scope of my questions because I didn't go
19 there.

20 JUDGE WOODRUFF: All right. I'm going to
21 overrule the objection. You can go ahead and answer.

22 Q (By Mr. Powell) Do you recall it?

23 A My understanding is that the Audrain plant was
24 transmission constrained in 2002.

25 Q Were there such constraints when Ameren acquired

1 the very same facility in 2006?

2 MR. MILLS: And, you Honor, I'll have to -- I
3 understand the ruling will probably be the same, but for
4 the record, I want to make the same objection.

5 JUDGE WOODRUFF: All right. The ruling is the
6 the same.

7 A There's still minimal constraint in 2006, but
8 578 megawatts of the plant did have firm transmission
9 outlet capability.

10 Q (By Mr. Powell) You were asked a -- several
11 questions in several different settings about the price
12 actually paid for Pinckneyville and Kinmundy. Based on
13 all the information available to you, do you have an
14 opinion whether the price paid for Pinckneyville and
15 Kinmundy was, in fact, the lower of the costs paid or
16 market?

17 A I believe that there is substantial evidence
18 that shows that the price paid for both facilities was at
19 the lower of cost or market.

20 Q In other words, market was higher than the cost
21 paid; is that your testimony?

22 A That's my testimony.

23 MR. POWELL: That's all I have, your Honor.

24 JUDGE WOODRUFF: Well, thank you.

25 MR. MILLS: Your Honor, before we leave this --

1 this topic with this witness, I have -- I have one
2 clean-up item. In response to a question, Mr. Voytas
3 said, Subject to check, he believed that Mr. Kind
4 testified in a certain way in the Metro East case.

5 And Mr. Kind over the lunch hour checked and --
6 and that does not seem to be correct. So I -- I want to
7 be sure that the record reflects that Mr. Voytas will --
8 will actually do that check and report back into the
9 record what the result of that check is because as it
10 stands, it's unclear.

11 JUDGE WOODRUFF: Mr. Voytas, can you check on
12 that? Do you have that information with you here?

13 MR. VOYTAS: Yes, I will. I will check.

14 JUDGE WOODRUFF: All right. When you come back
15 to Peno Creek, you can tell us about that.

16 MR. VOYTAS: I will.

17 JUDGE WOODRUFF: All right. Thank you.

18 MR. MILLS: Thank you.

19 JUDGE WOODRUFF: And, Mr. Mills, I assume you'll
20 remind him if he forgets?

21 MR. MILLS: I will do my best. Thanks.

22 JUDGE WOODRUFF: Okay. Thank you. All right.
23 Then it's my understanding Mr. Rackers will be here on
24 Tuesday. So we're ready for Mr. Kind, I believe. Welcome
25 back to the stand, Mr. Kind.

1 MR. KIND: Thank you, your Honor.

2 JUDGE WOODRUFF: You have testified previously,
3 so you're still under oath.

4 MR. KIND: Yes, sir.

5 RYAN KIND,
6 being first duly sworn to testify the truth, the whole
7 truth, and nothing but the truth, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MILLS:

10

11 MR. MILLS: And I believe Mr. Kind had a couple
12 of minor typographical corrections to make to this
13 position of his testimony.

14 JUDGE WOODRUFF: All right.

15 MR. LOWERY: Mr. Mills, just for clarity, is he
16 just going to correct any corrections from this portion,
17 or is he going to correct any corrections he might have,
18 if any?

19 MR. MILLS: I don't know.

20 Q (By Mr. Mills) Mr. Kind?

21 MR. KIND: I just have a couple of corrections
22 for this portion of the testimony, and the -- they're on
23 two -- the corrections are on two separate pages. The
24 first one -- I'm sorry.

25 I should say both of these corrections are in my

1 direct testimony. And the first one of those is on page
2 30 at line 10. That line begins with "facility in a rush
3 make up" and the word "to" should be inserted between the
4 words rush and make it so it would read "facility in a
5 rush to make up for."

6 The other correction is on page 33. There are a
7 few corrections at the bottom of page 30 though between
8 lines 19 and 24. And in line 19, the fourth word in that
9 line is "not." And it should be changed to "no."

10 The fifth word in that line is "attempted," and
11 that word should be changed to "attempt" so that the --
12 that line would -- would read just from the start, "UE
13 made no attempt to comply with."

14 And the -- the final correction that I wanted to
15 point out is on that same page, and the bottom line, line
16 24 after the line starts with "manual, March 2006". And
17 there should be a period before the closed quotation
18 there. And that's all the corrections that I wanted to
19 make on this issue.

20 JUDGE WOODRUFF: Thank you.

21 MR. MILLS: I tender the witness for
22 cross-examination.

23 JUDGE WOODRUFF: Does any party wish to
24 cross-examine the witness?

25 MR. POWELL: Yes, your Honor.

1 JUDGE WOODRUFF: All right. For Ameren?

2 CROSS-EXAMINATION

3 BY MR. POWELL:

4 Q Good afternoon, Mr. Kind.

5 A Good afternoon.

6 Q It's true, isn't it, that the only testimony you
7 filed in this case on the issue of Pinckneyville and
8 Kinmundy is found at pages 33 through 35 of your direct
9 testimony and part of page 28 of your surrebuttal
10 testimony?

11 A I think that's correct. In addition, there are
12 some attachments that are -- are referenced within those
13 pages.

14 Q All right. We -- Mr. Kind, you've been here
15 throughout prior proceedings on this issue, have you not?

16 A I'm not sure what you're referring to, prior
17 proceedings on this issue.

18 Q Have you been present in the hearing room
19 durinig all of the receipt of testimony on the
20 Pinckneyville and Kinmundy issue?

21 A In this case?

22 Q Yes.

23 A Yes. You mentioned multiple proceedings, and so
24 that kind of threw me off.

25 Q Well, by this one, I mean this one.

1 A Right. You said prior proceedings, and I was
2 wondering what to respond to.

3 Q Sure. An exhibit has been received into
4 evidence, the stipulation and agreement that was filed in
5 the 2002 rate case with this Commission. Do you recall
6 that?

7 A Yes, I do.

8 Q You were aware of the terms of that stipulation,
9 were you not?

10 A Yes. I'm familiar with, you know, most of that
11 stipulation. I can't say every single term, but certainly
12 most of it.

13 Q Right. You may not know the answer to this, but
14 isn't it true that initially that stipulation and
15 agreement was non-unanimous, but under the rules of the
16 Commission, it wound up being treated as unanimous and was
17 approved by the Commission? Is all that correct?

18 A I don't have any knowledge of that.

19 Q Okay. Do you know, Mr. Kind, whether or not the
20 Office of Public Counsel itself was an actual signer of
21 that stipulation?

22 A I couldn't say with absolute certainty, but I'm
23 -- I'm fairly certain that that's true.

24 Q Okay. Switching to the Metro East case for just
25 a moment, I'm referring here to the AmerenUE case in 2004.

1 You filed testimony in that case addressing the pricing of
2 CTGs; is that correct?

3 A I filed testimony on quite a number of issues.
4 Yes. I think, you know, pri -- I filed testimony on a --
5 a price for CTGs that should be used for purposes of a
6 cost benefit analysis, which is, of course, much different
7 than the issue that we're addressing here today.

8 Q That's a yes answer to my question?

9 A Maybe you should repeat the -- you said pricing
10 of CTGs?

11 Q Yes.

12 A I filed testimony on -- on how to do a cost
13 benefit analysis, how to do a proper cost benefit analysis
14 in that case. And one of the elements of that cost
15 benefit analysis was including a -- a value for the CTG
16 option.

17 Q I'll ask one more time. Is that a yes?

18 A I -- I don't believe it was.

19 Q Well, let me re-ask the question, then. In the
20 Metro East case, is it true that you filed testimony
21 addressing the pricing of CTGs?

22 A I think I'd have to review my testimony to see
23 if I could give you an answer in the -- in the specific
24 way you're asking that question.

25 Q Is it true that Dr. Proctor of Staff filed

1 testimony and calculations that assumed for purposes of
2 those calculations transfer of Pinckneyville and Kinmundy
3 from AEG to AmerenUE and that you did the same thing? Is
4 that true?

5 MR. MILLS: Your Honor, I'm going to have to
6 object to the relevance of this. We haven't had any
7 witness that's been talking about the Metro East case.

8 The -- the only -- the only person that's
9 talking about the Metro East case is Mr. Powell. And I'm
10 not sure that -- that the relevance of what -- what
11 Dr. Proctor filed in a case four years ago has to do with
12 -- with Mr. Kind's testimony. This is cross-examination,
13 and it should be within the scope of his direct testimony.
14 And this is not.

15 MR. POWELL: I'll break it down. That might
16 help.

17 JUDGE WOODRUFF: I'll sustain that objection.
18 If you want to ask further questions, go ahead.

19 Q (By mr. Powell) Mr. Kind, did you yourself file
20 testimony and calculations that assumed, for purposes of
21 those calculations, transfer of Pinckneyville and Kinmundy
22 from AEG to AmerenUE in the Metro East case?

23 A I don't know that without reviewing my
24 testimony.

25 Q Do you think it might help to review

1 Dr. Proctor's testimony if he referred to yours in it?

2 A I -- I would not rely on someone else's
3 characterization of my testimony to -- to figure out what
4 I said in my testimony, no.

5 Q Well, I don't actually have your testimony here.
6 But I do have his. May I just show it to you for the
7 purpose of refreshing your recollection?

8 MR. POWELL: I'm sorry. May I approach the
9 witness?

10 JUDGE WOODRUFF: Yes, you may. And you may show
11 him the document.

12 Q (By Mr. Powell) Mr. Kind, I'm asking you to
13 review page 2 of Dr. Proctor's testimony in the Metro East
14 case in which he characterizes your testimony and your
15 calculations. And I'm asking if his testimony accurately
16 portrays yours to the best of your recollection?

17 A Are there particular lines in this testimony
18 that you're asking me to refer to?

19 Q Let me get another copy. I'm referring to lines
20 12 through, I guess, 14?

21 A Which page?

22 Q On page 2.

23 A That -- that doesn't do anything to refresh my
24 recollection of how I did the analysis in that case.

25 Q All right. Those lines read --

1 MR. MILLS: Hang on a second. We don't need to
2 read the testimony into the record here, but -- but Mr.
3 Kind -- Mr. Powell approached Mr. Kind and said, Let me
4 hand you this, see if it refreshes your recollection.

5 Mr. Kind -- Mr. Kind's previous answer was very clear
6 that this does not refresh his recollection. Reading it
7 into the record is likely -- unlikely to have a better
8 effect than having Mr. Kind read it himself.

9 JUDGE WOODRUFF: I'll sustain the objection.

10 Q (By Mr. Powell) Is it your testimony that
11 Dr. Proctor's reference to your testimony there is
12 untruthful?

13 A It's my testimony that I can't -- Dr. Proctor
14 does not have a complete enough description of my position
15 in that case for me to say that that actually --
16 accurately reflects my position.

17 JUDGE WOODRUFF: All right. At this time, then,
18 your Honor, I guess I would offer that as an exhibit.

19 JUDGE WOODRUFF: That was previously marked as
20 118, I believe.

21 JUDGE WOODRUFF: Yes, it was.

22 MR. MILLS: And, your Honor, this was marked.
23 And then within minutes, Mr. -- Mr. Powell said -- he
24 wasn't going to offer it at that time. And I -- I don't
25 believe any foundation has been laid for this.

1 Apparently, the purpose is to use this testimony
2 of Mr. -- of Dr. Proctor to show what Mr. Kind testified
3 to in the Metro East case. And while I question the
4 relevance of -- of what Mr. Kind testified in that case,
5 to begin with, using another witness's testimony to
6 characterize this witness's testimony in a different case
7 is -- is really not the best way to do that.

8 And I don't -- I don't think we can get in some
9 other witness's description of Mr. Kind's testimony in
10 another case to prove what Mr. Kind said in another case.
11 So I object that it's -- it's hearsay. It's -- it's
12 irrelevant, and I object.

13 JUDGE WOODRUFF: Okay.

14 MR. POWELL: Actually, I'll withdraw that, your
15 Honor.

16 JUDGE WOODRUFF: All right.

17 Q (By Mr. Powell) And, Mr. Kind, it's true, isn't
18 it, that in the Metro East case, both Dr. Proctor and the
19 Commission itself wound up accepting a price of \$471 per
20 kilowatt for acquisition or transfer of CTGs?

21 A I don't believe that's correct. No.

22 Q You don't?

23 A No. I don't believe that was an issue in the
24 case.

25 Q Well --

1 JUDGE WOODRUFF: Are you looking for the report
2 and order, Mr. Powell?

3 MR. POWELL: I am, but for a particular copy of
4 it.

5 JUDGE WOODRUFF: Okay. I was going to offer to
6 share with you.

7 Mr. POWELL: Thank you.

8 Q (By Mr. Powell) I believe --

9 MR. POWELL: May I approach the witness?

10 JUDGE WOODRUFF: You may.

11 A We can trade.

12 Q (By Mr. Powell) Mr. Kind, your last answer was
13 that you did not believe pricing for transfers of CTGs was
14 an issue in the case of -- in the Metro East case, which
15 is EO-2004-0108. Did I state that correctly?

16 A Yes. I -- I don't recall that being an issue.

17 Q All right. I've now handed you what was
18 previously marked and offered as an exhibit and not yet
19 admitted, Exhibit No. 119. Do you recognize this as the
20 report and order on rehearing in the Metro East case?

21 A Yes, I do.

22 Q I would ask to you turn to 24. Does that
23 refresh your recollection?

24 A With regard to what?

25 Q With regard to my most recent question and your

1 answer.

2 A Yes. My answer remains the same.

3 Q So is it your testimony that setting a price or
4 accepting a -- an appropriate price for the transfer of
5 CTGs was not a portion of the Metro East hearing in any
6 way?

7 A I -- I certainly don't see anything on this page
8 that you've directed me to about this being the Commission
9 approved price for the transfer of CTGs.

10 Q Mr. Kind, I'd direct your attention to the first
11 sentence of -- of the second paragraph on page 24 and ask
12 for you to read that into the record.

13 A "The Commission does not agree with Public
14 Counsel, however, that UE erred by pricing CTGs at \$471
15 per KW."

16 Q Would you read the last sentence of that
17 paragraph?

18 A "For this reason, the Commission finds that the
19 \$471 per KW figure used by UE was appropriate."

20 Q Thank you.

21 MR. POWELL: Your Honor, I guess I would at this
22 time again to offer Exhibit No. 119.

23 MR. MILLS: Your Honor, the questions of this
24 witness and his answers make it clear that this witness
25 does not believe that the Commission was setting prices

1 for the transfer of CTGs.

2 MR. POWELL: Nor is that being argued. I -- in
3 this case that that proceeding is controlling in this
4 proceeding.

5 MR. MILLS: And that wasn't my objection. My
6 objection is relevance. The Commission was talking about
7 pricing there in a very different context. And -- and
8 it's not relevant to the way in which pricing is being set
9 in this case.

10 And -- and I think, you know, Mr. Powell has
11 tried this several times, and I don't think the questions
12 and the answers that he got from this witness in any way
13 helped his foundational problems.

14 JUDGE WOODRUFF: I'm going to sustain the
15 objection. I don't believe that -- that that decision in
16 the earlier case is relevant to the decision before the
17 Commission in this case.

18 MR. MILLS: And, further, I would -- I would ask
19 that the -- the reading of the two sentences that -- that
20 Mr. Kind was just subjected to be stricken from the
21 record.

22 JUDGE WOODRUFF: I'll overrule that.

23 Q (By Mr. Powell) Mr. Kind, are you familiar --
24 well, let me ask it this way: How extensive is your
25 knowledge of the FERC case that has been discussed here

1 earlier today involving the appropriateness of the price
2 for the transfer from AEG to AmerenUE of the Pinckneyville
3 and Kinmundy generating units?

4 MR. MILLS: I object to the form of the question
5 because it assumes that -- that what the purposes of the
6 FERC case was. If he wants to rephrase the question to
7 just ask about are you familiar with the FERC case without
8 some characterization of the case, then I won't object.

9 MR. POWELL: I assume this witness is aware of
10 several FERC cases. I was merely trying to be sure he
11 knew which one I was talking about

12 JUDGE WOODRUFF: Does the witness understand
13 which case is being talked about?

14 A Are you talking about FERC CE-03-53 {}.

15 Q That sounds like a yes answer to my question. I
16 am talking about that case.

17 A Yes. I have some familiarity -- some
18 familiarity with that case. Certainly, my familiarity was
19 much stronger closer to the time when the case actually
20 took place several years ago.

21 Q Did you participate in that proceeding?

22 A I don't recall doing so. No.

23 Q Would you consider that you have extensive
24 knowledge of it?

25 A Well, my knowledge is -- I have some knowledge.

1 I recall that as the case was going on I requested that
2 Union Electric provide Public Counsel with --

3 Q I asked you a yes or no question.

4 A -- all the confidential documents in that case,
5 and they refused to do so. So I have some knowledge of
6 the public documents that have been filed in that case.
7 Much of it was confidential.

8 Q Mr. Kind, let me ask you this again. Here
9 today, how extensive do you consider your knowledge of
10 that case to be?

11 A I had -- I certainly have some knowledge. When
12 you ask me a specific question, I guess we'll -- we'll
13 find out. You know, if I have knowledge in a certain area
14 that you have an interest in finding out that I have
15 knowledge of that, you know, I was aware of the case at
16 the time it took place.

17 Q It's true, isn't it, that in that FERC
18 proceeding, the proper pricing of the Pinckneyville
19 Kinmundy units under FERC rules was a focus of that case;
20 is that correct?

21 A I -- I know the sole focus that I recall was
22 whether or not --

23 Q I didn't say the sole focus. It was a focus of
24 the case?

25 A It might have been a part of a larger issue.

1 Q All right. Would you agree that in that case
2 the Federal Energy Regulatory Commission accepted the use
3 of net book value for Pinckneyville and Kinmundy for
4 FERC's purposes under FERC's rules and determined that
5 there was no affiliate abuse in doing so? Would you agree
6 with that?

7 A I -- I can't say or recall it well enough to
8 agree with all that, no.

9 Q All right. It is true, isn't it, as has been
10 mentioned here that in this case, you're proposing two
11 different numbers for the price to be included in rate
12 base for Pinckneyville and Kinmundy?

13 A I really just have one main proposal and have
14 just sort of set out a -- a second -- secondary proposal
15 as just another reference point.

16 Q Your main proposal, then, I assume you're
17 referring to the \$193.50 or 80 cents, whatever it was?

18 A I've seen it both ways.

19 Q Per kilowatt?

20 A That's correct.

21 Q And then what you're calling your secondary --
22 or somebody called your secondary proposal would be the
23 \$312.50 per kilowatt; is that correct?

24 A I have called that my secondary recommendation
25 at line 24 of -- of page 35 of my direct testimony. Yes.

1 Q It's true, isn't it, Mr. Kind, that both of
2 those are much lower than prices that you advocated be
3 considered for Pinckneyville and Kinmundy or the prices
4 you related to those facilities and the other Missouri
5 Public Service Commission cases we've discussed?

6 A I didn't advocate in other cases that the
7 Commission advocate any price to the transfer of
8 Pinckneyville and Kinmundy.

9 Q The prices you are now advocating in this case
10 for inclusion in rate base of Pinckneyville and Kinmundy
11 are much lower than the price mentioned in the two
12 sentences of the Metro East case which you read into the
13 record; isn't that a true statement?

14 A If -- yes. I think you're referring to the
15 prices that were in there as to what prices should be used
16 in a cost benefit analysis that I read a couple sentences
17 about. Yes.

18 Q In fact, if I've done my math right, and I'm
19 just asking you if you would agree with this, that the two
20 different alternative suggestions you're making are
21 respectively about 41 percent or 65 percent of the price
22 mentioned in the Metro East case, which we've just
23 reviewed?

