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 1   STATE OF MISSOURI

 2   PUBLIC SERVICE COMMISSION

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 6   TRANSCRIPT OF PROCEEDINGS

 7   Evidentiary Hearing

 8   October 1, 2012

 9   Jefferson City, Missouri

                    Volume 19

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12   In the Matter of Union Electric   )
     Company d/b/a Ameren Missouri's   )
13   Tariffs to Increase Its Annual   ) File No. ER-2012-0166
     Revenues for Electric Service   )

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17   MORRIS L. WOODRUFF, Presiding,

                  CHIEF REGULATORY LAW JUDGE.

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              TERRY M. JARRETT,

20   ROBERT S. KENNEY,

              STEPHEN M. STOLL,

21   COMMISSIONERS.

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

2   (WHEREUPON, the hearing began at 8:30 a.m.)

3   JUDGE WOODRUFF: Good morning, everyone.

4   We're back for day three of the Ameren rate case hearing.

5   Today we'll be taking up plant in service accounting. Any

6   matters we want to take up before we get started with

7   opening statements?

8   All right. Plant in service accounting,

9   then, we'll begin with Ameren Missouri's opening.

10   MR. BYRNE: May it please the Commission?

11   Plant in service accounting is the most significant

12   enhancement to the regulatory framework that we are

13   seeking in this case. I thought I might take a few

14   moments this morning to try to explain a little more

15   thoroughly exactly what the problem is that we are facing

16   and why we believe that the adoption of plant in service

17   accounting will help us solve it.

18   The chart that I passed out and that's on

19   ELMO illustrates the problem that electric utilities in

20   Missouri face when they invest money in capital projects.

21   The blue line on the left side of the chart reflects the

22   time when the plant is under construction. During that

23   time, although utilities don't recover any return on their

24   investment, they at least get to accrue a return on the

25   capital that's being invested in the form of the allowance

1   for funds used during construction, or AFUDC. AFUDC

2   reflects a cost of capital that is added to the cost of

3   the plant being installed, and then in the next rate case,

4   the AFUDC is added to the cost of the plant, the total

5   amount is included in rate base, and it's recovered over

6   the life of the plant, which is typically 30 or 40 years

7   or so, depending on what plant it is.

8   So during this period, the period of

9   construction when the plant is being constructed, the

10   company is being compensated for the cost of the capital

11   it is putting out through the accrual of AFUDC.

12   And, in addition, since the plant is not

13   yet in service, the company is not incurring any

14   depreciation expense related to the plant. So from the

15   company's perspective, during the period the plant is

16   being constructed, the period covered by the first blue

17   line, everything is okay.

18   However, everything changes once the plant

19   goes into service, which is represented by the red line.

20   The accrual of AFUDC stops. So now the company, which has

21   the capital out that was used to construct the plant, is

22   not being compensated for the cost of the capital it's

23   committed, even though this is when the customers begin to

24   get the use of the item of plant for the first time.

25   Even worse, the company starts incurring

1   depreciation expense that is not recovered, and the

2   company cannot recover its capital cost or it's

3   depreciation expense until it files a rate case and months

4   or even maybe years after the plant goes into service, the

5   Commission allows it to implement new rates.

6   And the money that the company loses during

7   the red period in the months or years between when an item

8   of plant goes into service and when rates are put into

9   effect can never be recovered. It's not just a delay in

10   recovering these costs as the term regulatory lag would

11   suggest. They're gone forever.

12   In other words, the way it works now, the

13   utility never recovers the full cost of its investment in

14   plant. Other costs and revenues can go up or down, you

15   can have favorable weather, unfavorable weather, but this

16   is a persistent failure to recover our costs which occurs

17   every day we are in business for every dollar we invest.

18   We can never recover the cost of those investments.

19   How big of a problem is this? It's a

20   really big problem. Ameren Missouri controller Lynn

21   Barnes has calculated that from the true-up date in the

22   last rate case until the effective dates of rates in this

23   case, assuming it's January 2nd, which is the operation of

24   law date, Ameren Missouri will have lost $37.6 million of

25   unrecovered in return and depreciation associated with

1    $637 million of plant additions that would have qualified

2   for plant in service accounting had it been in effect, and

3   recovery of 370-- or $37.6 million in costs that fell

4   through the cracks of the regulatory process would move

5   our earnings significantly closer to our authorized return

6   on the charts that you have seen. It's a significant

7   contributor to the shortfall of earnings below our

8   authorized return.

9   And the magnitude of this problem depends

10   on the magnitude of investment. The more a utility

11   invests in poles and wires and transformers and

12   substations and generating facilities, the more its

13   earnings are adversely affected by the red period on the

14   chart.

15   And what reaction do utilities have to

16   these chronic losses that come with every incremental

17   investment they make? Utility managers say two things.

18   First, what is the very least amount of money that I can

19   invest in my system so I can minimize these losses yet

20   still satisfy my obligation to provide safe and adequate

21   service? Second, how quickly can I file another rate case

22   to stop the bleeding in the red period? How quickly can I

23   stop this from continuing?

24   The current situation provides utilities

25   with a strong financial disincentive to invest in their

 1   systems and a strong financial incentive to file rate case

 2   after rate case after rate case, which you are seeing

 3   today, not just with Ameren Missouri but with other

 4   utilities. And it also produces a situation where

 5   utilities have no reasonable chance to earn their

 6   authorized return if they invest significantly in their

 7   infrastructure.

 8   You might be asking yourself, why is this a

 9   problem now? Why hasn't it come up in the past hundred

10   years or so of public utility regulation? And I think the

11   answer to that question was provided in Mr. Baxter's

12   testimony at the beginning of this hearing.

13   In the past, offsetting this systematic

14   under-recovery of costs associated with capital projects,

15   electric utilities experienced systematic support for

16   earnings from steady growth in usage year after year, from

17   the early part of the 20th century when electric

18   appliances first came into widespread use to the 1950s and

19   '60s and '70s when growth in population, movement to the

20   suburbs and the installation of air conditioning were the

21   drivers to the '80s and '90s when the widespread use of

22   computers and big screen TVs created the growth.

23   But now things have changed. The new

24   paradigm which we are facing is that there is no growth in

25   electric usage now, and there isn't likely to be any in

1 the foreseeable future. Our construction projects and

2 plant additions are not to serve new customers. They are

3 mostly to install environmental controls and replace plant

4 that is already serving existing customers when it reaches

5 the end of its life. In short, there's nothing to offset

6 this systematic under-recovery of costs.

7   As Mr. Baxter testified, in asking you to

8 adopt plant in service accounting, we are asking you to

9 look a little bit outside the box for a solution, but it's

10 only a little bit outside the box. Plant in service

11 accounting is not much different from construction

12 accounting that this Commission has used to address this

13 very same problem for large capital projects such as

14 Callaway nuclear plant or, more recently, the installation

15 of the Sioux scrubbers or the Iatan plant for Kansas City

16 Power & Light Company.

17   Our position is that the problem is the

18 same for $600 million of investment in small projects as

19 it is for $600 million of investment in one big project.

20 The logic supporting construction accounting is the same

21 whether it's one big project or a bunch of little

22 projects.

23   Plant in service accounting will help

24 address our chronic inability to earn our authorized

25 return, it will remove the disincentive to invest in our

 1   system that currently exists, and it will help reduce the

 2   number of cases being filed by electric utilities in this

 3   state. It is a measure that will benefit the company and

 4   its customers over the long run, and it should be adopted.

 5   The Staff and MIEC raise several objections

 6   to the company's proposal which do not withstand scrutiny.

 7   First, they object because they argue that plant in

 8   service accounting is single-issue ratemaking. Of course

 9   that is not true. Under the company's proposal, rates

10   will only be adjusted in the next rate case when all

11   relevant factors can be considered.

12   Plant in service accounting does permit the

13   accrual of the cost of newly installed plant until that

14   rate case can take place, but that's really no different

15   than accrual of AFUDC, which already occurs for every

16   capital project. It is just a more accurate method of

17   accruing the cost of newly installed plant than is used

18   today.

19   Staff and MIEC also argue that the new

20   plant additions might reduce O&M expenses or lead to more

21   efficient operation of Ameren Missouri's system. They

22   have provided no evidence to support their speculative

23   testimony on this point. Ameren Missouri witness Barnes

24   has testified that due to the age of our system, O&M costs

25   are likely to increase even if plant in service accounting

1   is adopted. And to the extent our investments in plant

2   are for new environmental controls that never existed

3   before, like, for example, the recently installed Sioux

4   scrubbers, our O&M plants -- our O&M costs associated with

5   these new additions will obviously increase.

6   Next, Staff and MIEC argue that the

7   adoption of plant in service accounting will diminish the

8   incentive of management to control costs. Allowing Ameren

9   Missouri to simply recover the cost of its capital

10 investment would not provide management with a perverse

11 incentive. On the other hand, the current framework in

12 which Ameren Missouri and other electric utilities are

13 systematically deprived of any opportunity to recover the

14 full cost of capital projects provides a very perverse and

15 inappropriate disincentive to invest.

16   Moreover, the Commission, of course,

17 retains its right to review all of Ameren Missouri's

18 investments and disallow any costs that you determine to

19 be imprudent. Plant in service accounting would not

20 change that at all.

21   Finally, the Staff and MIEC argue that if

22 plant in service accounting is adopted, customers should

23 get credit for accumulated deferred income taxes, or ADIT.

24 However, we believe such an adjustment is inappropriate

25 for the same reason it's inappropriate with regard to

 1   CWIP, which will be discussed later on today in the income

 2   tax portion of the case.

 3   If plant in service accounting is adopted,

 4   the deferrals will have no impact on today's customers.

 5   It will simply be deferrals that will affect rates later

 6   on. As a consequence, today's customers should not get

 7   the benefit of favorable tax treatment of ADIT until the

 8   next rate case when the costs of the plant associated with

 9   the ADIT is included in rate base, and then at that point

10   they should get -- they should get credit for the ADIT.

11   Staff and MIEC's objections to plant in

12   service accounting are without merit and should be

13   rejected. The Commission should adopt plant in service

14   accounting in this case to remove the disincentive to

15   invest which currently exists to afford the company a

16   realistic opportunity to recover the full cost of its

17   capital investment and to limit the number of rate cases

18   which must be filed.

19   Thank you.

20   JUDGE WOODRUFF: Any questions?

21   COMMISSIONER KENNEY: One quick one. Just

22   the plant in service accounting proposal, put another way,

23   allows for recovery of the cost of capital after the AFUDC

24   period ends?

25   MR. BYRNE: Right. When the plant goes in

 1   service, AFUDC stops, and our proposal would continue to

 2   allow the recovery of cost of capital.

 3   COMMISSIONER KENNEY: So that component is

 4   identical to what we're doing now with AFUDC accounting?

 5   MR. BYRNE: Our -- our proposal is to use

 6   the return, the last return approved by the Commission,

 7   which is a different return than the AFUDC, but the

 8   principle is the same.

 9   COMMISSIONER KENNEY: What is the return

10   rate of AFUDC versus plant in service accounting?

11   MR. BYRNE: You know, I don't know.

12   Ms. Barnes is up there, and I think she knows the answer

13   to that. It is a combination of debt and equity, but I

14   believe it's a slightly lower return for AFUDC.

15   COMMISSIONER KENNEY: So then the PISA adds

16   to that, though, the recovery of depreciation expense?

17   MR. BYRNE: Right. There is no

18   depreciation expense until it goes into service.

19   COMMISSIONER KENNEY: Okay. And then I'll

20   reserve the rest of my questions for Ms. Barnes. Thank

21   you.

22   CHAIRMAN GUNN: I actually have a quick

23   one. It may be more appropriate to wait for Ms. Barnes,

24   too. There was mention about how this propose -- the

25   plant in service accounting is used in some other states

1   but not in the particular way that it's being proposed by

2   the company here. And I don't know if you have that

3   answer or would say how is this different or what is

4   unique about what your proposal is compared to how plant

5   in service has been used in other places?

6   MR. BYRNE: I think there are some other

7   states that have used similar things to plant in service

8   accounting. We cited, I think there was a South Carolina

9   case and there was one other state's case that were cited

10 in Mr. Reed's testimony.

11   I don't think it's exactly like plant -- in

12 either case it's exactly like plant in service accounting

13 that we're proposing here. I think the South Carolina

14 case was specific to projects kind of similar to

15 construction accounting, and I think the other case it

16 was -- it was investment program. So it was multiple

17 projects in a program that were given this kind of

18 treatment.

19   I do think, though, when you look at other

20 states, there are other ways to solve this problem, and

21 other states have taken measures to solve this problem.

22 For example, if you use a projected test year, which I

23 don't think lawfully can be done in Missouri given

24 Proposition 1, a lot of states do that. If you use a

25 projected test year, then the gap is closed, or if you use

 1 formula rates, the gap is closed.

 2   CHAIRMAN GUNN: Right. This is really a

 3 substitute for CWIP formula rates --

 4   MR. BYRNE: Right.

 5   CHAIRMAN GUNN: -- future test year?

 6   MR. BYRNE: That's right. There are a

 7 bunch of different ways this gap can be closed, but we --

 8 and some are available to Missouri but some are not

 9 because of the statutes.

10   CHAIRMAN GUNN: So in the current form that

11 you're proposing, you don't know of any other states that

12 would treat it exactly the way you're treating it? I

13 understand there might be analogous situations, but --

14   MR. BYRNE: I don't think -- I don't know

15 of any state as I stand here that has exactly this, but

16 it's pretty analogous. I mean, it's analogous in that

17 it's being done for a specific project or a group of

18 specific projects in other states.

19   CHAIRMAN GUNN: Thanks, Tom.

20   JUDGE WOODRUFF: Thank you. Opening for

21 Staff.

22   MR. THOMPSON: May it please the

23 Commission?

24   Plant in service accounting is a symptom of

25 a bigger process that's going on here. That process is

 1   simply this: Ameren Missouri is a mature company in a

 2   mature industry in a mature service area. During the time

 3   they were building out infrastructure to serve new

 4   developments, new homes, new customers, they made money

 5   hand over fist. There was a period when they did not come

 6   in for a rate increase for 20 or 25 years.

 7   Now they're coming in every year, every

 8   year and a half, and the reason is because the world has

 9   changed. The world has changed. They're not adding

10   customers. They're not building out wires to new

11   subdivisions. They're not bringing in new customers.

12   They're not making that money hand over fist that they did

13   during the build-out, during the youth of this company.

14   The youth is over. This company has grown up. This

15   company has grown up.

16   And so they are now looking for ways to

17   make more money. Could it be that their expectations are

18   wrong? Could it be that they expect to earn the kind of

19   return, the kind of cash flows that they had during the

20   build-out that they just can't have now? It's not

21   sustainable because they're not adding customers, they're

22   not churning up new business the way they were during the

23   youth of the company when the company was young and

24   growing. That's gone. That's finished. It's over.

25   Expectations have to change.

 1   What does life with a mature company look

 2   like? What does that look like? Because that's where we

 3   are. And when they come in here and they bring experts

 4   from New York to tell you that you're not doing regulation

 5   right, no, that's wrong. You're doing regulation the same

 6   way Missouri has done regulation since 1913 when this

 7   Commission was established, and for years, for generations

 8   that regulation was fine. There were no complaints. They

 9   made plenty of money. In fact, they made so much money

10   they had to return some to the ratepayers.

11   You've heard talk about the experimental

12   alternative regulatory plan that they had where money went

13   back to ratepayers. You've heard about the overearnings

14   complaint that Staff filed in 2002 that resulted in money

15   going back to ratepayers. That's because they were making

16   too much money. It was because the company was young, the

17   company was building out, the company was raking in cash

18   as a result of adding customers, adding lots of customers

19   every year. That is over. It's not going to happen.

20   So now you have to ask yourself, what does

21   life with a grown-up electric company look like?

22   What does it look like? What are realistic, fair,

23   sustainable returns and cash flows for a mature, grown-up

24   company? In fact, this is something we're facing with the

25   nation, isn't it? It's a bigger question than just

 1   Missouri and this utility company. It's really kind a

 2   national question.

 3   But this tiny slice of it that you're

 4   dealing with, that's your question. What's life going to

 5   look like for a mature company? Because they're right in

 6   the -- they are going to be constantly making investments

 7   in infrastructure to replace things that are worn out.

 8   They have to to continue to provide safe and adequate

 9   service. Well, that's what life is going to be. That's

10   how it's going to be for the foreseeable future. So what

11   is that life going to look like?

12   Staff opposes plant in service accounting

13   for really one reason. One reason. It will improve the

14   financial performance of this company, but there is no

15   proposal to reduce the return on equity to reflect the

16   reduction in shareholder risk. There is no proposal to

17   reduce return on equity to reflect that reduction in risk.

18   But I think this is all part of that bigger

19   question, what does life look like for a mature company?

20   What are the realistic and sustainable level of returns

21   and cash flows? Thank you.

22   JUDGE WOODRUFF: Questions?

23   CHAIRMAN GUNN: Kevin, I actually have a

24   couple questions.

25   MR. THOMPSON: Yes, sir.

1   CHAIRMAN GUNN: Does Staff have a pro-- if

2   the Commission were to grant plant in service accounting,

3   does Staff have -- will Staff witnesses have a proposal

4   for what a commensurate reduction in ROE should be?

5   MR. THOMPSON: We don't have one at this

6   time, but we'll certainly develop one.

7   CHAIRMAN GUNN: My second question is kind

8   of a more broader question, and it's kind of a policy

9   question. If the world has changed, why should we still

10 continue to regulate like it's still 1913? Isn't there

11 a -- isn't there a reason to now reevaluate some of our

12 structures and regulatory frameworks to make a

13 determination to see whether -- if an impact on rates is

14 minimal, shouldn't we at least take a look at the way

15 we're doing things now? Because if we don't, aren't we

16 going to be dealing with the same issue in the next rate

17 case, in the next rate case, in the next rate case, and

18 aren't the things -- the only thing we're left with in

19 order to try to fix this are rate increases.

20   That as you talk about, as you describe the

21 company as a mature company, since you don't have

22 expansion anymore, according to what you said, in order to

23 help support the financials of the company, isn't then the

24 only thing that you have to support it are rate increases?

25 It's a very broad question and I'm -- and I apologize for

 1   that, but it brings out -- your opening statement brought

 2   up an interesting point.

 3   MR. THOMPSON: Well, I think you're

 4   absolutely right, Mr. Chairman. I think the Commission

 5   does have to think about how do we regulate if the world

 6   has changed, what are the structures, what are the

 7   processes, what should it be? Because just as doing

 8   business has changed for the company, so doing regulation

 9   perhaps should change in response by the Commission.

10   Now, that's a big, big question, and I

11   don't have answers for you standing here today. I can

12   point to the problem, but I can't tell you what the

13   answers look like. What I can tell you is there's a lot

14   of people who are much smarter than I am that are very

15   invested in this issue and this process, and that perhaps

16   a working group docket to explore those questions might be

17   the way to go.

18   CHAIRMAN GUNN: Thanks, Kevin.

19   MR. THOMPSON: Thank you, sir. Any other

20   questions?

21   JUDGE WOODRUFF: Thank you. Public

22   Counsel?

23   MR. MILLS: Good morning. May it please

24   the Commission?

25   Public Counsel also opposes construction --

1   I'm sorry, not construction -- plant in service

2   accounting. I think the record will reflect, and I think

3   Mr. Byrne essentially conceded this this morning, plant in

4   service accounting is a made-up concept. You won't find

5   it in any textbook. You're not going to find it in any

6   journal. You're not going to find it in an article in

7   Public Utilities Fortnightly. You're not going to find

8   people talking about it on a panel at NARUC.

9   Moreover, you certainly would not have

10   heard this company talking about it in the 1980s, the

11   1900s, even the early 2000s. UE has created this concept

12   because we are in a part of the cycle where investments

13   are needed and investment is outpacing the ability of

14   depreciation to keep up currently right now, and that's

15   all it is.

16   I disagree with Mr. Thompson that we're in

17   sort of the dotage of this company. I don't think that we

18   can predict standing here today that the growth either by

19   usage or by customer will never again return. We've been

20   through a lot of cycles in the last hundred years of

21   regulation. I don't see any reason to believe that this

22   is any different, that we're at sort of the end stage of

23   this company or that we need to change regulation

24   dramatically to deal with something that more than likely

25   is simply another cycle.

1   So I think -- I think the youth age thing

2   is the wrong analogy. I think they're simply in a down

3   turn of a cycle. The cycles have been with us for a

4   hundred years of regulation. The regulatory process has

5   always learned to manage them. The companies have always

6   done well. There are times when they profit less than

7   other times. There are times, as Mr. Thompson said, where

8   they profit so much that they not only have to give some

9   back, they have to lower rates, they make refunds to

10   customers. That's part of the cycle.

11   Chairman Gunn, in your question to

12   Mr. Thompson, I don't think that at this point it's

13   regulation that needs to change. I think it's the company

14   that needs to change. At this point in the cycle, the

15   company is unfamiliar with having to deal with managing

16   its business without the crutch of growth to lean on.

17   When they've got growth just hand over

18   fist, as Mr. Thompson said, it's easy to run the company

19   without a close hand on the tiller. When things are

20   leaner, you have to pay a lot more attention to everyday

21   items. You have to work more efficiently. You have to

22   operate more efficiently.

23   And I don't think it's regulation that's

24   failing to do that. I think it's the company that's

25   failing to do that. And first and foremost, it's the

 1   company that has to run its business in a way commensurate

 2   with the income that it's got coming in.

 3   Mr. Byrne referred to the situation that

 4   they're in currently as chronic, and I think that's

 5   somewhat ironic because at best it dates back to about

 6   2007, and I don't think when you're talking about a

 7   hundred-year-old industry and a hundred-year-old company

 8   and a hundred-year-old process that you can talk about

 9   five years as a chronic condition. At best it's an

10   ephemeral condition. At this point, you know, we may find

11   out something different, but it certainly is not a chronic

12   condition that requires massive surgery at this point.

13   Really, this is just another gambit that UE

14   is floating, like interim rates before it, like the

15   process they proposed in the Legislature to shorten the

16   rate case, to try to get more money more quickly because

17   they're not getting the growth that they're accustomed to.

18   Rather than changing the way their company operates, they

19   want to change the paradigm under which they operate.

20   Now, you've heard in the opening statements

21   and you read in the testimony the analogy to construction

22   accounting. Plant in service accounting is not the same

23   as construction accounting. Construction accounting, at

24   least for the Sioux scrubbers and for most other projects,

25   it's an agreed-upon process that the parties agree to to

 1   deal with extraordinary items, and that's key. It's to

 2   deal with extraordinary items. It's to deal with big

 3   construction items.

 4   When you take a concept that's designed to

 5   account for extraordinary items and try to shoehorn the

 6   everyday expenses, the everyday investments into something

 7   like that, then you've greatly distorted the regulatory

 8   process. And it's really -- it's kind of an issue for my

 9   office because, you know, we try to do the right thing.

10   We will agree to construction accounting. We will agree

11   to a regulatory plan for KCPL because we think it's the

12   right thing to do, and then we end up getting all that

13   stuff thrown back in our faces and say, well, gosh, you

14   agreed to construction accounting for Sioux. Why can't we

15   have construction accounting for every line that we

16   replace every day?

17   Well, you can't because it's different.

18   You make exceptions to the regulatory process for

19   extraordinary items because they are extraordinary, but

20   that doesn't mean that you should leverage those

21   extraordinary exceptions into everyday costs of doing

22   business.

23   Thank you.

24   COMMISSIONER KENNEY: Can I ask a quick

25   question? I think I understand your last argument, and so

 1   it kind of undermines my question, but I'm going to ask it

 2   anyway. The plant in service accounting, separating out

 3   the aspect that allows the recovery of depreciation

 4   expense, which is the portion that allows them to recover

 5   their cost of capital, how is that radically different

 6   from AFUDC and are you -- is it your -- is that your

 7   argument, that it's not an extraordinary item, therefore

 8   we shouldn't be using it?

 9   MR. MILLS: Well, for one thing, AFUDC is

10   required by GAAP. It's not required that you as

11   regulatory treatment recognize it, but it's required by

12   GAAP. I think that's a difference between construction

13   accounting and the sort of everyday kinds of investment

14   that we're talking about here.

15   But I think that the big difference is, as

16   I said, that one is extraordinary and one is not. One is

17   you don't -- you don't learn to manage your business on a

18   daily basis, you know, the same way that you would when

19   you have a major construction project going on. It's a

20   different way of doing things and it happens once in a

21   while, once every few years, once every few decades from

22   time to time. They went a long, long time without any

23   major construction projects.

24   And so it's one thing to make exceptions

25   for those extraordinary items. It's another thing to say

 1 that we're just going to change the entire process to look

 2 like it's an extraordinary time when it's not.

 3   COMMISSIONER KENNEY: And that's -- I

 4 understand that argument. That makes sense.

 5   The other question I have, does the Office

 6 of Public Counsel have any -- this is similar to the

 7 question that Chairman Gunn asked -- any proposal or any

 8 thought about a concomitant reduction in ROE if we were to

 9 grant this?

10   MR. MILLS: No, although I will agree with

11 Mr. Byrne that this would be a huge change in the

12 regulatory process, and I think it would require a huge

13 change in requisite returns. As far as I know, no one in

14 this case has even taken a shot at calculating the

15 required reduction in return.

16   COMMISSIONER KENNEY: Okay. Thank you.

17   CHAIRMAN GUNN: Just to follow up,

18 Mr. Baxter said it would reduce the risk hardly at all, if

19 you remember the policy statements. But I'm still trying

20 to -- I'm not an accountant, and I don't have a

21 background, so I'm still trying to figure out some the

22 mechanics

23   MR. MILLS: Neither am I, but I will try to

24 blindly lead you through it.

25   CHAIRMAN GUNN: But I have a sense this is

1   kind of like a giant AAO where you are allowing -- you're

2   taking all these -- you're bundling all these construction

3   projects together, creating kind of a giant AAO over it

4   and allowing them to accrue on that as they're segregating

5   that out, where typically what we do is we don't bundle

6   them altogether and we separate those out in slices and we

7   deal with the slices on an everyday basis, and then if any

8   individual slice is either too big to deal with it or it's

9   unusual because Joplin or something else happens, then

10 we -- then we say, okay, for this particular slice we're

11 going to either do an AAO or construction accounting or

12 something else to treat it differently. Is that your --

13 is that a non-accountant lawyer -- am I on the right

14 track?

15   MR. MILLS: Yeah. It is sort of an

16 accumulation and deferral kind of thing. But as you

17 recall from all the AAO cases, one of the -- you know, the

18 companies always have to try to shoehorn whatever they're

19 asking for an AAO for into the extraordinary basket. They

20 have to first convince you that it's extraordinary before

21 they can even ask to get it deferred, and that's -- that's

22 what I was talking to Commissioner Kenney about.

23   These are not extraordinary. This is the

24 everyday cost of doing business, and they want to treat it

25 somehow equivalent to what extraordinary items are

1 treated.

2   CHAIRMAN GUNN: And that's part of why I

3 asked the question, because I think that if in concept I

4 was correct, then it creates a threshold question exactly

5 to -- or it may create a threshold question exactly to

6 your point, that are these projects of such a nature that

7 they deserve to be treated differently than we've been

8 treating them in the normal everyday course of business

9 for however long we've been doing it.

10   MR. MILLS: Right. And I think that's --

11 that's a great first question to ask.

12   CHAIRMAN GUNN: And I also -- I also get

13 your point about sometimes five years or less may not an

14 end of -- or maturity make. Put it that way. Thanks. I

15 don't have anything further.

16   JUDGE WOODRUFF: Okay. Thank you. MIEC.

17   MR. DOWNEY: Good morning. May it please

18 the Commission? My name is Ed Downey. I represent the

19 MIEC.

20   This morning we address Ameren's proposal

21 for an extraordinary change to its ratemaking approach in

22 the form of plant in service accounting. Mr. Byrne

23 referred to this as a significant enhancement of revenue,

24 which it is. All other parties who have weighed in on

25 this issue oppose it.

1   The proposal is premised on Ameren's claim

2   of excessive regulatory lag. Ameren points to prior

3   periods when for various reasons it has failed to fully

4   earn its authorized return on equity. That is why the

5   issue addressed today is so closely linked to the

6   testimony you heard on Thursday regarding policy.

7   As was demonstrated on Thursday and

8   contrary to Ameren's claims, the Missouri regulatory

9   machine is not broken, and you will hear more on this

10   later when Mr. Gorman's testimony is introduced. He was a

11   witness on Thursday. He's a witness today.

12   Unfortunately, he's not going to show up until Friday. So

13   we haven't heard his testimony yet. You probably read the

14   prefiled testimony.

15   Ameren seeks to focus on its earned level

16   of return since 2007 while ignoring the generous returns

17   it earned for over a decade prior to 2007. Ameren also

18   would like you to ignore the fact that its most recent

19   one-year period ending June 2012 it earned 10.53 percent

20   over its authorized return on equity, even before

21   accounting for any of the large revenue increase it's

22   seeking in this case. So imagine what that 10.53 percent

23   return on equity would have been if we had another 150 or

24   more million dollars in revenue.

25   MIEC recommends rejection of the company's

 1   proposed sweetening of the Missouri regulatory framework

 2   in the form of PISA accounting for several reasons. One,

 3   Ameren has failed to prove any extraordinary financial

 4   need for the PISA relief it requests. The company's prior

 5   returns do not accurately predict future earnings

 6   attrition. No other state has adopted such an open-ended

 7   PISA accounting mechanism, contrary to the representations

 8   of Ameren's witnesses. And Mr. Brosch addresses this in

 9   his testimony.

10   Ameren already receives an allowance for

11   funds used during construction, AFUDC, which fully

12   compensates Ameren for its expenditures up to the point

13   where the plant is placed in service. Ameren's PISA

14   proposal takes AFUDC one step further by allowing a

15   deferred return and deferred depreciation on plant placed

16   into service between test years before it can be formally

17   included in rate base.

18   PISA is single-issue ratemaking. It's poor

19   regulatory policy. Everything changes between rate cases,

20   but PISA would focus solely on specific increasing costs

21   while ignoring other changes. New plant being added might

22   create efficiencies that reduce O&M. For instance, a

23   plant that is at the end of its useful life might have a

24   very high O&M expense that is baked into rates. That

25   plant is replaced by a more efficient plant with much

1   lower operating and maintenance expenses, and the lower

2   O&M expenses would not be factored in to rates under

3   Ameren's proposal.

4   PISA would eliminate all regulatory lag

5   associated with newly added plant investment. Regulatory

6   lag is not wholly evil as suggested by Ameren because it

7   provides an important incentive for management efficiency.

8   Regulatory lag encourages management to carefully control

9   the costs incurred between test years.

10   In contrast, PISA will simply produce

11 higher future rates for all of the plant investment Ameren

12 elects to add between test years.

13   Ameren's PISA proposal is fatally flawed in

14 its failure to account for incremental accumulated

15 deferred income taxes, ADIT, arising from new plant

16 investment. Substantial new tax deferrals are created

17 whenever new plant investment is made. Ameren's PISA

18 proposal would defer a return on investment and

19 depreciation on such new plant investment while completely

20 ignoring growth in ADIT.

21   The Commission will read and hear the

22 testimony of Staff and MIEC witnesses Brosch and Gorman

23 opposing PISA for the reasons stated. I encourage the

24 Commission to deny this extraordinary accounting

25 treatment.

1   I'll try to answer questions. I'm not as

2   knowledgeable as the other lawyers on this.

3   CHAIRMAN GUNN: I don't have anything.

4   JUDGE WOODRUFF: Thank you. That will be

5   all the openings, so we'll go with the first witness,

6   which will be Ms. Barnes.

7   (Witness sworn.)

8   JUDGE WOODRUFF: You may inquire.

9   MR. BYRNE: Thank you, your Honor.

10   (AMEREN EXHIBIT NOS. 11NP, 11HC, 12NP, 12HC

11   AND 13 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

12   LYNN BARNES testified as follows:

13   DIRECT EXAMINATION BY MR. BYRNE:

14   Q.   **Good morning, Ms. Barnes.**

15   A.   Good morning.

16   Q.   **Could you please state your name for the**

17   **record?**

18   A.   Lynn M. Barnes.

19   Q.   **And by whom are you employed?**

20   A.   Ameren Missouri.

21   Q.   **In what capacity?**

22   A.   I'm vice president of business planning and

23   controller.

24   Q.   **Ms. Barnes, are you the same Lynn Barnes**

25   **that caused to be filed in this case direct testimony**

1 which has been marked as Exhibit 11 in its HC and NP form

2 and rebuttal testimony that's been marked as Exhibit 12 in

3 its HC and NP form and surrebuttal testimony that's been

4 marked as Exhibit 13?

5   A.   Yes.

6   Q.   And do you have any corrections to that

7 testimony at this time?

8   A.   I actually do have a correction to my

9 direct testimony.