24 MR. MILLS: Your Honor, just so the record is
25 clear, those are the two sentences that I asked to be

1 stricken. And I don't want to keep interrupting
2 Mr. Powell, but I want it understood that I object to the
3 continuing reference to those on the same grounds that I
4 objected to them and asked them to be struck. So if I
5 could just have this as a continuing objection?

6 JUDGE WOODRUFF: That would be -- certainly.

7 MR. MILLS: -- continuing objection to talking
8 about those two sentences.

9 JUDGE WOODRUFF: Certainly.

10 Q (By Mr. Powell) Did I do my math right is the
11 question?

12 A Yeah. You keep referring to a price.
13 You know --

14 Q This is a yes or no question, Mr. Kind.

15 A Okay.

16 Q Did I do the math right?

17 A Well, to the extent of time you're asking me to
18 -- part of question implies that there was a price in the
19 other case. I can't answer your question.

20 Q I understand your position in that regard, Mr.
21 Kind. We've covered that.

22 A Okay.

23 Q Did I do the math right?

24 A Could you repeat the question about the math,
25 please?

1 Q The two proposals you're offering as
2 alternatives to the Commission in this case for inclusion
3 in rate base of Pinckneyville and Kinmundy are roughly
4 \$193.80 per kilowatt or \$312.50 cents per kilowatt, those
5 are respectively 41 percent and 66 percent of the \$471 per
6 kilowatt figure referenced in the segments of the Metro
7 East case which we've just reviewed; is that correct?

8 A That's correct.

9 Q All right. Mr. Kind, you are not an engineer,
10 are you?

11 A No, I'm not.

12 Q You're an accountant, correct?

13 A No. That's not correct.

14 Q Oh, I'm sorry. What is your profession?

15 A Okay. Well, I guess if you haven't read my
16 direct testimony, maybe -- maybe we should,

17 Q No. I'm asking you to characterize it here.

18 A Maybe we should just -- can I refresh your
19 memory of what it states. I have a Bachelor of Science in
20 Business Administration and Economics and a Master's in
21 Economics, both from the University of Missouri-Columbia.
22 And I've also taught Economics.

23 Q Would you characterize yourself as an economist?

24 A My -- my title at the Office of Public Counsel,
25 as it states in Line 2 on page 1 of my direct testimony,

1 is I'm the Chief Energy Economist.

2 Q All right. So that would be a yes?

3 A To what question?

4 Q Do you consider yourself an economist?

5 A I consider myself to be both an economist and a
6 policy analyst with lots of expertise in other areas.

7 Q Mr. Kind, we'll get through this a lot quicker
8 when I ask you a yes or no question if you'd answer yes or
9 no. Would you please do so? Is that a yes answer? Do
10 you consider yourself an economist?

11 A My job title, as I am the Chief Energy
12 Economist, yes.

13 Q That is a yes. All right. You've never
14 participated in constructing a generating plant; is that
15 correct?

16 A My answer is the same that I gave in my
17 deposition. I haven't done any construction since then.

18 Q Mr. Kind, again, I'm asking you yes or no
19 questions. Is that a yes?

20 A Still -- yes. Like -- just like it was in my
21 deposition.

22 JUDGE WOODRUFF: All right. Mr. Kind, just
23 answer yes or no, please.

24 MR. KIND: Okay.

25 Q (By Mr. Powell) The only sale transactions you

1 used in comparing the acquisition of Pinckneyville and
2 Kinmundy to AmerenUE and in arriving at your two
3 suggestions in this case were the sales of Audrain, Goose
4 Creek and Raccoon Creek facilities; is that correct?

5 A No. That's not correct. Those are the only two
6 that I cited in my testimony. But I -- I considered a
7 whole lot of transactions that have taken place over the
8 last few years and any general knowledge in that area.

9 Q The only -- and, in fact, you characterize that
10 list as two, but, in fact, I meant to refer to three. And
11 if I did, the only three that you referred to and base
12 your testimony upon are Audrain, Goose Creek and Raccoon
13 Creek and the transactions involved -- all involved in the
14 acquisition by AmerenUE; is that correct?

15 A No. I don't think so. The -- the secondary
16 recommendation doesn't involve an acquisition by AmerenUE.

17 Q Of course. You are correct. And thank you for
18 making that correction. And in your primary
19 recommendation, your testimony refers to and relies upon
20 those three, is that correct, Audrain, Goose Creek and
21 Raccoon Creek?

22 A That's correct.

23 Q And your secondary recommendation relies solely
24 upon the 2002 indicative proposal for Audrain; is that
25 correct?

1 A Correct.

2 Q It's true, isn't it, that you have made no
3 comparisons between the characteristics of Pinckneyville
4 and Kinmundy and the characteristics of those other plants
5 and that the sole comparison you made was price; is that
6 correct?

7 A When you speak of comparisons, are you asking me
8 just about what's stated in my testimony or just the
9 analysis that I've done as part of this case?

10 Q Well, I'm hoping for the same answer you gave in
11 your deposition, which was that the only consideration you
12 gave was to price in comparing Pinckneyville and Kinmundy
13 with the other three we've just mentioned. Is that still
14 your testimony?

15 A Well, I suppose that's what my initial -- my
16 recommendation was made on -- certainly, my knowledge in
17 this area has developed as this case has -- has
18 progressed.

19 Q It's true, isn't it, that Goose Creek and
20 Raccoon Creek are in central Illinois and Audrain is in
21 central Missouri; is that correct?

22 A That's correct.

23 Q And all three of those facilities, Goose Creek,
24 Raccoon Creek and Audrain, were actually acquired by
25 AmerenUE in the calendar year 2006; is that correct?

1 A That's when the transaction closed, I
2 understand, yes.

3 Q And it's reflected on your Attachment 7 to your
4 direct testimony, is it not?

5 A Yes, it is.

6 Q Regarding the Audrain facility, that one was
7 discussed extensively in the FERC case and Mr. Rackers'
8 direct testimony in this case, which he filed prior to
9 changing his position; is that correct?

10 A I -- I can't really characterize his testimony.
11 I don't think I recall it well enough. But what -- what
12 was your other question about that?

13 Q Was the Audrain facility and its characteristics
14 as well as its pricing discussed extensively, to your
15 knowledge, in the FERC case? Let's break it down that
16 way.

17 A I believe it was. Yes.

18 Q And you're saying you didn't know when it was
19 discussed in Mr. Rackers' direct testimony?

20 A Yeah. I probably just skimmed his testimony.

21 Q All right. You're aware that it is discussed
22 extensively in Mr. Voytas' testimony?

23 A I think with respect to his rebuttal of
24 Mr. Rackers, I -- I recall that, yes, he wasn't rebutting
25 me, so I know I would have read it in the same detail as

1 it would have been directed toward me.

2 Q Mr. Kind, do you know if the NRG plant at
3 Audrain was operated by them commercially?

4 A By them, you mean --

5 Q Meaning NRG?

6 A NRG? I don't believe so.

7 Q You've already said you've been here throughout
8 the hearing on this issue. Do you agree with the math --

9 A Excuse me.

10 Q Sure. Do you agree with the math that
11 Mr. Voytas testified to about the total price for the
12 Audrain facility as referenced in your testimony on your
13 Attachment No. 7 from two comparing the total price to
14 that 640 name plate megawatt facility and the price for
15 which AmerenUE actually acquired it in 2006?

16 Do you agree with his testimony that there was a
17 difference in total price of \$136 million less when
18 AmerenUE actually did acquire it?

19 A That's generally my understanding, but yes.

20 MR. POWELL: Thank you, your Honor.

21 JUDGE WOODRUFF: Thank you. I have no questions
22 from the Bench, so there's no need for recross. Any
23 redirect?

24 MR. MILLS: Really, just one, your Honor.

25 REDIRECT EXAMINATION

1 BY MR. MILLS:

2 Q Mr. Kind, Mr. Powell asked you about the -- the
3 Goose Creek, Raccoon Creek and Audrain facilities. Do you
4 know when the prices for those transactions were
5 established?

6 A Yes, I do. It's my understanding that between
7 the time that Ameren received the reponses to the RFP in
8 the late summer of 2005 and the time that Ameren submitted
9 its applications to the FERC to have the FERC approve
10 those transactions in late 2005 that there was a price
11 agreed upon between the parties.

12 MR. MILLS: All right. That's all I have.
13 Thank you.

14 JUDGE WOODRUFF: All right. Thank you.
15 Mr. Kind, can you step down. We're -- we're due for a
16 break. Before we go, I want to be clear what we're doing
17 after we come back from the break. I understand we'll do
18 Mr. Brosch next, and then was it Mr. Moehn on the SO2?

19 MR. DOTTHEIM: Yes.

20 JUDGE WOODRUFF: And then we'll go to Peno
21 Creek. I believe the parties said yesterday they didn't
22 think they'd have any cross on the Metro East issue?

23 MR. MILLS: That's correct, your Honor.
24 Mr. Lowery -- well, I'll let him speak for himself, but I
25 believe that -- that we have no questions for Mr. Weiss

1 and they have no questions for Mr. Kind.

2 MR. LOEWRY: In light of the fact that they
3 don't have any questions for Mr. Weiss, that would be
4 correct.

5 JUDGE WOODRUFF: Okay. Well, we'll deal with
6 that issue when we get there in case any of the
7 Commissioners have questions.

8 At this time, we'll take a break.

9 MR. MILLS: Your Honor, just so it's clear, it's
10 not that we've settled that issue giving it up. It's just
11 we're not doing cross-examination.

12 JUDGE WOODRUFF: Cross.

13 MR. LOWERY: Which is a whopping \$137 million,
14 your Honor.

15 JUDGE WOODRUFF: Which sounds like a lot to me
16 in another context.

17 Mr. LOEWRY: Not in that particular context.
18 All right.

19 JUDGE WOODRUFF: All right. We're on a break
20 until 3:05.

21 (Break in proceedings.)

22 JUDGE WOODRUF: All right. Let's come back to
23 order, please.

24 MR. MICHEEL: The State, your Honor, would call
25 Michael Brosch to the stand to stand cross on the issue on

1 Pinckneyville and Kinmundy.

2 JUDGE WOODRUFF: Okay. And Mr. Brosch has taken
3 thte stand. And you've testified previously here, so
4 you're still under oath.

5 MR. BROSCHE: Yes, sir. Thank you.

6 JUDGE WOODRUFF: Did anyone other than Ameren
7 wish to cross?

8 MR. MILLS: No questions.

9 JUDGE WOODRUFF: All right. Proceed.

10 CROSS-EXAMINATION

11 BY MR. POWELL:

12 Q Good afternoon, Mr. Brosch.

13 A Good afternoon.

14 Q Mr. Brosch, you think that this issue,
15 Pinckneyville and Kinmundy, is the company's strongest
16 issue, don't you?

17 A I guess I hadn't really considered it in that
18 context.

19 Q Well, in fact, Mr. Brosch, just a couple of
20 weeks ago in an e-mail discussion about the order in which
21 the issues were to be heard, you appended a comment to the
22 proposed order before the issue was to be heard which then
23 listed this issue first, and your comment read, "This
24 should not go first. They want to lead with their
25 strongest case." You made that comment, did you not?

1 A It sounds familiar. And I think I perceived
2 that the company believed this was a relatively strong
3 position for it. Yes.

4 Q Okay. Mr. Brosch, the only testimony you filed
5 in this issue is found on pages 52 through 58 of your
6 direct testimony; is that correct?

7 A That's where the testimony is. And then there
8 are two joint accounting schedules and some attachments to
9 the testimony. This is a schedule MLB-4 containing the
10 Commission's letters to the FERC in the FERC docket that
11 was discussed previously.

12 Q And that testimony is stated -- for your
13 knowledge, I'm referring here to page 52, lines 9 through
14 11, that these facilities, Pinckneyville and Kinmundy,
15 were purchased by AmerenUE from its affiliate Ameren
16 Energy Generating Company at their net book value,
17 correct?

18 A That's correct.

19 Q You also acknowledge that FERC approved the
20 transfer of Pinckneyville and Kinmundy to AmerenUE in the
21 FERC proceeding which we've been discussing; is that
22 correct? I'm referring to page 53, lines 4 through 6.

23 A Yes. I discuss the FERC decision on page 53 as
24 well as the Commission's letter and that proceeding that I
25 just mentioned.

1 Q And, specifically, you acknowledge that FERC
2 approved the transfer in that proceeding, correct?

3 A Well, I say several things about that
4 proceeding. I acknowledge --

5 Q Just answer the question I'm asking you, please.
6 You can expound later perhaps.

7 A I say on line 5, "The transfer was approved by
8 the FERC." And it's No. 473.

9 Q Thank you. You acknowledge as well in your
10 testimony that this Commission intervened in that
11 Commission proceeding that's on line 6, I believe,
12 correct?

13 A Yes. I reference the intervention.

14 Q And on page 6, lines 5 through 7 -- do you have
15 that?

16 A I do now. Yes.

17 Q You acknowledge that you did not yourself
18 conduct a prudent investigation regarding the prices paid
19 for Pinckneyville and Kinmundy by AmerenUE, correct?

20 A That's right.

21 Q Now, your suggested downward adjustment for what
22 is to be included in rate base for Pinckneyville and
23 Kinmundy is based upon sales that you examined during the
24 time period encompassing only the years 2004 and 2005; is
25 that correct? I'm looking at pages 57, lines 5 and 6.

1 A Certainly, yes, with respect to transactions
2 occurring between non-affiliates that were combustion
3 turbine transfers. And the dates are a little more
4 specifically delineated on Schedule MLB-3. They fail on
5 those years.

6 Q Mr. Brosch -- Mr. Brosch, is that a yes or no
7 answer?

8 A I'm just trying to be complete in my response.
9 They fall in those years. Yes.

10 Q And right below the reference I just gave you,
11 you acknowledge that the input data you used in that
12 analysis was what you derived from DR AG/UTI-94, correct?

13 A That's what it says. Yes.

14 Q Would you agree that that's the same document
15 which is now in evidence as Exhibit 435?

16 A I believe some of it's in evidence. I think
17 there were some voluminous attachments that may not be in
18 evidence.

19 Q The same information is reflected in Exhibit
20 435, the same transactions; is that correct?

21 A Well, I'm -- again, I'm trying to be complete in
22 my response. There was a spreadsheet attached to that
23 data request. And the information set forth on Schedule
24 MLB-3, the dollar values and megawatt values set forth
25 there are from the spreadsheet. The information in the

1 narrative is from about 205 pages of compiled articles
2 about those transactions.

3 Q Okay. I understand. Mr. Brosch, your direct
4 testimony was dated December 15, 2006; is that correct?

5 A Yes.

6 Q If you turn to the last page of your testimony,
7 page 58, lines 6 through 8, tell me if I read this
8 correctly. I would invite the Commission to consider
9 additional facts and circumstances supplied by AmerenUE as
10 well as the results of Staff's prudent review in
11 finalizing a reasonable rate-making valuation for these
12 assets. Did I read that correctly?

13 A That's part of the sentence that you read, yes.
14 That's a fragment of that sentence.

15 Q Did I read it correctly?

16 A You read a part of a sentence correctly. Yes.

17 Q All right. Subsequent to you filing your
18 testimony, which we've been reviewing, which contained
19 that statement, Mr. Rackers of Staff has completed all the
20 work of Staff for the prudent review you refer to; is that
21 your understanding?

22 A Well, I can't really speak to what Mr. Rackers
23 has done. I was aware at the time this was written that
24 Staff had responded to a data request from the -- the --
25 the State and indicated in that response that they were

1 undertaking prudent review.

2 Q So far as you know, that's completed since we're
3 here at the hearing; is that correct?

4 A I have no information about the status of the --
5 that beyond what I've heard in the hearing room.

6 Q All right. In any event, at this stage, Staff
7 and Mr. Rackers are supporting no downward adjustment in
8 rate base follow whatever work Mr. Rackers has done with
9 respect to Pinckneyville and Kinmundy; is that correct?

10 A I understand that to be true. Yes.

11 Q And once again, you yourself have filed no
12 additional testimony on this issue, correct?

13 A That's true.

14 Q All right. And we're taking up another related
15 issue immediately after this -- or I guess we're going to
16 be delayed a bit, which is the Peno Creek issue. It's
17 correct, is it not, that you have filed no testimony
18 favoring an adjustment with respect to the Peno Creek CTG;
19 is that correct?

20 A I've -- that's right. I've conducted no review
21 of Peno Creek and have no adjustment.

22 MR. POWELL: All right. That's all I have.

23 JUDGE WOODRUFF: All right. I have no questions
24 from the Bench, so there's no need for recross. Any
25 redirect?

1 MR. MICHEEL: Yes.

2 REDIRECT EXAMINATION

3 BY MR. MICHEEL:

4 Q Mr. Brosch, why didn't you have any more
5 testimony beyond your direct?

6 A It's my understanding that there was no rebuttal
7 filed to my direct that would create an opportunity for me
8 to have further responsive testimony.

9 Q Mr. Powell asked you about the response to
10 AG/UTI-94, and you indicated that there were some articles
11 attached to that. Do you recall that question?

12 A Yes, I do.

13 Q Could you give me -- did you review those
14 articles?

15 A I did.

16 Q Could you tell me what your review showed?

17 A Yes. Those articles represent a -- a
18 compilation of reports of publicly available information
19 regarding a number of power plant transactions as well as
20 a --

21 MR. POWELL: Your Honor, I object to this. This
22 goes beyond the scope of my cross-examination.

23 JUDGE WOODRUFF: Your response?

24 MR. MICHEEL: He asked him specifically about
25 the response to AT/UTI-94, your Honor.

1 JUDGE WOODRUFF: I'll overrule the objection.

2 A The articles also described the generally
3 distressed market conditions for merchant combustion
4 turbine generating units and the difficulty that sellers
5 were having in -- in finding buyers for those kinds of
6 assets at reasonable prices.

7 They also described in some detail, varying
8 detail, the characteristics of the individual units that
9 are set forth as comparable transactions on Schedule B-3.

10 Q And was there any discernible trend in that
11 information?

12 A The trend --

13 MR. POWELL: Same objection, your Honor.

14 JUDGE WOODRUFF: Again, overruled.

15 A The spreadsheet information in that response
16 certainly indicated the trends that were extrapolated in
17 the linear lines set forth in the data that was made an
18 exhibit earlier today.

19 The -- the narrative discussion of transactions
20 in the compilation of articles certainly indicated in many
21 instances where buyers were frustrated in finding -- or
22 excuse me -- sellers were frustrated in finding buyers for
23 their assets at reasonable prices and generally an
24 environment where many transactions were occurring to
25 repay debt and improve liquidity for sellers in distressed

1 financial condition.

2 Q Mr. Powell asked you about page 58 of your
3 testimony where you invited the Commission to consider the
4 additional facts and circumstances supplied by AmerenUE.
5 Do you recall those questions?

6 A I do.

7 Q Did they -- did Ameren supply any additional
8 facts that led you to change your recommendation?

9 A Well, not yet. As I said, there was no rebuttal
10 filed. And I listened with interest today, and what I
11 heard today does not change my opinions.

12 Q Okay. Mr. Powell asked you about the FERC
13 proceedings that you talk about in your testimony. Do you
14 recall those questions?

15 A I do.

16 Q And you wanted to indicate a further answer
17 about some of the other items with respect to that FERC
18 docket. Could you tell me what else you -- you talked
19 about with respect to the FERC docket?

20 A Yes. My testimony describes the letters that
21 are attached to it where the Commission indicated its
22 intent to scrutinize the Pinckneyville and Kinmindy
23 transfers in great detail. This case is where the first
24 opportunity to include those opportunities in rate base
25 occurs. I also describe on page 54 what the FERC said

1 about their expectation of further State level Commission
2 review and how that review does not prevent the exercise
3 of affiliate preferences before the transaction occurs.

4 And there's a quotation from the FERC in money
5 there including prescription of some guidelines for
6 reviewing future Section 203 -- 203 affiliate
7 transactions.

8 Q You also, in response to one of Mr. Powell's
9 questions, wanted to discuss a -- a schedule that you have
10 in the State's accounting schedules. Do you recall that
11 question?

12 A I believe so.

13 Q Could you expound on why it's important to look
14 at the State's accounting schedules with respect to this
15 issue?

16 A Yes. Schedule B-3 lays out the eight comparable
17 transactions from the AG/UTI-94 response. And I believe
18 it's notable that not only do the transfer prices for
19 Pinckneyville and Kinmundy compare unfavorably to the
20 average transfer price for the eight comparable market
21 transactions, but, in fact, Pinckneyville and Kinmundy's
22 transfer price at cost exceeds, on a per KW basis, every
23 single one of those comparable transactions.

24 Q And how did you determine those were comparable
25 transactions?

1 A Well, first, I asked the company for all the
2 analysis that they had done of comparable transactions and
3 then worked with the 205-page compilation of articles as
4 well as the spreadsheets the company prepared to that end.

5 Q So the comparable information came from the
6 company?

7 A It did.

8 MR. MICHEEL: That's all I have, your Honor.

9 JUDGE WOODRUFF: All right. Thank you,
10 Mr. Brosch.

11 MR. BROSCH: Thank you.

12 JUDGE WOODRUFF: You can step down. I will add
13 that I had an e-mail message from Commissioner Gaw's
14 secretary indicating that he might have some questions for
15 Mr. Brosch, but he wasn't sure when he would be able to
16 get down here. If -- if that doesn't happen today, you
17 will be back on Monday, I believe, on the SO2 issue; is
18 that correct?

19 MR. BROSCH: Yes, sir.

20 JUDGE WOODRUFF: Okay. We'll deal with it then.

21 MR. MILLS: You're looking forward to it, I'm
22 sure.

23 JUDGE WOODRUFF: All right. Then -- well, I
24 believe we'll move on to Mr. Moehn on the SO2 allowances.

25 MR. BYRNE: Your Honor, are we going to have a

1 chance for a mini opening on SO2?

2 JUDGE WOODRUFF: Do you want to do it now, or do
3 you want to do it when you get the bulk of them?

4 MR. MILLS: Let's do it on Monday. I don't know
5 about everyone else, but I've got three or four questions
6 for Mr. Moehn and --

7 MR. BYRNE: Okay. That would be fine.

8 JUDGE WOODRUFF: I think that would be
9 appropriate, also.

10 MR. MILLS: We've got no Commissioners here.

11 MR. BYRNE: I just didn't want to miss the
12 chance. Monday's fine with me.

13 JUDGE WOODRUFF: We'll do it on Monday.

14 MR. MILLS: You can do yours now and we'll take
15 notes.

16 MR. DOTTHEIM: We have a change of attorneys for
17 the Staff on that. And I think he is on his way.

18 JUDGE WOODRUFF: All right. Well, Mr. Moehn,
19 you are -- you've testified previously, so you are still
20 under oath.

21 MICHAEL MOEHN,
22 being first duly sworn to testify the truth, the whole
23 truth, and nothing but the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. BYRNE:

26

1 Q Mr. Moehn, good afternoon. Do you have any
2 corrections to your testimony?

3 A I do.

4 JUDGE WOODRUFF: Mr. Dottheim, since the Staff
5 attorney is not here, do you want to wait to do the
6 corrections, or can we do this now?

7 A Just a couple typographical changes.

8 MR. DOTTHEIM: Could we wait just a brief
9 moment?

10 MR. BYRNE: I apologize.

11 JUDGE WOODRUFF: Let's go ahead. And,
12 Mr. Dottheim, who is coming down?

13 MR. DOTTHEIM: David Meyer.

14 JUDGE WOODRUFF: Okay. We'll go off the record
15 for a minute.

16 (Break in proceedings.)

17 JUDGE WOODRUF: All right. Let's go back on the
18 record.

19 Q (By Mr. Byrne) Mr. Moehn, do you have
20 corrections to your testimony?

21 A Yes, I do. On my surrebuttal testimony, line
22 13, page 35 -- I'm sorry. Line 14, it should read, "Which
23 Ameren had purchased earlier in 2005 from Dynegy" and not
24 "and Dynegy."

25 Q Okay.

1 A And I'm sorry.

2 Q Anything else?

3 A Yes. One more. Page 36, line 1 should read,
4 books and realized instead of realize.

5 MR. BYRNE: Okay. Thank you. I tender the
6 witness for cross.

7 JUDGE WOODRUF: All right. Thank you. For
8 cross-examination, does anyone wish to cross this witness?

9 JUDGE WODRUFF: Go ahead, Public counsel.

10 CROSS-EXAMINATION

11 BY MR. MILLS:

12 Q Hello again, Mr. Moehn.

13 A Mr. Mills, how are you this afternoon.

14 Q Fine. Thank you. I'm going to be referring to
15 your testimony for just a couple of questions, and I
16 believe this will be your surrebuttal testimony. Is it --
17 is it correct that your surrebuttal testimony was the only
18 piece of testimony you filed that addresses SO2
19 allowances?

20 A Correct.

21 Q Page 32, line 13 -- and it may just be a -- a
22 grammatical thing, but are you saying there that you were
23 required to sell those allowances at that point in time?

24 A We would not have been obligated to sell them in
25 December of '05. We would have been obligated to sell

1 them in December of '06.

2 Q Okay. So you weren't required to sell them when
3 you did sell them; is that correct?

4 A We were not required.

5 Q Okay.

6 A I mean, we -- the call option did make them
7 contractually obligated to sell them at some point.

8 Q Okay. Was it -- was it just 2006 or 2006 and
9 2007?

10 A Yeah. There were two separate -- two separate
11 call options, 7500 ton in '06 and then '07.

12 Q Okay. Is any of that highly -- is any of this
13 stuff highly confidential that we're talking about here?

14 A You know, I don't --

15 MR. BYRNE: I believe not.

16 A I don't think so.

17 Q (By Mr. Mills) Okay. So that in December of
18 2005, UE chose to sell early; is that correct?

19 A We -- we did.

20 Q Okay. And, in fact, you had to pay Dynegy a
21 little over \$6,000 more in order to be able to sell to
22 them early?

23 A Yes. At the time that we contacted them, these
24 things had a neg -- these are required to be market to
25 market for the accounting purposes, and they had a

1 \$20 million negative mark to market, and we wanted to get
2 Dynegy to unwind it.

3 JUDGE WOODRUFF: Can I interrupt? You just said
4 mark to market. Can you explain to me what that is?

5 A The difference between the -- this call option
6 had a strike price at \$175, and the market price at the
7 time was approximately \$1500. so that difference is
8 effectively the mark to market.

9 JUDGE WOODRUFF: Okay. Thank you. Sorry to
10 interrupt.

11 Q (By Mr. Mills) That's okay.

12 A Sorry.

13 Q Now, on -- on your testimony, page 33, line 18,
14 again, I believe the term required shows up. Is it
15 correct to say that you were only required to pay the
16 \$600,000 because you wanted to -- to take advantage of the
17 early exercise?

18 A We -- we had to make the payment to Dynegy in
19 order to get them to exercise the call option early.
20 Correct.

21 Q Okay. All right. Now, on page 33, there's a
22 footnote there that I believe talks a little bit about
23 benefits to ratepayers and shareholders. And -- and let
24 me -- let me ask you this: Does the -- does the most
25 recent reconciliation in this case show the removal of the

1 \$600,000 or so that -- that UE paid for the early exercise
2 of the options?

3 A I don't know if it does or not. I -- I did
4 propose that we make the adjustment.

5 Q Okay. So -- so whether or not that's reflected
6 in the most recent reconciliation, you are proposing to
7 take that out of your case?

8 A We are.

9 Q Okay. Now, in -- in Mr. Kind's surrebuttal
10 testimony -- do you have a copy of that with you?

11 A No, I don't. Sorry.

12 Q Okay. Just a second. My next question is going
13 to be pretty general, and I don't know whether you'll need
14 to refer to that testimony or not, but I've just handed
15 you a copy. Have you read Mr. Kind' surrebuttal
16 testimony?

17 A I have.

18 Q Does his account of the conversation we had
19 about the Dyney exercise and other transactions accurately
20 reflect your memory of that conversation?

21 A I believe it does.

22 Q Okay.

23 A It's been a while since I looked at it, but I
24 believe it does.

25 Q Okay. And have -- have you read the surrebuttal

1 testimony of UE witness Maureen Borowski on this issue?

2 A At one point I did, yes.

3 Q Okay. Mr. Moehn, I've just handed you a copy of
4 the surrebuttal testimony of Muareen Borowski. And I
5 believe the one I -- I handed to you is open to the first
6 page of schedule MLB1-1.

7 And this is marked as highly confidential, so I
8 -- I believe we'll have to go in-camera briefly.

9 JUDGE WOODRUFF: All right. At this time, we'll
10 go in-camera.

11 REPORTER'S NOTE: At this point, an in-camera
12 session was held, which is contained in Vol. 31, pages
13 3264 through 3267.

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1 JUDGE WOODRUFF: All right. We're back in
2 regular session. While we were still in-camera, Mr. Mills
3 indicated that he was finished with his cross-examination,
4 so we've moved on to cross-examination from the State.
5 And you may proceed.

6 MR. MEYER: From the Staff.

7 JUDGE WOODRUFF: From the Staff.

8 CROSS-EXAMINATION

9 BY MR. MEYER:

10 Q Mr. Moehn, just to clarify --

11 A Yes.

12 Q -- in response to a question that you --
13 Mr. Mills asked you, you had indicated that you believed
14 that approximately \$800,000 should be taken out of -- I'm
15 sorry -- should be included in -- I lost my place. Pardon
16 me. That the premium paid to compensate Dynegy for
17 exercising its option early should not be recovered from
18 Ameren shareholders. Is that -- I'm sorry. Ratepayers.
19 Is that correct?

20 A Correct. I believe the amount was 634.

21 Q Okay. So the \$800,000 number that you
22 referenced --

23 A I believe I reference a 634 number, don't I?

24 Q Okay. I heard 800. That's why I just wanted
25 some clarification.

1 A Yeah. I believe it's 634.

2 MR. MEYER: Okay. Thank you. That's all.

3 JUDGE WOODRUFF: All right. We'll come up for

4 questions from the Bench, then, beginning with

5 Commissioner Gaw.

6 COMMISSIONER GAW: No questions.

7 JUDGE WOODRUFF: All right. Commissioner

8 Applling?

9 COMMISSIONER APPLING: No questions, Judge.

10 JUDGE WOODRUFF: Chairman Davis?

11 CHAIRMAN DAVIS: No questions for Mr. Moehn.

12 JUDGE WOODRUFF: All right. There's no need for

13 recross. Any redirect?

14 MR. BYRNE: No, your Honor.

15 JUDGE WOODRUFF: Mr. Moehn, you can step down.

16 MR. MICHEEL: Your Honor, I have Mr. Brosch here

17 still if there are questions today of --

18 JUDGE WOODRUFF: He will be back on Monday,

19 also?

20 MR. MICHEEL: Right. It's just a question of --

21 I kept him here for a little while before I said you can

22 head home, so I would just --

23 JUDGE WOODRUFF: You're making him available?

24 MR. MICHEEL: Yes.

25 JUDGE WOODRUFF: All right. Commissioner Gaw,

1 do you want to question Mr. Brosch today?

2 COMMISSIONER GAW: It might be -- it might be
3 better if I could do that. But I -- I don't know how your
4 time constraints are because of trying to get through
5 those other issues.

6 JUDGE WOODRUFF: We want to try to get through
7 Peno Creek yet today, and the parties have indicated they
8 do not have any cross for either of the witnesses on the
9 Metro East transfer issue.

10 COMMISSIONER GAW: Okay. Let me -- let me just
11 inquire. Hopefully I'll --

12 JUDGE WOODRUFF: Okay.

13 COMMISSIONER GAW: And maybe, Judge, that way
14 it's clear.

15 MR. MOEHN: Here's the information you wanted on
16 the Sarbane's Oxley rule.

17 JUDGE WOODRUFF: Why don't you take it to your
18 attorney, and we'll get it in.

19 Welcome back, Mr. Brosch. We'll have a few
20 questions from the Bench, and you can be on your way.

21 MR. BROSCHE: It's great to be back.

22 CROSS-EXAMINATION

23 BY COMMISSIONER GAW:

24 Q Mr. Brosch, I want to -- I just want a -- to --
25 to know exactly what -- what your testimony is in regard

1 to those generating units and -- and what you're relying
2 on on market value? If you've already said and it's in
3 the record I don't want to elongate this any longer than
4 it has to be. But if you could, give me what you're
5 relying on and what you're saying the prices should be on
6 those -- on those units.

7 A Absolutely. I would -- I would do that by
8 making reference to State Accounting Schedule B-3, the --
9 if you -- do you want me to wait or -- do you have that?

10 Q Go ahead. That's fine.

11 A The first four lines of that schedule summarize
12 the acquisition costs of at Pinckneyville and Kinmundy and
13 translate those values in a cost per megawatt. Then
14 there's a section in the middle setting forth eight listed
15 and described transactions under the heading Comparable
16 Transactions.

17 Q Okay?

18 A Simple cycle combustion turbines between
19 non-affiliates.

20 Q Okay.

21 A And I list those -- calculate cost per megawatt
22 for each, add them together, average them and create an
23 average market transaction price value of \$288 per KW and
24 reprice the Pinckneyville Kinmundy plants to that level.

25 Q Okay. Okay. How does that compare to the other

1 positions of the parties, if you know off the top of your
2 head, in regard to the value, the bottom line?

3 A I believe that -- well, first of all, as I
4 understand it now, the Staff has no adjustment. And I
5 believe that Mr. Kind is sponsoring an adjustment that
6 would reprice -- his -- his primary recommendation would
7 reprice the units to \$193 and change per KW, if I recall
8 the number correctly.

9 Q Okay. Now, the -- the comparables that you
10 have, are they the same type of combined cycle unit?
11 That's -- that's my first question.

12 A They are a variety of units. In fact, the first
13 one, the Worthington unit, was actually one of the units
14 that the company's witness treated as a comparable unit in
15 the FERC case.

16 Q Okay.

17 A Some of the units are large units. Some are
18 small units. At least one is dual fuel. They are, with
19 one exception, generally Midwest located units. The --
20 the Oleander unit is actually in Florida. That's the
21 exception in terms of location. So it's -- it's a wide
22 variety.

23 Q Okay. And is there any -- do you have any
24 analysis as to the -- the transmission constraints that
25 may or may not exist in -- in the areas around those units

1 that you have as comparables?

2 A I do not have any information on that.

3 Q How important do you think that is in this case
4 in regard to the list of comparable that's you -- that you
5 have?

6 A I don't know whether issues like that affect any
7 of these units.

8 Q Okay. And you have eight units, did you say?

9 A That's correct. This is the entire population
10 of comparables that were tracked by the company and
11 provided to me in response to AG/UTI-94.

12 Q Okay.

13 A There was an exhibit earlier today made of some
14 of the data from the same spreadsheet that these were
15 taken from. I excluded from that database the combined
16 cycle units to achieve better comparability, and I
17 excluded the affiliate transactions that were listed in
18 that database because I don't think those are
19 representative of arm's length non-affiliated
20 disinterested party kinds of transactions.

21 Q Okay. And what if you include those -- those
22 units? How many of those units are not of the same size,
23 general size or type of -- as the units in Pinckneyville
24 and Kinmundy?

25 A I don't know. I've not tried to subdivide. The

1 data is not complete enough to really do that accurately.
2 These are publicly reported transactions where the
3 available information for some of the transactions is
4 relatively complete. And for others, it's not.

5 Q Okay. Mr. Brosch, when -- when we're -- when
6 we're looking at -- at this base -- very basic question of
7 what the market price should be on these units, what
8 additional information is there that's available for us to
9 determine what that market price is other than what --
10 what you've testified to or what's in Mr. Kind's testimony
11 or in the company's testimony?

12 A Well, it's difficult. I recognize it's
13 difficult. I think that we have several data points on
14 the map in this case. We have the -- the transactions
15 that Mr. Moehn talked about in his direct testimony, more
16 recent transactions that I think are more reflective of
17 market conditions and third party transactions not
18 involving affiliates.

19 We have the other information referenced in my
20 testimony about the -- the replacement costs of, I believe
21 it was, a Venice unit that the company provided as a data
22 point?

23 But there's no readily available formulistic
24 analysis that will produce the answer you're looking for.

25 Q Okay. Well, if that's the case, then I guess

1 generally how is the Commission supposed to determine that
2 value? Just -- is -- is this -- is this information that
3 you've provided or that Mr. -- Mr. Kind is -- is providing
4 and the company providing? Is -- is it sufficient for
5 this Commission to -- to make a judgment call on this?

6 A Well, I believe that the calculations set forth
7 in my Schedule B-3 is the decision quality and the best
8 available information that you have.

9 Q Okay. And, again, how much discount is it off
10 the company's position? Do you know?

11 A Well, I -- I haven't calculated a percentage.
12 But it would be 288 over 432 is the allowed fraction.

13 Q Okay. Is it your belief that -- that the
14 downward -- I -- first of all, you believe that there was
15 a downward trend in the -- in the market value of these --
16 these combustion turbines beginning in -- at -- at a
17 certain time frame.

18 I guess I want you to tell me if that -- first,
19 if that's accurate, and then tell me what the time frame
20 that that downward trend started.

21 A There was generally reported distress in the
22 markets for these assets as early as 2002. And the
23 evidence in this record, in this case, indicates that that
24 distress continued at least well into 2006 when AmerenUE
25 was able to acquire the -- the Aquila and NRG assets at a

1 significant discount.

2 When you look at the -- the articles reporting
3 transactions in the Midwest and around the country, you
4 see recurring themes such as the seller taking a price
5 down after completing a transaction because the market
6 price was clearly less than their construction costs or
7 costs to acquire. As to whether that environment has
8 changed, I can't tell if it has.

9 Q Okay. So is it -- so since 2006, you're talking
10 about whether the environment has changed? Is that what
11 you mean?

12 A That's right. I don't have real current
13 information. What I had suggested that at least in the
14 year in this case, we still have market transactions way
15 below cost.

16 Q And your -- your understanding of the reason --
17 I'm sure this is in your testimony. But your
18 understanding of the reason for the reason for the
19 downward trend was -- was what?

20 A There are a number of merchant plants built with
21 project financing and a lot of debt leverage. There was a
22 run up in gas prices, changes in energy market conditions
23 that tended to squeeze parties owning those assets and
24 forcing sales at prices below cost.

25 Q Well, let me -- all right. Let me run through

1 these, and tell me if you agree or disagree with this.
2 There was -- there was an increase in natural gas costs
3 during that time frame. Would that be fairly accurate
4 although there's some volatility in there?

5 A That's a contributing factor, yes, sir.

6 Q There was a significant amount of -- of
7 construction in addition of natural gas units in the
8 Midwest footprint during the -- the time frame, the mid
9 late '90s to early 2000. Would that be a contributing
10 factor --

11 A Yes.

12 Q -- is that true? And it was a contributing
13 factor?

14 A That is true. And, yes, it contributes.

15 Q And then was it also true that you had a number
16 of IPEs that -- that got into the generation business that
17 became distressed in that time frame financially?

18 A That's true. And -- and in that time frame and
19 subsequent to Enron, there was a -- a tightening of
20 capital markets and creditors looking for additional
21 securitization for their debt position.

22 And there was some difficulty in servicing
23 outstanding debt that forced some of these companies into
24 bankruptcy or -- or near bankruptcy circumstances.

25 Q So it -- was there a quote, unquote, fire sale

1 of sorts going on during some of that time frame?

2 A I've heard it reported that way, yes.

3 Q Now, in regard to the -- to the two acquisitions
4 -- non-affiliate acquisitions that you mentioned by
5 AmerenUE, the NRG facility, is that the one around Mexico,
6 Missouri? Do you know?