10   Q.   Okay.

11   A.   On page 18 in the non-confidential --

12 actually, it's on page 18 of both versions, and it's not a

13 confidential issue, but on both of those pages one line

14 22, I need to insert the words 1/10 of between

15 approximately and 1 percent.

16   Q.   Okay. Any other corrections?

17   A.   No.

18   Q.   Okay. As corrected, is the information

19 contained in your prefiled testimony true and correct to

20 the best of your knowledge and belief?

21   A.   Yes, it is.

22   Q.   And if I were to ask you the questions

23 contained in that prefiled testimony today when you're

24 here under oath, would your answers be the same?

25   A.   Yes, they would.

1   MR. BYRNE: Your Honor, I'd offer

2   Exhibits 11, 12 and 13, I guess 11HC and NP, 12HC and N

3   and 13 into the record and tender Ms. Barnes for

4   cross-examination.

5   JUDGE WOODRUFF: 11, 12 and 13 have been

6   offered. Any objections to their receipt?

7   MR. MILLS: Yes, your Honor.

8   JUDGE WOODRUFF: What's your objection?

9   MR. MILLS: With respect to the rebuttal

10 testimony, page 37, the sentence that begins on line 21,

11 carries over to page 38, line 1, including the footnote, I

12 move to strike that as hearsay. Ms. Barnes is referring

13 to some study that's not attached to her testimony that

14 she did not conduct or participate in conducting and draws

15 conclusions from that study.

16   JUDGE WOODRUFF: Give me a moment. I'll

17 pull that testimony out.

18   MR. MILLS: And that portion of the

19 testimony, I don't know if it makes any difference, but

20 it's all being offered now, but that pertains to the rate

21 case expense issue rather than the plant in service

22 accounting issue.

23   JUDGE WOODRUFF: Page 37?

24   MR. MILLS: Yes. It's the sentence that

25 begins at the very end of line 21 of page 37 and carries

 1 on to half of line 1 on page 38.

 2   JUDGE WOODRUFF: Talking about the recent

 3 survey conducted by Staff?

 4   MR. MILLS: Correct.

 5   JUDGE WOODRUFF: And what's your response?

 6   MR. BYRNE: First a threshold, question,

 7 your Honor. Is there a -- some cases the Commission has

 8 required people to prefile motions to strike testimony.

 9 Is that applicable to this case or not?

10   JUDGE WOODRUFF: I've not made any order

11 like that.

12   MR. BYRNE: Okay. I guess, your Honor, the

13 testimony that Mr. Mills proposes to strike talks about

14 the Staff's survey of other jurisdictions and the fact

15 that the survey showed that they didn't -- that there was

16 no jurisdiction where the rate case expenses were shared

17 between ratepayers and shareholders. I think that's the

18 kind of information that an expert like Ms. Barnes is

19 entitled to rely on. I think it's an exception to the

20 hearsay rule.

21   JUDGE WOODRUFF: Your response to that,

22 Mr. Mills?

23   MR. MILLS: I don't -- first of all, we

24 don't have any foundation about how the study was

25 conducted, whether it was thorough, who did it, how they

 1   did it. I think for this witness to draw this conclusion,

 2   you know, based upon a study that was presented in a slide

 3   at a NARUC subcommittee meeting, I do not think that's the

 4   kind of thing that an expert would rely on.

 5   MR. BYRNE: And I also think it's an

 6   admission by a party opponent on the rate case expense.

 7   Staff is opposing us on rate case expense, and that's an

 8   admission by the Staff.

 9   JUDGE WOODRUFF: Mr. Thompson, let me ask

10   you, has this been filed in that case? I don't remember

11   seeing it.

12   MR. THOMPSON: I don't believe so.

13   MR. MILLS: I don't believe so either.

14   MR. BYRNE: It doesn't have to be filed to

15   be an admission by a party opponent.

16   MR. MILLS: The whole notion of an

17   admission by a party opponent gets a little problematic

18   when there are more than one opponents and you're talking

19   about some sort of a study rather than a clear admission.

20   JUDGE WOODRUFF: I'm going to go ahead and

21   grant the motion. That sentence is struck. So just to be

22   clear, it is page 37, line -- beginning with the word

23   perhaps on line 21 through the end of that page. Ends on

24   line 1 of page 38 after the footnote?

25   MR. MILLS: Yes, it does. Yes.

1   JUDGE WOODRUFF: Okay. That was your only

2 objection?

3   MR. MILLS: That's correct.

4   JUDGE WOODRUFF: Subject to that ruling,

5 then 11, 12 and 13 are received.

6   (AMEREN EXHIBIT NOS. 11, 12 AND 13 WERE

7 RECEIVED INTO EVIDENCE.)

8   JUDGE WOODRUFF: And for cross-examination

9 we begin with MIEC.

10   MR. DOWNEY: No cross.

11   JUDGE WOODRUFF: All right. Public

12 Counsel?

13   MR. MILLS: Thank you, Judge.

14 CROSS-EXAMINATION BY MR. MILLS:

15   Q.   **Good morning, Ms. Barnes.**

16   A.   Good morning.

17   Q.   **Ms. Barnes, do you know of another state**

18 **utility commission that has authorized plant in service**

19 **accounting?**

20   A.   Not in the form that we've proposed in this

21 case.

22   Q.   **Is that a relevant consideration for this**

23 **Commission to look at?**

24   A.   Not necessarily. Again, I think as

25 Mr. Byrne mentioned in his opening and as we've observed,

1   there are many ways to solve this problem. It's a gap

2   that exists. Interim rates, forward test years, formula

3   rates are all options that other states have adopted that

4   would address this problem. Those are not necessarily all

5   options that we have in the state of Missouri.

6   So what we proposed was something that we

7   felt the regulatory process would allow in Missouri to

8   attempt to mitigate and address the issue.

9   Q.   So you believe it's -- do you believe it is

10   totally irrelevant for the Commission to consider that no

11   other state has adopted this mechanism before?

12   A.   Relevance, I think it's again what we have

13   to work with in the state of Missouri versus what other

14   states have done to address the issue. So whether or not

15   we're the first ones to come up with this particular way,

16   every state jurisdiction is different in how they address

17   issues.

18   Q.   So was that a yes, it is totally irrelevant

19   or no, it is not totally irrelevant?

20   A.   I guess it's a yes, it is irrelevant.

21   Q.   Now, in your direct testimony, your

22   definition of plant in service accounting is on page 16,

23   correct?

24   A.   I have to look. Yes, that's correct.

25   Q.   Now, you wrote this testimony, correct?

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1            A.      I did.

2            Q.      And so you are the one who created this

3    definition of plant in service accounting?

4            A.      Yes.

5            Q.      Did you create the concept of plant in

6    service accounting?

7            A.      I think the concept was already out there

8    in that we've had forms of this on an exception basis,

9    which we have referred to in the past as construction

10   accounting.  It's a broader interpretation of that.

11           Q.      Are you the person who decided to bring

12   forward the concept of extending construction accounting

13   to plant in service accounting?

14           A.      I made the proposal to our leadership,

15   uh-huh.

16           Q.      And prior to your making that proposal, had

17   you ever seen this particular mechanism in any

18   authoritative text on utility ratemaking?