7 A I think so. Somewhere in mid Missouri.

8 Q And, now, there have been suggestions raised
9 that there were transmission constraints around that
10 particular facility. Are you familiar with that in any
11 way?

12 A I'm not familiar with that. And that's not one
13 of the comparables that I refer to.

14 Q All right.

15 A Although that was the -- the topic of some
16 discussion earlier today. I -- I understand from what I
17 heard today that there was for a period of time
18 transmission constraints that have -- have eased
19 considerably.

20 Q Okay. What about -- well, if we -- that
21 discussion could take some time if we go there. What
22 about the -- what about the other -- the other generating
23 units that you mentioned from Aquila?

24 A There were two stations, Raccoon Creek and -- I
25 don't remember the other -- the other plant. But there

1 were two bundled and closed in 2006 at approximately \$260
2 per KW. The Goose Creek was the other facility.

3 Q Now, how did those units compare to
4 Pinckneyville and Kinmundy in size, in --

5 A Again, I've not studied those in detail. I
6 think there is some testimony in the record on that point.

7 Q Okay.

8 A I would defer to that testimony.

9 Q All right. All right.

10 A Those two transactions were actually set forth
11 in Mr. Moehn's direct testimony.

12 Q Okay.

13 A And originally focused some of my attention on
14 the apparent difference in valuation between affiliate and
15 non-affiliated transactions.

16 Q Oh, how did those transactions take place with
17 Aquila? Was that -- was an RFP issued? Or excuse me.
18 Was there a sale that was done by Aquila with bids? Do
19 you know?

20 A I believe -- I believe there was a formal
21 solicitation of bids and a bid evaluation process.
22 Mr. Voytas actually testified about that a little bit
23 earlier today, that process.

24 Q All right.

25 A And if I recall his testimony correctly, there

1 were -- I don't know if it was confidential or not. There
2 were a number of -- of -- a small number of bids received,
3 and only two ended up, as I understood it, being
4 ultimately considered and negotiated into the contracts
5 for the transfer of the NRG and Aquila assets.

6 COMMISSIONER GAW: Okay. That's all the
7 questions I have of this witness, Judge.

8 JUDGE WOODRUFF: Okay. Any other questions from
9 the Bench? Any recross based on those questions?
10 Mr. Mills.

11 RECROSS EXAMINATION

12 BY MR. MILLS:

13 Q Mr. Brosch, Commissioner Gaw asked you what
14 additional information we should look at to try to value
15 the -- the Pinckneyville and Kinmundy transaction. Do you
16 recall that question?

17 A I do.

18 Q Should that kind of information be included in
19 the company's cost allocation manual filing?

20 A Well, there certainly should be disclosure of
21 actual affiliate transactions that have occurred. And I
22 believe that there is a requirement that the company make
23 a showing of the fair market value of similar asset
24 transactions as part of its CAM.

25 But I -- I'm going from recollection of some

1 things I reviewed a while back, and I'm not as certain
2 about that last part.

3 Q And is it the company's testimony in this case
4 that they did, in fact, pay fair market value for those
5 assets?

6 A For Pinckneyville and Kinmundy?

7 Q Or below.

8 A I -- I believe. Again, I'll try to be careful
9 to characterize it. I believe that the company's
10 testimony is that they paid net book value. And it just
11 so happened that net book value is at or slightly better
12 than market value in the way the company assesses market
13 value.

14 Q Okay. Are you familiar with the company's CAM
15 filing?

16 A I know I've seen it. I think it was several
17 months ago, and I barely recall it.

18 Q Okay. Do you recall whether it has any -- any
19 useful information with regard to the -- the valuation of
20 these transactions?

21 A I don't recall seeing any valuation of -- of
22 market price for generating asset.

23 Q Okay.

24 JUDGE WOODRUFF: Mr. Mills, if I could
25 interrupt, the term was used of CAM filing. It was used

1 several times. I'm not familiar with that.

2 MR. MILLS: Cost allocation manual is usually
3 referred to as capital CAM, all one word.

4 JUDGE WOODRUFF: All right. Thank you.

5 MR. MILLS: I'd like to have an exhibit marked.

6 JUDGE WOODRUFF: All right. You're up to 438.

7 Mr. Mills, is this HC or possibly --

8 MR. MILLS: I don't believe that it is marked as
9 HC anywhere, but I don't -- I don't know for sure whether
10 the company considers it to be HC or not.

11 JUDGE WOODRUFF: I'll ask the company. Would
12 this be HC?

13 MR. POWELL: May we have a moment to look
14 through it?

15 JUDGE WOODRUFF: Sure.

16 MR. MILLS: Your Honor, I don't have this --

17 MR. BYRNE: I guess we are probably going to
18 object to the admission of this, but I don't believe it is
19 HC.

20 JUDGE WOODRUFF: All right. Mr. Brosch, I've
21 handed you what's been marked as Exhibit 438. Do you
22 recognize that as AmerenUE's cost allocation manual from
23 March 2006 covering calendar year 2005?

24 A Yes. I recognize it as that.

25 Q And does -- does Exhibits 6 through 9 show

1 affiliate transactions and the --

2 MR. POWELL: Your Honor, may I interrupt? I'm
3 going to object to this entire line of questioning of this
4 witness as well as the document if it's offered for two
5 reasons.

6 This is not related to any questions received
7 from the Bench and that this witness has already stated
8 that he's not familiar with it, although he saw it, he
9 thinks, several months ago.

10 MR. MILLS: Well, my -- my response is the
11 question from the Bench from Commissioner Gaw had to be --
12 had to do with sources of information to determine the
13 valuation of the Pinckneyville and Kinmundy transactions
14 for rate-making purposes.

15 And according to the Commission's rules,
16 AmerenUE as part of its cost allocation manual filing
17 should be making that determination. And so if there is a
18 good source of information, it should be the company's own
19 cost allocation manual where they should be making that
20 valuation.

21 MR. POWELL: And this witness -- I'm sorry.
22 Were you through?

23 MR. MILLS: No. I was just getting to the point
24 with this witness. This witness has testified that he has
25 seen this -- this exhibit. And I believe -- and he didn't

1 say this, but I can certainly ask, and I believe it was in
2 the context of this issue. And he says that he's familiar
3 with the process of CAM filings, and he's identified this
4 as the CAM that covers the -- the period in which the
5 Pinckneyville and Kinmundy transactions occurred.

6 MR. POWELL: Your Honor, this document was not
7 mentioned by the witness in response to any question from
8 the Bench, nor was any subject covered here.

9 JUDGE WOODRUFF: And I'm going to overrule the
10 objection. You can proceed, Mr. Mills.

11 Q (By Mr. Mills) Okay.

12 A I'm sorry. Your question again, please?
13 Something about Exhibits 6 through --

14 Q Oh, Exhibit 6 through 10, does that show a
15 series of affiliate transactions and the -- the
16 contractual basis and the method of allocation for them?

17 JUDGE WOODRUFF: If I could interrupt for just a
18 second? You're referring to Exhibits 6 through 10. I
19 just want to be clear for the record, those are exhibits
20 within Exhibit 438?

21 MR. MILLS: That's correct. Yes.

22 JUDGE WOODRUFF: Okay. I'm sorry to interrupt.

23 A Yes. Those exhibits describe in table format
24 various services that are provided among Ameren
25 affiliates, and the basis for the transfer pricing and

1 method of allocation used to distribute those costs among
2 affiliates.

3 Q Okay. And if I can get you to turn to page 1 of
4 Exhibit 2 within Exhibit -- Trial Exhibit 438?

5 A I'm there.

6 Q Is No. 16 on that page the -- the particular
7 transaction that we're talking about here today, the
8 Pinckneyville and Kinmundy transfer?

9 A I believe so. The date coincides with the
10 transfer agreements for Pinckneyville and Kinmundy
11 stations.

12 Q Okay. And there's probably not a whole lot of
13 Pinckneyville and Kinmundy stations around the country,
14 are there?

15 A I would think not not.

16 MR. MILLS: Okay. With that, your Honor, I'll
17 offer Exhibit 438 into the record.

18 JUDGE WOODRUFF: 438 has been offered. Are
19 there any objections to its receipt?

20 MR. POWELL: Yes, your Honor. The same -- yes.
21 The same ones stated previously.

22 JUDGE WOODRUFF: All right. Those objections
23 will be overruled, and 438 is admitted into evidence.

24 (Exhibit No. 438 was offered and admitted into
25 evidence.)

1 MR. MILLS: And that's all the questions I had.

2 Thank you.

3 JUDGE WOODRUFF: All right. Any redirect? I
4 guess it would be redirect. No. I'm sorry. I forgot
5 which --

6 MR. POWELL: Are you coming to me?

7 JUDGE WOODRUFF: I am coming to you, and it
8 would be recross at this time.

9 MR. POWELL: Right. Whatever it is, I have no
10 questions.

11 JUDGE WOODRUFF: Redirect? I forgot who was on
12 the stand.

13 MR. MICHEEL: No redirect.

14 JUDGE WOODRUFF: Okay. All right. You can step
15 down again, please, Mr. Brosch.

16 MR. BROSCH: Thank you.

17 JUDGE WOODRUFF: All right, then. I believe
18 we're ready to go to the Peno Creek issue. And
19 Mr. Voytas, I believe, is back.

20 MR. POWELL: Your Honor, it might or might not
21 be helpful, but I would like to make an extremely brief
22 opening statement about this.

23 JUDGE WOODRUFF: All right. Yes. I'm sorry.
24 This is a new issue, so, yes, you can proceed.

25 OPENING STATEMENT

1 BY MR. POWELL:

2 MR. POWELL: Good afternoon again. May it
3 please the Commission. This issue should go much faster
4 than the last one. It's a closely related issue involving
5 acquisition of a different CTG by AmerenUE.

6 This one, however, was built rather than
7 purchased. This issue lacks the long history that the
8 Pinckneyville and Kinmundy issue has. The only dispute
9 before the Commission is between the Office of Public
10 Counsel and AmerenUE. No other parties have sponsored a
11 downward adjustment in rate base on this issue either now
12 or previously.

13 And we have a much shorter section of our
14 prehearing brief on this issue on pages 72 and 73. The
15 value of this issue in revenue requirement is around
16 \$3 million. The only witnesses who will appear to give
17 live testimony in this case are Mr. Voytas again for the
18 company and Mr. Kind for OPC.

19 A third witness, Mr. Leon Bender of Staff, has
20 filed testimony, but he is not scheduled to appear. I
21 understand that his pre-filed testimony will be offered at
22 a later time.

23 Mr. Kind of OPC is sponsoring a rate down to a
24 value of \$390 per kilowatt as compared to the constructive
25 cost, which the company is advocating.

1 As with Peno -- as with Pinckneyville and
2 Kinmundy, Staff again in this case flatly disagrees with
3 Mr. Kind on this issue. Mr. Bender, whom I mentioned in
4 his prefiled testimony, describes the detailed
5 construction audit, which he did, which reached the
6 conclusion that -- that Staff has not identified any
7 construction costs that should not be allowed in rate
8 base.

9 The Peno Creek facility consists of eight aero
10 -- pardon me -- arrow derivative units which have great
11 usefulness and great value. And the AmerenUE system as
12 described in Mr. Voytas' testimony and the company's
13 position is that all of the costs for constructing this
14 plant should be included in rate base.

15 As I mentioned, Staff agrees with that, and no
16 one except Mr. Kind has expressed any disagreement.

17 JUDGE WOODRUFF: Does Staff wish to do an
18 opening?

19 MR. DOTTHEIM: No. No opening statement.

20 JUDGE WOODRUFF: Public Counsel?

21 MR. MILLS: Yes. Just briefly.

22 OPENING STATEMENT

23 BY MR. MILLS:

24 MR. MILLS: Good afternoon. May it please the
25 Commission. This is another relatively simple issue.

1 It's Public Counsel's position that at -- leading up to
2 the time when the Penno Creek, which you'll also hear
3 referred to as the Pike County station, was constructed,
4 the Ameren family of companies was looking to enact
5 Missouri legislation that is commonly referred to as Genco
6 legislation, and as a result, held off for a long period
7 of time building needed capacity.

8 When it became clear that the Genco legislation
9 was not going to pass in Missouri, UE needed the capacity
10 and needed it in a hurry. And what happened was, as is
11 common when you try to building in a hurry, you pay more
12 for it.

13 The evidence will clearly show that the Penno
14 Creek station was built in -- in somewhat of an -- almost
15 an emergency basis on a very quick turnaround under an
16 engineer procure execute contract for which UE paid a very
17 high price, and that's reflected in the actual as-built
18 cost of Penno Creek.

19 Public Counsel's proposal adjustment will simply
20 factor out UE's own self-imposed timetable that caused the
21 -- the price for this -- this generating station to be
22 inflated. It's as simple as that.

23 JUDGE WOODRUFF: Thank you, Mr. Mills.

24 MR. MILLS: Thank you.

25 MR. LOWERY: Your Honor, could I beg the

1 Commission's pardon? But we got a message that perhaps
2 you wanted to swear Mr. Weiss in for some reason. And I
3 wasn't entirely clear why that might be unless the
4 Commissioners had questions on Metro East and --

5 JUDGE WOODRUFF: I don't know. Is he here?

6 MR. LOWERY: He is here. And if there was
7 something that needed to be, done, honestly, he was going
8 to be leaving for the day, and I wanted to see if there
9 was something we could do to expedite that if that needed
10 to be done.

11 JUDGE WOODRUFF: Let me ask the Commissioners.
12 This is on the Metro East issue, \$150,000 issue, I believe
13 it is.

14 MR. LOEWRY: \$138,000 I believe.

15 JUDGE WOODRUFF: \$138,000. The parties
16 indicated they did not have any cross-examination
17 questions for either witness on that issue. Do you know
18 if you have any questions for him?

19 CHAIRMAN DAVIS: I don't know. I've got a
20 couple questions for him.

21 JUDGE WOODRUFF: Okay. Well, with the parties'
22 agreement, we can do the Metro East issue first.

23 MR. MILLS: I think that makes sense. We're
24 perfectly willing to let Mr. Weiss get on the stand and
25 get out of here if we can. We'll be jealous, but we don't

1 have a problem with it.

2 JUDGE WOODRUFF: You'll be here either way. All
3 right. Let's get Mr. Weiss in here, then.

4 JUDGE WOODRUFF: Good afternoon, Mr. Weiss.

5 MR. WEISS: Good afternoon.

6 JUDGE WOODRUFF: Please raise your right hand.

7 GARY WEISS,

8 being first duly sworn to testify the truth, the whole
9 truth, and nothing but the truth, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LOWERY:

12 JUDGE WOODRUFF: You may be seated. And if the
13 -- do you need to offer his testimony? This will be his
14 only appearance; is that right?

15 MR. LOWERY: I guess -- I guess I do, your
16 Honor.

17 MR. MICHEEL: That's not correct. He's on
18 another issue.

19 JUDGE WOODRUFF: Oh, is he back again?

20 MR. LOWERY: Well, that's right. He is
21 scheduled to be back next week.

22 MR. MICHEEL: I've got some questions for him,
23 by the way.

24 JUDGE WOODRUFF: All right. Does anyone wish to
25 -- I assume you're tendering him for cross, then?

1 MR. LOWERY: Let me just ask him whether he has
2 any corrections. We didn't anticipate this until just
3 now.

4 Q (By Mr. Lowery) Mr. Weiss, do you have any
5 corrections to your testimony?

6 A Which testimony?

7 Q Well, any of it, I guess. Or any of it that
8 would be -- I guess at this point we could limit it to any
9 that might be germane to the Metro East issue.

10 A Nothing with the Metro East issue.

11 MR. LOWERY: Okay. So, your Honor, I do tender
12 him for cross-examination for questions from the Bench.

13 JUDGE WOODRUFF: All right. Does any party wish
14 to cross-examine? All right. Questions from the Bench?
15 Commissioner Gaw?

16 COMMISSIONER GAW: I don't think so.

17 JUDGE WOODRUFF: Commissioner Appling? Do you
18 -- Commissioner Davis? You can --

19 CHAIRMAN DAVIS: Yeah.

20 CROSS-EXAMINATION

21 BY CHAIRMAN DAVIS:

22 Q Mr. White?

23 A Weiss.

24 Q Weiss. Sorry about that.

25 A Okay.

1 Q Do you know anything about Ameren's
2 representations of what the environmental liabilities were
3 going to be in the Metro East case?

4 A I -- I think we mentioned the possible addition
5 of the asbestos cases that could arise from the power
6 plant. And we agreed to, you know, check each time we did
7 a rate case and make sure that 6 percent of those costs
8 went to savings and costs did not exceed the savings.

9 Q Have you done -- has Ameren done any estimate
10 related to environmental costs for those Metro East
11 related property since the rate case?

12 A Well, I -- if you're referring to the
13 distribution facilities, those environmental costs would
14 be incurred by the Illinois utility, not by Union
15 Electric.

16 Q Okay. Okay. So there was -- I'm just speaking
17 of the -- did Missouri, -- I can't -- I -- you'll have to
18 refresh my recollection.

19 So the assets that were transferred to Missouri
20 to the Missouri utility, AmerenUE, those liabilities came
21 to Missouri, and for the assets that were transferred to
22 the Illinois utilities, those liabilities went to
23 Illinois? Or did they stay with Missouri? Or do you
24 recall how all that worked?

25 A The -- that was -- you were correct. The assets

1 were transferred to Illinois. The liabilities went with
2 those assets. And the assets have stayed with UE, stayed
3 with UE, any liabilities.

4 Q Okay. And had -- on either -- on either side of
5 that equation, have the -- have the cost estimates for
6 environmental clean-up changed? And if so, how have they
7 changed?

8 A According to the records I reviewed for this
9 hearing, there have been no changes in the estimated
10 liabilities for environmental clean-ups at this time.

11 CHAIRMAN DAVIS: Okay. No further questions,
12 judge.

13 JUDGE WOODRUFF: All right. Does any party wish
14 to recross based on those questions from the Bench? Any
15 redirect?

16 MR. LOWERY: No, your Honor.

17 JUDGE WOODRUFF: Thank you. Then, Mr. Weiss,
18 you can step down, and you may go home.

19 MR. WEISS: Thank you.

20 JUDGE WOODRUFF: All right. Let's go back to
21 Peno Creek, then. And we'll bring Mr. Voytas up to the
22 stand. And, Mr. Voytas, of course, you've previously
23 testified, so you are also still under oath.

24 You can -- did you tender him for cross at this
25 point, or is this his last appearance?

1 MR. POWELL: This is his last appearance, as far
2 as I know. And at this time, I would offer Exhibit 58,
3 which is Mr. Voytas's direct testimony to -- dated July 3,
4 2006. Exhibit 59 is his supplemental direct dated
5 September 29, 2006. Exhibit 60-NP and HC, which is his
6 rebuttal testimony dated January 31, 2007, on some issues
7 use. And then Exhibit No. 61, his rebuttal on other
8 issues pertaining to weather, which was also dated January
9 31, 2007.

10 JUDGE WOODRUFF: That was 61 was the -- the
11 weather related one?

12 MR. POWELL: Yes.

13 JUDGE WOODRUFF: Okay. All right. Exhibits 58,
14 59, 60-HC and NP and 61 have been offered. Are there
15 objections to their receipt?

16 MR. MILLS: My objections go to 60-HC and NP. I
17 have no objections to the other ones.

18 JUDGE WOODRUFF: We'll deal with that, then.
19 58, 59, and 61 are admitted. What are your objections to
20 60?

21 (Exhibit Nos. 58, 59 and 61 were offered and
22 admitted into evidence.)

23 MR. MILLS: I have several. With regard to
24 Mr. Voytas's rebuttal exhibit statement, Exhibit 6, pages
25 16, line 15 through page 19, Line 4 --

1 JUDGE WOODRUFF: Wait a moment, Mr. Mills. I'll
2 see if I can find that.

3 MR. MILLS: Okay.

4 MR. POWELL: I'm sorry. Mr. Mills, what was
5 that again?

6 MR. MILLS: Page 15, line 15.

7 JUDGE WOODRUFF: Is this the -- which -- the
8 Pinckneyville and Kinmundy?

9 MR. MILLS: Correct.

10 JUDGE WOODRUFF: What was the page again?

11 MR. MILLS: Page 15, line 15. That's a question
12 that says, Please provide an overview of the transmission
13 issues at the Audrain facility 2002.

14 JUDGE WOODRUFF: Okay.

15 MR. MILLS: That's where my objection begins,
16 through page 19, line 4.

17 MR. POWELL: Page --

18 MR. MILLS: I'm sorry. Page 19, Line 4.

19 JUDGE WOODRUFF: Okay. And what's the basis of
20 your objection?

21 MR. MILLS: The basis for my objection -- there
22 are two bases. First, Mr. Voytas testified under oath
23 today that he is not a transmission expert, an exhibit
24 that I will introduce later or I will attempt to introduce
25 later, will show that he made the exact same statement

1 under oath at the FERC about not being a transmission
2 expert so that he is not himself qualified to talk about
3 transmission related issues with these plants.

4 And my second objection is that this entire
5 section is -- is an ongoing series of hearsay statements
6 about what other people testified to in other cases, and
7 none of those people are here today and all of those
8 statements are offered to prove the truth of the
9 out-of-court statements.

10 JUDGE WOODRUFF: Does Ameren have a response?

11 MR. MILLS: And I have different objections to
12 different sections, but we'll take this one first.

13 JUDGE WOODRUFF: This one first.

14 MR. POWELL: Mr. Mills' objection, I think, is
15 that this is hearsay, if I understood him correctly.

16 JUDGE WOODRUFF: That was partially part of his
17 objection, yes.

18 MR. POWELL: As to that -- and I guess I didn't
19 understand the other part. But there is an exception to
20 the hearsay rule about the effect on the cure, and as
21 Mr. Voytas has explained in great detail, his
22 responsibilities at AmerenUE which included acquisition of
23 additional generation.

24 JUDGE WOODRUFF: All right. And so -- are you
25 -- are you saying this is not hearsay, that it's -- it's

1 not --

2 MR. POWELL: I'm saying it's an exception to
3 the --

4 JUDGE WOODRUFF: Are you offering it for the
5 proof of the matter asserted in this section of the -- of
6 the testimony, meaning the -- proof of the -- what the
7 transmissions issue were at the Audrain facility?

8 MR. POWELL: I believe the meaning of that
9 exception is that it can be offered to the -- for the
10 truth of it. Yes.

11 JUDGE WOODRUFF: And this -- what -- I'm not
12 understanding what your objection -- or your defense is
13 here.

14 MR. POWELL: Well, as to a hearsay objection,
15 I'm saying there's an exception to the rule that applies
16 here.

17 JUDGE WOODRUFF: Okay. And I'm not aware of any
18 such exception, and I'm going to sustain the objection.

19 MR. MILLS: And the -- my -- my next objection
20 goes to page 26, lines 19 through 25.

21 JUDGE WOODRUFF: 26, 19 through 25?

22 MR. MILLS: Uh-huh.

23 JUDGE WOODRUFF: Starting the quotation from
24 Carmen Central?

25 MR. MILLS: That is correct. And then on the

1 following page, page 27, lines 12 through 34 continuing on
2 through page 28, lines 1 through 20. I'll make sure
3 everyone's up with me in terms of the sections I'm talking
4 about, and then I'll explain what my objection is.

5 JUDGE WOODRUFF: All right.

6 COMMISSIONER CLAYTON: Lewis, could you read the
7 line on page 26?

8 MR. MILLS: Yes. On page 26, it's lines 19
9 through 25.

10 COMMISSIONER CLAYTON: Thank you.

11 MR. BYRNE: Your Honor, if I could for a second,
12 we need a little more time to respond to these objections.
13 I -- for example, we did not have time to read all the
14 portions of the sections that were the subject of Mr. --
15 Mr. Mills' first objection.

16 Could -- I mean, could we at least read it and
17 then respond to his objection?

18 MR. MILLS: Well, your Honor, before we even
19 went to lunch, I -- I stated on the record that I planned
20 to object to those, and -- and that's been a number of
21 hours ago.

22 I don't have any objection to them reading that
23 now. But it's been -- it's been ruled on, and we're
24 moving on to something else.

25 JUDGE WOODRUFF: Let's -- let's deal with your

1 second -- is this the only other objection you had?

2 MR. MILLS: No. There will be a third after
3 this. This is my second that we're on.

4 JUDGE WOODRUFF: Let's go ahead and hear all the
5 objections, and I'll allow you time to look at it.

6 MR. BYRNE: Thank you, your Honor.

7 MR. MILLS: With respect to the material on
8 pages 26, 27 and 28, I object to those because they are a
9 draft decision from a FERC ALJ. They do not -- and -- and
10 Mr. Voytas, I believe, testified to this when I questioned
11 him earlier, they do not reflect the FERC's actual final
12 decision acting as a -- as a Commission, and Mr. Voytas
13 was not able to testify that the final decision was
14 actually the same as the ALJ's draft decision.

15 JUDGE WOODRUFF: All right. Your third
16 objection?

17 MR. MILLS: My third objection has to do with
18 page 10, line 9.

19 JUDGE WOODRUFF: Still in the rebuttal?

20 MR. MILLS: Still -- all of these have to do
21 with rebuttal. Yes. Still in the rebuttal. It's the
22 beginning of the discussion of AmerenUE's use of -- the
23 Staff's use of AmerenUE's Venice CTGs as a valuation.

24 JUDGE WOODRUFF: Okay.

25 MR. MILLS: So I'm running from page 10, line 9

1 through page 14, line 7.

2 JUDGE WOODRUFF: The entire section, then?

3 MR. MILLS: That entire section. My -- the
4 basis for my objection is that no witness other than
5 Mr. Rackers testified to that -- to this issue. And when
6 I questioned Mr. -- Mr. Voytas earlier, he admitted that
7 he was responsible -- responsive solely to Mr. Rackers.

8 And it's my understanding that Mr. Rackers'
9 testimony will not be offered so that there is -- there is
10 really nothing for this to rebut. It's rebutting some
11 testimony that's not going to be offered, is no longer
12 being sponsored.

13 JUDGE WOODRUFF: Well, my understanding from
14 discussion earlier was that Mr. Rackers would be on later.
15 But I could be incorrect on that.

16 MR. BYRNE: That's correct.

17 MR. MILLS: It's my understanding that he will
18 take the stand because the company has requested to
19 cross-examine him, but it's also my understanding that his
20 prefiled testimony will not be offered.

21 JUDGE WOODRUFF: Right.

22 MR. DOTTHEIM: It was the Staff's intention not
23 to offer Mr. Rackers testimony on Pinckneyville and
24 Kinmundy. The company had requested that Mr. Rackers take
25 the stand so he could be cross-examined.

1 Staff will put Mr. Rackers on the stand. Of
2 course, the Staff doesn't know what -- if -- if the
3 company wants Mr. Rackers' testimony on Pinckneyville and
4 Kinmundy received into evidence, then the Staff certainly
5 doesn't know in advance what the Commission's ruling would
6 be on that matter.

7 JUDGE WOODRUFF: Okay. Of course, the question
8 is if he's not offering any testimony, what can he -- what
9 cross-examination can be offered. I'll let the company
10 record respond to that.

11 MR. BYRNE: I guess, your Honor, could we have
12 about five minutes to read the material that Mr. Mills has
13 proposed to strike and try to formulate a response?

14 JUDGE WOODRUFF: Yes. We'll take a break.
15 We'll come back at 4:30.

16 MR. BYRNE: Thank you, your Honor.

17 (Break in proceedings.)

18 JUDGE WOODRUFF: All right. All right. We're
19 back from the break. And Mr. Mills has stated his basis
20 for striking portions of the testimony of Mr. Voytas.
21 I'll give Ameren a chance to respond now.

22 MR. LOWERY: Your Honor, a couple of points that
23 I'd like to make on this. First of all, we are going to
24 be offering Mr. Rackers' testimony, Mr. Rackers' filed
25 testimony in this case.

1 His deposition, in fact, is already in evidence
2 in this case. And as Mr. Conrad, of course, pointed out
3 in objecting to the admission of the deposition, he said,
4 Well, you know, the standards for testimony are different
5 and depositions are different. We shouldn't let that in.

6 But Mr. Rackers testified. He proposed an
7 adjustment as an admission -- they have admission of a
8 party opponent. And, you know, two days before the
9 hearing Staff says, well, we're not going to offer his
10 testimony. We're not going to sponsor our adjustment
11 because he did develop develop -- and the testimony, and
12 we're going to off it, so it's going to be in the record
13 unless there's some other legitimate objection, which I
14 don't believe that there is, so we are going to offer his
15 testimony which I think should resolve the issue regarding
16 Mr. Rackers' testimony.

17 As far as this other testimony that Mr. Mills
18 objected to as being hearsay, it -- even if it is hearsay,
19 we are not offering it for an admission of a party
20 opponent.

21 In testimony in terms of -- the belief that the
22 the company had about what the transmission system was at
23 the Audrain plant, and I forget honestly what the exact
24 nature of the other testimony was, but those -- those
25 testimonies, or those beliefs and the statements of these

1 other parties that are cited in Mr. Voytas' testimony
2 affected the resource planning that Mr. Voytas did, the
3 decisions the company made, as do we buy the Audrain
4 plant, do we not buy the Audrain plant, are we paying an
5 appropriate price on the Pinckneyville and Kinmundy plant.
6 I do recall now.

7 Administrative Law Judges at the FERC's
8 decisions about the appropriateness of the price the fact
9 there was no affiliate abuse all impacted Mr. Voytas'
10 decision and advice to the decision-maker test to the
11 company about whether or not we should go ahead and
12 proceed with the Pinckneyville and Kinmundy purchases and
13 at what price.

14 And they affect what he did, and that is an
15 exception to the hearsay rule. Whether the transmission
16 constraint did or did not exist, whether the FERC ALJ was
17 or was not right, that is not the issue here. The issue
18 is why we did what we did with regard to the transaction.

19 So it is not hearsay for that purpose. It falls
20 within the exception, and the testimony should be allowed.

21 JUDGE WOODRUFF: Okay. So you're saying that
22 all this information on -- beginning on page 15 running
23 from page 19 is not being offered for the proof of what --
24 the transmission issues at the Audrain facility. You're
25 just -- you're offering it to prove that --

1 MR. LOWERY: Why -- why we valued -- why we
2 didn't, there's been a lot of testimony about whether the
3 Audrain facilities is the right facility, whether we
4 should have bought that at a different time, why we made
5 the decision, whether it was an appropriate decision on
6 the Pinckneyville and Kinmundy at that price. And our
7 employee, Mr. Voytas, is clear about how those
8 transmission constraints were impacted, why we did what we
9 did and when we did it, and I believe that's relevant in
10 this case.

11 MR. MILLS: If I may respond to that?

12 JUDGE WOODRUFF: Certainly.

13 MR. MILLS: The effect of Pinckneyville and
14 Kinmundy, Mr. Voytas' beliefs about transmission
15 constraints or lack of transmission constraints cannot
16 affect the value of those plants. It can affect perhaps
17 Mr. Voytas' perception of the those plants.

18 But his perception is not what documents. It's
19 the Commission's is what counts. And -- and --

20 JUDGE WOODRUFF: I believe this was actually --
21 the Audrain plant. Is that -- I mean, that's not an issue
22 in this case, obviously, of the valuation of the Audrain
23 plant?

24 MR. MILLS: Correct.

25 JUDGE WOODRUFF: Or not valuing the Audrain

1 plant in in this case is what I mean. But the company has
2 indicated that they're -- there was discussion about the
3 value of the Audrain plant as it relates to valuation of
4 the Pinckneyville and Kinmundy plant.

5 MR. MILLS: Right. And it's my responsibility
6 -- well, first, is it -- before I get too deep into
7 arguing this, are you -- is your decision on the objection
8 which you sustained now being reconsidered or --

9 JUDGE WOODRUFF: It is being reconsidered.

10 MR. MILLS: Then I will get into arguing about
11 it, then. Regardless of what Mr. Voytas thought about
12 transmission constraints, it cannot affect the value. It
13 can only affect his perception of the value. I mean, it's
14 easy to say that we're not offering this for the truth
15 there in. We're just trying to show what Mr. Voytas was
16 thinking at the time, but that's not the case.

17 The only relevance that this testimony has is
18 how does it affect the value, not how it affects
19 Mr. Voytas's perception of the value, but how it affects
20 the actual value. And if it's not going to be offered for
21 that, then there's no reason to put it in.

22 MR. LOWERY: Your Honor. I disagree for another
23 reason. We are being accused in this case by the Office
24 of Public Counsel of violating the Commission's affiliate
25 transaction rules. And if we had reason to believe there

1 were transmission problems, we had reason to believe that
2 the FERC had to approve these -- had -- had found there
3 was no affiliate abuse. These were fair market value
4 transactions. This certainly is relevant to whether or
5 not we did violate those rules, whether or not some
6 sanctions might be imposed, violations of the rules as
7 they've alleged and those types of things in terms of why
8 we did what we did. It's certainly relevant for that
9 additional reason.

10 JUDGE WOODRUFF: I don't recall any testimony
11 about possible sanction. There was -- there was some
12 argument and testimony about whether certain things, I
13 believe the CAMs, were filed properly. But that's not in
14 this case.

15 MR. LOWERY: Your Honor, there was -- there was
16 testimony of not an actual threat for sanctions, for
17 example but, there was direct testimony by Mr. Kind and I
18 believe also by Mr. Rackers that the transaction was
19 violated of the affiliate transaction rules. That was
20 their testimony. That's the basis of their adjustment.

21 MR. MILLS: And -- and what these people
22 testified to at the FERC about transmission constraints
23 has got nothing to do with the -- with the Missouri
24 affiliate transaction rule.

25 JUDGE WOODRUFF: All right. I'm -- I'm ready to

1 rule on it.

2 MR. LOWERY: Your Honor, just -- I apologize for
3 interrupting.

4 JUDGE WOODRUFF: Go ahead.

5 MR. LOWERY: Just one other point. We are also
6 arguing that we were prudent in the decision we made. As
7 the Commission knows, the Commission can't use hindsight
8 in making that determination. They have to put themselves
9 in our shoes and say, Why did we do what we did. Was it
10 reasonable?

11 And given this information that Mr. Voytas had
12 that impacted why we did what we did and when we did it is
13 also relevant to that issue for an additional reason. So
14 I believe the exception applies, and I believe there's
15 relevance to this information.

16 JUDGE WOODRUFF: Okay. Well, there really are
17 two issues here. One is whether it's hearsay. And on --
18 it's clear to me that it is hearsay.

19 The next question then is whether it's being
20 offered for the truth of the matter asserted, which,
21 again, poses the question of whether it is, in fact,
22 hearsay. And this is all getting very confusing.

23 What is -- is included in this section is -- is
24 a series of excerpts from testimony filed by other --
25 other parties in other -- in other proceedings. That

1 strikes me as -- as being hearsay. And we're --

2 MR. LOWERY: Well, your Honor -- and I'm -- I
3 apologize for interrupting, but I'm just looking
4 at another one of these, and, of course, they've had this
5 testimony for weeks, and now they wait until now to make
6 this motion, obviously.

7 But, for example, there's a citation to the --
8 the brief that the Staff filed in the FERC proceeding in
9 here, that Staff authored, that agrees that there were
10 transmission constraints. I'd argue that's an admission.

11 MR. DOTTHEIM: Excuse me. I'd like to clarify a
12 number of matters. First of all, I think there have been
13 a number of references to Staff filings.

14 Mr. Powell has made, I think, two references to
15 Staff filings at the FERC in Case No. EC-03-53.
16 Mr. Lowery has now made a reference to the Staff filing of
17 a brief in -- in FERC Docket No. EC-03-53.

18 The Staff made no filings in that docket. The
19 Commission made the filings in that docket that are being
20 referred to.

21 MR. LOWERY: Your Honor, the same lawyers that
22 represented the Commission in those proceedings when they
23 signed those pleadings attested to the truthfulness of
24 what they had to say in those briefs, I believe. So I
25 guess we can split hairs in that way if we want to.

1 But I think the point stands.

2 MR. DOTTHEIM: Well, I don't think it's a matter
3 of splitting hairs. I think there is a true difference.
4 There, also, too, is a bit of hyperbole that I think I'd
5 want to address is Mr. Lowery made reference to the -- the
6 Staff advising the company two days before the hearings
7 that -- that the Staff was not pursuing the -- the
8 adjustment sponsored in the testimony of -- of
9 Mr. Rackers.

10 I believe the Staff advised the company no later
11 than March 2, which is ten days before the beginning of
12 the hearing. Not that that's necessarily relevant to any
13 rulings that are required from the Bench.

14 But I -- I think that's indicative of some of the
15 hyperbole that's coming from the company at this point
16 that I think needs to be addressed by the Staff.

17 MR. LOWERY: If I need to clarify my reasoning,
18 it was my belief that --

19 JUDGE WOODRUFF: Let me make a ruling at this
20 point because I've heard all of the argument from all of
21 the parties. And it occurs to me that we've actually
22 already heard testimony from all the witnesses on this --
23 on this issue, so there's no urgency in making any
24 decision at this point.

25 I want to give this careful thought. And at

1 this point, I'm basically going to punt it until later.
2 I'm not going to make a ruling on any of the motions at
3 this point. I'll either make a ruling after the
4 conclusion of the hearing, preferably before the briefs.
5 That is my plan to make a ruling --

6 MR. MILLS: Okay.

7 JUDGE WOODRUFF: -- before the briefs.

8 MR. MILLS: And, your Honor, Mr. Lowery briefly
9 addressed in his response not only this hearsay section
10 but the -- the section dealing with Mr. Rackers'
11 discussion of the Venice CTGs.

12 And I believe his response to my motion to
13 strike that was that UE plans to offer Mr. Rackers'
14 testimony, apparently despite the fact that he's -- he is
15 no longer supporting it as the admission of a party
16 opponent.

17 I must -- the reason I move to strike his
18 testimony here, Mr. Voytas's testimony here, is that it is
19 it not proper rebuttal testimony to any direct testimony
20 in this case.

21 Whether or not UE is successful in getting it
22 admitted as an admission of a party opponent, there will
23 not be direct testimony for which rebuttal testimony is
24 proper.

25 And, furthermore, I believe UE made a fairly big

1 deal in its opening statement about how Staff was no
2 longer an opponent on this issue. So how on earth that
3 could be an admission of a party opponent when UE is
4 trumpeting the fact that Staff is not an opponent in this
5 issue is beyond me. But it hasn't been offered yet and
6 we'll have that discussion later. But that's my response
7 to his response about that particular portion of the -- of
8 testimony.

9 JUDGE WOODRUFF: Okay. And I'll deal with all
10 these later on in a written order.

11 MR. MICHEEL: And, your Honor, I just want to
12 add my two cents.

13 JUDGE WOODRUFF: Go right ahead.

14 MR. MICHEEL: And we've heard all this about,
15 you know, the pre-filed testimony and all of that. But --
16 but the fact of the matter is, the testimony does not
17 become evidence until it's moved into evidence and been
18 admitted and withstood any sort of objections.

19 And I think any party, you know, prior to -- to
20 putting it up and moving it into evidence can -- I mean,
21 it is what it is. It's not testimony yet. It's -- it's
22 pre-filed. It's not evidence until it's moved in. And
23 it's not the testimony of any witness until they get up on
24 the stand.

25 And that -- I mean, that's an important point

1 for -- for the Bench to consider in making its ruling.

2 MR. MILLS: And -- and several of my motions
3 were -- were only able to be made after I asked Mr. Voytas
4 questions about his testimony, which I could not have done
5 weeks ago when this was filed.