19           A.      Not specifically, no.

20           Q.      Any treatise?

21           A.      No.

22           Q.      Any journal articles?

23           A.      No.

24           Q.      Any Public Service Commission decisions?

25           A.      Not other than how we've seen it
```

1   implemented from a construction accounting on specific

2   projects.

3   Q.   Any court cases?

4   A.   No.

5   Q.   Now, the existing framework -- and I'm

6   still on page 16 of your direct and the question and

7   answer that's at the bottom of page 16 carrying over.

8   What you refer to as the existing regulatory framework, is

9   that -- when you use the term existing regulatory

10   framework, are you talking about rate case rate of return

11   regulation as it's existed in Missouri for roughly 100

12   years?

13   A.   Yes, and how assets are treated, uh-huh.

14   Q.   And your application of plant in service

15   accounting would only apply to non-revenue-producing

16   assets; is that correct?

17   A.   That's what our proposal is, yes.

18   Q.   Has the company ever made a proposal to

19   capture increased revenues from revenue-producing assets

20   in between rate cases?

21   A.   Other than generally what we're

22   interpreting as new business would be for new customers

23   that didn't exist before. So we can look at increases

24   relating to that segment, but it's not carved out

25   specifically when we look at our revenues.

 1   Q.   Okay. Have you ever made a proposal to try

 2   and capture those increased revenues for possible

 3   treatment in the next rate case?

 4   A.   Not specifically, but I would --

 5   Q.   Even generally?

 6   A.   No. It would take years and years and

 7   years to recover those in rates from those customers.

 8   Their usage just doesn't warrant the immediate recovery of

 9   the capital expenditure we need to make to put them in

10   service.

11   Q.   Now, the way you've proposed plant in

12   service accounting, mathematically it could never lead to

13   lower rates, could it?

14   A.   No.

15   Q.   It only works one way, correct?

16   A.   It only works one way by allowing the

17   customer to pay for the benefit they're receiving from the

18   new asset.

19   Q.   Now, turning in your rebuttal -- I'm sorry,

20   your direct tomorrow to page 19, and particularly your

21   description at lines 15 to 16 about where you say assets

22   that are placed in service before assets can be reflected

23   in rates.

24   A.   Yes.

25   Q.   Again, isn't that the traditional rate of

1   **return regulatory paradigm that assets are placed in**

2   **service before they are reflected in rates?**

3   A.   The way it works in Missouri, that's

4   absolutely true, because the true-up period is typically

5   about five months before rates are put into effect. So

6   there's a minimum of a five-month under-recovery or

7   non-recovery, frankly, of the depreciation and the return

8   on those assets placed in service, even though the

9   customer's benefiting from those at the point in time that

10 they're placed in service.

11   **Q.   Isn't, in effect, your plant in service**

12 **accounting proposal a way to get ratepayers to invest in**

13 **your system?**

14   A.   Isn't that what they want to do is invest

15 in our system? It's to improve the reliability of the

16 system for their benefit.

17   **Q.   Is that's a yes?**

18   A.   Yes.

19   **Q.   Shouldn't customers get a return, then, if**

20 **they're going to invest in your system?**

21   A.   They do get a return. They get improved

22 reliability in our system.

23   **Q.   Now, as you testify here today, do you**

24 **believe that Union Electric is investing -- are you**

25 **investing in your system in Missouri at the optimal rate?**

1   A.   We are investing in excess of our

2   depreciation. So is it optimal? It's optimal -- it's as

3   close to optimal as we are willing under the current

4   regulatory framework, I guess is the way to think about

5   that. Is it what we want to do if we had regulatory

6   treatment that didn't result in not being able to recover

7   the cost of those investments? Then I think it would be

8   suboptimal.

9   Q.   **So it's your testimony that if you had a**

10   **different regulatory treatment that from your perspective**

11   **is better, you would be investing more in your system and**

12   **rates would be going up more than they are today; is that**

13   **correct?**

14   A.   The benefit is --

15   Q.   **Is that correct?**

16   A.   Yes, that is correct.

17   Q.   **Okay. Now, on page 18 of your rebuttal**

18   **testimony, at lines -- the sentence that starts on line 7**

19   **and continues to line 9, you state that Ameren Missouri**

20   **and other utilities in the state have not been able to**

21   **consistently earn their authorized returns. Do you see**

22   **that statement?**

23   A.   Yes.

24   Q.   **Over what period of time did you analyze to**

25   **come up with that statement?**

1   A.   Well, certainly for us it's been

2   approximately five years, six years, since 2007.

3   Q.   **Did you look at any period of time farther**

4   **back than five years ago when you made that statement?**

5   A.   No, I wouldn't say I did.

6   Q.   **Do you believe that statement would be**

7   **accurate if you looked farther back than five years ago?**

8   A.   Well, again, as has been mentioned in

9   several opening statements, I think the scenario or the

10   economics five years ago were different than they are

11   today in that there was less of a need. This problem

12   existed. It's existed since regulation was formed. It's

13   just that it was masked and potentially overcome by the

14   fact that we had growth in the system, and so we were able

15   to earn our allowed return without worrying necessarily

16   about this particular issue.

17   But as has also been pointed out in several

18   opening statements, the times have changed and that's not

19   necessarily the case.

20   Q.   **So the answer to my question is you don't**

21   **know that this would be true if you looked at a longer**

22   **period of time or it would not be true if you looked at a**

23   **longer period of time?**

24   A.   I think historically there are going to

25   have been times in our history where it may have been true

 1 or there are times in our history when it may not have

 2 been true. But I have not in my short tenure, when you

 3 think of the hundred years with the company, seen a

 4 scenario where customer growth has not been able to

 5 overcome whatever shortfall has been in the process from

 6 growth in the system.

 7   Q.   Now, customer growth, all other things

 8 being equal, leads to increased revenues, does it not?

 9   A.   Yes.

10   Q.   Isn't another way to -- for a company to be

11 able to consistently earn its rate of returns even without

12 customer growth is to cut its costs?

13   A.   Yes, and we've been doing that over the

14 last five years quite dramatically.

15   Q.   Now, are you willing to concede that at

16 times in the past that regulatory lag has worked to the

17 company's advantage?

18   A.   In cases where it has, yes, it has, and

19 we've refunded to customers and lowered rates as a result.

20   Q.   Have you refunded every dime that you've

21 overearned?

22   A.   Probably not. The system's not quite that

23 precise.

24   Q.   What refunds are you talking about?

25   A.   Well, the -- we, as Mr. Thompson pointed

1   out, had an alternative regulation plan where in cases

2   where we earned above what the agreed-upon ROE was, we

3   refunded back to customers, and we additionally had a

4   complaint case in 2002, and that resulted in a reduction

5   in rates.

6   Q.   And were both of those during your tenure?

7   A.   No. Shortly -- I started with the company

8   in 1997. So I wasn't involved at the beginning of the

9   alternative plan, but I was with the company toward the

10 end.

11   Q.   Now, do you accrue AFUDC on every project

12 that you undertake?

13   A.   Yes, while its under construction we do.

14   Q.   From a nuclear power plant to putting a

15 pole in service?

16   A.   Yes.

17   Q.   And GAAP requires that, does it not?

18   A.   GAAP requires that you capitalize interest

19 for construction, uh-huh.

20   Q.   Does the regulatory treatment necessarily

21 follow GAAP? In other words, is a Public Service

22 Commission required to allow recovery of those?

23   A.   No, it's not required to do what GAAP

24 allows.

25   Q.   Okay. Now, if I can get you to turn in

1   your rebuttal testimony on page 22, line 4, you refer to

2   many years the company has presented evidence. How many

3   years?

4   A.   Well, I think we've been in five rate cases

5   now in the last five years, and I believe consistently

6   we've demonstrated in those cases that we've not been able

7   to earn our allowed return on a consistent basis.

8   Q.   So your reference there to many years means

9   the last five years, correct?

10   A.   Yeah, I guess so.

11   Q.   In your rebuttal testimony at pages 23 to

12   24, you're responding -- starting more or less at the

13   bottom of page 23, you're responding to the -- to the

14   argument that plant in service accounting is a form of

15   single-issue ratemaking. Do you recall that testimony?

16   A.   I do. I recall it's not -- I disagree that

17   it is single-issue ratemaking.

18   Q.   Correct. Would your reasoning as it

19   applies to plant in service accounting, would that apply

20   to trackers in general? If you followed the same

21   reasoning, would your reasoning lead one to conclude that

22   trackers are not single-issue ratemaking?

23   A.   Yes, they would, because they do not change

24   rates.

25   Q.   So the way you look at single-issue

 1   **ratemaking, if it doesn't actually change rates, it's not**

 2   **single-issue ratemaking, correct?**

 3   A.   That's correct.

 4   Q.   **Now, on page 25 of your rebuttal testimony**

 5   **at line 10, you make a reference to excessive regulatory**

 6   **lag in Missouri. Do you see that reference?**

 7   A.   Yes.

 8   Q.   **If the Commission believes that regulatory**

 9   **lag is not excessive in Missouri and that your rate of**

10   **investment is optimal, would the Commission find any need**

11   **for plant in service accounting?**

12   A.   I guess not.

13   Q.   **Isn't the need for plant in service**

14   **accounting premised on the notion that regulatory lag is**

15   **excessive and that you are not currently investing in your**

16   **system under the current regulatory paradigm at the**

17   **optimal rate? Don't you need both of those things in**

18   **order to authorize plant in service accounting?**

19   A.   If the Commission is going to tell us how

20   much they want us to invest, they would be sending that

21   message by not allowing plant in service accounting

22   because that would drive a behavior then that would result

23   in lower investments or less investments because we have a

24   disincentive to invest under the current premise.

25   Q.   **Less investments than you're currently**

1   making or less investments than you would otherwise be

2   making?

3   A.   Well, I think we would have to look at all

4   of the factors that are considered in rates, and once the

5   rate order is complete, figure out how to operate our

6   business within the confines of what is in the order.

7   Q.   And that's the case no matter what the

8   order says, isn't it?

9   A.   That's correct.

10   Q.   In every single rate case, once your rates

11   are reset, you take a look and decide how to move forward,

12   correct?

13   A.   That's correct.

14   Q.   I don't want to get very deep into the ADIT

15   issue here.

16   A.   Appreciate that.

17   Q.   But just from sort of a high level, is it

18   your testimony that the use of ADIT and that plant in

19   service accounting are two separate mechanisms that really

20   have no relationship to each other?

21   A.   They're related obviously because they're

22   both related to capital investments. I think the position

23   that we have is that the purpose for ADIT and the whole

24   point of having it is to give companies an incentive to

25   invest. And if that benefit is refunded or returned to

1   customers before the corresponding costs are reflected in

2   rates, then that removes that incentive to invest. So our

3   position is that ADIT should be evaluated at the point in

4   time when the plant in service or when the investments are

5   actually put into rate base, and then it would be

6   evaluated along with all of the other factors that are

7   considered at that time.

8   **Q.   So ADIT is a mechanism designed to**

9   **encourage investment, correct?**

10   A.   That's what the tax code is, yes.

11   **Q.   And plant in service accounting is a**

12 **mechanism designed to encourage investment, correct?**

13   A.   Yes. But plant in service accounting

14 doesn't create the cash flows that result. The cash flows

15 are only realized once the plant in service accounting

16 deferrals are actually built into rates or into rate

17 base in a subsequent case.

18   **Q.   But they're two different mechanisms, each**

19 **designed to encourage investment in the system, correct?**

20   A.   Yes.

21   **Q.   Okay. Is it possible for a state**

22 **commission to over-incentivize investment?**

23   A.   I'm not sure I understand what that means.

24 What do you mean by over-incentivize?

25   **Q.   Well, would you agree that utility**

1 **companies operate differently depending on the messages**

2 **and the kind of regulatory treatment they get from their**

3 **state commissions?**

4   A.   Sure.

5   Q.   **And the commission can take steps that**

6 **would incent a company to invest in infrastructure,**

7 **correct?**

8   A.   Yes.

9   Q.   **Is it possible for a commission to**

10 **over-incentivize infrastructure and have companies**

11 **overbuild?**

12   A.   I think there would be a risk there from

13 the company's perspective that in a subsequent rate case

14 those I over-investments could be deemed disallowed. I

15 think that there's always a mechanism of check and balance

16 on the other side to minimize that from happening.

17   Q.   **Is that a yes, it is possible or a no, it**

18 **is not possible?**

19   A.   I would say no, it is not possible, based

20 on the process.

21   Q.   **Now, you were here this morning for the**

22 **opening statements, correct?**

23   A.   Yes.

24   Q.   **Do you agree with the premise that Chairman**

25 **Gunn raised in his question that the plant in service**

1   accounting is, in essence, a deferral mechanism?

2   A.   Yes.

3   Q.   Okay. Don't all deferral mechanisms by

4   definition violate the matching principle?

5   A.   Not necessarily. I think this could be

6   very much in line with the matching principle in that the

7   expense would be amortized and would be included in the

8   income statement the same time that the revenue collected

9   from customers to recover that expense would be reflected

10   in the revenues. So actually it aligns them much closer

11   from that perspective.

12   Q.   Let's back up a step and have you define

13   for me your -- the way you use the term the matching

14   principle.

15   A.   Well, the matching principle is designed to

16   reflect revenues and costs in the same period so you don't

17   have a mismatch between when the expense is incurred

18   versus when the revenues are collected for that expense.

19   By deferring the expense into the period when those are

20   actually reflected in rates, we actually have a matching

21   principle. If those costs are ultimately never going to

22   be reflected in rates, then there's not an issue here.

23   Q.   So in the purest sense, if you look at

24   something that didn't occur in the test year, do you not

25   see that as a violation of the matching principle?

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 1              A.     Not if it's being deferred to be recovered

 2    in rates eventually.  What we're matching is the point in

 3    time we expense it with the point in time when we're going

 4    to actually recover it in rates, so you don't have an

 5    expense in one period and a revenue in a subsequent

 6    period.

 7              Q.     Are you familiar with some of the cases in

 8    which the Commission first established accounting

 9    authority orders, the Sibley accounting authority orders,

10    for example?

11                   MR. BYRNE:  I'm going to object.  Calls for

12    a legal conclusion.  She's not a lawyer.

13                   JUDGE WOODRUFF:  Overruled.

14    BY MR. MILLS:

15              Q.     I'm sorry.  I didn't get your answer.

16              A.     I'm not intimately familiar with all those

17    court cases.  I'm not aware.

18              Q.     Are you familiar with the concept of an

19    accounting authority order?

20              A.     Yes.

21              Q.     So if the Commission had stated that it

22    views the granting of an accounting authority order as a

23    violation of or an exception to the matching principle,

24    would you disagree?

25              A.     Based on the court cases, I guess the
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1   conclusion is what it is. From an accounting perspective,

2   I stand by what I said that I understand the matching

3   principle to be.

4   Q.   I'm not talking about court cases. I'm

5   talking about this Commission and its decisions saying

6   that an accounting authority order violates the matching

7   principle. Do you disagree with that?

8   A.   Well, what I was referring to was what I

9   understand as an accountant to be Generally Accepted

10 Accounting Principles. As I said before, the Commission

11 doesn't necessarily have to follow those, and we then

12 adjust our accounting to match what the Commission

13 regulation requires.

14   Q.   Now, can you recall the last time that the

15 Commission made a prudence disallowance in one of your

16 rate cases?

17   A.   Well, we had a Taum Sauk disallowance in

18 the last case. I don't recall if that was specifically

19 related to prudence. I don't believe we believed it was

20 prudence disallowance. So other than that, not during my

21 tenure with the company has there been a prudence

22 disallowance.

23   Q.   And your tenure again started in 1997?

24   A.   That's correct.

25   Q.   Would you agree that generally if the

 1   Commission gets the incentives that it signals to a

 2   utility correct, then there is less need to examine

 3   prudence in hindsight in rate cases?

 4   A.   Yes.

 5   Q.   Okay. And conversely, if the Commission

 6   does not get the incentives right, then there's a greater

 7   need to look at prudence, correct?

 8   A.   If they have a concern that for whatever

 9   reason the company's not doing what they're supposed to, I

10   guess under that behavior.

11   Q.   And wouldn't a company be less likely to

12   get things right if the incentives are skewed?

13   A.   What do you mean exactly by get things

14   right?

15   Q.   Well, for instance, if the Commission gives

16   the wrong incentives in terms of the amount that you

17   should be investing in your infrastructure --

18   A.   Then --

19   Q.   -- either too many incentives or too few

20   incentives, isn't it more likely that you would overinvest

21   or under-invest than if the incentives were just right?

22   A.   Yes.

23   Q.   Okay. And in either of those situations,

24   if the incentives are wrong, the Commission would have a

25   greater need to look for prudence after the fact, correct?

1   A.   I guess I'm taking a little bit of

2   exception with the thought of it being prudence. If the

3   Commission incentives suggest that the company should or

4   should not be investing in their system, I think that's a

5   different decision than did they prudently invest the

6   funds that they chose to invest and did they mismanage

7   their costs. I guess I'm not understanding kind of how

8   those blend together or how that correlation works from

9   your perspective.

10   **Q.   Well, earlier you said that a prudence**

11   **review is a check and balance on incentives.**

12   A.   Uh-huh.

13   **Q.   And I'm just trying to explore that.**

14   A.   Well, to me, a prudence review suggests

15   that when the company is making an investment, that they

16   spent the money as efficiently and as optimally as they

17   could for an investment. And if the Commission felt that

18   that wasn't the case, they would have the ability to

19   disallow some of those costs.

20   **Q.   Isn't another aspect of prudence review**

21   **whether that particular project or investment should have**

22   **been contemplated in the first place?**

23   A.   Well, at some point management has the

24   responsibility to manage the company, and so those

25   decisions need to be made by management as to what

1   investments need to be made to maintain the system and to

2   make sure that we are not only providing safe and adequate

3   service but also meeting the reliability standard and

4   expectations that our customers have grown to expect.

5   **Q.   When you were talking about a prudence**

6   **review as a check and balance on incentives, were you**

7   **talking about decisional prudence or executional prudence?**

8   A.   I guess execution prudence in that

9   definition.

10   MR. MILLS: Okay. That's all the questions

11   I have. Thank you.

12   JUDGE WOODRUFF: Staff?

13   MR. THOMPSON: Thank you, your Honor. I

14   wonder if I might approach the screen.

15   JUDGE WOODRUFF: Certainly.

16   CROSS-EXAMINATION BY MR. THOMPSON:

17   **Q.   Good morning, Ms. Barnes.**

18   A.   Good morning.

19   **Q.   Now, up to this point, you would agree with**

20   **me there's a statute that prohibits any of the costs of**

21   **the plant being constructed from being charged to**

22   **ratepayers; isn't that correct?**

23   A.   I'm not as familiar with the statutes, but

24   as I understand it, customers do not begin to pay for that

25   until it's placed in service, so yes.

1   Q.   Have you heard of the anti-CWIP statute?

2   A.   Yes.

3   Q.   And CWIP you'll agree with me is

4   construction work in progress?

5   A.   Yes.

6   Q.   Okay. And with respect to this section,

7   the part where -- you would agree with me this is all

8   stuff you could earn just as soon as you get it into

9   rates; isn't that right?

10   A.   That's the premise, yes.

11   Q.   Okay. So return on this capital and

12   depreciation expense on a plant that is, in fact, in

13   service and operating?

14   A.   That's right.

15   MR. MILLS: Judge, I hate to interrupt

16   Mr. Thompson, but could I get a clarification about

17   whether this particular chart is in the record or is going

18   to be in the record?

19   JUDGE WOODRUFF: It's my understanding it

20   was only offered as a visual aid at the opening. So it's

21   not been offered as an exhibit.

22   MR. MILLS: The transcript might be clearer

23   if --

24   MR. BYRNE: I'd be happy to offer it if

25   that would be helpful.

 1   JUDGE WOODRUFF: Let's go ahead and mark

 2   it. Did you provide a copy to the court reporter?

 3   MR. BYRNE: I did not.

 4   MR. THOMPSON: Do we know what number?

 5   JUDGE WOODRUFF: It will be 49.

 6   (AMEREN EXHIBIT NO. 49 WAS MARKED FOR

 7   IDENTIFICATION.)

 8   MR. BYRNE: And, your Honor, I'd offer

 9   Exhibit 49.

10   JUDGE WOODRUFF: 49 has been offered. Any

11   objections to its receipt?

12   MR. MILLS: Can I ask a voir dire question?

13   JUDGE WOODRUFF: Go ahead.

14   VOIR DIRE EXAMINATION BY MR. MILLS:

15   **Q.   Ms. Barnes, did you prepare this?**

16   A.   No, I did not.

17   **Q.   Are you familiar with it?**

18   A.   Yes.

19   **Q.   Are the different segments, the two blue**

20   **segments and the red segment, is There any sort of scale**

21   **there that's meant to equate to a period of time?**

22   A.   No, I don't think so. It could be any

23   period of time, frankly.

24   **Q.   So it's not necessarily the case that this**

25   **reflects that the red period of time is greater than the**

1   **two blue periods of time?**

2   A.   No.   And arguably that red period of time

3   can be increased or decreased just depending on the

4   frequency of rate cases. The period of time that probably

5   is not movable is the red portion that's to the right of

6   where it says true-up cutoff, because under the current

7   process that's five months generally or the minimum of

8   five months.

9   **Q.   And the blue periods of time are variable**

10 **as well?**

11   A.   Yes, absolutely, because projects come and

12 go and take longer or less time, and generally I would

13 guess on the right that's a 30 to 40-year timespan.

14   MR. MILLS: Judge, I don't have any

15 objection based on those clarifying questions.

16   JUDGE WOODRUFF: All right. Hearing no

17 objections, then Exhibit No. 49 is received.

18   (AMEREN EXHIBIT NO. 49 WAS RECEIVED INTO

19 EVIDENCE.)

20   MR. THOMPSON: Thank you.

21   JUDGE WOODRUFF: Back to Mr. Thompson.

22 CROSS-EXAMINATION (RESUMED) BY MR. THOMPSON:

23   **Q.   Mr. Mills got into my next question, which**

24 **is, you would agree with me, would you not, that the**

25 **amount of this that is unrecovered is controllable by the**

 1   **company, at least to a degree, by the timing of the rate**

 2   **case filing?**

 3   A.   Some of it is. The period I would say from

 4   the in-service date to the true-up cutoff, we have some

 5   ability, although minimal, I would say, because it's very

 6   difficult. Some projects only take a few weeks to

 7   complete. Other projects take multiple years, and so --

 8   Q.   **I understand. But you would agree with me**

 9   **there is some control?**

10   A.   Some.

11   Q.   **And it's the timing of when the rate case**

12   **is filed?**

13   A.   Uh-huh.

14   Q.   **Okay. And it's your testimony, I believe,**

15   **that you can't get this any shorter than five months; is**

16   **that right?**

17   A.   As I understand the regulatory process

18   currently, yes.

19   Q.   **Now, you would agree with me, would you**

20   **not, that Staff audits the true-up figures?**

21   A.   Yes.

22   Q.   **Okay. And so if this was reduced, would**

23   **that not reduce Staff's opportunity to audit those**

24   **figures?**

25   A.   If they need five months in order to audit

1 those figures, then yes, it would.

2   Q.   Take this case, for example. When was the

3 true-up cutoff, if you know?

4   A.   July 31st.

5   Q.   Okay. And so during this period here is

6 when the rate case hearing is going to be going on; isn't

7 that correct?

8   A.   That's correct.

9   Q.   And that true-up cutoff you mentioned in

10 this case, did you file testimony after that date?

11   A.   Yes.

12   Q.   What testimony did you file after that

13 date?

14   A.   I believe both rebuttal and surrebuttal

15 were filed after that date.

16   Q.   Would you agree with me Staff filed

17 rebuttal and surrebuttal after that date as well?

18   A.   Yes.

19   Q.   As did the intervenors?

20   A.   Yes.

21   Q.   So a great deal of the rate case process

22 occurs between this date and, of course, when the rates go

23 into effect?

24   A.   That's absolutely correct. I'm not sure

25 that equates to why the company should bear the cost or

1 the lack of recovery for the depreciation and the return

2 during that time frame, however.

3   Q.   Okay. I accept that as your opinion. And

4 one last question about this. Would you agree with me

5 that this -- this area of non-recovery, we can call it a

6 donut hole if you want, that traditionally this has never

7 been recovered as long as we've had cost of service

8 regulation?

9   A.   Not specifically, but as several of the --

10 you in particular and others have pointed out, during

11 periods of growth, that was -- we were still able to earn

12 our return without recovering those particular costs

13 because of the growth in the system and because there were

14 revenues that were coming from customers to overcome that

15 shortfall.

16   Q.   I agree there was offsetting growth, but

17 this has never been recovered?

18   A.   Not specifically, I would say.

19   Q.   Thank you. So consequently, you would

20 agree with me that to allow recovery of that would, in

21 fact, be a departure from traditional cost of service

22 ratemaking?

23   A.   As it exists in Missouri today. It's not

24 out of the realm.

25   Q.   Okay. Thank you. Now, I think you've

 1   testified in your direct testimony, and I'm looking at

 2   pages 17 and 18. Okay?

 3   A.   Uh-huh.

 4   Q.   I'm looking at page 17 from line 7 to 13,

 5   and you have a colorful chart there, that since the last

 6   case, up to the time rates are expected to go into effect

 7   in this case, that the size of what I've called the donut

 8   hole is about 15 million; is that correct?

 9   A.   In direct. I actually updated that figure

10   in my surrebuttal, and the total number between the last

11   rate case true-up period, which would start March of 2011,

12   and the July 31st true-up for this case, that number is

13   actually 37 million.

14   Q.   37 million. That's quite a big bigger than

15   the 15 million you put in direct, isn't it?

16   A.   That's correct.

17   Q.   So if plant in service accounting is

18   implemented, that doesn't mean you immediately recover

19   that 37 million, does it?

20   A.   No, not at all.

21   Q.   That money would be deferred for a future

22   rate case, correct?

23   A.   That's correct.

24   Q.   And so any cash flows would not start until

25   that subsequent rate case?

1   A.   That's correct.

2   Q.   **But you agree with me, would you not, that**

3   **granting the plant in service accounting, even without**

4   **immediate cash flows, nonetheless would ameliorate the**

5   **company's financial situation?**

6   A.   Yes.

7   Q.   **Because it would bring with it the**

8   **potential of recovering that money that traditionally has**

9   **just been gone, correct?**

10   A.   Yes.

11   Q.   **And so you would agree with me that that**

12   **necessarily would reduce the risk that the company will**

13   **not meet its authorized return on equity?**

14   A.   Okay. Just restating it in my words to

15   make sure I'm clear on what you're asking, it would

16   mitigate or solve maybe part of the problem of why we're

17   not able to recover.

18   Q.   **That's exactly right.**

19   A.   That's correct.

20   Q.   **You agree with that?**

21   A.   I do.

22   Q.   **And so necessarily if the risk is reduced,**

23   **then the return on equity awarded by the Commission should**

24   **be reduced to reflect reduced risk?**

25   A.   I guess I'm trying to understand how the

1 two of those correlate. If I -- if the recommendation is

2 to put into the regulatory framework a tool that allows us

3 to recover our authorized return, I'm not sure how that

4 equates to the authorized return needing to be lower. All

5 we're suggesting is that we should have an ability to earn

6 the return, whatever it is, that the Commission deems

7 reasonable.

8   Q.   Thank you. Now, if you know, has Ameren

9 had any -- I'm talking about Ameren Corporation now

10 because I don't know that this occurs at the Ameren

11 Missouri level, or maybe you can tell me if it does. Have

12 you had any trouble selling bonds?

13   A.   We do sell bonds at the Ameren Missouri

14 level.

15   Q.   Okay. Do you have any trouble selling

16 those?

17   A.   Not recently.

18   Q.   Not recently. Okay. And I know you don't

19 sell shares at the Ameren Missouri level, but --

20   A.   That's correct.

21   Q.   -- to your knowledge are sells of Ameren

22 Corporation trading?

23   A.   Yes.

24   Q.   People buy them?

25   A.   Yes, even though they're trading below book

 1   value at the moment.

 2   Q.   But they are trading?

 3   A.   Yes.

 4   Q.   People are buying them?

 5   A.   Yes.

 6   Q.   Okay. And are you familiar with the

 7   testimony of David Murray in this case?

 8   A.   Not specifically.

 9   Q.   Okay. If I told you that David Murray has

10   testified that utility stocks in general are valued today

11   by investors in what he refers to as a flight to quality

12   phenomenon, would you have any reason to disagree with

13   that?

14   A.   Not for utilities in general, but not all

15   utilities are created equal in the stock market.

16   Q.   I understand. Is that a yes or no?

17   A.   I guess that's a yes. I'm not directly

18   familiar with his testimony.

19   Q.   Okay. But you have no reason to disagree

20   with that?

21   A.   I guess not.

22   Q.   Okay. Thank you. Have you testified in

23   previous rate cases on behalf of Ameren Missouri?

24   A.   Yes.

25   Q.   And in preparing your testimony for any of

1   **those cases, including this one, have you ever had**

2   **occasion to go back to prior testimony?**

3   A.   Yes.

4   **Q.   Have you ever used that prior testimony as**

5   **a template?**

6   A.   If the issues are similar, yes.

7   MR. THOMPSON: Okay. Thank you. No

8   further questions.

9   JUDGE WOODRUFF: Okay. We'll come up for

10   questions from the Bench. Mr. Chairman.

11   CHAIRMAN GUNN: I have a couple. Thanks.

12   QUESTIONS BY CHAIRMAN GUNN:

13   **Q.   I'd like you to very simply and**

14   **specifically tell me what the problem is that you're**

15   **trying to solve.**

16   A.   Okay. I can do that. And this chart

17   actually is very helpful for that. I believe the way the

18   current regulatory framework is designed is that it takes

19   into consideration what the carrying costs or the

20   borrowing costs are during construction period. We've

21   talked about AFUDC quite a bit this morning. So during

22   the construction period there is a provision for recovery

23   of the costs to either borrow the money or, if it's equity

24   that we're utilizing, to utilize the cash that's required

25   to make that, to fund that investment. And likewise, once

1 an asset is placed in service and put into rate base, the

2 assumption is that we will recover the return as well as

3 depreciation on that investment at that point in time.

4 Unfortunately, the ratemaking process

5 leaves a gap in the middle. So there's a period of time

6 where the investment is placed in service, customers are

7 benefiting from that investment, but they're not paying

8 for it. It essentially never gets recovered. And so as a

9 result, a customer never pays 100 percent of the costs

10 that were invested by the company in order to make that

11 improvement.

12 **Q. The difference is the borrowing cost,**

13 **carrying cost?**

14 A. And the depreciation. So actual cost of

15 the asset is reduced, the book value of the asset.

16 **Q. So tell me, in this particular case, if we**

17 **were to grant plant in service accounting, what's the rate**

18 **impact?**

19 A. If we had had -- what I have in my

20 surrebuttal testimony is if we had had plant in service

21 accounting during the period of time between the last rate

22 case and this one, the impact to customers for that would

23 have been less than a penny a day in rates. It's a

24 $6 million revenue requirement. It was a $37 million

25 impact to the change in rate base.

1   Q.   But if we were to grant that, it would not

2   show up until the next rate case; is that correct?

3   A.   That's correct. What we're proposing is

4   that we would defer the costs for any assets that are

5   placed in service. In this case, because the true-up was

6   July 31st, any assets that are placed in service from

7   August on to whenever the next rate case is, we would

8   defer the depreciation and a return, and that amount then

9   would be considered to be included in rate base in a

10   subsequent case, and that's when the rates would be

11   affected.

12   Q.   And you believe this is a -- this is a

13   substantial reason why you guys are not earning your

14   authorized ROE?

15   A.   Based on some analysis I've done, it is.

16   It's not the only reason, but it is clearly a major

17   contributor.

18   Q.   Mr. Baxter was a little less enthusiastic

19   about this being a major contributor to the difference

20   between what you were earning and what your ROE was

21   earning when I asked him about that. But you believe this

22   is a major contributor?

23   A.   I do.

24   Q.   So if we grant this, then -- and this is

25   kind of going to Mr. Thompson's question -- you don't see

 1 **any correlation between the company being able to now**

 2 **recover, I guess, this $37 million now?**

 3   A.   Uh-huh.

 4   **Q.   The company now can recover and gets to**

 5 **recover because they get to put it in a -- I guess it's a**

 6 **regulatory asset --**

 7   A.   Uh-huh.

 8   **Q.   -- $37 million. You don't see any**

 9 **correlation between the company's risk then being reduced?**

10   A.   The risk that is being reduced is our risk

11 of not being able to earn our allowed return. To me,

12 implementing plant in service accounting just provides us

13 with an opportunity to be able to actually earn the

14 authorized return that you deem reasonable.

15   **Q.   This is only one part of that?**

16   A.   That's right.

17   **Q.   And you have -- you haven't done it before,**

18 **you haven't gotten this revenue before. So this is**

19 **brand-new revenue that you're going to be able to collect?**

20   A.   That's right.

21   **Q.   Essentially a new source of revenue for**

22 **you?**

23   A.   But what we're seeing is that our

24 infrastructure is needing to be replaced over time, and in

25 order to build the regulatory framework in a way that

1 facilitates the ability to systemically replace that

2 infrastructure, we believe that that additional revenue is

3 necessary.

4   Q.   Now, this only goes -- only goes one way,

5 right? So this deferral is -- all these investment costs

6 and going forward. Previously growth had, according to

7 your testimony, had balanced out this non-recovery. So if

8 growth picks up again and we see substantial increases in

9 growth, then would you be willing to not have plant in

10 service accounting?

11   A.   Well, this is a regulatory framework that,

12 you know, just like any other regulatory tracker or

13 anything else that the Commission allows us to have. When

14 we come in for a subsequent rate case, the Commission has

15 to ability to take it away if they think it's not working

16 the way it's meant to or if we're in situations where

17 we're now consistently overearning.

18   Q.   That really wasn't my question. My

19 question was whether or not you'd be willing to go back to

20 the normal way we've been doing things if we see

21 substantial periods of growth?

22   A.   I guess so, yeah. I mean, we're not trying

23 to overearn here. We're just trying to earn our

24 authorized return.

25   Q.   I understand. Now, in the opening

 1   **statements, Mr. Byrne explained how since this -- other**

 2   **states have taken other -- other ways of trying to deal**

 3   **with this issue.**

 4   A.   Uh-huh.

 5   Q.   **Our Legislature haven't authorized to do**

 6   **any of those, have they?**

 7   A.   Not at this time.

 8   Q.   **So would -- we wouldn't be legislating from**

 9   **the bench and fundamentally altering the regulatory**

10   **framework now by doing this?**

11   A.   Well, I'm not as familiar with the whole

12   legislative regulatory and where the boundaries are.

13   My --

14   Q.   **But we've been specifically prohibited from**

15   **using some of the tools that you requested in order to fix**

16   **this problem.**

17   A.   That's correct. We don't believe this is

18   one that you're legislatively prohibited from

19   implementing, however.

20   Q.   **Why?**

21   A.   I guess because it's a deferral mechanism,

22   similar to the trackers that you've implemented. You've

23   also previously implemented a form of this through the

24   construction accounting process for specific projects.

25   Q.   **But this is new, right? This is brand-new.**

1   **We don't -- I mean, as you talked about, this hasn't been**

2   **adopted anywhere else in any other state?**

3   A.   Uh-huh.

4   Q.   **It's never been tested in this case?**

5   A.   Uh-huh.

6   Q.   **It is meant to fix a problem that your**

7   **lawyer specifically said other folks use other specific**

8   **legislative mechanisms in order to fix?**

9   A.   That's true. Every state's different.

10 Again, I don't know all of the laws and all the regulation

11 in all of the other states. My understanding is that this

12 is something that's within your purview as Commissioners

13 to be able to implement without having a legislative --

14   Q.   **And --**

15   A.   -- action.

16   Q.   **And I'm asking you for your basis of that**

17 **belief.**

18   A.   Well, advice of counsel because they know

19 the law better than I do.

20   Q.   **Fair enough.**

21   A.   But second of all, I guess as I think about

22 what has been legislated in this state versus what has

23 not, things like the FAC where it's an automatic mechanism

24 to change rates is something that was legislated. This is

25 not an automatic change in rates. This is just deferring

1 costs until a subsequent rate case whereby the decision is

2 made by this Commission to determine whether that recovery

3 happens or doesn't.

4   Q.   But other specific deferral mechanisms have

5 been prohibited?

6   A.   I'm not sure I know what you mean.

7   Q.   CWIP?

8   A.   That's because it was specifically

9 legislated.

10   Q.   Right. Specifically prohibited?

11   A.   Uh-huh.

12   CHAIRMAN GUNN: All right. Thank you. I

13 don't have anything further.

14   JUDGE WOODRUFF: Commissioner Jarrett.

15   COMMISSIONER JARRETT: Yes.

16 QUESTIONS BY COMMISSIONER JARRETT:

17   Q.   Good morning, Ms. Barnes.

18   A.   Good morning.

19   Q.   I wanted to ask you, during the opening

20 statements, I believe it was Mr. Downey, maybe it was

21 Mr. Mills also, that talked about extraordinary

22 circumstances --

23   A.   Uh-huh.

24   Q.   -- sort of being the standard we should

25 consider in whether we -- when we're looking at this plant

 1   in service accounting.

 2   A.   Right.

 3   Q.   I guess first of all, the company's

 4   position is that the chronic underachieving of earning the

 5   allowed ROE is an extraordinary circumstance?

 6   A.   That's correct. I mean, that's become

 7   reality.

 8   Q.   But you have this plant in service

 9   accounting which you're testifying on, but the company's

10   also proposing a two-way storm tracker --

11   A.   That's correct.

12   Q.   -- which addresses the same issue. And I

13   believe in your conversation with Chairman Gunn, you

14   talked about this plant in service accounting being

15   similar to trackers. Could you explain that and expand

16   upon that? How are they similar?

17   A.   Well, I think they're similar in the

18   standpoint that they're deferring a cost for future

19   recovery in a subsequent rate case. So the mere fact of

20   deferring the recovery at this point is not changing the

21   rates today, and that's similar to how trackers are

22   treated. There's no guarantee that we're going to recover

23   those costs, but there is an ability to have the

24   opportunity to do that in a subsequent rate case if we

25   have the tracker means to defer the costs on the balance

 1 sheet in the interim period.

 2   Q.   And I know you're not a lawyer, but you've

 3 testified in cases here before, correct?

 4   A.   Yes.

 5   Q.   And would it be safe to say that you have a

 6 general understanding of what extraordinary circumstances

 7 are?

 8   A.   Yes.

 9   Q.   Ameren Missouri currently has a pensions

10 and other post-employment benefits tracker; is that

11 correct?

12   A.   Yes. That's correct.

13   Q.   Do you consider those to be extraordinary

14 circumstances? Why were those granted?

15   A.   No. You know, we're talking about capital

16 costs when we talk about plant in service accounting. For

17 O&M costs, which are storms and pension and OPEBs, I think

18 the criteria that we've typically used and I think that

19 the Commission has used is are those costs very

20 uncontrollable, are they volatile, unpredictable, and so

21 as a result, we track them so that we don't over-collect

22 or that we don't under-collect those costs in interim

23 periods between rate cases.

24   I think the pension and OPEB tracker was

25 implemented for that reason, because there are a lot of

1   external factors that impact those numbers. There's no

2   question that we have to offer pensions and benefits to

3   our employees and to our retirees. And so I think the

4   decision was made that because there's a lack of control

5   around those, that by tracking them no one's harmed. The

6   customer receives the benefit if those costs go down, but

7   we also are able to recover those costs if they go up in

8   between rate cases.

9   **Q.   So do you see any correlation between the**

10 **pensions tracker and the vegetation management tracker and**

11 **the type of plant in service accounting that you're**

12 **looking at?**

13   A.   I think the difference would be that this

14 one's not -- the plant in service accounting is not

15 something that's going to be volatile, or to Commissioner

16 Gunn's point, it's not two-way. If we make the

17 investment, there's going to be a depreciation expense and

18 there's going to be a return, and be very difficult for me

19 to think of a scenario where that would get refunded to a

20 customer.

21   So in that case, what we're requesting in

22 this mechanism is to be able to recover costs that

23 previously were not being recovered at all, not that it's

24 volatile or unpredictable or uncontrollable.

25   **Q.   Well, and I know you're not a lawyer, and**

 1   I'll ask this question. You can tell me you don't know.

 2   Maybe this is something that should be briefed by the

 3   lawyers. But is the extraordinary circumstances the

 4   correct standard for us to consider when we're considering

 5   the plant in service accounting or is it the just and

 6   reasonable standard?

 7   A.   Yeah. That's a legal question. I guess I

 8   don't know.

 9   Q.   I'll ask the lawyer. I'll have the judge

10   ask the lawyers to brief that then.

11   A.   Thank you.

12   Q.   You were here also -- I'll tell you in

13   advance, I'm going to put you a little bit on the spot.

14   A.   All right.

15   Q.   Hopefully it won't be too uncomfortable.

16   In Mr. Byrne's opening statement, you were here?

17   A.   Uh-huh.

18   Q.   And you heard him talking. And I don't

19   know. Were you here when Mr. Lowery gave the opening

20   statement?

21   A.   I was not here last week.

22   Q.   Okay. Well, I think -- they said some

23   similar things, I think, but one of the things that

24   Mr. Byrne talked about today was admittedly this is an out

25   of the box type of consideration.

 1   A.   Uh-huh. It's different for Missouri,

 2   that's for sure.

 3   **Q.   And one of the main reasons that Mr. Byrne**

 4   **said in his opening statement was because you-all have**

 5   **come in for rate cases almost every year.**

 6   A.   Uh-huh.

 7   **Q.   The other companies in Missouri are coming**

 8   **in for rate cases every year.**

 9   A.   Uh-huh.

10   **Q.   And this is a way to limit the number of**

11   **rate cases. And if Mr. Byrne disagrees that he said**

12   **that --**

13   MR. BYRNE: I don't. I don't disagree.

14   BY COMMISSIONER JARRETT:

15   **Q.   Ameren Missouri's position is if we give**

16   **them this plant in service accounting, the two-way storm**

17   **tracker, that they're unlikely to come in for a rate case**

18   **for another two or three years?**

19   A.   I certainly can't commit the company

20   because I don't get to unilaterally make that decision,

21   frankly, but I can tell you that if you've looked at the

22   rate cases that we have filed recently, and this year is

23   no exception, a major portion of the increase has been

24   related to capital investments that we have made in those

25   interim periods between rate cases.

1   And if we have an ability to recover those

2   lost costs in that donut hole, as Mr. Thompson mentioned,

3   in the red area here, it would certainly be a mitigation

4   to allow us perhaps to be able to stay out longer than

5   we've currently been able to and still be able to make the

6   investments that we believe are needed in the system.

7   Q.   **Now, would it be a major mitigation?**

8   A.   Well, it's a factor. I mean, I think if

9   you look at this particular case, it's one of the major

10   increases -- portions of the increase in this case. Fuel

11   is another one, and the energy efficiency costs are

12   another big expenditure. But about $80 million of our

13   request in this rate case was related to capital

14   investments that we've made just since last February when

15   the last true-up period took place in February of 2011.

16   Q.   **And again, maybe this is something that the**

17   **attorneys could or should brief at the end of the case,**

18   **but it seems to me if we're being asked to do something**

19   **fairly extraordinary, never been done in Missouri, that it**

20   **should change the behavior of the company as far as rate**

21   **case filings, because if that really does work and cut the**

22   **regulatory lag problem, then shouldn't we expect that**

23   **there will be less rate cases filed?**

24   A.   We would certainly make every effort

25   because this is a cost and a time consideration for us as

 1 well.

 2   Q.   All right. Well, I hope I didn't put you

 3 on the spot too much, Ms. Barnes. Thank you very much.

 4   COMMISSIONER JARRETT: No more questions.

 5   JUDGE WOODRUFF: Commissioner Kenney.

 6 QUESTIONS BY COMMISSIONER KENNEY:

 7   Q.   Ms. Barnes, how are you?

 8   A.   I'm good. How are you?

 9   Q.   I'm doing well. Thanks. Glad to be here.

10 So I have a few quest--

11   A.   Me, too.

12   Q.   Really?

13   A.   Oh, sure.

14   Q.   Okay. I have a few questions that are

15 probably going to be redundant, but I'm not clear. So I'm

16 going to ask some predicate questions. The ROE that a

17 company earns, generally speaking, is supposed to reflect

18 the return that investors would expect if they were

19 investing in another enterprise of similar risk?

20   A.   That's as I understand it. I'm not an ROE

21 expert.

22   Q.   Similar to business risk?

23   A.   Uh-huh.

24   Q.   And the other trackers that we've allowed

25 and the FAC and the availability of environmental cost

1   **recovery mechanism, you haven't taken advantage of it but**

2   **it exists, the rating agencies will cite those as creating**

3   **a favorable regulatory environment, correct?**

4   A.   Yes.

5   Q.   **And typically they will view that as being**

6   **credit supportive?**

7   A.   Yes.

8   Q.   **Which reduces the company's business risk?**

9   A.   That's right. I think in the context of

10   how we think about ROE, should our authorized ROE be

11   average or should it be higher than average because of the

12   level of risk or regulatory treatment, and those are the

13   considerations I think that they look at compared to other

14   companies.

15   Q.   **And so if those trackers and other**

16   **mechanisms are favorable in reducing the company's**

17   **business risk and create a credit supportive environment,**

18   **then shouldn't the ROE be lowered to reflect the decrease**

19   **in the business risk?**

20   A.   I guess the question is lower than what?

21   Q.   **Lower than what it is. And I -- lower than**

22   **10.2.**

23   A.   Well, I guess it depends on what your

24   opinion is about whether the 10.2 is an adequate return or

25   if it's an above average return, and if it's an above

1 average return and you believe that these things require

2 that the ROE be recorded or be authorized at average, then

3 I would agree with that statement.

4   **Q.   What's your opinion regarding the current**

5 **authorized ROE as set in the last rate case? Is it**

6 **average, above average, below average?**

7   A.   Again, I'm not an ROE expert, but my

8 understanding is that it's about average when compared to

9 other utilities across the country.

10   **Q.   So it's about average as compared to other**

11 **utilities. Okay. I know you're not an ROE expert, but**

12 **you've worked as the comptroller of the company, I mean,**

13 **so you have some understanding of the finances of the**

14 **company?**

15   A.   Yeah, a little bit.

16   **Q.   Probably more than a little bit, right? I**

17 **want to ask you about -- it's a document that was prepared**

18 **by Gary Weiss, but I want to ask you about it anyway.**

19 **Does anybody have a copy of Staff Exhibit 232? It was**

20 **Ameren Missouri's response to Staff's motion to declassify**

21 **a portion of Cassidy's surrebuttal.**

22   MR. THOMPSON: I left mine upstairs. I'm

23 sorry.

24   MR. DOWNEY: You want 237.

25   COMMISSIONER KENNEY: 237, yeah. Seven

 1   looked like a two. Sorry. Is that it?

 2   MR. DOWNEY: Yes.

 3   BY COMMISSIONER KENNEY:

 4   Q.   Okay. If you look at page 2 -- well, it's

 5   not actually page 2, but it has page 2 on it.

 6   A.   Yes.

 7   Q.   It's a highly confidential component. Can

 8   I see that? Do you have the same thing I have?

 9   A.   (Indicating.)

10   Q.   Yeah. That's it.

11   A.   Okay.

12   Q.   And this is not highly confidential, right?

13   MR. THOMPSON: That's right.

14   THE WITNESS: That's correct.

15   BY COMMISSIONER KENNEY:

16   Q.   I want to refer to the actual earned return

17   on equity. First of all, this document refers to 12

18   months ended June 30th, 2012?

19   A.   Yes. That's correct.

20   Q.   Have you seen this document before today?

21   A.   Yes. I mean, I review the surveillance

22   reports, so I have seen this.

23   Q.   So you're familiar with the contents of

24   this document?

25   A.   Yes.

1   Q.   You review the surveillance reports before

2   they're provided to the Commission?

3   A.   Yes.

4   Q.   Okay. And you would have reviewed this

5   specific surveillance report before it was provided to the

6   Commission?

7   A.   Yes.

8   Q.   So you're competent to testify about its

9   contents?

10   A.   I don't prepare it, but I review it.

11   Q.   What do you review it for, accuracy?

12   A.   I look at it to make sure I understand

13   where all the numbers are coming from, and there's other

14   parts of this report that have notes, and I take a look at

15   the notes and make sure those are correct.

16   Q.   So you review it for correctness, and you

17   review it to make sure you understand it before it goes

18   out?

19   A.   Generally, yes.

20   Q.   And if you didn't understand it, you

21   wouldn't let it go out?

22   A.   That's right. I would ask questions first.

23   Q.   Well, then let me understand, then, the

24   common equity, because Mr. Weiss was very kind in trying

25   to help me mathematically understand how he arrived at

1   these numbers, but I was not a mathematician or an

2   accountant, so I'm a little obtuse. Maybe you can help me

3   understand.

4   A.   Okay.

5   Q.   The 10.53 common equity for the 12-month

6   period ending June 30th, 2012, how was that figure arrived

7   at? Well, and that's above the 10.2 that we authorized,

8   right?

9   A.   That's correct.

10   Q.   So how does this figure square with the

11   notion that the company is in a situation where it's

12   chronically under-earning and unable to reach its ROE?

13   Because that's essentially the predicate for why you want

14   this plant in service accounting, at least one reason you

15   want it is because there's a chronic inability to reach

16   your ROE. So how does this 10.53 for a 12-month period

17   ending June 30, 2012 square with that notion?

18   A.   Well, I think as I understand the premise

19   of the regulatory process, we're given an authorized

20   return, and at any point in time if you look at it on a

21   month-by-month basis, and every month you're looking at a

22   rolling 12-month average, so on a month-by-month basis, as

23   long as we are somewhere in the neighborhood of our

24   authorized return, there's going to be some periods where

25   you're going to overearn, there's going to be some periods

1 where you under-earn, but over time if you look at that

2 change over those periods of time, the overearn and

3 under-earn ought to get you at a point that on average

4 over those periods you're not consistently overearning or

5 you're not consistently under-earning.

6   So what I would characterize this as, you

7 know, we had a lot of weather in the month of June, which

8 probably contributed to for this 12-month period having an

9 overearning situation. I'm not sure having an overearning

10 situation in one period necessarily suggests that we are

11 overearning our return on a consistent basis.

12   **Q.   I certainly wouldn't suggest that. But it**

13 **does belie the notion that you're under-earning on a**

14 **chronic basis, right?**

15   A.   Well, depends on what you mean by chronic.

16 I mean, if this is one period out of eight and every other

17 period we were under-earning and this one we were over,

18 then I'm not sure I would call this a chronic overearning

19 situation.

20   **Q.   I'm not calling it a chronic overearning**

21 **situation. I think that would be incorrect. But I mean**

22 **if you have a period in which you are achieving above your**

23 **ROE, isn't it by definition not chronic under-earning?**

24   A.   I think what is important to think about

25 here and the way I think about it financially is looking

1   at trends. So I would need to take this number in

2   consideration with numbers subsequent to that and numbers

3   before that and say where does this fall on the continuum?

4   Is this a trend so that we are trending to be consistently

5   overearning, or is this an outlier and it's one position

6   or is it part of a trend that suggests that we're

7   under-earning.

8   So I'd have to look at it in the

9   perspective, a broader perspective than just saying here's

10 one period and one point in time where it appears that we

11 have overearned what our authorized return was.

12   Q.   **And you would have reviewed this, I think**

13 **you said, before it was provided?**

14   A.   Uh-huh.

15   Q.   **Did that figure cause you to ask those**

16 **questions?**

17   A.   Because I review these every month or every

18 time they're prepared, I guess I have a little bit of a

19 sense that -- and again, knowing that June was a

20 particularly warm weather month, that I wasn't surprised

21 necessarily that we would end up in a situation where this

22 would be over. But again, I put it in perspective of the

23 other months before it and the months that have occurred

24 since.

25   Q.   **And when this refers to a 12-month period**

 1   **ending June 30th, 2012, is that figure the average for the**

 2   **12 months leading up to June 30th or is that reflecting**

 3   **one month?**

 4   A.   No.   It's the average, because it's

 5   looking -- the way ROE is calculated is looking at

 6   earnings over a long period of time.   It would be looking

 7   at 12 months of earnings.   So it would take into

 8   consideration any weather last summer, July.   It would

 9   start from July of 2011 through June of 2012.   So it's

10   covering the hot summer from July and August incorporated

11   in those numbers as well as any weather events that we

12   would have had earlier this year.

13   Q.   **So if you average that 12-month period out,**

14   **taking into account the months of hot weather but also in**

15   **there are winter months --**

16   A.   That's right.

17   Q.   **-- and other not hot weather months?**

18   A.   That's correct.

19   Q.   **The average gets you above 10.2.   So**

20   **there's some months where it was much higher, some months**

21   **where it's much lower --**

22   A.   Uh-huh.

23   Q.   **-- for the 12-month period?**

24   **So you're not looking at a finite one**

25   **month; you're looking at a 12-month average?**

 1   A.   That's correct.

 2   Q.   **And this number, as you understand it, is**

 3   **there any difference between how this 10.53 is calculated**

 4   **for purposes of surveillance reports versus the chart**

 5   **that's reflected in Mr. Baxter's testimony?**

 6   A.   I don't recall exactly how Mr. Baxter's

 7   charts are prepared, but I do know that we traditionally,

 8   in the way the external investors look at it is they're

 9   looking at a holistic basis, so they're looking at our

10   entire company, which would include our gas operations as

11   well as things that are not recoverable in the regulatory

12   space in addition. Where this report is only looking at

13   electric operations, so that would be a subset of the

14   broader view.

15   Q.   **Is this a report or at least a document,**

16   **the contents of this report maybe in some other format,**

17   **would this be something investors would have available to**

18   **them to review?**

19   A.   To the extent this it's filed out on EFIS

20   and that they have access to your website, then I think it

21   is available to them.

22   Q.   **Would the contents of this document show up**

23   **in an SEC report, a quarterly report?**

24   A.   Not in this form.

25   Q.   **Not in this form?**

```
 1        A.     No.

 2        Q.     But could the contents in some other form?

 3        A.     No, because we wouldn't isolate the

 4  electric business from the gas business in those external

 5  SEC documents necessarily.

 6        Q.     Would an analyst isolate the electric

 7  operations from the holding company in analyzing your

 8  creditworthiness?

 9        A.     You know, I can't speak for them in how

10  they do their analysis.  If I were them, I guess I would

11  attempt to.  I'm not sure there's enough public

12  information available for them to do that.  They would

13  have to be making some assumptions to make that call.

14        Q.     Okay.  So back to my original question, the

15  plant in service accounting is something that in your

16  opinion would or would not reduce Ameren's business risk?

17        A.     It would reduce our -- it would reduce our

18  disincentive to make investments, and it would provide us

19  the opportunity to get closer to our authorized return,

20  but I don't believe that it directly correlates to what

21  you choose that return to be.

22        Q.     Putting aside the ROE, I'm just talking

23  focusing on business risk, it reduces the risk that you're

24  not going to recover $37 million under the example that

25  you've used, correct?
```

1   A.   Well, certainly it at least gives us the

2   opportunity to recover that $37 million, which we don't

3   have that opportunity today.

4   Q.   **So your risk of not recovering that**

5   **$37 million is reduced?**

6   A.   That's correct.

7   Q.   **So is your business risk then reduced by**

8   **the possibility of having this plant in service?**

9   A.   Yeah. It certainly gives us, I guess, the

10 opportunity to -- if we assume that we're going to recover

11 it, which we would assume that if we had plant in service

12 mechanism, then we would be able to then make decisions

13 differently based on that assumption.

14   Q.   **Do you have any thought or opinion about**

15 **how a rating agency would view the availability of such a**

16 **mechanism?**

17   A.   I think it would be similar to how they

18 view the FAC and the other trackers, that they would see

19 that as promoting a more favorable regulatory environment

20 in Missouri.

21   Q.   **Well, you've been very helpful. Thanks for**

22 **your patience in answering my questions.**

23   A.   You're welcome. It's my pleasure.

24   JUDGE WOODRUFF: Commissioner Stoll?

25   COMMISSIONER STOLL: No questions, your

1   Honor.

2   FURTHER QUESTIONS BY CHAIRMAN GUNN:

3   **Q.   Can I follow up on a couple of those**

4   **questions? Because I've been confused about this sheet as**

5   **well.**

6   A.   Okay.

7   **Q.   Because Mr. Baxter said that there were**

8   **things taken out of this, and he called it actually an**

9   **adjusted -- an adjusted figure.**

10   A.   Adjusted because it took out things that I

11   believe, if I understand correctly, that you-all have

12   allowed us not to recover, so Taum Sauk.

13   **Q.   Allowed you not to recover?**

14   A.   Well, disallowed, whatever term you want to

15   use.

16   **Q.   But the title is actual -- actual earned**

17   **return on equity. So it's an adjusted figure, but you**

18   **call it your actual earned return on equity?**

19   A.   From a comparability perspective for your

20   view, because these are prepared for the Commission, these

21   are trying to give you as best, I believe, an apples to

22   apples comparison of what did we actually earn versus what

23   you authorized us to earn.

24   **Q.   So if you put those -- well, if we hadn't**

25   **disallowed those figures, this 10.5 would be substantially**

 1   higher?

 2   A.   I don't know about substantially. We'd

 3   have to look at the math. It would be different.

 4   Q.   Would it be higher?

 5   A.   Most likely. I don't know what all got

 6   adjusted in and out of here to for sure make that

 7   determination.

 8   Q.   Well, if we -- if you got to recover

 9   dollars that we didn't allow you to recover, wouldn't that

10   by necessity mean that you earned more?

11   A.   Conceivably. Like I said, I don't know

12   what else might have been pulled out of here.

13   Q.   Would you conceivably pull dollars that you

14   were allowed to earn out of this number?

15   A.   No, but there could have been refunds or

16   some other revenue piece that also wasn't included, for

17   example, the Entergy refund, or I don't recall if these

18   are weather normalized.

19   Q.   And in order for this number to be 10.53,

20   that means that you had to have earned substantially in

21   those hot weather months, you'd have to -- your ROE would

22   have been substantially higher than that?

23   A.   For that one month you mean, for those hot

24   weather months?

25   Q.   For those hot weather months, in order to

1   offset -- offset substan-- or lower winter months?

2   A.   Well, if you take a look at just our

3   financials, you know, our costs generally are pretty

4   fixed, and so we spend about the same amount of money

5   every month, but our revenues can vary dramatically

6   depending on the weather. So that's right. So for the

7   summer, if we had a really hot summer month, then our net

8   income for that month is going to be a lot different than,

9   say, a winter month where we incurred the same amount of

10 costs but we have less revenues.

11   Q.   Right. But this isn't a month -- this

12 isn't a month period?

13   A.   That's right.

14   Q.   This is a 12-month period?

15   A.   That's right.

16   Q.   So you've taken into account those peaks

17 and valleys?

18   A.   That's right.

19   Q.   So by necessity, on several of those months

20 you would have had to have earned, maybe not

21 substantially, but you would have had to earn over

22 10.53 percent in some of those individual months?

23   A.   And equally we'd have substantially

24 under-recovered on the other months.

25   Q.   No. Absolutely. But I just want to make

1   sure. But even taking those months in which you've

2   under-recovered, the 12-month average is still 30 basis

3   points higher than your authorized ROE?

4   A.   For this one period of time.

5   Q.   For this year period of time?

6   A.   For this one year period of time, that's

7   right. Like I said, I would be looking for trends, and so

8   I would have to look at this one data point and compare it

9   to other data points because we do this every month for

10   rolling 12-month periods.

11   Q.   And I would agree with you except for the

12   fact that you have had an intervening rate case here.

13   We're not talking about a five-year period where you

14   haven't gotten a rate increase. You've gotten a rate

15   increase. When did the last one go into effect?

16   A.   August of 2011.

17   Q.   So a big portion of this is under the rate

18   structure that we authorized, the rate increase that we

19   authorized the last time?

20   A.   That's right. But I would want to compare

21   this to what did the May number look like, what did the

22   April number look like, what did the August number look

23   like to put this into perspective.

24   Q.   Absolutely. But you were able to do that

25   despite not having plant in service accounting?

1   A.   For that one point in time, that's correct.

2   Q.   **For the last year? I mean, I just want to**

3   **be clear, because you keep saying that this is one point**

4   **in time. Well, the one point in time is a 12-month period**

5   **of time, it is a full year, correct?**

6   A.   That's right, but --

7   Q.   **So over the hundred years of companies, it**

8   **is one data point on a hundred?**

9   A.   Uh-huh.

10   Q.   **But you started not earning your ROE,**

11   **according to this -- to one of these charts, in 2007?**

12   A.   Uh-huh.

13   Q.   **So since 2007, during this five-year**

14   **period, one 12-month period along that much smaller number**

15   **period of time, you have earned -- you have over-earned**

16   **30 basis points from your authorized ROE?**

17   A.   I think the way to look at it, and I have

18   to recall the testimony, but I believe if you look at that

19   five-year period of time, that 60-month period, I think

20   there were maybe five or six or seven times out of that

21   60-month period that this situation exists where we are

22   earning higher than whatever the authorized return was for

23   that period.

24   Q.   **So 12 out of those 60 months, an average,**

25   **you've earned higher, the last 12 more importantly?**

1   A.   No, because all of those periods are

2   12-month periods.

3   Q.   The last 12 months, the average of the last

4   12-month period of time over the last 60 months you've

5   earned 10.53, correct, according to this?

6   A.   Well, this is June. Like I said, I don't

7   know what July, August. Now we're October 1st. We'll be

8   looking at September.

9   Q.   Right. So we don't know what we've done

10 ongoing?

11   A.   Uh-huh.

12   Q.   All right. And that's -- that's what I'm

13 continually confused about, because we hear -- you talked

14 about how you see -- you see months where you've earned

15 more than the ROE and you've seen months where you've not.

16 The chart that Mr. Baxter provided show that there were no

17 months over the past 12 months that you earned over your

18 authorized ROE, and that is -- now, they said it was

19 weather normalized.

20   A.   Uh-huh.

21   Q.   But what I don't understand is why when

22 you're -- when you're taking that 12-month average, you're

23 taking -- as you said, you're going to see the peaks and

24 valleys based on weather. That's one of the reasons why

25 you have average it over 12 months, right?

```
1            A.     But you can have multiple months in that

2    12-month period that have weather, and that's what I think

3    we see with this particular period.  Again, your 10.2 is

4    based on weather normalized and all kinds of other

5    normalizations.  So to take that and compare it to raw,

6    you know, whatever happened, and we can adjust them.  I

7    believe what Mr. Baxter's charts attempt to do is try to

8    normalize as much as possible to get to an apples to

9    apples on the 10.2 versus what we really earned, and

10   that's where --

11           Q.     His chart with all that apples to apples

12   comparison showed that you didn't come close to earning a

13   10.2 ROE in any single month.

14           A.     Okay.

15           Q.     This piece of paper says that in the last

16   12 months, taking those averages, you've earned 10.53,

17   which means that you have in certain months had to have

18   earned even higher than 10.53 in certain months?

19           A.     That's correct.

20           Q.     All right.  So I don't get how those are --

21   how this apple compares to that apple.

22           A.     I think this one has weather in it and his

23   didn't is one big apple, but I'm not sure what other

24   differences there are between the two.