6 I needed to get him to say he's not a
7 transmission expert. I needed to get him to say Mr. Kind
8 does not address the Venice plant because those two facts
9 are crucial to my motions to strike. So I couldn't have
10 done those ahead of time until I had Mr. Voytas on the
11 stand.

12 JUDGE WOODRUFF: Okay.

13 COMMISSIONER GAW: Judge, I -- I'm sorry for
14 interposing here, but I -- in -- in your deliberation on
15 this issue, it is -- it does put the Bench in somewhat of
16 a difficult position to know whether or not it's
17 appropriate to inquire as to those parts of the testimony
18 that may or may not be in the record and by inquiring as
19 to what -- as to some of those items, whether or not that
20 inquiry then is or is not in the record subsequent to that
21 inquiry.

22 So -- and I -- I'm not asking that you make a
23 ruling now as a result of that. But if it's possible to
24 make a ruling before we conclude this matter so that if we
25 want -- wish to inquire about some of those parts of the

1 record that do end up being in that, that that's -- that's
2 available to us. I'm sorry for raising that, but --

3 JUDGE WOODRUFF: That is another complication.
4 I understand.

5 COMMISSIONER GAW: It is a problem to wait until
6 the end for us because of that, I'm afraid.

7 JUDGE WOODRUFF: All right.

8 MR. MILLS: And just to clarify, all of those
9 three sections that I moved to strike have to do with
10 Pinckneyville and Kinmundy rather than Peno Creek.

11 JUDGE WOODRUFF: All right.

12 MR. MILLS: And I think we're essentially done
13 with at least cross-examination from out here on that
14 issue, and so it shouldn't impact it from that respect.

15 COMMISSIONER GAW: Although -- although I may
16 still have some questions of some witnesses because of
17 being gone earlier.

18 MR. MILLS: Right. I understand.

19 COMMISSIONER GAW: So --

20 JUDGE WOODRUFF: All right. Well, if those
21 questions arise, we'll deal with them at that time. Thank
22 you again for bringing up a -- one more complication on
23 that issue.

24 COMMISSIONER GAW: You're welcome.

25 JUDGE WOODRUFF: All right. Let's get the --

1 going -- I'll defer ruling on the admission of Exhibit
2 60-HC and NP, then, until a later date.

3 All right. And I believe we're ready, then, for
4 cross-examination on the Peno Creek issue.

5 MR. POWELL: Yes. We tender the witness for
6 cross-examination. Whoops. We tender him for
7 cross-examination on Peno Creek.

8 JUDGE WOODRUFF: All right. Does anyone wish to
9 cross-examine on Peno Creek issue? Public Counsel?

10 CROSS-EXAMINATION

11 BY MR. MILLS:

12 Q Good afternoon, Mr. Voytas.

13 A Good afternoon.

14 Q Just to -- to start out with, is -- is Peno
15 Creek also sometimes referred to as the Pike County
16 facility?

17 A Yes.

18 Q Okay. And just as I did in the Pinckneyville
19 and Kinmundy issue, all of my questions will -- will focus
20 in on your rebuttal testimony. Okay? So we don't have to
21 worry about the -- the other testimony. When I refer to
22 your testimony, I will be referring solely to your
23 rebuttal testimony. Okay?

24 Is it correct that your rebuttal testimony is
25 the only piece of testimony in which you -- which you

1 address the Peno Creek issue?

2 A That's correct.

3 Q Okay. Now, in your rebuttal testimony at page
4 29, lines 11 through 12 -- well, actually, let me just
5 have you focus on that entire answer that begins on line 8
6 and extends through line 12, and I'll have a question
7 about that.

8 Is it your testimony there that Mr. Kind relies
9 on a benchmark figure that was provided in the application
10 that was filed in Case No. EA-2000-37 {}?

11 A That was my understanding of Mr. Kind's
12 testimony and the schedules attached to his testimony.

13 Q Okay. Did you ask Mr. Kind any -- any discovery
14 as to what the basis for his adjustment was?

15 A No. Because it was listed in his testimony.

16 Q Okay. And when I say you in that last question,
17 I meant you or anyone within Union Electric.

18 A Sure.

19 Q Is that no, you didn't ask for discovery about
20 that issue?

21 A I can't speak for anyone else but myself.

22 Q Okay.

23 MR. MILLS: I'd like to have an exhibit marked.

24 JUDGE WOODRUFF: All right. You're up to 523.

25 I'm sorry.

1 MR. MILLS: I thought I was in the fours.

2 JUDGE WOODRUFF: You are. I grabbed the wrong
3 -- wrong -- Public Counsel is up to 439.

4 MR. MILLS: Okay. Your Honor, I believe this
5 needs to be 439-HC.

6 JUDGE WOODRUFF: All right.

7 Q (By Mr. Mills) Mr. Voytas, do you recognize
8 what's been marked as Exhibit 439-HC as the notification
9 of resource acquisition that has to do with the Peno Creek
10 facility?

11 A Yes, I do.

12 Q Okay. And is it my understanding that -- that
13 the cover letter is not highly confidential, but the --
14 the attachments are?

15 A That's my understanding, also.

16 MR. MILLS: Okay. And -- and, your Honor, just
17 for the -- the purposes of -- of clarity, even though it's
18 sort of a half an half, we've marked the entire thing
19 highly confidential, and it will be admitted that way.
20 But any questions having to do with -- with the cover
21 letter, I think are not highly confidential.

22 Q (By Mr. Mills) So -- Mr. Voytas, did -- did
23 you, in fact, sign this letter and cause it to be
24 transmitted to the Public Counsel's office and the Staff
25 of the Commission?

1 A Yes, I did.

2 Q Is this a view and accurate copy of the
3 submission that you made at that time?

4 A I believe it is.

5 MR. MILLS: Okay. Your Honor, with that, I'd
6 like to offer Exhibit 439-HC.

7 JUDGE WOODRUFF: All right. 439-HC has been
8 offered into evidence. Are there any objections to its
9 receipt? Hearing none, it will be received into evidence.

10 (Exhibit No. 439-HC was offered and admitted
11 into evidence.)

12 Q (By Mr. Mills) Now, Mr. Voytas, with respect to
13 the table on page 31 of your rebuttal testimony --

14 A Yes.

15 Q -- I believe that table has been marked highly
16 confidential. And I'm not going to -- to -- I'm going to
17 try not to get into highly confidential information when I
18 ask you questions about that.

19 But if you need to refer to the highly
20 confidential information when I ask you a question, please
21 let me know, and we can go in-camera.

22 A Okay.

23 Q Are the -- the types of units shown there --
24 would you consider that to be highly confidential or to
25 ask you what those types are and whether --

1 A No.

2 Q Okay. Are D-5A and F class units large frame

3 CTs?

4 A They are.

5 Q And how about an FT-8?

6 A Aero derivative.

7 Q And LM-6,000?

8 A Aero derivative.

9 Q Okay. And the -- the formatting is a little bit

10 off, but is the first column is yet another unit. And is

11 that a GE-6-V?

12 A It's a GE-6-v, correct.

13 Q Is that also an aero derivative?

14 A That's a small frame.

15 Q That's a small frame. Okay. Now, in general,

16 and I'm not going to get into the specific numbers here,

17 but are large frames generally cheaper than aero

18 derivatives?

19 A Yes.

20 Q Now, turning to page 32, lines 2 to 3, you talk

21 about a relatively short installation time of

22 approximately three months. Do the -- at that time -- and

23 there you're talking about the FT-8 machines; is that

24 correct?

25 A That's correct.

1 Q And at that time, did the FT-8 machines also
2 have a significantly shorter delivery time than large
3 frame CTs?

4 A That information -- excuse me. That information
5 is on page 31 of my testimony on the matrix on the
6 equipment availability date.

7 Q Okay. And -- and will those dates be highly
8 confidential? They're within the highly confidential
9 section.

10 A They're not highly confidential anymore.

11 Q Okay. Okay. And what are those dates?

12 A For each machine, the -- 6-B delivery date is
13 March of '02. The LM-6,000 is March of '02. The FT-8 is
14 February of '02. The D-5A is November of '03. And the F
15 class is November of '03.

16 Q Okay. Now, when -- when you were -- you said
17 Exhibit 439-HC was dated August 29th, 2001; is that
18 correct?

19 A That's correct.

20 Q And that would have been shortly after you had
21 made the decision to -- to make this particular
22 acquisition; is that correct?

23 A That's correct.

24 Q Okay. Now, at that time, was it -- was it --
25 was it UE's desire to have whatever resource acquisition

1 it made at that time in place by June of 2002?

2 A That was one of the objectives. That's correct.

3 Q Okay. And to meet that objective, neither of
4 the large frames that you evaluated would have been
5 possible; is that correct?

6 A For the -- installing a date objective. Yes.

7 Q Okay. Now, when -- when you made a decision
8 around August of 2001 that you needed additional
9 generating capacity before the -- the beginning of the
10 next summer peak season, is that the -- the time frame
11 that UE usually makes capacity addition decisions?

12 A Well, it depends upon the circumstances. The --
13 the resource planning world is very dynamic. One of the
14 things that was going on just prior to that time was one
15 of the first attempts to discuss the Metro East transfer.

16 The Metro East transfer was the result of three
17 separate negotiations. And at this particular time, that
18 was -- in the act of discussions in that capacity would
19 have been sufficient to meet our needs in the summer of
20 2002.

21 Q Okay. Is it generally the case that if you want
22 to do construction of a generating plant on a relatively
23 short time frame that it may be more expensive than a
24 lengthier construction period?

25 A No. Not at all. I think the -- the Venice CTGs

1 are an excellent example of that. At Venice, we also have
2 the exact same CTG that we call our Venice CTG-2. But if
3 you can coordinate your construction, you can get these
4 things installed very, very quick. But it -- it's a
5 function of many factors.

6 MR. MILL: Okay. I'd like to have another
7 exhibit marked.

8 JUDGE WOODRUFF: All right. You're at 440.

9 MR. MILLS: Okay.

10 Q (By Mr. Mills) Mr. Voytas, I've handed you a
11 motion from the transcript from a FERC proceeding. And if
12 you look at the second page of that exhibit, it shows a
13 docket number of EC-03-053-000. Is that the same FERC
14 proceeding that we discussed this morning in conjunction
15 with Pinckneyville and Kinmundy?

16 A I believe it is.

17 Q And you testified during that proceeding, did
18 you not?

19 A Yes, I did.

20 Q If I can get you to turn in Exhibit 440 to --
21 it's marked, as transcripts usually are, with sequential
22 numbers, so the first substantive page of this transcript
23 is page 456. And does that show where you were taking the
24 stand and the Judge is reminding you that you're still
25 under oath down towards lines 20 through 25?

1 A Yes.

2 Q Okay. And up -- with -- with respect to the --
3 preparation of this exhibit, it's a -- over a hundred page
4 transcript, and what I did was I picked up the first few
5 pages to show that it's the testimony of Mr. Voytas.

6 And then I picked up the last pages, which --
7 which is what I -- where the material I'm interested in is
8 in. So there is a gap in the middle. And I simply didn't
9 want to produce a hundred-odd page transcript that has
10 little to do with this case.

11 And -- and the exhibit picks up again after the
12 first couple of pages with page 553. And the reason I
13 started there is because that's the first time towards the
14 end that Mr. Voytas' name is mentioned.

15 So on page -- page 553, line 17, the transcript
16 makes it clear that the -- that the examination is
17 continuing with Mr. Voytas. So --

18 JUDGE WOODRUFF: All right.

19 Q (By Mr. Mills) Mr. Voytas, do you see your name
20 on line 17 of page 553 of the transcript?

21 A That's correct.

22 Q Okay. And did you recall being cross-examined
23 by Mr. Lentworth (ph.) at the FERC in conjunction with
24 this case?

25 A I don't recall it. But I see it here, so I'm

1 sure it happened.

2 Q Okay. Now, if I can get you to turn to page 572
3 of that transcript -- and you have look at the question
4 and answer that runs from lines 9 through lines 12. And
5 the question there is -- and you also stated in your
6 rebuttal testimony that it should cost approximately \$450
7 an installed kilowatt to build a CTG; is that correct?
8 And what was your answer to that question?

9 A That's correct.

10 Q Okay. And then if I can get you to read the --
11 the answer at the -- at the top of page 574, and,
12 certainly, read as much of the intervening part as you'd
13 like to -- to get the context.

14 Is it your testimony there on -- on page 574 of
15 the FERC proceeding --

16 A I'm not there yet. I'm still reading.

17 Q I'm sorry. Just let me know when you're -- when
18 you're done there.

19 A Yes.

20 Q Okay. Your answer on -- on page 574 says that;
21 is that true?

22 A One other point that I would like to make on
23 that, when you construct facilities, the Peno Creek
24 facility, for instance, was put in in 12 months.

25 Q To make a time frame like that requires

1 additional overtime, additional accelerated schedule that
2 has costs associated with that, so you have to look at
3 parameters that were involved in building a large plant.
4 Is that what your answer on that page says?

5 A On that particular page, that's what that answer
6 says.

7 Q Okay. And the next -- I'd like you to go back
8 to page 572, the answer by the witness, who I believe is
9 you, at lines 5 through 7. Do you there indicate that the
10 cost of the Penno Creek plant was a price of \$550 a
11 kilowatt approximately?

12 A If the witness is me, that's -- that's an
13 accurate statement.

14 Q okay. Do you have any doubt that the witness is
15 you?

16 A I -- I wish my name had been on there. I just
17 don't remember.

18 Q If you need to, please read back through from
19 page 553 where your name does appear on line 17, and I've
20 got every single page between 553 and 572 if you need to
21 read through there to make sure that the witness hasn't
22 changed.

23 A No. I'm fine.

24 Q Okay. So you do -- do you believe that that is
25 your statement on page 572 about the 550 -- 550 a kilowatt

1 approximately?

2 A It's been a while. And if the witness is me, I
3 believe that. I just don't -- don't remember, you know,
4 everything that was said during that time. But, yes, I
5 believe the witness is me.

6 MR. MILLS: Okay. Your Honor, with that, I'd
7 like to offer Exhibit 440 into the record.

8 JUDGE WOODRUFF: Exhibit 440 -- Exhibit 440 has
9 been offered into evidence. Are there any objections to
10 its receipt?

11 MR. POWELL: No, your Honor.

12 JUDGE WOODRUFF: Hearing none, it will be
13 received into evidence.

14 (Exhibit No. 440 was offered and admitted into
15 evidence.)

16 Q (By Mr. Mills) Now, in your rebuttal testimony
17 at page 32, lines 16 -- I'm sorry, I may have the wrong
18 reference, line 16 through page 33, line 14, there's a
19 question about additional reliability benefits from the
20 Peno Creek facility and your answer. Do you see that
21 section of your testimony?

22 A Yes, I do.

23 Q Are the benefits you discuss in that section
24 worth paying any costs for? And let me rephrase that
25 because the transcript may not get the inflection right,

1 and it may skew the -- the way the question reads. Is it
2 worth paying any cost to get those benefits?

3 A Well, there's two parts to this passage that you
4 referred me to. One is the transmission part, and one
5 talks about system reliability and voltage support and
6 reactive support.

7 Q And I'm talking about --

8 A Pardon me?

9 Q And I'm talking about the -- the -- the power --
10 the power and voltage support benefits that you're
11 discussing there.

12 A So I'm -- I'm confused. At first you referred
13 me through line 14 where we talk about the generation
14 benefits.

15 Q Yeah.

16 A Are you excluding that now from your question?

17 Q No, no. I'm talking about all the benefits
18 you're talking about there.

19 A Okay. And the question is --

20 Q The question -- and maybe I haven't phrased it
21 very well. Given that there are some -- that it's your
22 opinion that there are some benefits from those things, do
23 you not still need to do a cost benefit analysis to see
24 what cost you should pay for those benefits?

25 A Those benefits -- some of those are difficult to

1 quantify. But the use of this machine had operational
2 aspects to it. And where those come from is the fact that
3 prior to Peno Creek, AmerenUE had approximately two to 300
4 megawatts of CTGs in its fleet. Most of those were 1970s
5 vintage. None of those had the capabilities that the
6 aeros had.

7 In other words, they did not have the quick
8 start-up capability. They did not have any back-up. And
9 they did not have any intra-day cycling capability. So to
10 the extent that the system was changing -- and by the
11 system changing, what I mean there is that our coal plants
12 for years had done -- up to this time had done the load
13 voluming.

14 We made significant modifications to our coal
15 plants. Usually a coal plant is designed to go up to a
16 certain level and run at that level and not go up and
17 down, up and down.

18 Significant modifications were made to burners
19 to these coal plants to allow them to do some of that type
20 of cycling. As the system matured and the capacity
21 factors on those plants got higher and higher, the system
22 simply did not have the other generation capability to do
23 that load flow.

24 And that was one of the reasons. That was one
25 of the values, and it was defined in the matrix for this

1 particular plant.

2 Q Okay. So is it -- is it your testimony that
3 there -- that there are benefits, but you did not do a
4 quantitative cost benefit analysis on those benefits?

5 A From lines 18 through 14, we're talking about
6 those specific benefits?

7 Q Yes.

8 A Yes. The operational benefits are difficult to
9 quantify. That's true.

10 MR. MILLS: Okay. I'd like to mark another
11 exhibit, please.

12 JUDGE WOODRUFF: Okay. And we're at 441.

13 MR. MILLS: And I believe this one is
14 proprietary.

15 JUDGE WOODRUFF: Okay. We'll call it 441-P.

16 Q (By Mr. Mills) Mr. Voytas, have you had a
17 chance to look at what's been marked as Exhibit 441-P?

18 A Just a cover -- just the cover page.

19 Q Okay. If you -- if you would, please, take a
20 look through the exhibit and -- so that I can ask you
21 questions about whether you understand what it is.

22 A Okay. I understand.

23 Q Okay. Is this a data request from Public
24 Counsel to AmerenUE in this Case No. EC-2002-1, which
25 simply asks for Public Counsel DR-630 provided in Case No.

1 EC-2002-1? Is that what the first couple of pages appear
2 to be?

3 A I see reference to EC-2002-1.

4 Q Okay. And if you'd look at the second page,
5 does that appear to be Public Counsel Data Request No. 630
6 in EC-2002-1?

7 A Is this the modified No. 630?

8 Q It says Modified No. 630. Yes.

9 A It appears to say that.

10 Q And the response to that data request says, See
11 the attached documents?

12 A It does.

13 Q Okay. And then the next page is -- is just a --
14 a designation by UE that the information attached is -- is
15 proprietary --

16 A Okay.

17 Q -- isn't that correct?

18 A That's correct.

19 Q Okay. Now, the -- which brings us to the -- to
20 the actual response to the data request, which, in this
21 instance, is marked page 4 of 7 in the lower right-hand
22 corner.

23 Does that appear to be a -- a presentation about
24 some discussion points concerning the Pike County CTGs?

25 A It appears to be that.

1 Q Okay. And -- and the Pike County CTGs are --
2 are also referred to as the Peno Creek CTGs; is that
3 correct?

4 A I think so.

5 Q Okay. If I can get you to turn to page 6 of 7
6 of that exhibit, does that --

7 MR. BYRNE: Your Honor, I guess I'm going to
8 object to questions about this document. He hasn't laid a
9 proper foundation that Mr. Voytas has ever seen this
10 document before.

11 MR. MILLS: I -- I haven't really gotten there
12 yet. He hasn't said he hasn't. But I can certainly do
13 that.

14 Q (By Mr. Mills) Data Request No. 630, as you
15 point out, it's titled Modified No. 630, asked UE to
16 provide a copy of all notes and meetings from CTG meetings
17 that were held regarding regeneration plans within the
18 last two years.

19 And the date of the data request response
20 appears to be February 25, 2002. Do you see that stamp on
21 the -- on the bottom of the page?