25           Q.     This is actual?
```

 1   A.   Yes, it is.

 2   Q.   All right. They just -- and look, this

 3   might be my total lack of understanding, but I don't see

 4   how these two charts can be reconciled. They are saying

 5   fundamental different things. That one said the company

 6   did not earn anywhere close to its authorized ROE. This

 7   chart, this piece of paper says, oh, no, wait a minute, we

 8   did in certain months. And this one actually is taking

 9   into account the differences in what -- the different

10   earning cycles that you talked about month to month to

11   month, where you will earn more in a hot month than you

12   will in a cold month.

13   A.   Uh-huh. I didn't prepare his charts. I

14   would have to go back and look at those and see what the

15   true differences are. I understand this report, and I

16   don't -- I didn't do his charts, so --

17   Q.   And I think that's a -- that's a fair

18   point. But when you hear the argument, and it's

19   Commissioner Kenney's point, that this, the plant not

20   having plant in service accounting and other regulatory

21   frameworks that we have here in the state of Missouri or

22   the other things that we don't have in the state of

23   Missouri to allow you a greater return creates a chronic

24   inability to earn your authorized ROE. And yet I have a

25   piece of paper here that tells me that for the months

1   **ended June 30th, 2012, the actual earned return on equity**

2   **has been 10.5, which averages out month by month a**

3   **12-month period of time.**

4   A.   I think the way I would think about it, I

5   mean, you had it right earlier this morning when you were

6   asking questions I believe of Mr. Thompson about policy

7   and thinking about this on a more longer term systemic

8   basis. As he pointed out, as Mr. Byrne has pointed out,

9   times have changed, and the way that we implemented

10   regulatory policy 20, 30 years ago may not be the same way

11   we need to implement it in the future.

12   So I think there's a longer term, broader

13   perspective around this plant in service accounting

14   premise than just for this one point in time whether or

15   not we've earned or over-earned. It's thinking more

16   broadly around what is the future requirement of the

17   company. And I think we're in a position where we have

18   assets that are 40, 50 years old that are going to need to

19   be replaced, and we will not have the ability to do that

20   and continue to earn anywhere close to our authorized ROE

21   given the regulatory framework that's currently in place.

22   Q.   **But what -- from a policy standpoint, the**

23   **threshold question that we have to ask is whether or not**

24   **those policies actually do what you say that they are**

25   **doing.**

 1   A.   Uh-huh.

 2   Q.   And I would expect that Mr. -- that if that

 3   was the case, that Mr. Baxter's chart would be the norm,

 4   and that there would be no way -- if it was structural,

 5   all right, if it was institutional, I don't know that

 6   there would be any way that you would be able to earn a

 7   10.53 or in some cases having to earn higher than a

 8   10.53 to get to that average in certain months, because

 9   that tells me that it's not structural or institutional

10   because you have the ability to do it.

11   If it was structural or institutional, you

12   would never be able to do it, and you have been able to do

13   it. And people say, oh, well, that's because it was

14   really hot. Well, yeah, it gets really hot in the summer.

15   A.   But not every summer.

16   Q.   No, it doesn't, but it does get hot in the

17   summer and it gets cold in the winter.

18   A.   Uh-huh.

19   Q.   And that is part of what you're having to

20   deal with. But if this was structural or institutional,

21   then it wouldn't matter whether it got hot in the summer

22   because there wouldn't be -- you wouldn't be able to

23   recover costs. But you're being -- not only are you being

24   able to recover your costs fairly, but you're able to earn

25   higher than what we authorized the ROE in certain months,

1 and on a 12-year rolling average, you're 30 basis points

2 higher than your authorized ROE.

3   A.   For one 12-month period.

4   Q.   Okay, but it's during that -- a five-year

5 period --

6   A.   Uh-huh.

7   Q.   -- that's only in the last five years have

8 you not been able to hit your authorized ROE.

9   A.   Because growth and demand in that five-year

10 period has leveled off or even been reduced.

11   Q.   But if we're talking long-term, all right,

12 one year -- so previous to that five-year period of time

13 you're making money, you're hitting your authorized ROE,

14 and yes, there was a special regulatory plan that

15 recovered -- returned some of that money to the customers,

16 but yet you were in a -- in the wheelhouse there.

17   A.   Uh-huh.

18   Q.   So then we're now in a shorter time period,

19 a five-year period since 2007 that you have not been able

20 to recover your authorized ROE. But for 12 months during

21 that time, for 20 percent of the time you have been able

22 to recover it, because we've got a 12-month rolling

23 average that says you earned 10.53.

24   A.   I guess the current concern that I have is

25 we could wait for time to pass and if the company's

1   predictions play out and so now we're here five years from

2   now, so now there's been a ten-year period where we for

3   all intents and purposes haven't earned our return, and in

4   the meantime we have operated our business under the

5   confines of the regulatory structure that we have and the

6   rates that you have given us to spend, the concern is that

7   this infrastructure improvement or this replacement will

8   just get delayed, and the impact to customers won't be

9   pennies or less than a penny a day. It will be much more

10 substantial than that in that future period.

11   Q.   That is absolutely a fair point, and I --

12 when I was down at FRI I asked the question whether our

13 desire to constantly have least cost improvements will

14 actually cause rates to rise in the future, and I think

15 that's an absolutely fair point.

16   My point here today is, is that you're

17 asking us to look for trends, and you're saying that we

18 need to plan for the long term when we had a subsequent

19 rate case less than a year ago, during that -- or almost a

20 year ago. During that period of time, you've been able to

21 earn on the average higher than your ROE. So how do we

22 know that the structures that we put in place in the last

23 rate case, which included some trackers, hasn't solved

24 your problem?

25   A.   Because for the other 11 periods that we've

1 looked at in this case, we've not become -- we've not been

2 30 basis points over our allowed ROE.

3 　　　　Q.　　But previous -- that was before the

4 subsequent rate case?

5 　　　　A.　　Well, then I would --

6 　　　　Q.　　Am I right on that? This -- this is for

7 the last -- the 12 months ending June 30th, right?

8 　　　　A.　　Uh-huh.

9 　　　　Q.　　So -- and June, July and August were pretty

10 hot where I was. So I'm assuming -- I could be wrong, but

11 I'm assuming that you weren't struggling during those

12 periods of time, that those ROEs are --

13 　　　　A.　　Uh-huh.

14 　　　　Q.　　-- not bad?

15 　　　　A.　　Weather was definitely a contributing

16 factor in those months, that's right.

17 　　　　Q.　　And it's going to help in December?

18 　　　　A.　　It depends on how weather plays out for the

19 rest of this year. The warm winter in the first quarter

20 negatively impacted the financials, and as we I think

21 indicated in our June external reports, frankly, with the

22 warm June, it really just got us back to even as far as

23 normal weather goes.

24 　　　　Q.　　You just made -- you just made my point,

25 right, which what you just made was my point was, is that

1   **from year to year to year we don't know what's going to**

2   **happen with the weather, but we do know that last year,**

3   **the last 12 months, you made higher than your ROE, your**

4   **authorized ROE.**

5   **But what you're asking us to do is**

6   **fundamentally change the way that we handle accounting in**

7   **Missouri on an ongoing basis, and yet we have no basis to**

8   **say that what we did in the last rate case hasn't given**

9   **you enough resources, regulatory framework, whatever, in**

10   **order to earn your authorized ROE.**

11   A.   Well, I think what you're seeing is the

12   company behaving based on what we got from our regulatory

13   framework. I mean, if you're expecting that the company's

14   going to continue to spend what we believe is the right

15   level and continue to incur losses just so that we can

16   have a report that shows that we didn't manage our

17   business, I think that's kind of a different scenario.

18   I mean, we have scaled back our capital

19   expenditures over the last several years because of all

20   the rate decisions that have been made. We don't believe

21   that's a sustainable place to be going forward because we

22   have infrastructure that needs to be replaced.

23   Q.   **We have given you vegetation management**

24   **trackers. We have given you storm trackers. We have**

25   **given you -- in the last few years, we have given you a**

1   lot of ways in order to not cut back on capital

2   expenditures, and we've granted rate increases and we've

3   done it on a pretty consistent basis. If you go to these

4   local public hearings, those people will tell you how much

5   their bill has gone up to the penny month by month by

6   month.

7   So I don't know that it's a fair point to

8   say that you have reduced your capital expenditures in the

9   system because of the -- of our non-constructive rate case

10   decisions, because if you look at what New York says, what

11   Wall Street says, even though I hate to do that, every

12   single one of those have said that our rate cases in the

13   past few years has been constructive, and that the

14   regulatory environment in Missouri as compared to, for

15   example, Illinois where now you have formula rates, is

16   much more constructive than it has been in the past.

17   So I don't buy -- I don't necessarily buy

18   the argument that -- and this kind of is a problem -- that

19   the regulatory framework in Missouri is so fundamentally

20   broken that we need to start fixing it this way. Maybe

21   it's the tone of the -- maybe it's just the general tone

22   of the argument where -- where Mr. Baxter got on the stand

23   and said it, and you're kind of saying it now, is that

24   this plant in service accounting fixes a huge part of the

25   problem.

1   A.   Again, I think you have to take it in the

2   perspective while the regulators and the external

3   investors have indicated that we have had constructive

4   rate outcomes, at the end of the day, compared to the rest

5   of the country, I believe Missouri's regulatory framework

6   is still in the bottom 25 percent or even bottom

7   10 percent across the country of regulatory frameworks.

8   Q.   And that --

9   A.   I think there's still an opportunity there.

10   **Q.   But let's look at why. A big part of that**

11   **has nothing to do with our decisions. It has to do with**

12   **the fact that there's no future test year, that there's no**

13   **CWIP, that there aren't these other regulatory frameworks.**

14   **So it's not -- that are legislatively put. It doesn't**

15   **have anything to do with this Commission's decisions.**

16   A.   I agree with that, and all we're suggesting

17   is that this is a decision that you can make, that you

18   don't need legislative approval to make, that would help

19   mitigate the problem.

20   **Q.   But the problem that you are describing**

21   **doesn't seem, from what I can tell, to be that big of a**

22   **problem from our standpoint. What you're trying to**

23   **solve -- and I don't know that I -- $80 million is a lot**

24   **of money. I don't know that capital expenditures in this**

25   **case is really that big when you look at the fuel and --**

1   **fuel and MEEIA costs. I mean, what's the MEEIA cost?**

2   A.   The MEEIA'S $80 million, and the fuel's

3   about 100ish. So it's a substantial piece. It's

4   comparable, I would say, to those.

5   **Q.   But there -- but they're -- they're normal**

6   **everyday capital expenditures?**

7   A.   That's right, because we have an aging

8   infrastructure and we have compliance requirements that we

9   have to make. I mean, part of that investment was to put

10 into place the Maryland Heights Energy Center, for

11 example, which was to comply with the renewable energy

12 standard that we have to meet.

13   So, I mean, we're making capital

14 investments where we need to make them. We still have an

15 aging infrastructure that needs to be systemically

16 addressed, and we want to be able to do that over a longer

17 period of time and get those improvements in now when it's

18 inexpensive because right now interest rates are really

19 low.

20   **Q.   Right.**

21   A.   And also that it has the minimalest impact.

22 I mean, I can't make investments without impacting

23 customer rates. Unfortunately, it doesn't work that way.

24 But if I can do it where it has a less of an impact on

25 customer rates than what might happen if I wait, I would

 1 much rather do it where it's a small increase, pennies per

 2 day, than get to the point where we have to make the

 3 investments and now it's going to be a very substantial

 4 increase to customers and be more of a rate shock for

 5 them. Whether that's five years from now, ten years from

 6 now, I don't know when that will happen, but it will

 7 happen.

 8   Q.   I'm going to stop now because I think it's

 9 probably also appropriate for the ROE part of the

10 testimony that we can talk about it then. I appreciate

11 you putting up with me, and I appreciate your honest

12 answers. Thanks.

13   CHAIRMAN GUNN: I don't have anything else.

14   JUDGE WOODRUFF: Thank you. We've been

15 going for over two hours now, so we'll take a break now,

16 and we'll come back at 11 o'clock and continue with

17 recross based on questions from the bench.

18   (A BREAK WAS TAKEN.)

19   JUDGE WOODRUFF: We're back from the break.

20 Lynn Barnes is still on the stand, and we'll be moving to

21 recross based on questions from the bench, beginning with

22 MIEC.

23 RECROSS-EXAMINATION BY MR. DOWNEY:

24   Q.   Ms. Barnes, I want to ask you a few

25 questions about Staff Exhibit 237.

 1   A.   Okay. I don't have it anymore, but that's

 2   okay.

 3   Q.   One of us is going to be without it. So I

 4   only have one copy. Let's see if we can handle the

 5   questions without you seeing the copy.

 6   A.   Okay.

 7   Q.   The 12-month period under consideration in

 8   Staff Exhibit 237, that's very close to the true-up period

 9   under consideration by the Commission in this case, right?

10   A.   Yes.

11   Q.   Okay. And you're asking for over

12   150 million in increased revenue --

13   A.   Yes.

14   Q.   -- in this case?

15   A.   Yes.

16   Q.   And if that 150 million were granted and if

17   that had been part of this -- had been in the revenue

18   added to this 12-month period ending June of 2012, then

19   obviously the ROE would be even higher than is reported in

20   this exhibit, right?

21   A.   Well, there are obviously some numbers that

22   are included in that 12 months ended June that are not

23   normal business.

24   Q.   Okay. Just answer my question, though. If

25   you added additional revenue, let's say 150 million, the

 1   calculated ROE would actually be higher, right?

 2   A.   I guess if you assume then that the weather

 3   is going to stay hot and the other unusual things are

 4   included in there, then just doing the math, that's

 5   correct.

 6   MR. DOWNEY: Thank you. I have nothing

 7   further.

 8   JUDGE WOODRUFF: Public Counsel?

 9   MR. MILLS: Yes.

10   RECROSS-EXAMINATION BY MR. MILLS:

11   Q.   Ms. Barnes, is it your testimony that the

12   company's situation of not being able to earn its

13   authorized return on equity is both extraordinary and

14   chronic?

15   A.   I have not used the term extraordinary.

16   Q.   Okay.

17   A.   I have used the term chronic.

18   Q.   Is it your testimony that it's not

19   extraordinary?

20   A.   Because we've been seeing this situation

21   over the last five years, I would say this isn't

22   extraordinary, and that's not what we're requesting in

23   this proposal.

24   Q.   Now, the infrastructure expenditures that

25   we've been talking about, I believe in response to

 1   **questions from the Bench, your testimony is that those are**

 2   **not volatile --**

 3   A.   No.

 4   **Q.   -- correct?**

 5   A.   They're predictable.

 6   **Q.   And not volatile and they are not**

 7   **unpredictable, correct?**

 8   A.   Uh-huh.

 9   **Q.   And they're also not out of the company's**

10   **control?**

11   A.   Only to the extent that infrastructure

12   improvements need to be made. I mean, that's -- we can

13   control when we make expenditures as long as the system

14   doesn't fail before we get around to making them.

15   **Q.   Within the parameters of providing safe and**

16   **adequate service, it's within your control when and how**

17   **you do these investments?**

18   A.   That's right. And we will always try to

19   provide safe and adequate service. Our customers expect

20   more than that.

21   **Q.   In response to -- you had some questions**

22   **from Commissioner Jarrett about the possibility of the**

23   **company not seeking another rate increase for two or three**

24   **years. Do you recall those questions?**

25   A.   I do.

1   Q.   You said some pretty encouraging things in

2   response to those questions. Was it your intention to

3   suggest that there is a real possibility that if the

4   company gets plant in service accounting in this case,

5   that you may not file for two or three years after

6   January 1, 2013 when rates go into effect in this case?

7   A.   There's a lot of considerations that go in

8   to making decisions around when to file rate cases, and

9   certainly having better regulatory treatment around our

10   infrastructure investments is one of those decisions. I

11   also said that I'm not the decision-maker on when we file

12   rate cases. All I'm saying is that would definitely be a

13   factor that would allow us to consider, but I can't commit

14   us to when we would or wouldn't file another rate case.

15   Q.   And I believe one of the Commissioners

16   noted that there is at least some disparity between the

17   way that you and the way that Mr. Baxter characterize the

18   plant in service accounting mechanism. Do you recall

19   that?

20   A.   Yes. I wasn't here for Mr. Baxter's

21   testimony.

22   Q.   So when you say that plant in service

23   accounting would be a consideration that could lead the

24   company to decide to stay out for two or three years, how

25   significant a consideration is that?

1   MR. BYRNE: I'm going to object. The

2   question misstates her testimony. She did not say it

3   could lead the company to stay out for two or three years.

4   MR. MILLS: The question was premised on

5   the notion of the company staying out for two or three

6   year, and she testified that the plant in service

7   accounting would be a consideration in making that

8   determination, and so I'm asking how significant a

9   consideration that would be.

10   THE WITNESS: I can't answer that, not

11 knowing what else -- I'm sorry.

12   JUDGE WOODRUFF: I'll overrule the

13 objection, and now you can give your answer.

14   THE WITNESS: Without knowing all the other

15 factors that go into making decisions about rate cases, I

16 can't speak to how big of a deal this would be or not be

17 on when we would file next.

18 BY MR. MILLS:

19   Q.   **Have you seen business plans of the company**

20 **that talk about the next rate case and when it might be**

21 **filed?**

22   A.   We -- I've seen -- yes. That's part of my

23 job is to prepare those.

24   Q.   **And when do those show that the next rate**

25 **case is likely to be filed?**

 1   MR. BYRNE: Your Honor, I believe this is

 2 probably highly confidential information, so -- well, let

 3 me ask Ms. Barnes. If it's highly confidential

 4 information, we would need to go in-camera.

 5   THE WITNESS: I think we should.

 6   JUDGE WOODRUFF: Do you wish to pursue it?

 7   MR. MILLS: I do.

 8   JUDGE WOODRUFF: We'll go in-camera then,

 9 and if there's anyone in the audience who needs to leave,

10 please do so.

11   (REPORTER'S NOTE: At this point an

12 in-camera session was held, which is contained in

13 Volume 20, pages 661 through 664 of the transcript.)

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1   JUDGE WOODRUFF: And we're back in regular

2   session.

3   BY MR. MILLS:

4   Q.   Ms. Barnes, you were asked by Commissioner

5   Kenney about Exhibit 237.

6   A.   Yes.

7   Q.   Do you recall that?

8   A.   Uh-huh.

9   Q.   That information -- that exhibit is

10   actually a correction to a schedule that was filed with

11   Staff witness John Cassidy's surrebuttal testimony; is

12   that correct?

13   A.   I believe so, yes.

14   Q.   Why was the information wrong when it was

15   first submitted to the Staff?

16   A.   I don't remember. I don't know.

17   Q.   Okay. But you reviewed that information?

18   A.   I do review them. Gary Weiss prepares

19   them.

20   Q.   Okay. And how often is that report

21   submitted to the Staff?

22   A.   Quarterly.

23   Q.   How often is that information compiled and

24   prepared by the company?

25   A.   In that form, I think only for the Staff

1   reporting is my understanding. The only time I review it

2   is quarterly when it's going to be submitted to the Staff.

3   **Q.   So you don't accumulate that information**

4   **and tabulate it monthly?**

5   A.   If it is, I don't see it. I don't know.

6   **Q.   Okay. Now, in your surrebuttal testimony,**

7   **and you talked to some of the Commissioners about this**

8   **$37 million number, that's simply an updated figure from**

9   **the $15 million figure that's in your direct testimony?**

10   A.   Yeah. The $15 million figure was derived

11 based on assets that were placed in service from March

12 2011 through December of 2011, and the updated in the

13 surrebuttal just updated that figure to include assets

14 that were placed into service in 2012 through the true-up

15 period at the end of July.

16   **Q.   Now, do you have your direct testimony**

17 **there --**

18   A.   Uh-huh.

19   **Q.   -- with you?**

20   **At the very -- this is a long time ago, but**

21 **when you very first took the stand, you made a correction**

22 **to your direct testimony.**

23   A.   Yes.

24   MR. BYRNE: I'm going to object. This is

25 outside the scope of questions from the Bench.

1   JUDGE WOODRUFF: He hasn't asked a question

2 yet.

3 BY MR. MILLS:

4   Q.   It goes to the $37 million, of which there

5 were a number of questions from the Bench. The correction

6 you made was to correct the number on line 22, the

7 reference to line -- the number on line 22, which is

8 actually less than 1/10 of a percent?

9   A.   Yes.

10   Q.   Isn't that number incorrect to begin with

11 because it's been updated?

12   A.   It's not incorrect. It's just been updated

13 to include additional information. It was correct as of

14 December -- for the assets in place as of the end of

15 December.

16   Q.   But that .097 percent is no longer the

17 number that you're testifying to?

18   A.   That's correct, because we've updated it,

19 uh-huh.

20   Q.   And now the $37 million that you talked to

21 the Commissioners about, that's an annual revenue

22 requirement number, correct?

23   A.   Yes.

24   Q.   And --

25   A.   I believe it is.

1   Q.   And you would anticipate that that number

2   would be collected from customers over the life of the

3   assets?

4   A.   That's correct.

5   Q.   And did you not testify that those assets

6   are anticipated to have a life of 40 or 50 years?

7   A.   30 to 40. They're all long-term assets,

8   uh-huh.

9   Q.   So if we were to assume that you were to

10   collect that amount for 40 years, do you know what that

11   would be?

12   A.   I didn't calculate the math. The

13   37 million equates to $6 million in a revenue requirement,

14   and so that calculates to be an increase in rates of about

15   21 cents per month.

16   Q.   So the $37 million is not a revenue

17   requirement number?

18   A.   No. The revenue requirement number is the

19   $6 million. If you look in my testimony, I believe it

20   says that.

21   Q.   But you would anticipate to collect that

22   $6 million over the 30 to 40-year life of the plant in

23   service, correct?

24   A.   Uh-huh.

25   Q.   And in addition, in every subsequent period

 1   **you would add another additional $6 million for additional**

 2   **construction?**

 3   A.   Well, it may not be $6 million.

 4   **Q.   But something in that neighborhood?**

 5   A.   Depending on how much we invest in that

 6   interim period.

 7   **Q.   And you would collect that in addition over**

 8   **the same 30 or 40 years?**

 9   A.   And basically it's rate base additions.

10   We're offsetting them by retirements and by changes in

11   accumulated depreciation. So it's just saying whatever

12   the net increase in rate base would have been if those

13   assets would have been in rate base as soon as they were

14   put into service, that's the piece that we're trying to

15   collect.

16   **Q.   But the $6 million is just for one year of**

17   **additional collection, correct?**

18   A.   It's for a period of asset additions from

19   March 2011 through July of 2012, so a little bit more of a

20   year's worth of additions, and what the revenue

21   requirement would be had those additions been added to

22   rate base.

23   **Q.   But that would make rates $6 million higher**

24   **not just for the first year after rates go into effect in**

25   **this case, but for the year after and the year after and**

1   **the year after that, correct?**

2   A.   That's correct, uh-huh.

3   Q.   **And if the Commission were to continue**

4   **plant accounting in the next rate case, for every year you**

5   **would add another $6 million on top of -- as you said, it**

6   **may not be 6 million, but some amount for the plant in**

7   **service accounting on top of that every single year?**

8   A.   That's correct.

9   Q.   **So that number would continue to climb year**

10   **after year after year? It wouldn't hit 6 million from**

11   **this one period of investment and then stop at that level,**

12   **would it?**

13   A.   No, not at all. I mean, the premise isn't

14   that we're going to stop making capital investments. The

15   premise is that we're going to recover 100 percent of the

16   investments in the money that we spent.

17   Q.   **Now, with respect to -- I'm referring back**

18   **to the Exhibit 237 that Commissioner Kenney asked you**

19   **about just in general terms. I don't think you'll need**

20   **the document. But I think you answered a question from**

21   **Chairman Gunn about the Entergy refund. If the Entergy**

22   **refund was pulled out of that, would not the 10.53 be a**

23   **higher number if the Entergy refund was left in?**

24   A.   The Entergy refund was left in.

25   Q.   **Okay.**

1   A.   And that refund was about $16 million after

2   tax, which is about 30 basis points. So what's in that

3   number is weather, and what's in that number is the

4   Entergy refund, and if the -- and the 10.2 had neither of

5   those things in it.

6   Q.   Okay. Now, do you happen to have a copy of

7   Mr. Baxter's direct testimony there with you?

8   A.   No, I don't.

9   Q.   Did you have a chance to look at it or talk

10   about it during the break?

11   A.   No.

12   Q.   Okay. Because when we talk about the chart

13   in Mr. Baxter's testimony, there's actually more than one;

14   is that correct?

15   A.   I believe so. I haven't looked at it in a

16   while.

17   MR. MILLS: Okay. well, Judge, may I

18   approach?

19   JUDGE WOODRUFF: You may.

20   BY MR. MILLS:

21   Q.   Ms. Barnes, there are two charts in

22   Mr. Baxter's testimony, are there not?

23   A.   Yes.

24   Q.   And the primary difference is one is

25   weather normalized and one is not weather normalized?

 1   A.   I believe that's correct.

 2   Q.   **Okay. And I believe you testified that the**

 3 **information shown on Exhibit 237 is not weather**

 4 **normalized?**

 5   A.   That's correct, it is not.

 6   Q.   **So that would be most comparable to the**

 7 **chart in Mr. Baxter's testimony that is not weather**

 8 **normalized; is that not correct?**

 9   A.   Yes.

10   Q.   **And the information in Exhibit 237 covers**

11 **the 12 months ending June 31st, 2012, correct?**

12   A.   June 30th, yes.

13   Q.   **Okay.**

14   A.   Add an extra day there, but yes.

15   Q.   **The end of June 2012. Do either of the**

16 **charts in Mr. Baxter's testimony show the company earning**

17 **at or above 10.2 ROE for any of the months in 2000-- for**

18 **any of those 12 months?**

19   A.   That are encompassed in the 12 months

20 ending June 30th?

21   Q.   **Correct.**

22   A.   No.

23   Q.   **Okay. So if the information in Exhibit 237**

24 **is on an apples to apples basis with the information in**

25 **Mr. Baxter's charts, does that not mean that the end of**

1 the 12-month period ending June 30th, 2012, you earned

2 substantially in excess of the 10.2 in order it make the

3 average over those 12 months to be 10.53?

4   A.   Again, in June we had a revenue from an

5 Entergy refund of monies that had already been

6 contemplated because we'd already spent them, and that

7 showed up as revenue in one month, and that is in those

8 numbers. So that alone is 30 basis points on that

9 surveillance report.

10   Q.   So the answer to my question is yes?

11   A.   It would be for just that one month. The

12 month of June is where the $30 million was recorded, and

13 that's really the main difference between what we earned

14 in that 12-month period and what our authorized was.

15   Q.   So you're saying that -- do you know what

16 the other months between the end of Mr. Baxter's charts

17 and the end of Exhibit 237, do you know what the returns

18 were in those months?

19   A.   I don't have that information in front of

20 me, no.

21   Q.   But we know arithmetically that because

22 Mr. Baxter's chart shows substantially below 10.2,

23 correct, even on an non-weather-normalized basis, on

24 either basis --

25   A.   Uh-huh.

1   Q.   -- that in order for the average for those

2   12 months to be 10.53, that the period of time subsequent

3   to his chart must have been substantially above the period

4   of time that's shown in his chart?

5   A.   There would have been weather in 2012, and

6   there would have been the Entergy. So those would have

7   resulted in a higher percentage for those events.

8   Q.   Substantially higher to get the overall

9   average of 10.53, correct?

10   A.   I'm not sure if I could define

11   substantially, whether I'd agree with that or not. It's

12   higher.

13   MR. MILLS: Those are all the questions I

14   have. Thank you.

15   JUDGE WOODRUFF: Staff?

16   MR. THOMPSON: Thank you, Judge.

17   RECROSS-EXAMINATION BY MR. THOMPSON:

18   Q.   There were questions about the 37 million,

19   the updating of your figure of 15 million in direct.

20   A.   Yes.

21   Q.   And I think you explained that 6 million is

22   the revenue requirement figure?

23   A.   That's correct.

24   Q.   And I think you also explained that those

25   assets are 30-year assets?

1   A.   For the most part, 30 to 40.

2   Q.   30 to 40. Okay. And you would agree with

3   me, then, that 6 million times 40 years is $240 million?

4   A.   Yeah.

5   MR. THOMPSON: Thank you. No further

6   questions.

7   JUDGE WOODRUFF: Redirect?

8   MR. BYRNE: Yes, your Honor. May I

9   approach?

10   JUDGE WOODRUFF: You may.

11   REDIRECT EXAMINATION BY MR. BYRNE:

12   Q.   Ms. Barnes, I'm handing you Mr. Baxter's

13   surrebuttal testimony, and I'd like to first --

14   And it's got a chart of earnings, and I'd like to talk to

15   you about the earnings he shows versus the earnings that

16   are shown on Staff Exhibit 237. Can you take a look at

17   that? And what page is that on or what schedule number is

18   that?

19   A.   This is Schedule WLB-ES2 in his surrebuttal

20   testimony.

21   Q.   Okay. And does that -- does that schedule

22   show an actual non-weather-normalized return for the 12

23   months ending June of 2012?

24   A.   Yes.

25   Q.   And what -- I mean, I know it's a bar

1 chart, but about what is it showing for the actual

2 non-weather-normalized return?

3   A.   It's close to but it's below 9 percent.

4   Q.   Below 9 percent. Okay. So Mr. Baxter's

5 showing below 9 percent, but on the surveillance report

6 that's on Staff Exhibit 237 shows 10.53 percent. That's a

7 pretty big difference.

8   A.   That's correct.

9   Q.   What accounts for that pretty big

10 difference? What's the difference between what

11 Mr. Baxter's number shows and what the surveillance report

12 shows?

13   A.   Well, again, both of them don't have --

14 both of them have weather in them because he's not weather

15 normalizing his, but the Entergy refund is a big factor

16 because that's in our surveillance report.

17   Q.   What about Taum Sauk, is Taum Sauk in both

18 of those or is it only in --

19   MR. MILLS: Object. That's leading.

20   JUDGE WOODRUFF: I'll sustain the

21 objection.

22 BY MR. BYRNE:

23   Q.   Can you explain the difference between the

24 two charts, the two numbers?

25   A.   Yes. Because the Taum Sauk disallowance

1   was made in the last rate order, the surveillance report

2   pretends like we didn't spend that money, and so that

3   $90 million or $89 million is essentially added back to

4   that 12-month period because that happened in the last

5   rate order. And so that has the impact of the increasing

6   the allowed return, the earned return on the surveillance

7   report.

8   But obviously our numbers as we look at

9   them externally do not reflect the write-off of that

10 $90 million, and so that reduces the authorized return or

11 the earned return on these schedules from Warner.

12   **Q.   So does that reconcile Mr. Baxter's number**

13 **with the --**

14   A.   That's probably the biggest difference,

15 $90 million on a pretax basis would be.

16   **Q.   Okay. And do you think it's appropriate on**

17 **the surveillance report to add back in the Taum Sauk**

18 **disallowance? Is it arguably appropriate to do that?**

19   A.   Based on this Commission's decision, we're

20 reflecting the numbers based on the order that we received

21 in the last case.

22   **Q.   But if we're going to start adjusting the**

23 **actual returns that the company earns, are there other**

24 **adjustments that should be made, too?**

25   A.   Well, again, I think the question becomes

1 do we want to get to a truly apples to apples basis. The

2 10.2 was assuming we didn't have the disallowance -- that

3 we did have a disallowance for Taum Sauk. It's weather

4 normalized. The Entergy refund was an event that was --

5 that occurred in this period but really was a refund of

6 expenses that we had incurred over, you know, several

7 historical periods.

8   So I think you can get into a really

9 slippery slope about trying to get to a lot of

10 adjustments.

11   Q.   Let's talk about the Entergy refund. What

12 is the Entergy refund? Can you tell me what that is?

13   A.   The Entergy refund came about as a result

14 of a FERC order that required Entergy to refund us

15 purchased power costs that they had inappropriately

16 charged us over a period of time that we had a contract

17 with them. That period of time was 2007 through 2009.

18   Q.   And did the company pay those costs back in

19 2007 and 2009?

20   A.   Yes. They were part of our purchased power

21 costs in that period.

22   Q.   And then how did we get the money back?

23 How did we get it back?

24   A.   Well, we got one big check in the month of

25 June.

1   Q.   And how much was the check for?

2   A. $30 million.

3   Q. $30 million. And that's included in the

4   surveillance report information in Staff Exhibit 237?

5   A.   Yes.

6   Q.   And how much -- on an after-tax basis, how

7   much did that impact the earnings shown to the company?

8   A.   It's a $16 million after-tax effect, and

9   that was about 30 basis points on the ROE.

10   Q.   Okay. And if you took 30 basis points off

11   the ROE that's shown on the surveillance report, how much

12   would it be?

13   A.   It would be much closer, practically on our

14   authorized return.

15   Q.   What number would it be?

16   A.   Well, 10.53 minus 30 basis would be 10.23.

17   Q.   Okay. And are our rates set on a weather

18   normalized or non-weather-normalized basis?

19   A.   Our rates are set, the 10.2 is on a weather

20   normalized basis.

21   Q.   And did we experience unusually favorable

22   weather or unusually unfavorable weather in the 12 months

23   ended June 30th, 2012?

24   A.   It was definitely favorable when you look

25   at the July and August periods of 2011 and the June 2012

1   month that was included.

2   Q.   And if you weather normalized the

3   information in the surveillance report, would it show that

4   we're earning above or below our authorized return on

5   equity?

6   A.   I believe if you weather normalized it, it

7   would show that we're below the 10.2.

8   Q.   I guess that's all that I had with regard

9   to Mr. Baxter's testimony.

10   Mr. Mills in his cross-examination asked

11   you a number of questions about has plant in service

12   accounting been implemented exactly in the form we have it

13   in other jurisdictions. I believe you said no. He said

14   have you read any articles in Public Utilities Fortnightly

15   or seen any cases or anything like that that has exactly

16   the form that we are suggesting? Do you remember those

17   questions?

18   A.   I do.

19   Q.   Why does the company think it's appropriate

20   for the Commission to implement this when there haven't

21   been any articles in Public Utilities Fortnightly about

22   it?

23   A.   Again, I think every jurisdiction seems to

24   operate a little bit differently across the country, and I

25   just -- conceptually and the reason why I think I was

 1   sponsoring this testimony in the first place is really

 2   because of this chart and the fact that we've got this

 3   donut hole. It doesn't make sense to me that if the

 4   Commission feels it appropriate for us to recover our

 5   investment once an asset gets into rate base and it allows

 6   us to recover carrying costs when we're constructing the

 7   asset via AFUDC, why we shouldn't recover the entire cost

 8   of our investment once it's placed into service when the

 9   customers are actually benefiting from that investment.

10   And so that really is the premise to bring

11   this proposal to the Commission. It's just to say that

12   that fundamentally doesn't make any sense to me, and I

13   don't understand from a regulatory perspective why we

14   would want that to take place.

15   I think then, you know, you look at that

16   time, and it's been said that we can control when we come

17   in for a rate case versus when we place assets in service,

18   and obviously that's true for very large investments, but

19   we make investments every day, and when we're replacing a

20   pole, we can't necessarily wait to do all of that until

21   we're in the middle of a rate case and can time it exactly

22   right with our true-up period.

23   And even if we could, we'd still have a

24   five-month gap between placing those assets in service and

25   actually beginning to recover from. So we'd still have at

1   least five months of depreciation and return that we would

2   never be able to recover, and that just fundamentally

3   doesn't make sense to me from a regulatory perspective.

4   **Q.   Can the company wait until the date of the**

5   **true-up to install all of its plant?**

6   A.   Absolutely not. In some cases we'll have a

7   storm where we have to restore customers, and we're going

8   to do that, and right now we're doing that to our own

9   detriment if that doesn't happen to fall right around a

10   true-up in a rate case.

11   **Q.   You were asked a question early on, I think**

12   **by one of the Commissioners, about this, and I think it**

13   **was characterized as plant in service accounting would**

14   **encourage investment in our system. Do you recall that?**

15   A.   Uh-huh.

16   **Q.   But in your testimony you referred to**

17   **eliminating a disincentive to invest. Which is it or does**

18   **it make a difference?**

19   A.   Well, I think definitely it's eliminating a

20   disincentive to invest, but I don't think it opens the

21   gate for, you know, over-investment as well because we

22   still have other limitations with respect to cash. I

23   mean, this is a tracker-type mechanism, a deferral-type

24   mechanism. We still don't get the cash except for when it

25   gets into rates, and then it's over a 40-year life of the

1   asset. So we still have other constraints that have to be

2   considered when we're making decisions about how much or

3   what level of investment we make. So I think there are

4   checks and balances there that prohibit us from

5   overinvesting.

6   Q.   I think Mr. Mills asked you some questions

7   about the matching principle and if this is consistent

8   with the matching principle?

9   A.   Yes.

10   Q.   My question is, does the matching principle

11   require a regulatory regime where we can't recover the

12   cost of our investment, in your opinion?

13   A.   No. I don't believe so. I'm not sure why

14   we can't recover all of our investments.

15   Q.   You were -- Mr. Thompson, I think, asked

16   you about whether this was a departure from cost of

17   service ratemaking because it's -- because it consists of

18   a deferral, and I think he cut off your answer. I don't

19   know if you remember, but you said it's not out of the

20   realm, and then he cut you off. Do you have anything

21   you'd like to add to your answer or do you even remember

22   it at this point?

23   A.   All I would say is that, you know, while

24   we -- we've talked about this in terms of it being out of

25   the box. It is not fundamentally different than other

1   things that have been proposed or that, frankly, have been

2   implemented. And again, it's just really looking at that

3   period of time, that gap between when things are placed in

4   service and what they get into rates, and I'm not sure I

5   understand why that can't be recovered or why that should

6   not be recovered, particularly given that we -- all of us

7   as utilities are having difficulties in earning our

8   authorized return and is resulting in us having to come in

9   for rate cases every year almost.

10   Q.   You got some questions from the Bench and

11   maybe some of the lawyers about whether there should be --

12   or how this would affect the ROE that the Commission

13   should authorize the company.

14   A.   Uh-huh.

15   Q.   I guess my question is, do you know if the

16   Commission adopts plant in service accounting, do you know

17   whether that will make the regulatory framework in

18   Missouri less risky than the regulatory frameworks in

19   Other states where other electric utilities operate?

20   A.   Well, I think, again, if we think about it

21   in the context of when they talk about constructive

22   regulatory environments, that it will improve that

23   compared to what they currently think about Missouri. But

24   on a comparison basis, I think, you know, formula rates

25   and some of the other mechanisms that are in place in

1   other jurisdictions probably are still more favorable than

2   just this plant in service accounting proposal.

3   **Q.   Is the fact that there aren't a lot of --**

4   **the Missouri jurisdiction's not more favorable in terms of**

5   **the regulatory environment to encourage investment, is**

6   **that the fault of these Commissioners?**

7   A.   Absolutely not. I think what we're

8   experiencing is just that, I think it's been brought up

9   several times, is that there's a bit of a change in the

10   paradigm, and over the course of a hundred years, you're

11   going to have ebbs and flows, and I think we're in an

12   environment right now where we don't have growth in our

13   service territory or in customer demand, and yet we have

14   assets that are aging that need to be replaced.

15   And so I think as we all make business

16   decisions and adjust our business practices to whatever

17   the current environment is, I think we're right at the

18   cusp of a change in the environment that gives an

19   opportunity to this commission to address that and to be

20   proactive in how they think about the policy and how we

21   want to move forward rather than not wanting to change it

22   because it's worked well for the last hundred years.

23   Maybe that mean it's not going to work well for the next

24   hundred. That's for you to decide.

25   **Q.   Do you know if Mr. Hevert contemplated that**

1   **plant in service accounting would be approved or not**

2   **approved when he made his rate of return -- or return on**

3   **equity recommendation in this case?**

4   A.   I haven't specifically asked him that. I

5   think he did contemplate it, but I know in how he thought

6   about how our ROE should be based compared to other

7   utilities that he took into consideration the regulatory

8   environment overall. And I think his testimony suggests

9   that there should be a premium on the ROE because the

10 regulatory environment is not as favorable as perhaps in

11 other jurisdictions.

12   Q.   Someone asked you if Ameren Missouri has

13 **ever had trouble selling bonds or accessing debt markets,**

14 **and I think you said not recently. But in -- do you know**

15 **if in 2008 during the financial crisis there were any**

16 **concerns about accessing different kinds of debt by**

17 **different Ameren entities?**

18   A.   Clearly we scaled back our spend quite

19 dramatically at the end of 2008 because there were

20 concerns about accessing the markets and having liquidity

21 issues. We reacted similarly to a lot of other utilities

22 at the time.

23   Q.   When you say accessing markets, what

24 **markets are you talking about?**

25   A.   Well, the capital markets for either

1 short-term debt, long-term debt and what the interest

2 rates might be, and certainly at that point in time equity

3 was not a, I don't think, a viable option.