22 A Yes, I do.

23 Q Okay. So the two years prior to that would have
24 been approximately February 2005 through February 2002; is
25 that correct?

1 A Did you say the two years prior to 2002 would
2 have been --

3 Q I don't -- maybe it's getting late. Maybe I
4 said something silly. What I meant to say was would the
5 two years prior to February 25th, 2002, refer to the
6 period February 2000 through February 2002?

7 A Yes.

8 Q Okay. Now, during that period of time, what
9 would your position with Union Electric have been?

10 A I'd have to look at my list of qualifications.
11 I believe I may have been supervising engineer at that
12 time as opposed to manager.

13 Q Okay. And would you have been involved with
14 presenting discussion points to the senior team about
15 proposed capacity additions such as the Peno Creek or Pike
16 County CTGs?

17 A I've never seen this particular document at all,
18 but there are times when I am involved. There are times
19 that I'm not.

20 Q Okay. Well, you've never seen this particular
21 document at all, and you don't recognize the talking
22 points about Pike County?

23 A I don't -- I don't recall having seen this
24 document. No.

25 Q Okay. Then let's -- let's set that aside for

1 now. Do you recall when the Peno Creek project was being
2 planned whether or not it consisted of four Pratt &
3 Whitney FT-8 twin packs?

4 A The twin pack designation is what's throwing me.
5 I do recall -- the Pratt & Whitney, but the twin pack
6 designation is throwing me.

7 Q But you -- it was when it was planned and is as
8 constructed in Pratt & Whitney -- Pratt & Whitney FT-8s;
9 is that correct?

10 A That's correct.

11 Q Okay. And what is the -- the total capacity of
12 the Peno Creek station?

13 A The total capacity of the Peno Creek station is
14 forty-eight times four, which is approximately.

15 Q 190?

16 A Yeah.

17 Q Okay. And is the start time approximately eight
18 to ten minutes?

19 A That's correct.

20 Q Okay. And do you recall the -- the target date
21 for commercial operation of the Peno Creek center?

22 A Prior to summer of 2002.

23 Q Would that have been the first of June 2002?

24 A Yes.

25 Q Okay. Do you recall the -- when the project was

1 being planned what -- what, for planning purposes, the
2 estimated total cost of the project was?

3 A No, I don't.

4 Q Do you recall what the estimated cost per
5 kilowatt hour -- I'm sorry -- the estimated cost per
6 kilowatt was?

7 A No, I don't.

8 Q Do you recall whether there was discussion at
9 that time whether the generating station should be owned
10 by Union Electric company or a different Ameren entity?

11 A My only recollection is that AmerenUE had a
12 capacity need and needed combustion turbines in to fill
13 that. So I don't know -- I'm not familiar with the other
14 discussion you referred to.

15 Mr. MILLS: Okay. Your Honor, I would like to
16 have another exhibit marked. And I believe this one will
17 also be proprietary.

18 JUDGE WOODRUFF: All right. This will be 442-P.

19 Q (By Mr. Mills) Now, Mr. Voytas, if you would,
20 please, take a moment to look through Exhibit 442-P. Mr.
21 Voytas, does that appear to be a response to Public
22 Counsel data request in this case No. 2085 that asks for a
23 copy of Public Counsel data request 508 from Case No.
24 EO-2004-108?

25 A I see a reference to No. 508.

1 Q Okay. And if you look at the second page of
2 that exhibit, does that appear to be a data request
3 submitted to AmerenUE by the Office of Public Counsel in
4 Case No. EC-2002-1 and a response thereto by David J.
5 Brueggeman?

6 A It appears to be that.

7 Q Okay. And Mr. Brueggeman at that time worked
8 for you; is that correct?

9 A That's correct.

10 Q And does he still?

11 A No.

12 Q Okay. Now, if I can get you to flip through to
13 the -- the actual attachment to DR 508, which is the one
14 that looks like a printout of a -- of an Excel spreadsheet
15 -- do you see that page?

16 A Yes.

17 Q Okay. Does the title of the file that -- that
18 -- that is this Excel -- Excel spreadsheet include the
19 initials RAV?

20 A Yes, it does.

21 Q And are those your initials?

22 A Yes, they are.

23 Q Okay. Are you familiar with these schedules?

24 A I am familiar with these schedules and -- yes.
25 Yes.

1 Q Okay. And do those -- do these -- and I'm not
2 going to get into the numbers, so I don't think this will
3 be highly confidential, but does this essentially show a
4 CT -- an Ameren energy generating new CT schedule that was
5 revised June 12th of 2001?

6 A That's what it says.

7 MR. MILLS: Okay. Your Honor, with that, I will
8 offer Exhibit 442-P.

9 JUDGE WOODRUFF: All right. 442-P has been
10 offered. Are there any objections to its receipt?

11 MR. BYRNE: No, your Honor.

12 JUDGE WOODRUFF: Hearing no objection, it will
13 be received.

14 (Exhibit No. 442-P was offered and admitted into
15 evidence)

16 Q (By Mr. Mills) Mr. -- Mr. Voytas, could I get
17 you to point me in your rebuttal testimony where you
18 respond to Mr. Kind's assertion in his direct testimony
19 that the rush to put Peno Creek in caused added cost?

20 A There is no reference.

21 MR. MILLS: Those are all the questions I have.
22 Thank you.

23 JUDGE WOODRUFF: Did you wish to offer 441-P?

24 MR. MILLS: Is 441-P the one he said he'd never
25 seen before?

1 JUDGE WOODRUFF: I think so.

2 MR. MILLS: I don't wish to offer it. Thank
3 you.

4 JUDGE WOODRUFF: All right. And did any other
5 party wish to cross? All right. Come up for questions
6 from the Bench. Commissioner Gaw?

7 COMMISSIONER GAW: Thank you.

8 Cross-EXAMINATION

9 BY COMMISSIONER GAW:

10 Q Mr. -- Mr. Voytas, there was a series of
11 questions regarding the quantification of -- of certain
12 benefits dealing with the operation of those -- of those
13 generators and your description of -- of the difficulty
14 that -- that Ameren was having regarding the regulation of
15 the coal units. Do you recall that general area of
16 discussion?

17 A Yes, I do.

18 Q Regarding the issue of -- of -- of operating
19 reserves when -- when you get into -- help me to
20 understand what you were saying in regard to the problem
21 you were having with -- with your coal units to begin with
22 at -- at that time in that time frame.

23 A If I characterized it as a problem, I misspoke.
24 It's changing operating conditions.

25 Q I don't know that you did. I'm just trying to

1 identify the area of testimony, so --

2 A The situation was that as the -- the market
3 started to expand and our units started to sell more, we
4 had gone from capacity factors 60, 70 percent to 80, 90
5 percent. So these units now are more flatlined as opposed
6 to doing these type of things.

7 We had made modifications, and that's what I was
8 referring to, to these burner replacements so we could do
9 that type of load flow. And one of the characteristics
10 for CTGs, for large frame CTGs, are that they have very,
11 very high start costs.

12 And these come up -- the way they like to
13 operate is they come up, and they stay there. And then
14 they come down. They have a very important place in the
15 entire mix of the operation in the fleet.

16 But in the summertime, we have a double hump
17 peak, one in the morning and one in the evening. When we
18 start hitting those shoulders, what we're looking for is
19 intra-day cycling capability.

20 That's where we can take a small frame, put it
21 on, take it off, put it back on in the evening. And those
22 are things you can do with an aero derivative that you
23 can't do with a large frame.

24 And the reason that became more and more
25 important on our system was precisely because our coal

1 plants were running flatter and flatter and flatter.

2 Q Okay. So when you say they were running
3 flatter, did you -- was that -- did you change what your
4 capability was in regard to regulating your coal units in
5 order -- in order for them to be utilized to a greater
6 extent for energy, or was that just -- I'm trying to
7 understand whether it was a modification to the coal units
8 or whether it was just a function of utilizing them for
9 energy to a greater extent.

10 I'm not -- I'm not sure I'm -- I'm understanding
11 what the -- what the issue was with the coal units.

12 A The operation -- the issue is that the -- the
13 coal units were no longer able to cycle as we had cycled
14 them to follow the load. They were -- it was more
15 economic to sell them into the market. That's why they're
16 running.

17 Q Now, that makes sense to me if that's what
18 you're telling me. You're saying to me that the coal
19 units, the energy prices made it more profitable for you
20 to be -- to be utilizing your coal units at a -- at a much
21 higher percentage of the -- of their capacity?

22 A That's -- that's correct.

23 Q Okay. Now -- now -- now I can move to the -- to
24 this question about your decisions about the -- the gas
25 units. So in dealing with the issues of -- let me break

1 these down so I -- so I can kind of understand what we're
2 talking about here into -- into regulation, spending
3 reserves and just black start capability. And I want you
4 to tell me -- if you could, break this down into -- into
5 which portion of those -- of those sections you were
6 needing for purposes of -- of your reliability of your
7 systems.

8 A I'm going to struggle with that. My forte is
9 long-term resource planning, not operations. When we meet
10 with our operations folks to look at these mix CTGs, Matt
11 Wallace is one of the -- our managers of CTG operations,
12 and he submitted testimony in the Metro East testimony.
13 But those are the modifications that we talk about.
14 And I have to -- I cannot answer those strict operational
15 questions.

16 Q The reason I'm wanting to ask questions about
17 that is because when we're talking about -- I think these
18 -- these gas units and their ability to -- to adjust up
19 and down, their ability to -- to have quick start
20 capability, we're talking about operating reserves,
21 short-term operating reserves. And -- and that's --
22 that's where this -- this becomes the most critical, isn't
23 it?

24 A Well, it becomes critical in that area for --
25 for system reliability purposes, but also for economics as

1 MISO moves perhaps into ancillary service markets, then
2 these will have a quantification valuation attached, also.

3 Q Well, and that's where I was headed with this
4 because what I wanted to ask you -- and we can speculate
5 on what the value of this is in an ancillary services
6 market. But what I wanted to understand is what you're
7 being paid today for those services in the MISO market
8 that exist, there is a value, isn't there, to -- to the
9 services of regulation and spending reserves and -- and
10 quick start capability today, correct?

11 A Correct.

12 Q It's not set at a market price. It's set -- you
13 are paid for those capabilities?

14 A That's correct.

15 Q So that's why I was -- I was trying to explore
16 this with you because you said that some of those things
17 weren't quantifiable, and that confused me. There are
18 values that are received. There are dollars that are
19 received for being able to have generation that can do
20 those things, right?

21 A That -- that's true. And that's -- that's out
22 of my long-term world. And that's in the operational
23 world. And I'm not well-versed enough to answer those
24 questions.

25 Q Okay. So earlier when you say -- said those

1 things are not quantifiable, did -- do you mean you can't
2 quantify them yourself or they are not quantifiable?

3 A I mean that I cannot quantify them myself. I
4 was really thinking in terms of if I had a MISO ancillary
5 services schedule where I could do some mathematical
6 modeling.

7 Q That's okay. I'm just trying to understand what
8 your testimony is intended to mean. Can -- do you have
9 any idea -- well, let me -- let me ask you this: As those
10 coal units became more and more valuable to sell into the
11 energy market and to maximize the use of those coal units,
12 what did UE depend upon for some of those regulation and
13 spending reserve requirements?

14 Was it utilizing its own assets, or was it going
15 out to affiliates or to -- to bilateral transactions to
16 meet the reliability standards that it had to -- had to
17 follow for a long time?

18 A We're utilizing our base load assets to do those
19 things. That's why I spoke to the technical improvements
20 for these capabilities.

21 Q I understand that. But once you cross that
22 threshold and made the decision that, Hey, its more
23 valuable for us to sell that power as energy, there must
24 have been some -- at least for some window of time, some
25 other resources that Ameren UE is utilizing to meet those

1 needs. And my question is, what -- what were those
2 resources?

3 A I don't know the answer to that question.

4 Q All right. And there would have been -- if you
5 would have been procuring them from some other sources
6 other than your own assets, there would have been money
7 that would have been paid for those things to whoever it
8 was that was actually -- actually meeting those
9 requirements?

10 A I'm not familiar with that end of the operations
11 of the business. I don't know.

12 Q Okay. Do you know if there's anybody that --
13 that Ameren's going to supply that -- that is capable of
14 answering those questions?

15 MR. BYRNE: I'm not -- I don't think there's
16 anybody on the schedule that -- that is in that area,
17 Commissioner.

18 COMMISSIONER GAW: Okay.

19 Q (By Commissioner Gaw) Well, in any event, are
20 you familiar with whether or not the -- the system itself
21 -- let's -- let's back this up. These units were placed
22 in -- into service when at -- in Pike County?

23 A June 2002.

24 Q Okay. And at that point, the -- the balancing
25 authority, the control area that Ameren was in, do you

1 know how large of an area that was?

2 A No.

3 Q Okay. I -- I understand this is not generally
4 your area. I'm just trying to see how far out that
5 knowledge extends. I -- I think I'll just -- I'll just
6 stop there, Mr. Voytas. Thank you very much.

7 JUDGE WOODRUFF: All right. Anyone wish to
8 recross based on questions from the Bench?

9 MR. MILLS: No.

10 JUDGE WOODRUFF: Any redirect? All right.
11 We're off the record for a moment.

12 (Break in proceedings.)

13 JUDGE WOODRUFF: You may inquire.

14 REDIRECT EXAMINATION

15 BY MR. POWELL:

16 Q Mr. Voytas, I have what I think may only be two
17 questions. Why was the cost of Peno Creek higher than the
18 \$450 per kilowatt number which was mentioned in your
19 questioning by Mr. Mills?

20 A I think I need to go back to that \$450 source.
21 I don't have that in front of me.

22 Q That was from the excerpt of testimony that
23 Mr. Mills showed you. All I'm really asking is why were
24 the costs of Peno Creek as high as they were?

25 A Well, the -- the cost of machines are based on

1 the type of machines. There's a vast difference between
2 aero derivatives, large frame and small frames.

3 So depending on the -- what that reference was,
4 if it was for a large frame, that's one thing. If it's
5 for aero derivative, that's a very low cost. So it's --
6 it's totally dependent on the type of machine being
7 referenced. And without that piece of information, that
8 number really is meaningless.

9 Q Do you -- well, I would suggest you have a look
10 at Exhibit 440 again. Do you still have that?

11 A You know, I didn't put the exhibit numbers on --
12 what is -- is that the FERC --

13 Q It's the FERC transcript.

14 A Okay. I've got it.

15 Q That number which Mr. Mills pointed out to you
16 appeared on page 572, line 10.

17 A Okay. I'm there.

18 Q All right. First of all, it's that 450 number,
19 is that in testimony connected with any particular type of
20 CTG?

21 A That number was specifically associated with the
22 Kinmundy and Pinckneyville CTGs, and it reflected an
23 additional year of depreciation from a prior number, \$471
24 a KW that we had filed.

25 Q All right. Back to my question now. Comparing

1 whatever number in the 450 range that might be discussed
2 here, what would the actual cost to AmerenUE of Peno Creek
3 -- why would the cost of Peno Creek be higher?

4 A Well, it's an apples and oranges comparison.
5 The \$450 number, you have a blend of large frame and aero
6 derivatives. And the \$550 number is 100 percent aero
7 derivatives.

8 Q And the differences you've already described
9 having to do with quick start capability and large frame
10 versus --

11 A Yes. That's true. The -- the differences have
12 been specified in my testimony as well as in the issues
13 discussed on page 31 of my testimony.

14 Q All right. And --

15 A Rebuttal testimony. I'm sorry.

16 Q Right. I'm sorry that first question took so
17 long. My second question is, in fact, it is true, is it
18 not, that all of the actual costs for Peno Creek were im
19 -- were approved by Staff for inclusion in rate base after
20 a detailed construction audit?

21 A That is true.

22 MR. POWELL: That's all I have.

23 JUDGE WOODRUFF: Thank you. Mr. Voytas, you can
24 step down.

25 MR. VOYTAS: Thank you.

1 JUDGE WOODRUFF: We have one more witness,
2 Mr. Kind. Do you have extensive cross on Mr. Kind or --

3 MR. POWELL: No.

4 JUDGE WOODRUFF: Let's finish this issue, then,
5 today.

6 MR. MILLS: Judge, Mr. Kind does have a
7 correction with respect to the Peno Creek testimony, the
8 one we talked about earlier where the schedule was -- was
9 not included in the file copy.

10 JUDGE WOODRUFF: Okay.

11 MR. MILLS: And I think just for -- for ease of
12 -- rather than try to staple it on, I'd like to just mark
13 it as a separate exhibit --

14 JUDGE WOODRUFF: That would be fine.

15 MR. MILLS: -- if that's all right.

16 JUDGE WOODRUFF: And, Mr. Kind, of course,
17 you've testified earlier today, so you're still under
18 oath.

19 MR. KIND: Right.

20 JUDGE WOODRUFF: Your number is up to 443. Is
21 this HC or P?

22 MR. KIND: P.

23 JUDGE WOODRUFF: P?

24 MR. MILLS: It's P. For example, if you look at
25 Mr. Kind's NP version of his surrebuttal testimony --

1 well, there it says Attachment 8 has been deemed highly
2 confidential in its entirety.

3 MR. KIND: Yeah.

4 MR. MILLS: But I think it -- it's actually
5 marked by AmerenUE as proprietary.

6 JUDGE WOODRUFF: Okay. And this was originally
7 an attachment -- or this should have been an attachment to
8 his surrebuttal?

9 MR. MILLS: Right. Exhibit 8 to his
10 surrebuttal. And it's -- it's No. 443; is that correct?

11 JUDGE WOODRUFF: 443-P.

12 MR. MILLS: 443-P.

13 MR. MILLS: Okay. And I'd like to offer that
14 into the record, please.

15 JUDGE WOODRUFF: 443-P has been offered. Any
16 objections to its receipt? Hearing none, it will be
17 received into evidence.

18 (Exhibit No. 443-P was offered and admitted into
19 evidence.)

20 JUDGE WOODRUFF: All right. Does anybody wish
21 to cross-examine Mr. Kind? Ameren, then.

22 CROSS-EXAMINATION

23 BY MR. POWELL:

24 Q Very briefly, Mr. Kind, the only testimony you
25 filed in this case on the issue of Peno Creek is found at

1 pages 29 through 33 of your direct testimony and part of
2 page 28 of your surrebuttal; is that correct?

3 A Those pages in addition to the attachments, yes,
4 that's correct.

5 Q Yes. All right. You're sponsoring a -- an
6 adjusted price downward from the actual price, and the --
7 the price you are sponsoring is \$390 per kilowatt; is that
8 correct?

9 A Yes. That's correct.

10 Q And you got that number from AmerenUE's
11 application in PSC Case No. EA-200 -- I'm sorry. The year
12 2000-37; is that correct?

13 A Correct.

14 Q And that application related to the formation of
15 a generating company; is that correct?

16 A I think that's correct.

17 Q It was filed on July 21, 1999; is that correct?

18 A That sounds right.

19 Q And you yourself did not conduct an audit of the
20 construction records of Peno Creek, and you've never
21 visited it, correct?

22 A I'm not sure how you define an audit of the
23 construction records. I've received a much delayed DR
24 response just recently that -- that covers the -- the
25 status reports for the contract of Black & Veatch to work

1 on it.

2 Q And take did you undertake an audit of the type
3 that Staff did in this case?

4 A I'm not familiar with their construction audit,
5 so I can't answer.

6 Q So you don't know?

7 A I don't know.

8 Q Peno Creek went into operation in the summer of
9 2002 as far as you know?

10 A Yes. It became -- it went -- started commercial
11 operations on June 1st of 2002.

12 Q You admit, do you not, that it consists entirely
13 of aero derivative units? Or do you know?

14 A Yes. It does consist entirely of aero
15 derivative units, the Pratt & Whitney under the
16 circumstances that have been discussed earlier today.