4   Q.   I think in response maybe to Mr. Mills, and

5 I think one of the Commissioners, they talked about the

6 point that this mechanism would be one way. In other

7 words, it would only increase costs for customers. Do you

8 recall those questions?

9   A.   I do.

10   Q.   And I guess my questions are, do the costs

11 go both ways in this situation or do the costs only go one

12 way?

13   A.   Well, we make the investments for the

14 benefit of customers. The way I guess I think about it is

15 that we're asking the customers for a small increase, but

16 the benefits that they receive by us making these

17 investments are far greater than what the expense or what

18 the increase might be to their rates.

19   So I don't see us refunding as a result of

20 something like this, but I think there's definitely an

21 opportunity here to take advantage of lower interest rates

22 and have the ability to make the investments when we can

23 optimize our spend and make it as inexpensive as possible

24 to customers to make those investments.

25   Q.   I think Commissioner -- or Chairman Gunn

1   talked to you about the possibility that adoption of plant

2   in service accounting might be seen as legislating from

3   the Bench.

4   A.   Yes.

5   Q.   Do you recall that line of questioning?

6   And specifically he talked about the statutory prohibition

7   against including CWIP in rate base. Do you know what --

8   do you know why CWIP is not allowed to be included in rate

9   base, what characteristics there are of CWIP that keep it

10   under the Missouri statutes from going into rate case?

11   A.   Actually, I don't.

12   Q.   Fair enough. You're not a lawyer, as I

13   objected to before.

14   A.   That's right.

15   Q.   You talked a little with Commissioner

16   Jarrett about the pension and OPEBs tracker, and I think

17   it was -- I think you talked about lack of control and

18   volatility.

19   A.   Uh-huh.

20   Q.   Can you explain why the costs for pensions

21   and OPEBs are volatile and outside of our control? What

22   makes them out of our control and volatile?

23   A.   Well, I think there's two things. First of

24   all, you're estimating what the cost of the benefit's

25   going to be when it's actually utilized, and that's

 1 several years out for employees obviously because they

 2 access that when they retire.

 3   The other side of that is the level of

 4 investments and the funding are based on discount rates

 5 and what the stock market does, and so it's very difficult

 6 to keep in sync what the cost is going to be compared to

 7 what the funding level is going to be and what discount

 8 rate's going to be used to anticipate how much is going to

 9 be needed to actually fund those benefits when they are,

10 in fact, ready to be distributed.

11   Q.   I mean, does stock market performance

12 affect the cost of pensions and OPEBs?

13   A.   To the extent that we've invested and

14 that's what we do when we fund the pension is that it goes

15 into a trust and that's invested in the stock market.

16   Q.   Okay. Early on I think you said in

17 response to a question that AFUDC is applied to all cap--

18 100 percent of capital investments, but do you know if

19 it's -- if it's applied to like land, when we make

20 investments in land?

21   A.   Well, land's not really construction.

22 Land's just an asset purchase. So true asset purchases

23 aren't construction, so AFUDC would not be applied to

24 those.

25   Q.   So it more just applies to the construction

 1 **projects you're saying?**

 2   A.   Yes.

 3   MR. BYRNE: Thank you, Ms. Barnes. That's

 4 all the questions I have.

 5   JUDGE WOODRUFF: We have additional

 6 Commissioner questions. Sorry.

 7   THE WITNESS: That's okay.

 8   JUDGE WOODRUFF: We'll allow further

 9 redirect and -- or recross and redirect after the

10 questions.

11 FURTHER QUESTIONS BY COMMISSIONER KENNEY:

12   Q.   **Sorry.**

13   A.   That's okay.

14   Q.   **I feel bad for you.**

15   A.   I'll be back this afternoon and another day

16 and another day. It's okay.

17   Q.   **All right. I don't feel so bad then.**

18 **Okay. I want to ask you again about this actual earned**

19 **ROE document. Mr. Byrne said that the $16 million Entergy**

20 **refund was provided in June, right?**

21   A.   Yes.

22   Q.   **And you said that accounted for 30 basis**

23 **points?**

24   A.   Yes.

25   Q.   **So deducting that from the 10.53 would**

 1   **yield 10.23?**

 2   A.   That's correct.

 3   Q.   **But is that the correct way to deduct that?**

 4   **If the 10.53 reflects an average of 12 months and the 30**

 5   **basis points was 30 basis points for the month of June,**

 6   **don't you back it out of whatever -- I mean, this 10.53**

 7   **isn't just one month, right?**

 8   A.   No, but the 10.53 is based on those 12

 9   months of earnings, and in those 12 months of earnings the

10   $30 million Entergy -- so if the $30 million Entergy

11   refund hadn't been in there, when you calculated the ROE

12   for those 12 months, you would have had an ROE that was 30

13   basis points lower.

14   Q.   **Okay. So this -- and the reason I'm asking**

15   **about it, because I want to just -- let me just back up a**

16   **second. You made a point about that chart, and you made**

17   **the point that we allow for recovery of AFUDC.**

18   A.   Uh-huh.

19   Q.   **It doesn't make sense that we wouldn't**

20   **allow for recovery, and I think that's arguably a fair**

21   **point, and it merits further discussion. But part of the**

22   **reason Ameren is asserting the need for this PISA is**

23   **chronic under-earning?**

24   A.   That's correct.

25   Q.   **And chronic means sustained over a lengthy**

1 period of time, and so then when we're presented with a

2 document that shows an ROE of let's even say 10.23

3 averaged over a 12-month period taking out the Entergy,

4 that still you're hitting your ROE, and it belies the

5 argument that there is a persistent and chronic

6 under-earnings when you have at least a 12-month period

7 reflecting something where you've hit the ROE.

8   So the reason I think that this -- it's

9 important for me at least to understand the disconnect

10 between this exhibit and WLB-ES2. And I'm just -- and I'm

11 not trying to belabor the point. I really just want to

12 understand how these two documents differ. As I

13 understood it from additional questioning from Mr. Byrne,

14 the Entergy refund is reflected here --

15   A.   Uh-huh.

16   Q.   -- but not reflected in Mr. Baxter's chart?

17   A.   I think the major difference between the

18 two charts really when you come down to it is Taum Sauk.

19   Q.   Which was $90 million, right?

20   A.   That's right. The way that surveillance

21 report was prepared was if the $90 million was not written

22 off.

23   Q.   Which --

24   A.   Was not included. Let me make sure I'm

25 backward. It was as if you disallowed it and we did not

1   have an expense, which the way we accounted for that

2   disallowance when that happened with the last rate order

3   is that we would have recorded a $90 million expense, and

4   that expense is reflected in Mr. Baxter's chart. It is

5   not -- that expense is not included in the 12-month

6   numbers that you're looking at on the surveillance report.

7   Q.   **So the surveillance report more accurately**

8   **lines up with how we made -- the decisions we made in the**

9   **preceding rate case, then?**

10   A.   Yes, with respect to Taum Sauk.

11   Q.   **Okay.**

12   A.   But again, the weather -- the 10.2 assumed

13 we had normal weather, and the 10.2 wouldn't have

14 contemplated the Entergy refund because we didn't know

15 about that a year ago either. We were still waiting for

16 an order from FERC.

17   Q.   **You're talking about the 10.2 that we**

18 **authorized?**

19   A.   That's correct, which is what you're trying

20 to compare to on that surveillance report with 10.5.

21   Q.   **Why does that matter?**

22   A.   Why does what matter?

23   Q.   **Whether or not -- well, you said that the**

24 **10.2 doesn't -- that we -- that we allowed in our last**

25 **rate case didn't reflect the Entergy refund?**

1   A.   That's correct.

2   **Q.   So how does that matter?**

3   A.   Well, because it's in the 10.5 calculation.

4   **Q.   But you took it out.**

5   A.   I did, and then I got to 10.23. So the

6   other difference is there's weather in the 10.23 number

7   and your 10.2 number assumes normal weather.

8   **Q.   But isn't that one of the contemplated**

9   **vagaries of the regulatory process is that you're going to**

10 **have -- what you actually end up earning is going to be**

11 **reflective of changes in the weather?**

12   A.   That's why you have to look at these not in

13 a vacuum but look at a trend. So for one period we have

14 weather, but if for subsequent periods and prior periods

15 there wasn't any weather, that kind of gets back to the

16 whole premise of are we sometimes earning our return and

17 sometimes not earning our return but over time we're right

18 around, hovering around what that authorized return is, or

19 are we consistently not earning it or consistently earning

20 it, overearning.

21   And I think the information that we're

22 sharing with you is suggesting that we are consistently

23 under-earning.

24   **Q.   But I guess what I'm not -- what I'm**

25 **hearing from you, though, is that the actual earned ROE**

 1   reflected in the surveillance report --

 2   A.   The actual earned ROE is not reflected in

 3   the surveillance report is what I'm telling you. The

 4   actual earned ROE is what's in Mr. Baxter's chart.

 5   Q.   I haven't asked a question yet. Then why

 6   is -- I don't understand then. Then why did you refer to

 7   this as the actual earned ROE and provide it in response

 8   to -- I don't know if it was a data request or in the

 9   course of this case it was provided to the Staff and it's

10   titled actual earned ROE, and the distinction between this

11   document and Mr. Baxter's chart as you just said is the

12   Entergy refund, Taum Sauk and -- but Taum Sauk actually

13   makes the actual earned ROE that's in the surveillance

14   report more aligned with our 10.2 authorized ROE, is what

15   I think you just testified to.

16   A.   Uh-huh.

17   Q.   So that number backing out the 30 basis

18   points for the Entergy refund is still more consistent and

19   is reflective of the allowed ROE that we authorized in the

20   last rate case, if I'm understanding what you just said

21   about Taum Sauk.

22   A.   So the difference is weather.

23   Q.   So the difference is weather. All right.

24   But, so that brings me back to my question. We authorize

25   a particular ROE, and it's contemplated and understood

 1   **that your actual ROE is going to reflect the vagaries of**

 2   **the weather, right?**

 3   A.   I believe your authorized ROE assumes that

 4   the weather's going to be normal. I'm not sure what that

 5   means when you say the vagaries of the weather.

 6   Q.   **So what you're saying, then, is that the**

 7   **chart that we really should be looking at is WLB-ES3, and**

 8   **Mr. Byrne can help you out, which is weather normalized?**

 9   A.   I don't have a copy of that chart in front

10   of me.

11   Q.   **Or WLB-ES1. I'm sorry.**

12   MR. BYRNE: May I approach the witness?

13   JUDGE WOODRUFF: You may.

14   THE WITNESS: I believe WLB-ES3.

15   BY COMMISSIONER KENNEY:

16   Q.   **Skip that. ES1. I'm sorry.**

17   A.   ES1 is weather normalized.

18   Q.   **So I should pay no attention to this**

19   **surveillance report? I mean, what is the value of it,**

20   **then, if it's not -- it's not -- you just said it's not**

21   **actual, but this is the actual.**

22   A.   Well, it picks up actuals -- how do I want

23   to explain this? It picks up actual expenses per books

24   for electric. And what Warner's chart picks up is not

25   just the regulatory expenditures and revenues, but it's

1 going to pick up -- for example, it's going to pick up

2 additional items because on -- from an external

3 perspective, we look at our total earned ROE for the

4 entire business.

5   Q.   These both are Ameren Missouri, right?

6   A.   Uh-huh. I wish I could answer you more

7 clearly, but I didn't prepare these schedules from Warner.

8 So I must admit, I have to really study what -- how these

9 were prepared versus the surveillance report.

10   Q.   No. I understand. I'm just -- I mean, I

11 understand that you didn't prepare that one, but you're

12 able to speak competently and cogently as to the

13 surveillance report, and what I'm -- the conclusion that

14 I'm coming to is that the surveillance report, because

15 it's not weather normalized, and I'm paraphrasing again,

16 but it's not weather normalized, so, therefore, it's not

17 truly reflective of a regulatory actual ROE because it

18 doesn't line up with how we arrived at our 10.2 authorized

19 ROE.

20   A.   I think that's correct.

21   Q.   So then what's the value of this and why

22 would you ever even provide it to a regulatory body?

23   A.   I don't know the history of how that

24 surveillance report was originally required. I mean, it's

25 a reporting requirement of the Commission, and I think

1 it's prepared based on the instructions of the Commission.

2 Other than that, I don't know. That's a good question, I

3 guess.

4   **Q.   I guess what I'm hearing you say today is**

5 **ultimately it has no value --**

6   A.   No. I think the --

7   **Q.   -- in the regulatory context?**

8   A.   For today and how we should think about it,

9 no. I think the charts that are in Mr. Baxter's testimony

10 are much more indicative of what you should be thinking

11 about.

12   **Q.   So you said also that our regulatory**

13 **environment is in the bottom 10 to 25 percent, and it**

14 **would make us less risky but we'd still not necessarily be**

15 **as credit supportive as other entities?**

16   A.   That's correct.

17   **Q.   That bottom 10 to 25 percent, upon what is**

18 **that based, or who's the entity that says that?**

19   A.   I believe the information I've seen comes

20 from Regulatory Research Associates, and they look at the

21 comparison of all the different structures in the

22 jurisdictions.

23   **Q.   And then the last question, and I think**

24 **this really is my last question, you indicated that not**

25 **having the plant in service accounting authority would**

1   maintain the disincentive to make capital investment,

2   right?

3   A.   That's correct.

4   Q.   And I think that you said there are

5   decisions made and projects delayed because of the current

6   regulatory environment not having the plant in service

7   accounting?

8   A.   That's correct.

9   Q.   Are there specific projects that you could

10   identify that Ameren made the conscious decision not to go

11   forward by virtue of the fact of the current regulatory

12   mechanisms that are in place?

13   A.   Yeah. A couple of examples of projects

14   that we would have liked to have done on a more current

15   basis. We typically use mobile substations in our

16   business when we have a failure, and it allows us to put

17   in something temporary while we're making the larger fix,

18   and we would like to have more of those to place across

19   the state so that when we have a failure we can restore

20   customers on a more frequent basis, but we have not been

21   able to justify really getting those. Those are more of a

22   discretionary expense, and we've not been able to fund

23   those as timely as we would like to.

24   Additionally, we've got some substations

25   out there that frankly predate me, late '50s, early '60s

1   vintage substations that I think it would be appropriate

2   to replace, and we would like to be able to do that.

3   They're sill providing safe and reliable service today,

4   but we'd certainly like to take a look at those given

5   their age and make adjustments as necessary to replace

6   them if we could warrant that replacement by having the

7   additional funds to spend.

8   So things like that on the underground

9   mechanism or infrastructure in downtown St. Louis is also

10   something that's pretty dated and obviously has

11   ramifications if there were a failure there. Again, we

12   believe it provides safe and adequate service, but if

13   there were -- we'd just like to be able to systemically

14   and on a reasonable basis be able to make those

15   improvements, you know, realizing there's some limitations

16   when you're tearing up streets that you can't do it really

17   quickly, but to be able to do it on a little more quick

18   basis just to avoid anything that could happen there that

19   could be catastrophic.

20   So there's some examples of certain

21   projects that, you know, they are more discretionary in

22   nature. At least the amount of time and timeline that we

23   use to fund those can be delayed. We're still providing

24   safe and adequate service, but would feel more comfortable

25   if we had the ability to invest in those to maintain the

1 reliability that our customers have grown to expect from

2 us and that we've been able to provide.

3   **Q.   Were those off the top your head or are you**

4 **reading something?**

5   A.   No. I have a cheat sheet.

6   COMMISSIONER KENNEY: Okay. All right.

7 Thank you.

8   JUDGE WOODRUFF: Commissioner Jarrett, you

9 had questions?

10   COMMISSIONER JARRETT: Yes, Judge. We've

11 had a lot of different witnesses testify about Exhibit

12 237. We've had lots of questions about Exhibit 237. I

13 get more and more confused over Exhibit 237 with each

14 question.

15   Can the company provide a revised chart

16 like Mr. Baxter's that takes into account Taum Sauk and

17 weather and Entergy and everything that went into this 237

18 so that we actually have a chart that's consistent with

19 237?

20   MR. BYRNE: There already is a chart that

21 takes into account Taum Sauk and Entergy and weather

22 normalization in Mr. Baxter's surrebuttal testimony.

23   COMMISSIONER JARRETT: Does it take out

24 weather normalization, too?

25   MR. BYRNE: We've got it both ways. We've

1   got it weather normalized and not weather normalized, and

2   it's in his surrebuttal testimony, which I gave to

3   Ms. Barnes. May I approach, your Honor?

4   JUDGE WOODRUFF: You may.

5   MR. BYRNE: I mean, I guess.

6   COMMISSIONER KENNEY: It's in the

7   surrebuttal.

8   MR. BYRNE: And the ones I'm specifically

9   talking about are ES3, the WLB-ES3 and WLB-ES4. One is

10   weather -- the difference between them is one is weather

11   normalized, one is not weather normalized. ES3 is weather

12   normalized. ES4 is not. And it takes into account, it

13   takes Entergy out of our earnings, both of the charts do.

14   Both of the charts put the Taum Sauk

15   disallowance back in. So they, you know, properly from

16   the Commission's perspective account for the Taum Sauk.

17   In other words, they count -- they don't count it against

18   our earnings that the Taum Sauk was disallowed. Do you

19   see what I'm saying?

20   COMMISSIONER JARRETT: Yes.

21   MR. BYRNE: And what was the third one? I

22   think the --

23   COMMISSIONER JARRETT: The weather.

24   MR. BYRNE: Well, and then also there was

25   another disallowance, which was the FAC disallowance, and

1   these charts once again don't lower our earnings for the

2   FAC disallowance, which was I think --

3   THE WITNESS: $17 million.

4   MR. BYRNE: -- around $17 million on the

5   first FAC, Wabash, AEP. So we put the $17 million back in

6   that was disallowed, even though that would not be

7   reflected on our book earnings, but because it was a

8   disallowance we put it back in. We put back in the Taum

9   Sauk disallowance, because even though on our books it

10   shows lower earnings because of the Taum Sauk

11   disallowance, we didn't think it was fair to reflect it on

12   that chart. And then -- and it took out the Entergy

13   because that was a one-time refund of $30 million. And

14   that's what you got on a weather normalized and

15   non-weather-normalized basis.

16   COMMISSIONER JARRETT: So Exhibit 237 is

17   non-weather-normalized, right?

18   THE WITNESS: Correct.

19   MR. BYRNE: Right.

20   COMMISSIONER JARRETT: So which chart is it

21   that's the non-weather-normalized?

22   MR. BYRNE: ES-4.

23   FURTHER QUESTIONS BY COMMISSIONER JARRETT:

24   Q.   Ms. Barnes, I'll ask you, what he said --

25   A.   Yes.

 1   Q.   -- does that reflect the way that

 2   Exhibit 237, the surveillance report in 237 was

 3   calculated?

 4   A.   With all those things changed?

 5   Q.   Yeah.

 6   A.   No, it was not. Entergy is in the

 7   surveillance report, and weather is in the surveillance

 8   report.

 9   Q.   Right. Okay. And it's not in the chart

10   that Mr. Byrne just mentioned?

11   A.   That's right.

12   Q.   Can I get a chart that does?

13   A.   I think one of those -- it's out of both of

14   his charts, right? Those two things are out of both of

15   his charts?

16   MR. BYRNE: Correct.

17   COMMISSIONER JARRETT: I'm just asking for

18   a chart that is figured the same way this is figured with

19   those come components that were in or out.

20   MR. BYRNE: I'm sorry.

21   COMMISSIONER JARRETT: Do we have it or do

22   we not?

23   MR. BYRNE: Can I ask some questions --

24   COMMISSIONER JARRETT: Yes.

25   MR. BYRNE: -- and try to figure out what

1 you're -- I'm just having trouble following. Okay. The

2 difference between the surveillance report and just the --

3 just the non-weather-normalized basic chart that

4 Mr. Baxter had, the only difference is Taum Sauk was added

5 back in to the surveillance report.

6   So the surveillance report has Entergy in

7 it, and Mr. Baxter's first chart, I think it's ES-1 in his

8 surrebuttal testimony, the only real difference is the

9 Taum Sauk being added back in to the surveillance reports.

10 So they both have Entergy in them. They both -- they both

11 are not weather normalized. The only difference would be

12 the Taum Sauk piece.

13   COMMISSIONER JARRETT: Well, can we make it

14 the same by adding the Taum Sauk, taking Taum Sauk out,

15 whichever?

16   MR. BYRNE: Sure.

17   COMMISSIONER JARRETT: Because there was a

18 lot of discussion between the two Commissioners about how

19 these were different in the charts and how one chart may

20 be inaccurate because of this and trying to figure out

21 which one's accurate. I was just simply asking, can we

22 get a chart where everything is the same as this so that

23 we'll have at least another chart to look at as far as

24 which ones we should be looking at?

25   MR. BYRNE: You're saying make a chart of

 1 our surveillance report and then that would be comparable,

 2 I guess.

 3   COMMISSIONER JARRETT: I don't know.

 4 Ms. Barnes, can you help out?

 5   THE WITNESS: Well, are you just trying to

 6 say you're trying to look at that to compare it to what

 7 the charts, the Warner -- the charts that are in

 8 Mr. Baxter's testimony?

 9   COMMISSIONER JARRETT: Yes, because --

10   THE WITNESS: Then I think that is what

11 he's asking for is just a chart that pictorially shows

12 what's in our surveillance reports for those comparable

13 periods, but they're not going to -- but the data's still

14 going to be different. Those reports are prepared on a

15 different basis than the way the charts in Mr. Baxter's

16 testimony were prepared because we follow the requirements

17 of the surveillance reports.

18 BY COMMISSIONER JARRETT:

19   Q.   Right. I understand that.

20   A.   Okay.

21   Q.   I'm trying to get an apples to apples

22 comparison.

23   A.   And apples to apples between?

24   Q.   Between Mr. Baxter's chart and this, and

25 there were things taken out of Mr. Baxter's chart or put

 1   in Mr. Baxter's chart that were not taken out or not put

 2   in this.

 3   A.   Uh-huh.

 4   Q.   So I'm just simply asking, can we have a

 5   chart like Mr. Baxter's --

 6   A.   That reconciles between --

 7   Q.   -- that reconciles between this and that

 8   for this -- for that period of time. It doesn't -- it's

 9   not going to affect obviously 2007, but it's going to

10   affect maybe --

11   A.   So do you want those for the 2012 or -- I

12   mean, what periods do you want that for? I think I can

13   think of a way we might be able to do this.

14   Q.   Right. It's for the 12 months ended

15   June 30, 2012.

16   A.   You just want to see that one, the

17   difference between that one period and what we say in

18   Mr. Baxter's charts for that June 2012 period?

19   Q.   Right. Compare the chart with this.

20   A.   Okay. I have an idea. Let me give a go at

21   it and we'll bring you something back and see if that

22   answers your question.

23   Q.   All right. Thank you.

24   JUDGE WOODRUFF: Procedurally what I'm

25   going to do, then is reserve No. 50 for that chart, and

1 when you have it ready, submit it as No. 50.

2   THE WITNESS: Okay.

3   COMMISSIONER JARRETT: That's all I have.

4 Thank you.

5   JUDGE WOODRUFF: Mr. Chairman, did you have

6 anything else?

7   CHAIRMAN GUNN: I was going to, but if we

8 have this new chart -- I'm going to sound frustrated, I'm

9 going to sound annoyed, and it's because I am. It's

10 because fundamentally when you use charts to try to

11 advocate for a position and manipulate them, and it is

12 manipulation because some of it's in, some of it's not,

13 Taum Sauk should have been taken out or Entergy was in, it

14 creates the kind of confusion that you see from the

15 Commissioners up here.

16   And so the -- and, quite frankly, and I --

17 you know, we had agreement on some times when there was

18 testimony that the ROE was earned above the 10.2 and then

19 below it was not. So I would -- this is not everybody's

20 finest hour on this information, and I urge that we get

21 this right and provide us with the information so we can

22 make good decisions on what we're trying to do. That's

23 all I have to say. Thanks.

24   JUDGE WOODRUFF: Mr. Byrne, do you know how

25 quickly you'd be able to have this chart? I assume not

 1   today.

 2   THE WITNESS: Maybe tomorrow. Maybe

 3   Wednesday. I'll do what I can. I have an idea.

 4   JUDGE WOODRUFF: And Ms. Barnes will be

 5   back later on in the hearing as well, I believe.

 6   THE WITNESS: Yes, several times.

 7   JUDGE WOODRUFF: Okay. We'll deal with it

 8   then.

 9   MR. BYRNE: Mr. Weiss is the one who did

10   the calculations for both of the charts, and he'll be

11   appearing a couple of more times in this proceeding, so --

12   JUDGE WOODRUFF: Whoever's most appropriate

13   to present the chart you can use.

14   Commissioner Stoll, you had something?

15   COMMISSIONER STOLL: I do.

16   QUESTIONS BY COMMISSIONER STOLL:

17   Q.   Kind of -- I don't want to belabor this.

18   The other Commissioners may totally understand this, but

19   when you're talking about weather normalization, you've

20   got the two graphs. One is weather normalized and one

21   isn't. When you take out what's referred to as the

22   abnormal weather months, you're not really -- you're

23   taking -- you're taking out what exactly? You're taking

24   out what is considered abnormal?

25   A.   No. Well, I mean, our billing units are

1   based on the assumption that weather is normal in every

2   period. That's how the rates are set. And so to the

3   extent that our sales are higher or lower and we can

4   attribute that to weather, and it's an art, not a science,

5   then we weather normalize.

6   So earlier this year, if you think about

7   the first quarter, winter weather was much warmer than we

8   would have anticipated, and we would have been negatively

9   impacted by that. And then by the summer, obviously in

10   June and July with the hundred degree plus temperatures,

11   we would have had more sales relating to the warmer

12   weather.

13   So we -- all we try to do is take our

14   numbers, our actual sales and estimate as best we can what

15   portion of those sales either below or above what was

16   built into rates was attributable to weather versus other

17   things, the economy, conservation, energy efficiency.

18   There's lots of reasons why our sales go up and down, but

19   that's what we mean when we say weather normalized.

20   Q.   And so if you -- if you earn more in a

21   month or several months because of abnormal weather

22   conditions but you take that out, maybe this is something

23   I need to look at behind the scenes, but that -- how is

24   that reflected in the ROE? It almost seems to me, and

25   maybe I'm wrong, it would be like a retailer taking out

1   **Christmas sales, but that's probably --**

2   A.   Well, I think the question becomes when the

3   ROE is set and we say it's set based on normal weather,

4   then if our ROE goes up because we have warmer than normal

5   temperatures, then what portion of that increase is

6   related to the weather? And the same thing happens in a

7   period where the weather was warmer or cooler, whatever

8   season we're in, how does that negatively impact our

9   ability, to just try and get to that apples to apples,

10 which we've apparently not been able to do very

11 successfully today.

12   Q.   **And then eventually I guess that's where it**

13 **would be determined if the company had over-earned and the**

14 **ratepayers would get --**

15   A.   Right.

16   Q.   **-- a credit or --**

17   A.   Right. I think to simplify that, I think

18 the point we were trying to make is that if we're

19 continually chronically under-earning even in cases where

20 the weather may have been warmer than normal or if the

21 only reason why we've over-earned in a particular period

22 is because the weather was warm, then that suggests that

23 something else isn't working in the regulatory construct

24 because we should expect some variation. Some months we

25 should overearn, some months we should under-earn given

1   things like weather variation.

2   But when we're chronically under or

3   chronically over, that would suggest a problem that's a

4   little bit more pervasive than just weather.

5   Q.   **Hopefully the new information that was**

6   **requested will help in this regard, too.**

7   A.   We'll try.

8   COMMISSIONER STOLL: Okay. Thank you.

9   JUDGE WOODRUFF: Anything else from the

10   Commissioners? All right. We'll go back to recross based

11   on the questions, beginning with MIEC.

12   FURTHER RECROSS-EXAMINATION BY MR. DOWNEY:

13   Q.   **Ms. Barnes, I may have misheard you when**

14   **you were having a conversation with Chairman Gunn about**

15   **the weather from the last 12-month period.**

16   A.   Uh-huh.

17   Q.   **I thought you told him that the**

18   **unseasonably warm weather in the winter offset the**

19   **unseasonably warm weather in the summer for purposes of**

20   **sales.**

21   A.   In year to date 2012, for the first six

22   months of '12, that's correct. But you'll recall these

23   are 12-month numbers, and the last half of 2011, that was

24   not the case. Last July, last August, which are also

25   included in those numbers, the weather was unseasonably

1 warm as well, and those influences are included in these

2 numbers.

3   Q.   Okay. And then I believe you said that the

4 calculation in Staff Exhibit 237 is not as -- well, I

5 think you said it differently. I think you said the

6 Baxter exhibit is more indicative of what the Commission

7 should consider than the calculation in Staff's

8 Exhibit 237. Did you say that?

9   A.   That is what I said, yes.

10   Q.   And as I understand it, one of the

11 differences between Staff's 237 calculation and

12 Mr. Baxter's is that Mr. Baxter counts as an expense the

13 Taum Sauk $89 million expense, right?

14   A.   I'd have to go back and look at his charts,

15 but I believe in some of those charts that is included as

16 an expense. I don't think it's taken out of all of them.

17   Q.   Okay. And just so we're clear, accounting

18 101, if you have an expense in your calculation, you have

19 a lower income, right?

20   A.   Yes.

21   Q.   Okay. If you have a lower income, you have

22 a lower calculated ROE?

23   A.   Yes.

24   Q.   Okay. So that is one reason why we --

25 Mr. Baxter would have a lower calculated ROE than what

1   **Ameren calculated in Staff's Exhibit 237?**

2   A.   Yes, although I believe he has charts that

3   do both ways. I think his charts in his surrebuttal

4   testimony actually try and factor in, as Mr. Byrne just

5   talked to the Commission about, he pulled that out of the

6   expense. He also pulled out the FAC disallowance that was

7   previously expensed, and he took out the Entergy refund

8   which was a one-time revenue. And pulling out all those

9   items that were not part of normal course, we still have a

10 situation where we're under-earning.

11   **Q.   I think this new exhibit that you're**

12 **preparing is probably going to help, but the thing that**

13 **you said that really struck me is that an exhibit that**

14 **doesn't pull out the Taum Sauk expense is more indicative**

15 **of what this Commission should consider than an exhibit**

16 **that doesn't include that expense, and should the**

17 **Commission really be considering expenses that it**

18 **disallows when it's determining what your appropriate ROE**

19 **is?**

20   A.   Well, again, I think there's several charts

21 in Mr. Baxter's testimony, and irregardless of which one

22 you look at, I think at the end of the day, whether you

23 include Taum Sauk or exclude it, it's still -- it still

24 suggests that we have not earned our allowed ROE. So I'm

25 not sure I want to dwell too much on the Taum Sauk

1 specifically because we've got charts that show that we're

2 under-earning even when you add Taum Sauk back. And those

3 are the charts that I think are more indicative of what

4 the actual earned return is.

5   **Q.   My concern, and I think it's probably the**

6 **Commission's concern, is that we're all confused about**

7 **what is added back. Even when you add back Taum Sauk, you**

8 **may not be adding back other things. And hopefully this**

9 **chart will straighten that out.**

10   MR. DOWNEY: I have nothing further.

11   JUDGE WOODRUFF: Public Counsel.

12 FURTHER RECROSS-EXAMINATION BY MR. MILLS:

13   **Q.   Yeah, I'm going to have to ask some**

14 **questions about this chart, too. As I understand what**

15 **you're going to show, and you may depict it in different**

16 **ways, but you're going to have a month-by-month chart that**

17 **shows 12 months ending June 30th of 2012, correct?**

18   A.   I don't know if it's a month-by-month

19 chart, but I'm going to -- I'm going to try to reconcile

20 between Exhibit 237 and what's in Mr. Baxter's testimony

21 for the June 2012 period. That's what I'm going to

22 attempt to do. That's kind of what I heard, I thought I

23 heard that we were looking for.

24   **Q.   Okay. So at least -- and maybe by month**

25 **and maybe not by month, but at least for that year period**

1 **you're going to have an explanation of the difference**

2 **between the 10.53 and whatever it is, the 9.85, and you're**

3 **going to break down exactly what the differences are and**

4 **exactly the amounts by basis point that those particular**

5 **differences affect that delta?**

6   A.   I'm going to attempt to do that, I think,

7 yes.

8   MR. MILLS: Okay. I assume that we'll have

9 the opportunity to question about that chart.

10   JUDGE WOODRUFF: That would be my

11 anticipation also.

12   MR. MILLS: That may answer a lot of

13 questions. It may spawn some new ones.

14   JUDGE WOODRUFF: Mr. Byrne, it's your

15 understanding also you'll have a witness sponsor that

16 chart?

17   MR. BYRNE: Yes.

18 BY MR. MILLS:

19   Q.   **Now, when we're talking about the Taum Sauk**

20 **expense, the Taum Sauk adjustment in the last rate case**

21 **was not an expense adjustment, it was a rate base**

22 **adjustment, correct?**

23   A.   It resulted from an SEC perspective in

24 recording an expense. We actually recorded a charge for

25 the writeoff, for the reduction in rate base. That's the

1 way the accounting works.

2   Q.   But it would not have been a $90 million

3 writeoff, correct?

4   A.   Pretax, it was.

5   Q.   Because it was only $90 million worth of

6 rate base.

7   A.   That's right. I was lowering my rate base

8 by $90 million. Under good accounting practice, if I

9 reduce something, I have to put it someplace else, and the

10 someplace else was an expense on the income statement.

11   Q.   And so you're saying that a $90 million

12 writeoff to rate base equated to a $90 million expense in

13 one year?

14   A.   Yes, it did. In 2011 we had a charge in

15 the third quarter for the entire $90 million.

16   Q.   Okay. And so for the rate base that you

17 put into your case for this case, how did you reflect the

18 Taum Sauk rate base?

19   A.   It's out. The Taum -- well, the Taum

20 Sauk -- the $90 million is out of the rate base, and we

21 then took that rate base number and increased or decreased

22 it for whatever changes in rate base, capital additions,

23 accumulated depreciation, everything else as if Taum Sauk

24 was never in that rate base, at least that 89 million or

25 90 million that was written off.

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1          Q.      Now, in response to a question by

2    Commissioner Kenney, one of the -- one of the things you

3    touched on in our answer was the question of mobile

4    substations, correct?

5          A.      Yes.

6          Q.      And in response to another question from

7    Commissioner Kenney, you referenced a cheat sheet that you

8    were looking at to work on his questions.

9          A.      Uh-huh.

10         Q.      What exactly is that cheat sheet?

11         A.      I just have a list of some bullet points

12   that were things to help jog my memory.

13         Q.      All about that question or just in general

14   about the topics you're testifying about?

15         A.      In general about the topics that I'm

16   testifying about.  That happens to be one of them.

17         Q.      And with respect in particular to the

18   mobile substations, what has been the effect on

19   restoration times and outages from the lack of the extra

20   mobile substations that you would like to have?

21         A.      I'm not a distribution expert, so I'm not

22   sure I can answer that as specifically as you would like.

23   I think the point is if we had more than one or two of

24   those, then we could locate them across our service

25   territory rather than having one maybe sitting in
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1 St. Louis, and so clearly then the travel time of getting

2 that mobile sub to the place where the failure occurred

3 would be shortened if we've got one that's ready to go

4 that's closer to where the failure occurred.

5   **Q.   Sure. And if you had 500 of them, you**

6 **could put them all over the place?**

7   A.   Well, I think again we get back to cash

8 flow constraints and that we don't need 500 of them, but

9 we need probably more than the one or two that we have.

10   **Q.   And how much do they cost?**

11   A.   They're about a million to $2 million

12 apiece.

13   **Q.   But it's your testimony that you don't know**

14 **the actual effect on restoration times of having another**

15 **few of them?**

16   A.   I'm not an operations expert. Mr. Wakeman,

17 who's our VP of energy delivery, will be testifying later

18 in this hearing, and that would be an excellent question

19 to ask him.

20   **Q.   Now, and this may -- this may come to light**

21 **when we look at the new chart that will be Exhibit 50, but**

22 **when you do weather normalization for purposes of a chart**

23 **like that, do you weather normalize billing units on a --**

24 **on what basis, on a monthly basis, on an hourly basis, a**

25 **daily basis?**

1   A.   I don't know. I don't personally do the

2   calculations, so I don't know all the details of exactly

3   how that's done.

4   Q.   **But that will be -- when we see Exhibit 50,**

5   **we will have information on how that was done to calculate**

6   **the effects of weather on that chart, correct?**

7   A.   I -- that actually wasn't -- that

8   specificity wasn't -- I was going to try and tell you how

9   much of the difference is related to weather. As far as

10   how that's calculated, again, I'm not the expert on how we

11   do that calculation, so I'm not sure I'll be able to

12   answer those questions as specifically as you'd like.

13   Q.   **Okay. Can we at least get a footnote that**

14   **says who did the weather normalization for purposes of**

15   **that?**

16   A.   Yes.

17   Q.   **Okay. I think that would be helpful**

18   **because I think there are different ways to do it, and**

19   **some may result in different numbers, and we may want to**

20   **explore that further.**

21   A.   It is an art.

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

23   JUDGE WOODRUFF: And for Staff?

24   MR. THOMPSON: Thank you.

25   FURTHER RECROSS-EXAMINATION BY MR. THOMPSON:

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 1          Q.     I don't want to increase any frustration or

 2    irritation on the part of the Bench, but I have some

 3    questions about 237, if I could.  You're not saying that

 4    Exhibit 237 is false, are you?

 5          A.     No.  I am suggesting that the way it's

 6    prepared maybe isn't exactly how we should think about

 7    whether or not we're earning or -- under-earning or

 8    overearning against our authorized return.

 9          Q.     But it is true?

10          A.     The data is -- comes from our statements.

11          Q.     And you work every day with finances and

12    financial reporting; isn't that correct?

13          A.     That's correct.

14          Q.     And you would agree with me that financial

15    reporting is a way of marshalling and summarizing

16    financial data in order to report on it for some

17    particular reason to some particular audience?

18          A.     Yes.

19          Q.     Okay.  And you make financial reports, for

20    example, to the Securities and Exchange commission?

21          A.     Yes.

22          Q.     And you make financial reports to this

23    Commission?

24          A.     Yes.

25          Q.     And you make financial reports to the FERC?
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 1   A.   Yes.

 2   Q.   And probably to dozens of other audiences

 3   as well for different reasons?

 4   A.   Yes.

 5   Q.   Okay. And each of those reports has its

 6   own rules and formula as to how that information is to be

 7   reported and proposed for that reporting purpose?

 8   A.   That's correct.

 9   Q.   Okay. And, of course, you scrupulously

10   follow those rules in each case of each report?

11   A.   Yes.

12   Q.   Okay. And so you would agree with me,

13   then, that just as Exhibit 237 is true and correct insofar

14   as that goes, that so are Mr. Baxter's charts?

15   A.   Yes.

16   Q.   They simply report the same information and

17   in some cases somewhat different information in a

18   different way?

19   A.   Yes.

20   Q.   For example, whether --

21   JUDGE WOODRUFF: Mr. Thompson, you need to

22   use your microphone.

23   MR. THOMPSON: I'm sorry.

24   BY MR. THOMPSON:

25   Q.   For example, whether Taum Sauk is in or

 1   **Taum Sauk is out, whether Entergy is in or Entergy is out,**

 2   **or even just what 12-month period you're reporting?**

 3   A.   Yes. But just because we're following the

 4   rules about how to report something, and those numbers may

 5   be extremely accurate, when we're doing analysis, I think

 6   you have to understand what you're looking at and whether

 7   or not that report is providing you with the information

 8   you need in order to make the -- do the analysis that you

 9   want to perform ultimately.

10   Q.   **Absolutely. So with respect to the Taum**

11   **Sauk disallowance and the Wabash/AEP disallowance, to the**

12   **extent that a chart showing Ameren Missouri's failure to**

13   **meet its authorized ROE does not add back those two**

14   **disallowances, then that chart would, in effect, be asking**

15   **for that money back, would it not?**

16   A.   But the charts that are in Mr. Baxter's

17   surrebuttal testimony do reflect those appropriately,

18   not --

19   Q.   **All of them?**

20   A.   Uh-huh. I believe so.

21   Q.   **All of the charts?**

22   A.   Well, not all of the charts. I think the

23   ones that Mr. Byrne mentioned that are in Mr. Baxter's

24   surrebuttal testimony reflect the data with all of those

25   pulled out or added back, whatever the case may be, and

1 still suggested that we are not earning our authorized

2 return.

3   Q.   Okay. And weather normalization, what do

4 you understand that to be?

5   A.   It's trying to estimate what the impact of

6 our sales are in a given period that are related to

7 weather variations compared to a weather normalized level

8 of sales.

9   Q.   Okay. And would you -- you would agree

10 with me, would you not, that when this Commission issues

11 its rate order and sets rates, that those rates are on a

12 prospective going-forward basis?

13   A.   Yes.

14   Q.   And you would agree with me that no one

15 knows what the weather is going to be during the first

16 year, let's say, that those rates will be in effect?

17   A.   But the data that is used --

18   Q.   Pardon me. Could you answer my question?

19 You would agree that no one knows going forward what the

20 weather will be when the rates are in effect?

21   A.   Yeah, you're right, nobody will know.

22   Q.   Okay. And Exhibit 237, however, is

23 historical, isn't it?

24   A.   Yes.

25   Q.   It reflects the effect of the rates and the

 1 **weather during an historical actual period; isn't that**

 2 **true?**

 3   A.   Yes.

 4   Q.   **So this information is history?**

 5   A.   Yes.

 6   Q.   **There's no reason to weather normalize it**

 7 **because history has weather that was what it was; isn't**

 8 **that correct?**

 9   A.   But if you're trying to compare the two

10 returns, one was prepared on the assumption that

11 weather -- an opinion of what normal weather was, and the

12 second one is prepared based on what weather is.

13   Q.   **Exactly. So if you're going to predict,**

14 **you're going to predict weather in the future, it's best**

15 **to rely, as do the weather normalizers, on a 30-year**

16 **average of each day's weather, isn't it?**

17   A.   To set rates, that's correct. So when

18 we're looking --

19   Q.   **Thank you. Thank you.**

20   MR. THOMPSON: I have no further questions.

21   JUDGE WOODRUFF: Thank you, sir. Redirect.

22 FURTHER REDIRECT EXAMINATION BY MR. BYRNE:

23   Q.   **I agree with Chairman Gunn, this has not**

24 **been our finest hour. I think the problem we're having**

25 **here, correct me if I'm wrong, is the Commission's trying**

1   to figure out if we over-earned or under-earned for the 12

2   months ending June 30th, 2012. Would you agree that

3   that's what they're trying to figure out?

4   A.   Yes.

5   Q.   Okay. And there's two starting points that

6   we've talked about that aren't necessarily consistent with

7   each other, one being the actual returns that are shown in

8   one of Mr. Baxter's charts, I'll get to that in a second,

9   and the second being the 10.53 percent return on equity

10   for the same period that we reported on our surveillance

11   report. That --

12   A.   Yes.

13   Q.   -- appears to be the problem; would you

14   agree with that?

15   A.   I would agree with that.

16   Q.   Okay. Let me ask you to start with each

17   one. Let's start with the -- let's start with the actual

18   earned return, which I believe for the -- not weather

19   normalized, no adjustment to it, the actual returns that

20   are financially reported, and I believe that would be

21   shown on Mr. Baxter's -- one of Mr. Baxter's schedules in

22   his surrebuttal testimony, the non-weather-normalized

23   Exhibit ES2.

24   A.   I'm sorry. I don't have a copy of his

25   testimony.

1   Q.   Okay. So there it is. So what does that

2 show the actual reported return for Ameren Missouri to be

3 with no adjustments to it?

4   A.   It is below 9 percent. I don't know the

5 exact number, but --

6   COMMISSIONER KENNEY: Where are you

7 looking?

8   THE WITNESS: The June, so it's the --

9   COMMISSIONER KENNEY: June 2012?

10   THE WITNESS: Uh-huh. Second to last bar

11 on the ES2 schedule.

12   COMMISSIONER KENNEY: It's not below

13 9 percent, is it?

14   THE WITNESS: It's not below 9?

15   COMMISSIONER KENNEY: The red line is

16 the --

17   THE WITNESS: No. Look to the left at the

18 gauge. The red line's at 10.2, which is our allowed.

19   COMMISSIONER KENNEY: You're looking at

20 June 2012, right.

21   THE WITNESS: Uh-huh, which is the second

22 to last bar. Not the last bar. The second to last bar.

23   COMMISSIONER KENNEY: That's April. Oh,

24 it's June 2012. So what is this then?

25   THE WITNESS: July.

1   COMMISSIONER KENNEY: That's July. Okay.

2   BY MR. BYRNE:

3   Q.   Okay. So that shows less than a 9 percent

4   return, right?

5   A.   Yes.

6   Q.   But there's some problems with that

7   depiction, would that be fair, that you've talked about

8   with some of the Commissioners; is that fair to say?

9   A.   Yes.

10   Q.   And I think there's about four or five

11   problems with that depiction, but -- but one problem, is

12   one problem with that depiction that it doesn't add back

13   in the disallowances for Taum Sauk and the fuel adjustment

14   clause?

15   A.   Yeah. This is -- this is based on, I

16   believe, just looking at all the numbers at what the

17   actual numbers are, and so we would have taken a charge

18   for Taum Sauk and --

19   Q.   So the Commission doesn't want us to say

20   our earnings -- gee, feel sorry for us, our earnings are

21   lower because you disallowed Taum Sauk or you disallowed

22   the fuel adjustment clause?

23   A.   That's correct.

24   Q.   And so would you agree that if you want to

25   really decide or take a view as to whether we're earning

 1 or not earning our authorized return during that period,

 2 you've got to add those disallowances back, don't you?

 3   A.   Yes.

 4   Q.   Okay. And then another issue that we

 5 talked about was Entergy.

 6   A.   Yes.

 7   Q.   And as I understand it, that the results

 8 that Mr. Baxter showed, the less than 9 percent, include

 9 the Entergy refund; is that correct?

10   A.   Yes, that's correct.

11   Q.   And I think you've testified before, it's

12 not appropriate to determine whether we're over or

13 under-earning based on a one-time Entergy check?

14   A.   Agreed.

15   Q.   Would you agree with that?

16   A.   I do agree with that.

17   Q.   So is there any chart in Mr. Baxter's

18 testimony that adds back in the disallowances for Taum

19 Sauk and the FAC and takes out the Entergy and doesn't

20 weather normalize?

21   A.   I believe that's ES4.

22   Q.   Okay.

23   A.   So if you look at chart ES4, it says it is

24 not weather normalized and it accounts for unusual items

25 in 2011-2012, and those unusual items were the ones that

1 we just talked about.

2   Q.   What does that show that our earnings for

3 the 12 months ending June 2012?

4   A.   It shows it close to 10 but still below the

5 10.2. I don't know the exact number. I'm just looking at

6 the chart here.

7   Q.   Okay. And then is there another chart that

8 shows that data on a weather normalized basis?

9   A.   Yes. That is chart ES3.

10   Q.   And what does that show the earnings to be

11 on a weather normalized basis?

12   A.   That shows 2012, June 2012 to be between 9

13 and 10, certainly not over 10.2, and that's probably the

14 most comparable as I think about how rates were set to set

15 the 10.2. This reflects apples to apples as best I think

16 as we have.

17   COMMISSIONER KENNEY: That WLB-ES3?

18   THE WITNESS: Yes.

19 BY MR. BYRNE:

20   Q.   So that's starting with Mr. Baxter's number

21 and working -- making adjustments to it to make it

22 comparable on a --

23   A.   Yes.

24   Q.   Okay. Let's try going the other way.

25 Let's try starting with the surveillance report. Okay.

 1   And my understanding is, based on your testimony before,

 2   the surveillance report already has the Taum Sauk

 3   disallowance added back in; is that correct?

 4   A.   Yes, that's correct.

 5   Q.   And what about the -- what about the FAC

 6   disallowance, would that have any impact on this?

 7   A.   Not for June because that adjustment was

 8   made in April, I believe, of 2011, so it would be out of

 9   the 12-month period that we're looking at for the 12

10   months ended June 30, 2012.

11   Q.   Okay. So the 10.53 percent has the Taum

12   Sauk disallowance added backed in, and the FAC

13   disallowance didn't fall in the period, so it doesn't have

14   any impact either way?

15   A.   Right. That's correct.

16   Q.   So you could say 10 -- if you stop there,

17   you could say 10.53 is the amount that we earned, right?

18   But --

19   A.   Uh-huh.

20   Q.   But do you think -- I mean, as I understand

21   it, you're saying that's not a fair representation. So

22   why isn't that a fair representations. What additional

23   adjustments would you have to make to that 10.53 to make

24   it really tell you meaningful information about whether

25   we're over-earning or under-earning?

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 1          A.      Again, if you're trying to get to apples to

 2    apples, the Entergy refund is in the actual numbers, but

 3    is a one-time unusual event, and so that increased our

 4    allowed return for that period of time.  So you would take

 5    that out because that wouldn't have been contemplated in

 6    the authorized return, and you've got this weather.

 7    There's weather in our numbers.  If the authorized return

 8    was based on a weather normalized basis, then that would

 9    also impact the differences there.

10          Q.      Entergy is called a refund?

11          A.      That's correct.

12          Q.      Why is it a refund rather than just a

13    payment?

14          A.      Because the -- the company under the

15    contract we had with Entergy during the period 2007 to

16    2009, we paid Entergy those amounts, and FERC then ordered

17    Entergy to refund those amounts back to us as they felt

18    those were inappropriately charged by Entergy.

19                  MR. BYRNE:  I think that's all the

20    questions I have.  Thank you, Ms. Barnes.

21                  JUDGE WOODRUFF:  All right.  Then you can

22    step down.

23                  THE WITNESS:  Thank you.

24                  JUDGE WOODRUFF:  It's now 12:30, and I've

25    heard whisperings out in the audience or among the
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 1 attorneys out there that there's some depositions going on

 2 this afternoon. Have we got that covered? How do we want

 3 to deal with the rest of this issue today? Anybody want

 4 to be heard?

 5   MR. DOWNEY: I'll be heard. I need to be

 6 here for Mr. Brosch both on this issue and the next issue,

 7 which is income tax. I am supposed to be taking a

 8 deposition at three and defending a deposition at three,

 9 and I've been thinking, and I don't have a solution to the

10 problem yet. I'm going to see if a colleague can handle

11 the depositions. I haven't talked to her yet.

12   JUDGE WOODRUFF: Well, let's go ahead and

13 take our lunch break now. We'll come back at 1:30, and

14 Mr. Brosch will be on the stand then.

15   (A BREAK WAS TAKEN.)

16   JUDGE WOODRUFF: We're back from lunch, and

17 let's go ahead and get started. Mr. Brosch has taken the

18 stand. Please raise your right hand.

19   (Witness sworn.)

20   JUDGE WOODRUFF: Thank you. You may

21 inquire.

22   MR. DOWNEY: Thank you.

23 MIKE BROSCH testified as follows:

24 DIRECT EXAMINATION BY MR. DOWNEY:

25   Q.   **Mr. Brosch, are you the same Mike Brosch**

 1 **who testified last Thursday?**

 2   A.   I am, yes.

 3   **Q.   And was your testimony offered and received**

 4 **on Thursday?**

 5   A.   I believe it was, yes.

 6   **Q.   And was that Exhibit 500, 501 and 502?**

 7   A.   I believe so.

 8   MR. DOWNEY: Okay. I would tender the --

 9 all of that testimony's been received. I would tender the

10 witness for cross and encourage counsel and the Commission

11 to freely ask questions.

12   JUDGE WOODRUFF: Okay. Thank you. I

13 didn't need to swear you again a second time, but now

14 you're doubly promising.

15   THE WITNESS: As it should be.

16   JUDGE WOODRUFF: Okay. For

17 cross-examination, then, we begin with, looks like, Public

18 Counsel.

19   MR. MILLS: No questions.

20   JUDGE WOODRUFF: For Staff?

21   MR. THOMPSON: No questions.

22   JUDGE WOODRUFF: For Ameren?

23   MR. BYRNE: No questions.

24   JUDGE WOODRUFF: We'll come for questions

25 from the Bench.

 1   COMMISSIONER JARRETT: No questions.

 2   JUDGE WOODRUFF: All right. I have no

 3 questions. You will be staying in the room, I assume,

 4 during the hearing? I'm concerned some of the other

 5 Commissioners haven't gotten down here yet.

 6   THE WITNESS: I'm here for the income tax

 7 issue as well later.

 8   JUDGE WOODRUFF: We may ask you questions

 9 at that point. You can step down.

10   THE WITNESS: Thank you.

11   JUDGE WOODRUFF: And the other MIEC witness

12 is Mr. Gorman. I think he will be here on Friday.

13   MR. DOWNEY: That is correct.

14   JUDGE WOODRUFF: We'll move to John Cassidy

15 for Staff. If you'd please raise your right hand.

16   (Witness sworn.)

17   JUDGE WOODRUFF: Thank you. You may

18 inquire.

19 JOHN CASSIDY testified as follows:

20 DIRECT EXAMINATION BY MR. THOMPSON:

21   **Q.   State your name, please.**

22   A.   John Cassidy.

23   **Q.   Could you spell your last name for the**

24 **reporter, please.**

25   A.   C-a-s-s-i-d-y.

1   Q.   Mr. Cassidy, how are you employed?

2   A.   I'm a Utility Regulatory Auditor 5 with the

3   Missouri Public Service Commission.

4   Q.   Mr. Cassidy, did you prepare or cause to be

5   prepared certain items of testimony and schedules? I have

6   quite a list here, Exhibit 200, which is your direct

7   testimony?

8   A.   Yes.

9   Q.   And Exhibit 201 and 202, which are the

10   Staff cost of service revenue requirement report NP and HC

11   respectively?

12   A.   Yes.

13   Q.   And you contributed to that report?

14   A.   Yes.

15   Q.   And supervised its preparation?

16   A.   That is correct.

17   Q.   And then Exhibit 203, which is the Staff

18   accounting schedules?

19   A.   Yes.

20   Q.   And Exhibit 208, which is your rebuttal

21   testimony?

22   A.   Yes.

23   Q.   And Exhibit 234, which is your surrebuttal

24   testimony, also NP and HC?

25   A.   That's correct.

1   Q.   Now, do you have any corrections for any of

2   those things?

3   A.   I do not.

4   Q.   And if I were to ask you the same questions

5   today, would your answers be the same?

6   A.   Yes, they would.

7   Q.   And is the information contained in those

8   items of testimony true and correct to the best of your

9   knowledge and belief?

10   A.   Yes, they are.

11   MR. THOMPSON: At this point, your Honor, I

12   will offer Exhibits 200, 203, 208 and 234, and we will

13   offer the revenue requirement cost of service report at

14   the end when all of the contributors have testified.

15   JUDGE WOODRUFF: All right. So 200 has

16   been offered as well as 208 and 203, and then also 234,

17   and actually 235HC is also the surrebuttal. That's the

18   way I have it on the schedule here. Those have all been

19   offered.

20   MR. THOMPSON: You're right. I apologize.

21   JUDGE WOODRUFF: Any objections to their

22   receipt?

23   (No response.)

24   JUDGE WOODRUFF: Hearing none, they will be

25   received.

 1   (STAFF EXHIBIT NOS. 200, 203, 208, 234 AND

 2   235HC WERE RECEIVED INTO EVIDENCE.)

 3   MR. THOMPSON: Thank you. I tender the

 4   witness.

 5   JUDGE WOODRUFF: For cross-examination,

 6   then, we begin with MIEC.

 7   MR. DOWNEY: No questions.

 8   JUDGE WOODRUFF: And for Public Counsel?

 9   MR. MILLS: No questions.

10   JUDGE WOODRUFF: For Ameren?

11   MR. BYRNE: Just a few.

12   CROSS-EXAMINATION BY MR. BYRNE:

13   **Q.   Good afternoon, Mr. Cassidy.**

14   A.   Good afternoon.

15   **Q.   My understanding is that you testified that**

16   **the company's calculation of costs under its plant in**

17   **service accounting proposal is flawed because it doesn't**

18   **take into account the potential for savings and operations**

19   **in maintenance expense associated with replacing old plant**

20   **with new plant; is that true?**

21   A.   Yes. I recall that.

22   **Q.   And -- but isn't it also true that you**

23   **haven't provided any evidence as to what those O&M savings**

24   **would be or even for sure if they would exist; is that**

25   **fair to say?**

1   A.   Not specifically in my testimony. However,

2 I've reviewed some maintenance costs since filing my

3 testimony.

4   Q.   **Isn't it possible that the increases in the**

5 **O&M costs from the rest of the company's aging**

6 **infrastructure would more than offset any savings in O&M**

7 **cost resulting from plant replacements?**

8   A.   I don't know.

9   Q.   **Isn't it true that if new plant is**

10 **installed that's not a replacement for any plant that's**

11 **being retired, that it could have incremental new O&M**

12 **expenses?**

13   A.   It's possible.

14   Q.   **Isn't that true, for example, with the**

15 **Sioux scrubbers where we installed new scrubbers; is that**

16 **correct?**

17   A.   Yes.

18   Q.   **And there was some additional operations**

19 **and maintenance expenses associated with those scrubbers**

20 **that didn't exist before; isn't that true?**

21   A.   That's true.

22   Q.   **And I'm assuming you haven't done any study**

23 **to consider all those possible ramifications for O&M**

24 **expenses?**

25   A.   I have not.

1   Q.   And so would it be fair to say you don't

2   know whether O&M costs would go up or go down or stay the

3   same if the Commission adopted plant in service

4   accounting?

5   A.   In total, I don't know.

6   Q.   Okay. What's the logic in your mind for

7   allowing the company to have a return on plant that's

8   under construction but not allowing a return after the

9   plant goes into service?

10   A.   I assume you're speaking to the point in

11   time that once it -- on this chart, once it goes into

12   service, that the AFUDC ends?

13   Q.   Correct.

14   A.   And that is part of the regulatory lag that

15   exists with putting investment in service, and I think the

16   balance there is that, you know, I think that what the

17   company's trying to do with its proposal, this piece of

18   proposal is shift that risk from the company on to,

19   directly on to the ratepayers.

20   Q.   That's not what -- that wasn't my question

21   really. I guess my question is, why is it logical to have

22   a return before the plant goes into service but then no

23   return after the plant goes into service? Why is that

24   logical, is my question?

25   A.   Once it's in service, then the -- the

1 construction has stopped and so there's no longer a need

2 to continue to accrue AFUDC on that construction.

3   Q.   Well, let me ask --

4   A.   Then at that point it's incumbent upon the

5 company to determine whether it needs to file a rate case

6 to address those costs that they've put into service.

7   Q.   When Ms. Barnes was on the witness stand,

8 we were talking about trying to figure out if the

9 company's earnings were above or below its authorized

10 return. Were you here for that discussion?

11   A.   Yes, I was.

12   Q.   Would you agree with me that in order to

13 figure out if the company's earnings are above or below

14 the authorized return, it would be appropriate to exclude

15 the Entergy check from those calculations?

16   A.   Yes. That's one way of looking at it on a

17 regulatory basis.

18   Q.   And would you agree with me that it would

19 be appropriate to weather normalize the results?

20   A.   Yes.

21   MR. BYRNE: Thank you. I have no other

22 questions.

23   JUDGE WOODRUFF: Then we'll have questions

24 from the Bench. Mr. Chairman?

25 QUESTIONS BY CHAIRMAN GUNN:

1   Q.   In opening statements Mr. Thompson said

2   that one of the main reasons, if not the reason, why Staff

3   was against plant in service accounting was there was no

4   reduction in risk or no adjustment to the ROE. There was

5   a reduction in risk, but there was no commensurate

6   reduction in the ROE. Has Staff or does Staff quantify

7   what that should be based upon the proposal put forward by

8   Ameren?

9   A.   I haven't attempted to quantify that, but

10   Staff witness David Murray is also scheduled to testify on

11   Friday, so he may have some insight into what that

12   quantification might be.

13   Q.   So some reduction of risk, but you don't

14   know what basis point that translates to?

15   A.   I do not know that magnitude.

16   CHAIRMAN GUNN: Okay. That's all I have.

17   Thank you.

18   JUDGE WOODRUFF: Commissioner Jarrett?

19   QUESTIONS BY COMMISSIONER JARRETT:

20   Q.   Good afternoon.

21   A.   Good afternoon.

22   Q.   Were you here when I had a conversation

23   with Ms. Barnes about several issues?

24   A.   Yes, I was.

25   Q.   You were in the hearing room the entire

1 **time. One of those issues I asked her about was the**

2 **differences and similarities between this plant in service**

3 **accounting plan and a tracker. Can you tell me what are**

4 **some -- what are the differences and similarities between**

5 **Ameren's proposal and a tracker?**

6   A.   I view Ameren's pro-- Ameren Missouri's

7 proposal as being more like an AAO with a little bit of

8 ISRS flavoring to it, and I think that it's attempting to

9 recover all of those -- defer all of its investments

10 that's non-revenue-producing for inclusion in a subsequent

11 rate case.

12   Part of the problem with the proposal is,

13 in that light, is that the company really has not offered

14 any explanation for how or what non-revenue-producing

15 investments should be included, and here's one of the

16 dilemmas associated with this proposal. For example, if

17 the company were to replace a large transmission line,

18 that transmission line might allow it to push more power

19 across, you know, its borders and be able to sell more

20 off-system sales revenue than it would absent the

21 replacement of that transmission line. Should that be

22 included in this piece of proposal or not? If it's

23 increasing off-system sales, I would say no. But these

24 types of questions aren't answered in the company's

25 proposal.

1   Q.   So I guess I'm still trying to get the

2   answer. So you couldn't just call this a tracker because

3   it's not a tracker. What's the attributes that make it

4   not like a tracker?

5   A.   Well, a tracker would be something that

6   would gear off of a base level. Whereas, this is more of

7   let's just defer everything one way. A tracker could have

8   a two-way element to it. This is just one way. It's just

9   let's look at all of the non-revenue-producing investment

10   and determine what amount of depreciation or return was

11   associated with that, net it with retirements that might

12   occur during the same time frame and then just defer that

13   for a subsequent recovery in another rate case.

14   Q.   When you say there's no -- you know,

15   there's no criteria for what goes in and what goes out,

16   doesn't that all get sorted out then in the next rate

17   case? I mean, they get to defer whatever they defer, and

18   then at the next rate case it gets all sorted out. If

19   they improperly defer something, then they don't get to

20   recover that.

21   A.   That's true, but it's a significant burden

22   upon the Staff and other parties to sort through all of

23   that at that time.

24   COMMISSIONER JARRETT: I don't think I have

25   any further questions. Thank you.

 1   JUDGE WOODRUFF: Commissioner Kenney?

 2   QUESTIONS BY COMMISSIONER KENNEY:

 3   **Q.   Mr. Cassidy, how are you?**

 4   A.   Just fine.

 5   **Q.   Thanks for being here with us. You were in**

 6   **the room for the whole discussion of Staff Exhibit 237?**

 7   A.   Yes, I was.

 8   **Q.   And it's attached to your surrebuttal**

 9   **testimony?**

10   A.   A version of it is, yes.

11   **Q.   So I'm going to ask you some questions**

12   **about that, too. I'm sure it's the topic of everyone's**

13   **consternation.**

14   A.   Okay.

15   **Q.   Do you have a copy of your surrebuttal**

16   **testimony?**

17   A.   Yes, I do.

18   **Q.   And it's designated as HC, and I think it's**

19   **designated as HC because of A version of that Staff**

20   **Exhibit 237.**

21   A.   Yes.

22   **Q.   But then since that has been declassified,**

23   **it's not HC anymore, correct?**

24   A.   That's correct.

25   MR. THOMPSON: Commissioner, the thing

 1   that's declassified is the version that was attached to

 2   the company's response to Staff's Motion to Declassify.

 3   COMMISSIONER KENNEY: Which was a

 4   correction to the exhibit on Mr. Cassidy's.

 5   MR. THOMPSON: That's correct.

 6   COMMISSIONER KENNEY: I'm going to get to

 7   that. Bear with me.

 8   BY COMMISSIONER KENNEY:

 9   Q.   **So the document that was attached to your**

10   **testimony had a different figure, and I guess can I**

11   **discuss those figures? That's the question I want to get**

12   **at.**

13   MR. BYRNE: Your Honor, we -- we did ask

14   that it be maintained HC just because it's the wrong

15   figure.

16   COMMISSIONER KENNEY: Let's go in-camera

17   just for a second because I want to ask about it.

18   JUDGE WOODRUFF: We'll go in-camera at this

19   time.

20   MR. MILLS: Judge, just for the record, I

21   don't believe that being wrong is a basis under the

22   Commission's rule as to classify something as highly

23   confidential. So I don't -- I mean, you've gone

24   in-camera.

25   COMMISSIONER KENNEY: I would agree with

 1   you, but they're saying they've asked for it to remain

 2   classified because it was a wrong number, but I don't --

 3   MR. MILLS: But I don't think that's an

 4   appropriate basis for such a classification under the

 5   Commission's rules. There are five things in the

 6   Commission's rules that allow you to claim something

 7   highly classified. Making a mistake is not one of them.

 8   MR. BYRNE: Your Honor, Mr. Mills is right.

 9   Let's go out of camera. We did assert it was highly

10   confidential.

11   JUDGE WOODRUFF: I'm not sure we were ever

12   in-camera. I'll make sure that we were out of camera and

13   I'll get us back in regular session here.

14   Okay. For the benefit of the people

15   watching, after I muted we had a further discussion which

16   is on the record that indicated that Ameren is no longer

17   claiming highly confidential protection for the document

18   that the Commissioner is asking about, so we are back in

19   regular session. Proceed.

20   BY COMMISSIONER KENNEY:

21   Q.   All right. Thank you. So there was a lot

22   of discussion about the surveillance report.

23   A.   Yes.

24   Q.   And I want to ask you a few questions about

25   it because it formed the basis of some of your testimony.

1   And this all revolves around whether or not Ameren has

2   chronically under-earned or failed to achieve its

3   authorized ROE, and the relevance of that fact is that

4   forms the basis at least in part for their request of the

5   plant in service accounting.

6   So I want to discuss your understanding of

7   their authorized ROE and then also your understanding of

8   what's contained in the surveillance report, because as I

9   understand it, the surveillance report is compiled based

10 upon the Commission's request. So I want to ask a few

11 questions about that.

12   So if we look at page 6 of your testimony,

13 and you refer to JPC-SUR-1.

14   A.   Right.

15   Q.   It's beginning on line 3.

16   A.   Okay.

17   Q.   And I want to make sure I understand that

18 what was attached to your testimony contained an incorrect

19 figure regarding Ameren's actual earned ROE of

20 11.52 percent, right?

21   A.   Yes.

22   Q.   And that's about 99 basis points higher

23 than the corrected version, correct?

24   A.   That's correct.

25   Q.   Other than that difference, was there any

1   other difference between what was attached to your

2   testimony and the corrected document that's attached to

3   Staff Exhibit 237?

4   A.   That was the only change they made.

5   Q.   Was it clear to you how that error was

6   made?

7   A.   Yes. Subsequent to the filing of this

8   11.52 number in EFIS, company filed a corrected version

9   and indicated that it had to do with an incorrect booking

10   related to Taum Sauk. So they made an adjustment to

11   remove this Taum Sauk disallowance totally from the 11.52

12   calculation -- the 11.52 calculation to bring it down to

13   the 10.53 calculation that they're at now.

14   Q.   So the original 11.52 didn't reflect the

15   Taum Sauk disallowance?

16   A.   The 11.52 did not have that pulled out of

17   it.

18   Q.   I see. So the 10.53 has that disallowance

19   added back in?

20   A.   It has all of that Taum Sauk disallowance

21   adjusted out of it.

22   Q.   So it's about a $90 million disallowance,

23   which translates into an expense which has the effect of

24   lowering the ROE?

25   A.   Yes. But as Mr. Weiss explained earlier,

1 that, you know, in testimony when he explained his

2 numbers, the part that -- the part of the 90 million was

3 booked below the line and part of it was booked above the

4 line, and this adjustment just reflected what they had

5 booked above the line.

6 **Q.   So not the whole 90 million?**

7 A.   So it wasn't the whole amount.

8 **Q.   So the change, the 99 basis points isn't**

9 **because of adding back in the entire $90 million from the**

10 **disallowance but some portion of that disallowance?**

11 A.   Yes.

12 **Q.   How much of it?**

13 A.   Mr. Weiss stated something along -- I'm

14 just recalling from his testimony earlier it was something

15 in the neighborhood of 50 million or something.

16 **Q.   Do you agree with how Mr. Weiss arrived at**

17 **his number?**

18 A.   I don't have any reason to disagree with

19 those calculations.

20 **Q.   You didn't independently verify it?**

21 A.   I don't have a lot of backup supporting

22 documentation to support the calculation, but I don't have

23 any reason to disbelieve it.

24 **Q.   All right. So the 10.53 as reflected in**

25 **the surveillance report has the Taum Sauk allowance added**

 1   **back in, but as you heard Ms. Barnes say earlier today, it**

 2   **does not have the Entergy refund deducted?**

 3   A.   That's correct. But there are other

 4   factors that also have not been removed from the 10.53

 5   number.

 6   Q.   **That should be?**

 7   A.   Yes.

 8   Q.   **Such as?**

 9   A.   The company hasn't excluded incentive

10   compensation that would be normally disallowed or removed

11   from the cost of service that pertained to earnings per

12   share driven incentives. So that's approximately

13   $15 million. In this 12-month ending June number, there

14   was a Callaway refueling that occurred in the fall of '11,

15   October or November of 2011. This refueling only happens

16   on an 18-month basis, so you have to normalize those

17   costs. So a third of that refueling is worth another

18   12 and a half million.

19   Q.   **And that wasn't --**

20   A.   That was not removed. Any amounts of

21   institutional advertising have not been removed from this

22   number, any amount of lobbying expense and on and on it

23   goes. Also, it did not reflect any inclusion for this

24   $200 million plus rate increase that's pending as well.

25   Q.   **So is it fair to say that you could make**

1   any number of adjustments to this 10.53 percent ROE that's

2   reflected in the surveillance report to either move the

3   ROE up or down?

4   A.   That's fair.

5   Q.   What is -- let me back up. I think the

6   testimony that we heard earlier was that the surveillance

7   report is something that's prepared for the purposes of

8   the Commission?

9   A.   That's correct.

10   Q.   What is it that the Commission is trying to

11   determine in requesting this information that's reflected

12   in the surveillance report?

13   A.   I'm not certain why the surveillance was

14   originally authorized or required, but I would suspect it

15   has to do something with whether or not if the company is

16   continuously overearning, then maybe there would be some

17   consideration of whether or not the FAC should continue.

18   Q.   So the purpose of this report, though, is

19   to determine what the company's ROE is for purposes of

20   making regulatory determinations; is that right?

21   A.   I would say it gives us a benchmark of what

22   they're actually earning on their actual books.

23   Q.   And would you expect that you would need to

24   take this number and then make additional adjustments to

25   it to either weather normalize it or to extract out

 1 **one-time unusual occurrences to come up with a different**

 2 **ROE?**

 3   A.   I would say it depends on what you're

 4 looking at the number and what you're wanting to use it

 5 for.

 6   **Q.   And what were you using it for in your**

 7 **testimony?**

 8   A.   To show that company actually had achieved

 9 its authorized ROE for this most current period that they

10 had reported.

11   **Q.   Because why? What were you trying to**

12 **demonstrate at that time?**

13   A.   Well, that company, there's a lot of

14 complaints that they haven't achieved their ROE, but this

15 report would show that they had, but you can also make the

16 argument that you need to adjust it for ratemaking or

17 regulatory purposes for other items.

18   **Q.   So can we -- can this number -- I guess**

19 **I'll ask it the same way I asked Ms. Barnes. What's the**

20 **value of this report if it requires additional adjustments**

21 **for ratemaking purposes? Or in other words, is it fair to**

22 **use this number to determine whether the company has or**

23 **has not achieved its ROE?**

24   A.   I would say it's fair to use this number

25 because this is actually what company is earning.

1   Q.   Even if it's not -- what if it's not

2   weather normalized historically?

3   A.   I think that's irrelevant in terms of their

4   actual experience.

5   Q.   Because using weather normalization for the

6   purposes of setting rates is entirely different than

7   applying some type of weather normalization formula to

8   historical data?

9   A.   I agree, yes.

10   Q.   And if you're looking at what actually

11   occurred, would there be any reason to weather normalize

12   that?

13   A.   No.

14   Q.   So even if you take the -- at face value

15   what Ameren has told us and take the 10.53, take out the

16    $36 million Entergy refund because it's a one-time thing,

17   assuming that that equates to 30 basis points, you arrive

18   at 10.23 for that period. Does that still demonstrate

19   that they have or have not achieved their ROE?

20   A.   I would say it still demonstrates that

21   they've earned their authorized ROE.

22   Q.   All right. I want to ask a question more

23   particularly about the plant in service accounting and

24   using this chart, and I think it was a point that

25   Ms. Barnes made, that during the time that the plant is

1   under construction, that the company is allowed to accrue

2   its return on capital at the AFUDC rate; is that right?

3   A.   Yes.

4   Q.   And then once the plant's placed in

5   service, AFUDC accrual stops?

6   A.   That's correct.

7   Q.   Why is that fair? Why shouldn't they

8   continue to accrue that at that rate until the plant is

9   actually -- until new base rates are set?

10   A.   Well, AFUDC is, the purpose of that is to

11   allow the company some return on its investment while it's

12   actually constructing the investment, and then once it's

13   in service, then the company can choose to come in for a

14   rate increase if it thinks the cost is, you know, it

15   reaches the threshold to trigger the need to file a rate

16   increase, but that's also in consideration of all the

17   other relevant factors.

18   Q.   But why allow them to earn a return before

19   the plant is actually placed in service --

20   A.   Well --

21   Q.   -- and have the AFUDC accrue not during

22   that time when it actually is placed in service?

23   A.   Part of the problem is that the Staff will

24   not have had an opportunity to audit those costs to

25   determine if they were prudent, reasonable, that they were

1 not excessive in some manner. So those costs are

2 literally unaudited and unknown. There's not some

3 determination of whether they're good or not.

4   **Q.   But if -- and the PISA would still not**

5 **make -- would not require a determination of the prudence**

6 **of the expenditures or not. It's just allowing a**

7 **regulatory asset to be created. There would still be an**

8 **opportunity to review the prudence, correct?**

9   A.   That's correct. But part of the problem

10 also is that that's part of the normal business risk that

11 Ameren Missouri has in making investments, and to -- to

12 start allowing them to earn return and depreciation

13 exactly at the point that they put the investment in

14 service effectively transfers the risk from Ameren

15 Missouri to the ratepayer.

16   **Q.   And I'm actually putting aside the recovery**

17 **of the depreciation expense. I'm just trying to**

18 **distinguish between why we would allow AFUDC before the**

19 **plant's in service and not continue to allow it to be**

20 **accrued up and through the time that new rates are set?**

21   A.   That's per FERC USOA rules. I mean, that's

22 the way it's required to be reported.

23   **Q.   The AFUDC component?**

24   A.   Yes.

25   **Q.   But I mean, ultimately wouldn't this just**

 1 **be an extension of the AFUDC accrual, putting aside the**

 2 **depreciation expense?**

 3   A.   I guess the return portion could be viewed

 4 that way.

 5   Q.   **If it were at the same rate as the AFUDC?**

 6   A.   Yes, if it was closely matched.

 7   Q.   **Would it be -- would that be unfair?**

 8   A.   Yes, in my mind, without a corresponding

 9 reduction in ROE.

10   Q.   **Okay. So because you've at that point**

11 **reduced their business risk or you've shifted business**

12 **risk from the shareholders to the ratepayers, right?**

13   A.   Yes.

14   Q.   **How do you quantify what that reduction in**

15 **ROE should be? I know you haven't done it, but is there a**

16 **mechanism by which we can figure out how to appropriately**

17 **account for that reduced business risk?**

18   A.   I don't know personally.

19   COMMISSIONER KENNEY: All right. I don't

20 have any other questions. Thanks for your time.

21   JUDGE WOODRUFF: Commissioner Stoll?

22   COMMISSIONER STOLL: I have no questions.

23   JUDGE WOODRUFF: Mr. Chairman?

24 FURTHER QUESTIONS BY CHAIRMAN GUNN:

25   Q.   **I apologize for coming back, but I have a**

1 couple different questions. So with that reduction in

2 risk that Commissioner Kenney was just talking to you

3 about, that would be different depending on when the

4 true-up cutoff was or, for example, if you -- if you got a

5 plant in service and it was included and a case settled

6 and rates were then implemented a month after the

7 settlement, you'd only have a month of lost carrying

8 charges, correct?

9   A.   Yes. That would mitigate that five-month

10 period that Ameren Missouri complains about.

11   Q.   So is that five-month period the -- I mean,

12 I guess it all depends on when you file a rate case and

13 then where the rate case is resolved?

14   A.   It's kind of a balance of when is the

15 investment put in service, when have they filed their

16 case.

17   Q.   And that's where we talked about how these

18 blue lines and red lines don't represent any kind of

19 specific time structures. They can shift back and forth

20 depending upon the particular circumstances?

21   A.   Yes. That's correct.

22   Q.   And I want to go back to this Exhibit 237,

23 too, because I got more confused by some of the questions.

24 So -- and I just -- you were in here for Ms. Barnes'

25 testimony, right?

 1   A.   Right.

 2   Q.   So are you -- are you agreeing with her in

 3   terms of what everybody believes that the Taum Sauk

 4   whatever it is, whether it's in or out or partially in or

 5   partially out, because I thought I heard you say that this

 6   10.53 has already been adjusted down in order to take Taum

 7   Sauk into account?

 8   A.   Yes. I mean, I think when they filed the

 9   11.52, that had some Taum Sauk numbers in it that were

10   associated with the piece that needed to be removed

11   because it had been disallowed. And so company

12   erroneously filed that filing with that included in there,

13   and so then they made some adjustments to take into

14   account the tax impact associated with that, which was

15   charged above the line, and they removed that, and by

16   doing so that took their return calculation down from

17   11.52 to 10.53, and then now Taum Sauk is not a factor in

18   the 10.53. I think that's where Ms. Barnes is as well.

19   And then she's saying, on top of that, you need to adjust

20   for Entergy and weather.

21   Q.   Right.

22   A.   But then I have these other factors.

23   Q.   So you believe that -- you agree with her

24   that this 10.53 doesn't handle Taum Sauk the way it should

25   be handled?

 1   A.   Yes.

 2   Q.   And so you wouldn't make any further

 3   adjustments to this 10.53 for Taum Sauk? It's been

 4   handled in the 10.53?

 5   A.   Yes.

 6   Q.   And then just to be clear, you agree that

 7   the Entergy refund is not -- has not been dealt with in

 8   this number?

 9   A.   That's correct.

10   Q.   But there may be enough offsetting credits

11   to that Entergy or -- and I use credits not as -- I use it

12   in my own head to describe what they are --

13   A.   I understand.

14   Q.   -- to offset --

15   A.   Offsetting factors.

16   Q.   To offset that Entergy refund?

17   A.   Yes.

18   Q.   And so if the company said, well, we'd have

19   to deal with the Entergy in one way, you say okay, that's

20   fine, but then you've got A, B, C and D that probably

21   should also stay out or come in depending on what it is?

22   A.   That's correct.

23   Q.   So it is your opinion that the 10.53 has

24   been at least adjusted enough that all the competing

25   adjustments are -- have been dealt with, either they're

 1   all in or they're all out, and you wouldn't need to do

 2   anything further to this 10.53?

 3   A.   I'd say that's fair.

 4   CHAIRMAN GUNN: All right. Thank you. I

 5   don't have anything further.

 6   JUDGE WOODRUFF: Go to recross based on

 7   questions from the Bench beginning with MIEC.

 8   MR. DOWNEY: Just a couple.

 9   RECROSS-EXAMINATION BY MR. DOWNEY:

10   Q.   I want to follow up on that last line of

11   questioning. You had listed incentive compensation as a

12    $15 million issue.

13   A.   Yes.

14   Q.   Callaway refueling as a 12 and a half

15   million dollars issue. Then you indicated that there was

16   some issue about institutional advertising and lobbying,

17   but you didn't assign dollar values to that?

18   A.   I would say there's approximately a million

19   dollars of institutional advertising, and at least

20    $100,000 of lobbying costs.

21   Q.   Okay. So Ameren has pointed out an

22   adjustment, the Entergy adjustment that it would make, but

23   these other adjustments would offset that?

24   A.   Yes.

25   Q.   So then we're just left with weather

 1   normalization?

 2   A.   Yes.

 3   Q.   And you think the 10.53 ROE figure is a

 4   good figure?

 5   A.   I would say so. You know, and the company

 6   experienced a rather warm winter, so that mitigated some

 7   of the warm weather they experienced this past summer,

 8   too.

 9   MR. DOWNEY: Thank you.

10   JUDGE WOODRUFF: Public Counsel?

11   RECROSS-EXAMINATION BY MR. MILLS:

12   Q.   Yeah. And I hate to beat on this drum some

13   more, but the Exhibit 237, the change between the number

14   that was filed with your testimony and Exhibit 237 is

15   roughly 99 basis points, correct?

16   A.   Yes.

17   Q.   And it's your understanding that that

18   entire change is due to a reflection of the tax impact of

19   the Taum Sauk disallowance from above the line to below

20   the line; is that correct?

21   A.   Yes. There was a filing that summarized

22   that impact in the -- in the FAC surveillance that

23   summarized that correction.

24   Q.   Okay. Is that filing in the record in this

25   case?

 1   A.   It is not.

 2   Q.   In terms of revenue dollars, revenue coming

 3   into the company, how much revenue does it take to move

 4   the return on equity 99 basis points?

 5   A.   A basis point is worth $540,000, so I don't

 6   have -- I could do the calculation, I guess. I'd say 99

 7   basis points is worth approximately $53 million.

 8   Q.   So there was a $53 million beneficial Taum

 9   Sauk, beneficial from a ratepayers' perspective beneficial

10   Taum Sauk tax adjustment taken away between the filing of

11   your surrebuttal and the recalculations in Exhibit 237?

12   A.   Yes.

13   Q.   Now, Commissioner Kenney started out with

14   some questions about the fairness of the gap in time

15   between when AFUDC cuts off and when a piece of plant is

16   reflected in rates. Do you recall those questions?

17   A.   Yes.

18   Q.   Up until the point at which a particular

19   piece of plant is actually in service in Missouri, is a --

20   is an electric company allowed to file a rate increase

21   case that would include that plant in service? I'm sorry.

22   Would include that plant in rate base?

23   A.   Could you ask me the question one more

24   time?

25   Q.   Yeah. That wasn't a very clear question.

 1   Are you familiar with the anti-CWIP statute for electric

 2   companies in Missouri?

 3   A.   Yes.

 4   Q.   Does that statute not prohibit a company

 5   from including plant that is not yet in service in rate

 6   base?

 7   A.   It does prohibit.

 8   Q.   And setting aside the timing of the true-up

 9   and the time it takes the Commission to issue a decision,

10   but from the very day at which a piece of plant goes in

11   service then it is eligible to be -- to be included in

12   rate base and the company can earn a return on it,

13   correct?

14   A.   Yes.

15   Q.   So up until the point in which it goes in

16   service, the company has no option to include it in rate

17   base, correct?

18   A.   That's correct.

19   Q.   After it's in service, it's up to the

20   company whether to file a rate case to capture or not?

21   A.   Yes.

22   Q.   So it's the company's decision?

23   A.   Yes, the company's decision. It's in their

24   control.

25   Q.   Okay. Now, imbedded in this whole concept

1   is the question of regulatory lag. In your opinion, is

2   regulatory lag a bad thing that we just can't avoid or are

3   there beneficial aspects to regulatory lag?

4   MR. BYRNE: I'm going to object. It

5   exceeds the scope of Commission questions.

6   JUDGE WOODRUFF: Overruled.

7   THE WITNESS: There are benefits to

8   regulatory lag. It offers incentives for management to

9   cost optimize their spending.

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

11   JUDGE WOODRUFF: For Ameren?

12   MR. BYRNE: Just a few.

13   RECROSS-EXAMINATION BY MR. BYRNE:

14   Q.   In response to some Commissioner

15   questions, you made the point that there were any number

16   of adjustments that could be made to this rate of return,

17   the 10.53 that's in the -- in the surveillance report for

18   the 12 months ended June 2012; is that correct?

19   A.   Yes.

20   Q.   I mean, isn't it really true that a whole

21   bunch of adjustments have to be made to those surveillance

22   report numbers? Aren't there dozens of adjustments that

23   you would need to make to bring those numbers to a

24   regulatory level where you have to determine whether

25   you're overearning or under-earning on a regulatory basis?

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1            A.      It's true if you wanted to get a perfect

2     number it would require a myriad of calculations.

3            Q.      Isn't it true that -- have you ever been

4     around when the Staff has filed a complaint against a

5     utility for overearning?

6            A.      Yes.

7            Q.      Isn't it true the Staff would never

8     consider using that surveillance information as the basis

9     for the complaint until they ran through the whole gamut

10    of adjustments to it?

11           A.      The surveillance would be something that we

12    would use as kind of a benchmark to determine whether some

13    sort of adjustment to rates was necessary, yes, sir.

14           Q.      If a surveillance report showed, you know,

15    a 10.53 percent return on equity for a company that's

16    earning -- whose authorized return was 10.2, would that

17    suggest to you there's a big overearnings problem in that

18    company?

19           A.      I don't know.

20           Q.      Would -- would you think it would be a

21    basis for an earnings complaint against that company?

22           A.      It may.

23           Q.      Let me ask you this.  Let's imagine a

24    company that has had five rate cases, four rate increases

25    and another one pending, and each time the company's
```