17 MR. POWELL: That's all I have.

18 JUDGE WOODRUFF: All right. Questions from the
19 Bench, then. Commissioner Gaw?

20 CROSS-EXAMINATION

21 BY COMMISSIONER GAW:

22 Q Mr. Kind, is it your position that -- that the
23 issue with the Peno generation units is about the amount
24 that was paid in regard to the quick construction or that
25 it was -- there was a better solution to the issue or that

1 there was no issue to solve or something else?

2 A That's probably -- probably all of those things.

3 Q Okay. Well, let's -- let's break them down,
4 then, so I can understand.

5 A Okay.

6 Q First of all, in -- in regard to the
7 construction issue for the -- the -- the price that was
8 paid to put these units up and running --

9 A Uh-huh.

10 Q -- what is it that you believe the additional
11 cost was, first of all, in -- in doing that? Or just tell
12 me which exhibit to look at.

13 A Right. Well, some of it is related to what you
14 see in Exhibit 439-HC --

15 Q Okay.

16 A -- which describes the -- basically, the -- it
17 was only one type for one -- one type of unit that could
18 be installed in order to meet the June 1st, 2002, deadline
19 and rather expensive type of capacity of combustion
20 turbine capacity, aero derivative capacity.

21 Q Okay. And when you say type of unit, are you
22 talking -- what do you mean by that?

23 A I mean -- well, I'd go back to -- I mean, the --
24 the Pratt & Whitney FT-8s. And -- and that's -- I think
25 it's important to understand that the -- there's a lot to

1 do with actually the historical context of this particular
2 period in time, the -- the rush of merchant generators to
3 put in gas capacity, and, also, it's also related to, I
4 think, what was going on in terms of Ameren's ventures to
5 try and become a major player in the Midwest region in
6 terms of merchant generation and them reversing course to
7 some extent from that decision in the spring of 2001 when
8 their proposed Genco legislation failed at the Missouri
9 legislature.

10 And I go over that in my -- in my direct
11 testimony, that type of historical context, at least with
12 respect to -- with respect to the changes in the strategic
13 direction and business plans of -- of Ameren that were
14 taking place at that time.

15 Q Okay. First of all, in regard to -- to the
16 units in Pike County, are you saying that there were other
17 units that would have been more appropriate and more
18 reasonably priced as -- and I -- I'm not trying to limit
19 you. I'm just trying to understand the pieces here.

20 A Okay. I understand. That's a very important
21 part of the piece. And I would say, yes, there were other
22 limits. If -- if AmerenUE was doing -- doing a prudent
23 job of resource planning during that time period, they
24 would have had the flex -- they -- I mean, I have reviewed
25 extensively the resource planning documents from that time

1 period.

2 And for -- for a period of time in the late
3 '90s, they had CTs -- actually, I'm probably venturing
4 into HC material here. I shouldn't -- I mean, I don't
5 know if Ameren believes their resource plans in that
6 period were HC or not. But I -- I should be cautious.

7 MR. BYRNE: No.

8 Q (By Commissioner Gaw) Yeah. That's what I
9 thought from earlier. But -- go ahead, Mr. Kind.

10 A Thank you. Like I said, I've reviewed
11 extensively the resource planning documentation from that
12 period of time as was discussed earlier today. I've
13 rarely missed a single resource planning meeting with this
14 company.

15 And we've had updates at least every six months
16 that I've attended for, you know, quite a -- probably a
17 decade or so. And then we have additional meetings other
18 than that. And I've -- and I have gathered additional
19 documents through discovery to document what was going on
20 in that period of time.

21 Q Okay.

22 A I'll try to be brief here and get to the point.

23 Q That's what I'm looking for.

24 A The point is if they'd been doing prudent
25 resource planning and if they had not switched away from

1 this idea of instead of building any new generation within
2 UE, let's build for all in the Genco, then they could have
3 planned several years prior to this resource need. And I
4 think one of the most remarkable things you'll see in my
5 testimony is the quote from one of their senior vice
6 presidents, Paul Agathan (ph.), in May of 2001 when they
7 were making a final push to get the Genco legislation
8 passed.

9 He asserts that AmerenUE nor any other IOU in
10 Missouri has any plans to build generation capacity. It
11 was almost a threat at that time. And then we see one
12 month later suddenly when the Genco legislation fails, all
13 of a sudden they need to rush and -- and start doing
14 resource planning again at UE.

15 Q This was in what year?

16 A 2001.

17 Q You -- you're raising a whole series of things
18 here, and I really -- I really want to take them one at a
19 time if you wouldn't mind. I'm still wanting to -- to
20 make sure I'm following you in regard to -- let's -- let's
21 -- for now, let's cash out the historical portion for me.
22 Take -- take that out of the picture for the moment.

23 A Okay. All right.

24 Q And just look at that point in time in 2001 and
25 tell me if there was another option if we -- I'm going to

1 get to that other area in a minute -- if there was another
2 option at that time frame that was better as far as units
3 were concerned, what type of units were better than the
4 ones that they actually put in Pike County.

5 A At that period of time, I don't believe they had
6 -- they were pretty much stuck with that as the sole
7 option given that you decided, you know, just less than a
8 year in advance of needing the resource. I don't -- I --
9 I'm not aware that they had any other options.

10 Q Okay. Now I'm going to expand this a little bit
11 for you.

12 A Okay.

13 Q Let's assume that they had more time.

14 A Uh-huh.

15 Q And, again, I'm -- I'm going to incrementally
16 expand this, so bear with me. When you -- when they -- if
17 they had had more time and we -- and we assume that it was
18 prudent to build, okay, instead of doing something else,
19 and we're assuming that they need it, okay, all of those
20 assumptions.

21 A Uh-huh.

22 Q If -- was there a better type of unit if they'd
23 had more time or units than the ones that were put in?

24 A I believe so.

25 Q Okay. What -- tell me what you -- what kind of

1 units were better.

2 A Those would have been large frame combustion
3 turbine units. And part of the reason I say that they --
4 those would have been appropriate for at least a portion
5 of this approximately 250 -- 200 megawatts is that they
6 already had plans to put in a -- an aero derivative at the
7 Venice site in the summer of 2002 that would take care of
8 some of these load flowing issues that were discussed
9 earlier by Mr. Voytas.

10 Q Okay. All right. And -- and why do you say
11 that having large frame or a large frame or more than one
12 large frame combustion turbine was a better alternative
13 than what they put in?

14 A I say they were a better alternative just
15 because they have a lower cost per KW. And because if you
16 plan several years ahead, even though it was a very tight
17 market for CTs at that time, you could get in the cue in
18 order to get them if you planned far enough ahead.

19 Q Okay. Now, and when you say lower cost per KW,
20 are you talking about operational costs or construction
21 costs or both?

22 A I am primarily talking about the construction
23 costs, the capital costs because that's really the main
24 costs associated with peaking facilities. You don't plan
25 to operate them many hours of the year.

1 Q Okay. And -- and what is your belief in regard
2 to what they -- the costs would have been for -- for the
3 appropriate generation there in substitute for what --
4 what they actually build?

5 A My belief is -- and it's -- this is exhibit --
6 the exhibit that Mr. -- Mr. Mills just discussed which was
7 the attachment that was inadvertently omitted from my
8 direct testimony which is now Exhibit 443, which -- which
9 basically gives -- it has a letter from one of the senior
10 generation people at Ameren, Fred Pope. And I guess -- I
11 -- this is proprietary at this point.

12 JUDGE WOODRUFF: Should we go into in-camera?

13 COMMISSIONER GAW: You know, if it's in there, I
14 can refer to it, Judge. I'm trying to save time, although
15 I don't appear to be doing that.

16 A If I could just generalize about the time of
17 CTGs that he evaluated?

18 MR. BYRNE: That would be fine.

19 A Okay. He evaluated -- basically, at that point
20 in time, as of August 26th 1999, he evaluated the cost at
21 that point in time of large frame combustion turbine units
22 for UE to build based -- based on his actual experience.

23 Q (By Commissioner Gaw) Now, is this -- is this
24 equal in capacity to the -- to the units that were -- were
25 constructed?

1 A Those units -- they come in different sizes.
2 But there is one size listed here that's -- that's 103
3 megawatts. So you could put in two of those and you've
4 got about the same or you could put in one of those, and
5 if you really felt you needed some additional, you know,
6 load flowing capability, basically, you can -- you can
7 come up with combinations of CTs to get roughly what you
8 want.

9 And there really isn't a problem if you're a
10 little bit -- as long as you have enough. If you go a
11 little bit over, you're going to grow into it shortly.

12 Q Okay. Now, in regard to -- are you familiar
13 with Ameren's need in regard to short-term reserves during
14 this time frame? Are you familiar with that? Are you --
15 do you -- do you know where they were in regard to -- to
16 capability?

17 A I know that it can be advantageous to have
18 facilities for load flowing. And that's why I pointed out
19 they have the one addition -- they had plans for the
20 additional unit going in at -- at the Venice site, which
21 did get installed.

22 Q How many megawatts was that?

23 A Forty-eight megawatts.

24 Q Now, at that point in time, how many quick start
25 generators did Ameren own?

1 A Well, part of the way I answer that question --
2 you were asking very interesting questions about --
3 earlier about how all this stuff is evaluated today and
4 everything. And -- and there -- Ameren made a filing
5 recently at -- at FERC that -- that sort of gets into this
6 area. I don't know that I can find it right now.

7 But, basically, they offered to sell spending
8 reserves to, I think, their affiliate utilities in
9 Illinois because, at this point in time, they've got
10 excess, and they offered to sell spending reserves
11 specifically from the Peno Creek units.

12 So that, I -- I can't tell you that they were
13 all -- that a hundred percent of that was excess at the
14 time. I can tell you based on looking at their FERC
15 filing, they've got more than they need today.

16 Q But that's with the addition of those units,
17 right?

18 A That's -- that's correct.

19 Q What I'm looking for is what they needed at that
20 point in time in -- if you know, in regard to -- to the --
21 these three short-term areas, regulation, spending and
22 quick start. And you're telling me you really -- you have
23 not evaluated that?

24 A Well, I have done an extensive review of the
25 resource planning documents from that era. I never saw

1 any mention in them of an urgent need for additional load
2 following capability.

3 Q Okay. Now, if I understood Mr. Voytas
4 correctly, he -- he was testifying that the change in
5 their ability to do -- to do load following was, if I
6 understand it right, an economic decision in regard to --
7 to the ability -- to -- to making a choice about
8 economically it was more advantageous for them to be able
9 to sell more of their coal generation into the markets or
10 into the bilateral markets that existed at that time.

11 Q Do you have any additional information on -- on
12 that, whether or not it was an economic decision or
13 whether it was an -- a reliability decision and need that
14 -- that caused the addition or the -- or the argument that
15 these CTs needed to be added to the generation fleet of
16 AmerenUE?

17 A I don't think I have anything to add on that
18 issue. No.

19 Q Now, you're making the argument, as I understood
20 it, to -- you say earlier that there was -- that there was
21 some effort or some decision made to hold acquiring or
22 building new generation during a certain time frame
23 because of the thought that there would be some change in
24 -- in the regulatory environment in Missouri from a
25 legislative standpoint; is that -- is that general

1 correct?

2 A That's correct.

3 Q What time frame are you talking about that that
4 -- that that was occurring in?

5 A That occurred over an extended period of time,
6 beginning in, roughly, I would say, 1997, when we started
7 seeing the initiatives that were being pushed largely by
8 Ameren for retail deregulation in Missouri.

9 That evolved into -- when that failed partly
10 because of the whole Enron thing and everything, it -- in
11 my mind, Ameren made one last attempt at deregulation, and
12 that was their Genco bill in 2001, which was not -- well,
13 it was -- it was direct retail access for large customers.

14 It was limited direct access for large
15 customers, and it also involved the -- giving utilities
16 the option and taking all oversight away from this
17 Commission for the transfer of their generation assets to
18 unregulated affiliates.

19 Q Mr. Kind, how long have you been with Public
20 Counsel's office?

21 A I have been with Public Counsel's office since
22 1991.

23 Q I don't suppose that you have any -- any idea
24 about what the position was of the -- of the Governor of
25 the State during the -- during the '90s in regard to this

1 issue?

2 A I -- I was involved extensively in, you know,
3 legislative discussions for most of that time.

4 Q Do you know what his position was, if you would
5 tell me specifically? If you don't, that's fine.

6 A The specific Governor that you have in mind --

7 Q Well, you said between 1997 and 2000. Let's put
8 that -- put that into context.

9 A Okay.

10 Q Do you know?

11 A Frankly, as a State employee, I should know who
12 the Governor was in that period of time.

13 Q Mel Carnahan. Try that.

14 A Carnahan. I had never known him to -- to openly
15 support any kind of deregulation for electric utilities.

16 Q But you don't know the answer one way or the
17 other?

18 A No. Not -- no. I can't read his mind in that
19 sense, no.

20 Q Well, you could -- you could have -- have known
21 something if he had made some statements about it. I'm
22 asking that.

23 A That's right. No. I -- I'm not aware of any
24 statements that were made by Governor Carnahan.

25 Q All right. And you don't know the position of

1 legislative leadership at that time frame on that issue,
2 do you?

3 A Oh, I'm -- I'm pretty familiar with a lot of
4 those positions actually, yes. I mean, for instance, the
5 -- I mean, I -- there were certain legislators that were
6 sponsors in the Genco legislation. There were certain
7 legislators like Senator Good who were, you know,
8 vigorously opposing it.

9 There were certain other people who seemed to be
10 sort of in the middle like Senator Steelman who was
11 really, I think, trying to give it a fair hearing on both
12 sides.

13 Q That must have been in 2001.

14 A It was because I recall a meeting in her office
15 in the spring of 2001 that I attended.

16 COMMISSIONER GAW: Uh-huh. Okay. I think
17 that's all I have, Judge. Thank you.

18 JUDGE WOODRUFF: All right. Thank you. Any
19 recross based on the questions from the Bench? Any
20 redirect?

21 MR. MILLS: No, thank you.

22 JUDGE WOODRUFF: All right. While we have
23 Mr. Kind up there, let's run him through on the Metro East
24 transfer issue, also. I believe the parties indicated
25 there would be no cross from the parties on that?

1 MR. BYRNE: That's correct.

2 JUDGE WOODRUFF: Commissioner Gaw, did you have
3 any questions on Metro East?

4 CROSS-EXAMINATION

5 BY COMMISSIONER GAW:

6 Q You know, it would be just very briefly,
7 Mr. Kind, helpful to me, Mr. Kind, if I understood what
8 this issue is from Public Counsel's standpoint.

9 A I will try to be brief.

10 Q Please, just very brief.

11 A Basically, I was involved in the -- in the Metro
12 East transfer case. I was aware of the conditions that
13 the Commission imposed on approval of that transaction.
14 And I was aware that a lot of those conditions involved
15 that if Ameren wanted to recover certain costs in a rate
16 case, they needed to come and make an affirmative showing
17 to this Commission that, in fact, the savings from the
18 Metro East transfer exceeded the level of costs they were
19 trying to recover.

20 So my -- my initial start on this issue was
21 through discovery, I said, since there was nothing in the
22 company's direct testimony that addressed this issue, I
23 thought, well, should I presume they're not trying to
24 cover it -- recover any costs associated with the Metro
25 East transfer where the conditions were imposed? And I

1 thought, well, no, I'll do some discovery.

2 And through discovery, I found out that there
3 was about this \$137,000 that they were trying to recover
4 that they pursued to the conditions in the Metro East
5 transfer they could not recover unless they made an
6 affirmative showing to this Commission that the benefits
7 of that transfer exceeded the -- the level of cost that
8 they were trying to recover.

9 Now, I interpret that as being the net benefits
10 of the transfer when I refer to benefits. So I wrote
11 direct testimony that basically stated they're trying to
12 recover this category of costs and this category of costs,
13 and they've got no direct testimony addressing the
14 conditions in the Metro East transfer.

15 And then -- then there was some response from
16 that from one of UE's witnesses, Mr. Weiss. And I was not
17 at all satisfied that his response met the purpose that
18 the Commission had specified for recovery of these costs
19 in the Metro East transfer order, so I pointed that out in
20 my surrebuttal testimony.

21 Q Okay. And the -- the categories that you're
22 referring to are what?

23 A Mostly has to do with -- I think they're
24 categorized as environmental liability. And, basically,
25 there's a couple named categories of cost. One of them is

1 -- has already been mentioned here today. It's the
2 asbestos costs, asbestos lawsuits, you know, from workers
3 who formerly worked in -- in UE generating plants. And
4 the idea --

5 Q Yes.

6 A -- the idea was that, well, UE formerly was
7 responsible for just 94 percent of those costs prior to
8 the transfer. Now there's another 6 percent --

9 Q Right.

10 A -- under savings in the transfer to justify
11 that. There's another category of costs. I'm not sure if
12 that's confidential or not off the top of my head.

13 MR. BYRNE: I don't know.

14 A And that's a smaller category. I mean, there's
15 actually two other categories. But there's one other
16 that's more than just a few dollars. But -- but the main
17 one is the -- is asbestos. And, frankly, I -- one of the
18 things I hoped to get out of this case was for the
19 Commission to say, one -- you either say Ameren, you know,
20 you haven't proved your case and hopefully to set up, you
21 know -- put Ameren on notice that when they come in in a
22 rate case next time, they better try and support this
23 stuff in their direct testimony if they're including the
24 cost of -- in their case that they want to recover from
25 ratepayers.

1 Q (By Commissioner Gaw) So in this -- in this
2 case, the issue is not a high dollar issue in comparison
3 with some other issues, correct?

4 A That's correct.

5 Q So what you're trying to -- what Public Counsel
6 is suggesting is to the Commission, you need to -- you
7 need to make this -- this clear at this point in time
8 because -- because -- do you believe it could become a
9 more expensive issue down the road?

10 A I certainly do. I certainly do.

11 COMMISSIONER GAW: Okay. That's -- I think
12 that's all I have on this. Thank you, Judge.

13 JUDGE WOODRUFF: All right. Any recross based
14 on questions from the Bench?

15 MR. BYRNE: No, thank you.

16 JUDGE WOODRUFF: Any redirect?

17 MR. MILLS: No.

18 JUDGE WOODRUFF: All right. Mr. Kind, you can
19 step down. And I believe that will end the testimony for
20 tonight.

21 MR. BYRNE: Your Honor, I noticed that I forgot
22 to offer Mr. Moehn's testimony, and that was his last
23 appearance. So I -- if it's okay with you, I would like
24 to offer, looks like, Exhibit 35-HC and NP, Exhibit 36 and
25 Exhibit 37-HC and NP.

1 JUDGE WOODRUFF: All right. Exhibits 35, 36 and
2 37 have been offered. Is there any objection to its
3 receipt? Hearing none, they will be received into
4 evidence.

5 (Exhibit Nos. 35, 36 and 37 were offered and
6 admitted into evidence.)

7 JUDGE WOODRUFF: Anything else anyone wants to
8 bring up while we're still on the record?

9 MR. MILLS: No.

10 JUDGE WOODRUFF: All right. I did want to make
11 a mention of a couple of things of parties who aren't
12 here. Noranda had indicated they did not want -- they
13 asked whether we needed to speak with -- if the
14 Commissioners had any questions for Mr. Baker, Cooper and
15 McPheeters. And I believe I've talked with all the
16 Commissioners now, and they do not have questions for
17 them.

18 A similar request was filed by MIEC regarding
19 Hinkley, Owen and Conjander (ph.). And I have not heard
20 from all the parties -- or from all the Commissioners on
21 that one yet, although I expect it will probably have the
22 same result.

23 So if you speak to the attorneys for those
24 parties over the weekend, you might let them know that
25 result.

1 Anything else we need to do before we adjourn?

2 It's been a long week. Go enjoy the weekend if you can.

3 We're adjourned until 8:30 tomorrow morning. Excuse me.

4 8:30 Monday morning.

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11	60-HC	Rebuttal Testimony of Richard Voytas	NOT ADMITTED	
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17	(Original exhibits retained by the Public Service Commission.)			
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