1   gotten a rate increase. Do you think that would suggest

2   the company has been overearning or under-earning during

3   the period those rate cases occurred?

4   A.   Could you rephrase your question again?

5   Q.   Well, I'm saying if a company like Ameren

6   Missouri who's had four rate increases in the last five

7   years and has another rate increase case pending, does

8   that history -- and my understanding is rates are based on

9   an historic test year in Missouri; is that correct?

10   A.   Yes.

11   Q.   I mean, does that history suggest that

12 Ameren Missouri's been overearning or under-earning or

13 does it suggest nothing to you?

14   A.   It most likely suggests that they've earned

15 their authorized ROE. It may or may not suggest that some

16 sort of complaint would need to be filed. I'm not

17 suggesting that Ameren is chronically overearning.

18   Q.   No. I mean, I guess what I'm asking is,

19 does the fact that Ameren Missouri has gotten four rate

20 increases in the last five years and has another rate case

21 pending, does that suggest that we've been overearning or

22 under-earning over the four or five-year period?

23   A.   That would suggest under-earning.

24   Q.   Okay. That's a better answer. At the very

25 beginning you were talking about the 10.53, and I think

 1   you referred to it as the actual return. Do you remember

 2   that? Maybe you were talking to Commissioner Kenney.

 3   A.   Yes.

 4   Q.   But isn't it true that that's literally not

 5   the actual return because it's been adjusted for Taum

 6   Sauk?

 7   A.   That's true.

 8   MR. BYRNE: Thank you. That's all the

 9   questions that I have.

10   JUDGE WOODRUFF: Redirect.

11   MR. THOMPSON: Thank you, Judge.

12   REDIRECT EXAMINATION BY MR. THOMPSON:

13   Q.   You were asked a question about what the

14   logic is of the -- of what I've characterized as the donut

15   hole, and isn't it true that traditionally there is no

16   return on plant in service, there is no depreciation

17   expense between the in-service date and the date that

18   rates become effective from the case that put that plant

19   into rate base?

20   A.   Yes.

21   Q.   And that's traditional?

22   A.   That is.

23   Q.   That's always the way it's been?

24   A.   Yes.

25   Q.   That's how cost of service ratemaking

 1   works?

 2   A.   Yes.

 3   Q.   And the company, I think you testified, has

 4   control over when it files its rate case?

 5   A.   Yes.

 6   JUDGE WOODRUFF: Mr. Thompson, I'd request

 7   you use your microphone.

 8   MR. THOMPSON: I apologize.

 9   BY MR. THOMPSON:

10   Q.   Now, there was some questions that were

11   asked about the difference between a tracker and an AAO.

12   I believe Commissioner Jarrett was asking you those

13   questions. Do you recall those questions?

14   A.   I do.

15   Q.   And I think you stated that a tracker

16   measures the difference between actual experience and a

17   base amount?

18   A.   Yes.

19   Q.   For example, the FAC is a type of tracker

20   perhaps?

21   A.   Yes.

22   Q.   Because there's a base amount of fuel

23   that's in rates and then the FAC measures the difference

24   between actual fuel costs and that base amount?

25   A.   That's correct.

 1   Q.   And an AAO on the other hand doesn't have a

 2   base amount, but it represents all of some cost that is

 3   being deferred for consideration in a later rate case?

 4   A.   Yes.   That's the concept.

 5   Q.   And so this plant in service accounting

 6   idea is more like an AAO, I think you testified?

 7   A.   Yes.

 8   Q.   I think you said it had an ISRS flavoring?

 9   A.   That's correct.

10   MR. THOMPSON: I think that's all I have.

11   Thank you very much.

12   JUDGE WOODRUFF: Thank you, Mr. Cassidy.

13   You can step down.

14   And then the next witness is Mr. Robertson

15   for Public Counsel.   Mr. Robertson, is this the first time

16   you've been up for this case?

17   THE WITNESS: It is.

18   (Witness sworn.)

19   JUDGE WOODRUFF: You may inquire.

20   TED ROBERTSON testified as follows:

21   DIRECT EXAMINATION BY MR. MILLS:

22   Q.   Could you state your name for the record,

23   please?

24   A.   My name is Ted Robertson.

25   Q.   And by whom are you employed and in what

 1 capacity?

 2   A.   I'm the chief public utility accountant for

 3 the Missouri Office of the Public Counsel.

 4   Q.   And are you same Ted Robertson who has

 5 caused to be filed in this case direct testimony, rebuttal

 6 testimony and surrebuttal testimony?

 7   A.   Yes.

 8   Q.   And do your direct and rebuttal testimonies

 9 have NP versions and HC versions?

10   A.   I believe so.

11   Q.   If I were to ask you the same questions

12 that are contained in that testimony -- first of all, do

13 you have any corrections or additions to make to that

14 testimony?

15   A.   None that I know of.

16   Q.   If I were to ask you the same questions

17 that are contained in those testimonies, would your

18 answers be the same?

19   A.   They would.

20   Q.   Are those answers true and correct to the

21 best of your knowledge, information and belief?

22   A.   Yes.

23   MR. MILLS: Okay. Judge, I do not have my

24 exhibit list with me today. Could you help me out with

25 the exhibit numbers for Mr. Robertson's testimony?

 1   JUDGE WOODRUFF: His direct is 406HC and

 2   NP, his rebuttal is 407, and his surrebuttal is 408.

 3   MR. MILLS: Thank you. With that direct

 4   examination, I will offer Exhibits 406HC and NP, 407HC and

 5   NP and 408 and tender the witness for cross-examination.

 6   JUDGE WOODRUFF: 406, 407 and 408 have been

 7   offered. Any objections to their receipt?

 8   (No response.)

 9   JUDGE WOODRUFF: Hearing none, they will be

10   received.

11   (OPC EXHIBIT NOS. 406, 407 and 408 WERE

12   RECEIVED INTO EVIDENCE.)

13   JUDGE WOODRUFF: For cross-examination,

14   begin with Staff.

15   MR. THOMPSON: No questions. Thank you.

16   JUDGE WOODRUFF: MIEC?

17   MR. DOWNEY: No questions.

18   JUDGE WOODRUFF: Ameren?

19   MR. BYRNE: No questions.

20   JUDGE WOODRUFF: Any questions from the

21   Bench? Commissioner Kenney?

22   QUESTIONS BY COMMISSIONER KENNEY:

23   Q.   I'll be brief. I'm going to ask you about

24   the plant in service accounting. If we were to adopt

25   something along the lines of a plant in service

 1 **accounting, would you be able to express any opinion on**

 2 **whether and how much the ROE should be adjusted to reflect**

 3 **any decreased business risk?**

 4   A.   We haven't done any calculation along that

 5 line, so at this time I'd say no.

 6   Q.   **Would you agree that it would be**

 7 **appropriate or in -- well, let me ask the question**

 8 **differently.**

 9   **Would it be appropriate or inappropriate to**

10 **adjust the ROE to reflect the increased business risk?**

11   A.   Assuming that you went with the company's

12 proposal to some degree, I think it would be appropriate

13 to do an adjustment on ROE of some kind.

14   COMMISSIONER KENNEY: Thank you.

15   JUDGE WOODRUFF: Commissioner Jarrett?

16   COMMISSIONER JARRETT: I don't have any

17 questions. Thank you, Mr. Robertson.

18   JUDGE WOODRUFF: Commissioner Stoll?

19   COMMISSIONER STOLL: I don't have any

20 questions. Thank you.

21   JUDGE WOODRUFF: Mr. Chairman?

22   CHAIRMAN GUNN: Yeah. I probably should

23 ask this.

24 QUESTIONS BY CHAIRMAN GUNN:

25   Q.   **237, are you familiar with what went into**

 1 those calculations? It was a Staff exhibit through the

 2 company, so --

 3   A.   Only what I've heard sitting here today.

 4   Q.   So we're in the same boat, so I won't ask

 5 you any more than that. Thanks.

 6   CHAIRMAN GUNN: That's all I have.

 7   JUDGE WOODRUFF: Recross based on questions

 8 from the Bench, beginning with Staff?

 9   MR. THOMPSON: No questions. Thank you.

10   JUDGE WOODRUFF: MIEC?

11   MR. DOWNEY: No questions.

12   JUDGE WOODRUFF: Ameren?

13   MR. BYRNE: No, thank you.

14   JUDGE WOODRUFF: Redirect?

15 REDIRECT EXAMINATION BY MR. MILLS:

16   Q.   Just to clarify, I think Commissioner

17 Kenney's first question was, all due respect, a compound

18 question. He asked you whether and how much an adjust--

19 whether and, if so, how much an adjustment. I think your

20 answer was no, but I think your later question, just to

21 clarify, do you believe that it would be appropriate or

22 not appropriate to adjust ROE if the plant in service

23 accounting was authorized?

24   A.   I believe it would be appropriate to

25 adjust.

1   Q.   You just don't know by how much?

2   A.   As I sit here today, no.

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

4   JUDGE WOODRUFF: All right. Then,

5   Mr. Robertson, you can step down. And that concludes the

6   plant in service accounting issue.

7   MR. DOWNEY: Judge, if I may, when

8   Mr. Brosch was on the witness stand, some of the

9   Commissioners missed his testimony. You had indicated he

10   could be made available for questioning by the Commission

11   on this issue. He's -- I don't know if we're going to

12   have the same attorneys here later this afternoon if we

13   address income tax or not. He'll be testifying then. But

14   do you want to offer the Commissioner --

15   JUDGE WOODRUFF: I will make that offer.

16   If anyone wants to question Mr. Brosch, we can bring him

17   back up to the stand. He got on and off very quickly.

18   COMMISSIONER KENNEY: He's going to be

19   around, right? You're going to be here?

20   MR. DOWNEY: My only concern was if counsel

21   changes between this case and the next issue, they may not

22   be prepared.

23   MR. BYRNE: I'm doing the next issue, too,

24   if that helps you.

25   COMMISSIONER KENNEY: I'll wait. I don't

 1 have any.

 2   JUDGE WOODRUFF: Okay. Then that concludes

 3 the plant in service accounting issue. Next issue is

 4 income tax ADIT and NOL. We'll take a ten-minute break

 5 before we go to that and we'll come back at 2:30.

 6   (A BREAK WAS TAKEN.)

 7   JUDGE WOODRUFF: Let's go ahead and get

 8 started. We're back on the record after our break and

 9 moving on to a new issue involving income tax and ADIT and

10 NOL, and we'll do mini openings on that beginning with

11 Ameren.

12   MR. BYRNE: Thank you, your Honor. May it

13 please the Commission?

14   There are two income tax issues that we are

15 here today to address. The first issue relates to the

16 company's ESOP, or employee stock ownership plan, and the

17 second involves the application of the ADIT, or

18 accumulated deferred income tax, to CWIP, or construction

19 work in progress. A lot of acronyms that make these

20 issues somewhat confusing. Let me try to explain them.

21   Let's talk first about the employee stock

22 ownership plan or ESOP issue. The crux of this issue is

23 that MIEC witness Brosch argues that Ameren Missouri's

24 customers are entitled to tax benefits that are earned by

25 Ameren Corporation based on decisions that Ameren Missouri

 1   employees make about where to invest money they have

 2   already earned as part of their salaries and decisions

 3   that Ameren Corporation, not Ameren Missouri, makes about

 4   whether to use money that it has already earned from

 5   numerous sources or that it has borrowed to pay a dividend

 6   to its stockholders.

 7   Mr. Brosch and the parties who support him

 8   on this issue are fundamentally mistaken about the

 9   customers' entitlement to these tax benefits. Customers

10   are not entitled to tax benefits stemming from decisions

11   employees make to invest their own money after it's been

12   earned, and customers are not entitled to tax benefits

13   that stem from Ameren Corporation's decision to pay its

14   shareholders a dividend out of money that has already been

15   earned or that has been borrowed. Those tax benefits

16   belong to Ameren Corporation, not Ameren Missouri's

17   customers.

18   Let me explain more specifically what is

19   happening here. All employees of Ameren Corporation,

20   Ameren Corporation subsidiaries, including Ameren Missouri

21   employees are offered the opportunity to invest a portion

22   of their salaries in a 401K plan. 401K plan shelters the

23   money invested and any earnings on those investments from

24   income tax until the employee retires and begins to

25   withdraw money from his or her 401K account.

 1   Ameren offers numerous investment options

 2   to employees who elect to participate in a 401K plan. One

 3   of the options is to purchase shares of Ameren Corporation

 4   stock, and when Ameren Corporation pays a dividend out of

 5   its retained earnings to Ameren Corporation stock held in

 6   a 401K plan, that dividend payment generates a tax benefit

 7   for Ameren Corporation. The federal government provides

 8   that tax benefit to companies as an incentive to encourage

 9   them to offer 401K plans to their employees.

10   The issue here is that Mr. Brosch and other

11   parties that support him want to take that tax benefit

12   away from Ameren Corporation and give it to Ameren

13   Missouri's customers. This position is completely without

14   merit. Mr. Brosch and the other parties cannot argue that

15   customers' entitlement stems from our employees' decisions

16   to invest money they have already earned in Ameren

17   Corporation stock. Where an employee chooses to invest

18   his earnings is his own business and should have no impact

19   on customers one way or the other. Once earned, the

20   salaries belong to the employees, not to customers.

21   And similarly, once they are earned,

22   customers have no claim on Ameren Corporation's profits,

23   and its decision to pay a dividend out of money it has

24   already earned or borrowed should also have no impact on

25   customer rates.

 1   Ameren Corporation gets money to pay its

 2   dividend from all of its subsidiaries, not just Ameren

 3   Missouri, and its subsidiaries include a large Illinois

 4   gas and electric operation as well as a subsidiary owning

 5   unregulated generation. Moreover, money Ameren

 6   Corporation uses to pay its dividend could also be

 7   borrowed.

 8   The point is the money used to pay Ameren

 9   Corporation's dividend doesn't necessarily have any

10   relationship to Ameren Missouri.

11   Nonetheless, even if all the money from

12   Ameren Corporation's dividend came from earnings derived

13   from Ameren Missouri, customers would still have no

14   entitlement whatsoever to tax benefits that come from

15   Ameren Corporation's decision to utilize money that it has

16   already earned. Those tax benefits are incidental to

17   Ameren Corporation's ownership of its retained earnings,

18   which is recognized under Missouri law. They are not the

19   property of Ameren Missouri's customers.

20   Mr. Brosch and the other parties supporting

21   this adjustment would never argue that, I don't think,

22   that customers are entitled to tax benefits if Ameren

23   Corporation used its earnings to buy tax exempt bonds.

24   But attempting to seize the tax benefits

25   for customers in this instance is really no different. It

 1   is simply taking a tax benefit earned by Ameren

 2   Corporation based on disposition of money that Ameren

 3   Corporation owns and giving it to Ameren Missouri's

 4   customers.

 5   This proposal would be similar to the State

 6   of Missouri saying that taxpayers are entitled to the home

 7   mortgage deduction of State employees just because their

 8   houses may have been purchased using salaries funded by

 9   the taxpayers. This would obviously be ridiculous. Once

10   earned, State employees' salaries are their own and

11   taxpayers have no claim on any benefits that might result

12   from decisions that the State employee might make in

13   disposing of the money he or she has earned.

14   Similarly Ameren Missouri customers have no

15   claim to benefit -- tax benefits based on decisions our

16   employees make about how to invest their salaries or

17   decisions that Ameren Corporation makes about disposing of

18   its retained earnings. Whether Ameren Corporation chooses

19   to use those funds to pay a dividend or whether it uses

20   those funds for any other purpose it should have no impact

21   on the rate Ameren Missouri customers pay. Mr. Brosch's

22   proposed adjustment is without merit and should be

23   rejected.

24   The second tax issue involves another tax

25   benefit, Accumulated deferred income taxes, or ADIT,

 1   attributable to construction work in progress. As the

 2   Commission knows and has been discussed at length in this

 3   hearing, construction work in progress is paid for by

 4   money that Ameren Missouri has to front in order to build

 5   utility plant. Because of the way Missouri law works,

 6   Ameren Missouri is not allowed to charge customers

 7   anything for the money that it devotes to construct work

 8   in progress.

 9   In other words, Ameren Missouri has to put

10   out the money for construction, but it gets nothing in

11   return until the next rate case when completed projects

12   can be put into rate base. It's a significant problem for

13   Missouri utilities that rates can't be adjusted to reflect

14   construction work in progress.

15   But Mr. Brosch -- Mr. Brosch's adjustment

16   would make that problem even worse. Under Mr. Brosch's

17   proposal, even though today's customers pay none of the

18   cost of construction work in progress, under his proposal

19   they would be immediately credited for the tax benefit

20   associated with the construction work in progress.

21   This proposal is unfair to Ameren Missouri

22   and makes no logical sense. Customers pay for plant

23   investments, and those investments are included in rate

24   base in a future case. The tax benefits associated with

25   those investments should be flowed through to the

 1 customers when they pay the related costs and not a moment

 2 before.

 3   Thank you.

 4   JUDGE WOODRUFF: Questions? Thank you.

 5 Opening for Staff.

 6   MR. THOMPSON: Thank you, your Honor.

 7 May it please the Commission?

 8   This is the income tax section of the rate

 9 case, and it's usually a standing room only segment.

10 There's two issues, and Mr. Byrne has described them very

11 accurately. The first is the ESOP. The second is the

12 ADIT on the construction work in progress.

13   The ESOP issue has to do with equity

14 between the subsidiary, Ameren Missouri, and the parent,

15 Ameren Corporation. A proportion of the employees that

16 have chosen in their 401K to invest their money in the

17 Ameren shares, a proportion of those employees are Ameren

18 Missouri employees. There's a tax benefit that is thereby

19 realized by the corporation, and Staff suggests that an

20 equitable portion of that tax benefit should be shared

21 with Ameren Missouri, that after all is who these

22 employees are employees of, and that that benefit in turn

23 should reduce revenue requirement.

24   The second issue is the accumulated

25 deferred income tax related to construction work in

 1   progress. It's our understanding -- and when I say my

 2   understanding, I don't understand much about this issue,

 3   but nonetheless, I understand that in the past this

 4   accumulated deferred income tax money has been used as an

 5   offset to rate base. That is, it is a subtraction from

 6   rate base, a negative inclusion, and that Staff believes

 7   it should be treated that way in this case as well.

 8   Thank you.

 9   JUDGE WOODRUFF: Questions? Thank you.

10   Commissioner Jarrett?

11   COMMISSIONER JARRETT: How did we treat

12   these issues in the last rate case?

13   MR. BYRNE: I think the income tax issues

14   were settled in the last case.

15   MR. THOMPSON: It's my understanding that

16   the ADIT was treated as a deduction from rate base.

17   JUDGE WOODRUFF: For Public Counsel?

18   MR. MILLS: I'll waive the mini opening on

19   this issue. Thank you.

20   JUDGE WOODRUFF: For MIEC?

21   MR. DOWNEY: Thank you, Judge. Good

22   afternoon. May it please the Commission?

23   Commissioner Jarrett, I think this may go

24   to the question you just raised. MIEC witness Brosch is

25   proposing the ESOP adjustment. By proposing an

1   adjustment, I'm assuming we're wanting to change

2   something. On the second issue, Ameren is proposing the

3   adjustment.

4   The adjustment Mr. Brosch proposes is

5   $2.8 million per year in revenue requirement. The

6   adjustment that Ameren is proposing is $9 million per year

7   in revenue requirement.

8   I think Mr. Byrne accurately described the

9   issues. The first issue, the ESOP issue, MIEC notes that

10 the costs of Ameren's -- Ameren Missouri's employees'

11 salaries and their 401K match enables those employees to

12 acquire Ameren, Inc. stock in their 401K portfolios. It's

13 an expense that is included in revenue requirement and

14 thus rates. In the spirit of matching benefits and

15 burdens, it is only fair to allocate into Missouri revenue

16 requirement that portion of the dividends deduction that

17 Ameren Corporation receives that is attributable to the

18 Ameren Missouri employees' 401K holdings.

19   Ameren's rationale for keeping the dividend

20 deduction tax benefits involves abstract arguments about

21 which corporate entity actually pays the dividends and

22 argues that dividends are not explicitly considered in

23 setting utility rates.

24   The truth is that the Commission allows

25 Ameren Missouri an ROE sufficient for it to pay upstream

 1   dividends to its sole shareholder, Ameren Corporation.

 2   Ameren Corporation in turn has divided -- excuse me, has

 3   dividend income from which to pay these dividends to its

 4   shareholders, including the Ameren Missouri employees at

 5   issue here.

 6   We urge the Commission to adopt the MIEC

 7   adjustment. By the way, this adjustment is supported by

 8   all the other parties except Ameren.

 9   With regard to Ameren's proposal, that is

10   to deny ratepayers any benefit whatsoever of accumulated

11   deferred income taxes, ADIT, associated with construction

12   work in progress or CWIP investments. This new proposal

13   should be denied. ADIT results from accelerated and bonus

14   tax depreciation that, for instance, allows an asset with

15   a 20-year life to be largely expensed for tax purposes in

16   the first year.

17   Additional ADIT balances result from

18   treating as currently deductible repairs many costs that

19   are capitalized for book purposes as construction work in

20   progress. These accelerated tax deductions result in

21   significant income tax deferrals that essentially provide

22   an interest-free loan to the taxpayer to be paid back

23   without interest over the 20-year book life of the asset.

24   Ameren argues that the ADIT that is

25   associated with its CWIP assets should be ignored for

1 ratemaking purposes solely because CWIP is not included in

2 rate base. This overly simplistic argument is wrong and

3 should be rejected. Customers are, in fact, burdened by

4 CWIP since the CWIP earns, as you've heard this afternoon

5 and this morning, AFUDC, that Ameren's customers will in

6 fact pay.

7   During 2011 and 2012, AFUDC averaged

8 $3.8 million a month in added income for Ameren, all of

9 which amounts will be added into future rate base for

10 which ratepayers will be burdened with a return in

11 depreciation costs in setting their rates.

12   AFUDC calculations do not account for

13 CWIP-related ADIT balances. Therefore, as explained by

14 MIEC witness Brosch, these ADIT balances must continue to

15 be included in rate base as they have been in all previous

16 Ameren rate cases. Thank you.

17   JUDGE WOODRUFF: Thank you. I believe that

18 will be all the openings, so we'll begin with the first

19 witness, which is James Warren.

20   CHAIRMAN GUNN: Can I just ask a quick

21 question? Public Counsel, the information I have is you

22 have not taken a position on this, but Mr. Downey said

23 that all the other parties support the position. I just

24 want to clarify as to whether you are neutral on the issue

25 or whether you're supporting the other parties?

1   MR. MILLS: We are supporting the MIEC and

2   Staff positions.

3   CHAIRMAN GUNN: Thank you.

4   (Witness sworn.)

5   (AMEREN EXHIBIT NO. 10 WAS MARKED FOR

6   IDENTIFICATION.)

7   JUDGE WOODRUFF: You may inquire.

8   JAMES WARREN testified as follows:

9   DIRECT EXAMINATION BY MR. BYRNE:

10   **Q.   Good afternoon. Could you please state**

11   **your name for the record?**

12   A.   My name is James I. Warren.

13   **Q.   And by whom are you employed, Mr. Warren?**

14   A.   I'm a member of the law firm Miller &

15   Chavalier, Chartered in Washington, D.C.

16   **Q.   And Mr. Warren, are you the same James I.**

17   **Warren that caused to be filed in this case prefiled**

18   **rebuttal testimony that's been marked as Exhibit No. 10?**

19   A.   Yes, I am. I'm not sure what the exhibit

20   number is, but I did file prefiled testimony.

21   **Q.   Prefiled rebuttal testimony?**

22   A.   Rebuttal testimony, yes.

23   **Q.   And do you have any corrections to that**

24   **testimony you'd like to make at this time?**

25   A.   Not that I found, no.

 1   Q.   And is the information contained in your

 2   prefiled testimony true and correct to the best of your

 3   knowledge and belief?

 4   A.   Yes, it is.

 5   Q.   And if I were to ask you the questions

 6   contained in that prefiled testimony today when you're

 7   under oath, would your answers be the same?

 8   A.   They would.

 9   MR. BYRNE: Your Honor, I would offer

10   Exhibit No. 10 and tender Mr. Warren for

11   cross-examination.

12   JUDGE WOODRUFF: Exhibit 10 has been

13   offered. Any objections to its receipt?

14   (No response.)

15   JUDGE WOODRUFF: Hearing none, it will be

16   received.

17   (AMEREN EXHIBIT NO. 10 WAS RECEIVED INTO

18   EVIDENCE.)

19   JUDGE WOODRUFF: For cross-examination, we

20   begin with MIEC.

21   MR. DOWNEY: No questions.

22   JUDGE WOODRUFF: Public Counsel?

23   MR. MILLS: No questions.

24   JUDGE WOODRUFF: Staff?

25   MR. THOMPSON: No questions. Thank you.

 1   JUDGE WOODRUFF: We'll come up for

 2   questions from the Bench. Mr. Chairman?

 3   CHAIRMAN GUNN: No questions.

 4   JUDGE WOODRUFF: Commissioner Jarrett?

 5   COMMISSIONER JARRETT: I don't have any

 6   questions.

 7   JUDGE WOODRUFF: Commissioner Kenney?

 8   COMMISSIONER KENNEY: No, no questions.

 9   JUDGE WOODRUFF: Commissioner Stoll?

10   COMMISSIONER STOLL: No questions, your

11   Honor.

12   JUDGE WOODRUFF: All right. No need for

13   recross or redirect then, and Mr. Warren, you can step

14   down.

15   THE WITNESS: Thank you.

16   JUDGE WOODRUFF: Next witness then is

17   Mr. Brosch for MIEC, and Mr. Brosch, I'll not swear you a

18   third time, but you are still under oath.

19   THE WITNESS: Yes. Thank you.

20   MIKE BROSCH testified as follows:

21   DIRECT EXAMINATION BY MR. DOWNEY:

22   **Q.   Are you the same Mr. Brosch that testified**

23   **on Thursday?**

24   A.   I am, yes.

25   **Q.   And that testified this morning or this**

 1 **afternoon, I guess?**

 2   A.   That's correct.

 3   **Q.   And you're available at this time to**

 4 **address income tax issues and also if the Commission has**

 5 **questions the PISA proposal that we addressed this morning**

 6 **and this afternoon; is that correct?**

 7   A.   I am, yes.

 8   MR. DOWNEY: Tender the witness for cross.

 9   JUDGE WOODRUFF: And for cross, we begin

10 with Public Counsel.

11   MR. MILLS: No questions.

12   JUDGE WOODRUFF: For Staff?

13   MR. THOMPSON: No questions. Thank you.

14   JUDGE WOODRUFF: For Ameren?

15   MR. BYRNE: No, thank you.

16   JUDGE WOODRUFF: Come up to the Bench then.

17 Mr. Chairman?

18   CHAIRMAN GUNN: I just have a couple

19 questions.

20 QUESTIONS BY CHAIRMAN GUNN:

21   **Q.   So this is a benefit to Ameren Corporation,**

22 **correct, that the tax benefit goes to Ameren Corporation?**

23   A.   Are you talking about the ESOP dividend

24 deduction?

25   **Q.   Yes.**

1   A.   Yes, that's right. Ameren Corporation

2   files a consolidated tax return as an affiliated group and

3   includes a deduction for dividends paid on common shares

4   held on in employee stock ownership plan accounts.

5   **Q.   And I would assume because they get that**

6   **benefit -- or one of the reasons why they offer the ESOP**

7   **is because they get this tax benefit?**

8   A.   I would think that's one of many

9   considerations, offering a 401K retirement plan helps to

10 attract and retain employees.

11   **Q.   So if this benefit goes away from --**

12 **from -- or we reduce the revenue requirement, are we**

13 **making it more likely that the company or less likely that**

14 **the company would continue to offer the plan?**

15   A.   Make sure I understand your question. Are

16 you saying --

17   **Q.   Let me rephrase that. If by taking that**

18 **tax benefit and reducing revenue requirement, is that a**

19 **disincentive for the company to continue operating their**

20 **ESOP plan?**

21   A.   I don't think so. I don't think so,

22 because the offering of the plan is part of an overall

23 package of employee compensation, and I would think the

24 primary considerations in making that plan available to

25 employees is, as I said, to be able to attract and retain

 1   talent.

 2   The dividends deduction I view as mostly a

 3   byproduct of having offered Ameren stock as one of the

 4   investment options. If you don't account for that

 5   deduction, that benefit here, it will be retained for the

 6   sole benefit of shareholders.

 7   Q.   Does the employees' purchase of stock

 8   through the ESOP, is that a -- what -- is that volume

 9   significant enough on a regular basis to affect the stock,

10   the stock price?

11   A.   I don't have an opinion one way or the

12   other on that. The deduction stems from shares held in

13   employee accounts. I have no information about the

14   frequency or volume of trades. My suspicion is that those

15   investments may be relatively stable and constant and

16   incremental and probably not that large a piece of total

17   trading volume, but I've not really studied it to know.

18   CHAIRMAN GUNN: That's all I have. Thank

19   you.

20   JUDGE WOODRUFF: Commissioner Jarrett?

21   COMMISSIONER JARRETT: I have no questions.

22   Thank you, sir.

23   JUDGE WOODRUFF: Commissioner Kenney?

24   QUESTIONS BY COMMISSIONER KENNEY:

25   Q.   Good afternoon.

1   A.   Good afternoon.

2   Q.   **I just have a couple of questions but not**

3   **about the tax issue, about the plant in service**

4   **accounting.**

5   A.   Okay.

6   Q.   **My questions should be relatively brief,**

7   **and you probably heard me ask them already. Do you have**

8   **an opinion about whether, if the Commission were to**

9   **approve such an accounting, there should be an adjustment**

10   **to the ROE?**

11   A.   I think there should be an adjustment to

12   the ROE. I have no quantification to offer you as to what

13   that might be. Clearly approval of the PISA accounting

14   would be persistent incremental additional revenue, the

15   effect of which would be to improve the company's overall

16   opportunity to earn in Missouri.

17   Q.   **You don't have a quantification in basis**

18   **points, but would it be relatively straightforward to**

19   **conduct such a calculation and quantification?**

20   A.   I wouldn't think so.

21   Q.   **Really?**

22   A.   My -- okay. My experience has been that

23   when changes to the regulatory framework, the mechanism

24   are entertained, regulators often struggle with how to

25   quantify the return on equity adjustment that should

 1 correspond with the significant change in the regulatory

 2 paradigm.

 3   I've seen discussions of that issue

 4 centered on what is the appropriate range of a return and

 5 should the regulator move toward the bottom of that range

 6 rather than the midpoint, but those discussions are all

 7 relative magnitude rather than precise quantification in

 8 my experience.

 9   Q.   **If you assume that over the last three or**

10 **four or five rate cases Ameren has had X amount of dollars**

11 **in capital investment that they haven't been able to earn**

12 **a return on capital during that red period on the bar up**

13 **there, could you average that and use that dollar amount**

14 **as the -- as -- and assume that that's what they would**

15 **recover in the future as a way of adjusting the ROE?**

16   A.   I don't think I would. I can't accept your

17 premise that Ameren, in fact, has a significant amount of

18 dollars that they've been unable to earn a return on. If

19 you look, for example, in Mr. Weiss' testimony and study

20 the change in the rate base number across all those months

21 in the historical period that he analyzes, except for the

22 step increase at about the time the Sioux scrubber went

23 into service, Ameren Missouri's rate base has been

24 relatively constant across that period. So PISA is a

25 misplaced remedy. It's trying to address a problem that

1   really doesn't exist in my view.

2   **Q.   And then you were in the room earlier when**

3   **Ms. Barnes was testifying?**

4   A.   I was.

5   **Q.   She made the point that there's an**

6   **allowance for funds used during construction and that's**

7   **allowed to accrue during that blue period before the plant**

8   **is actually in service?**

9   A.   That's right.

10   **Q.   And she makes the argument that it doesn't**

11   **really make sense to allow that accrual during that period**

12   **but then not allow for it from the time that the plant's**

13   **in service to the time that the new rates are set. And**

14   **it's a fairness argument. How do you respond to why is it**

15   **fair to allow the AFUDC accrual at one period but not for**

16   **that period once the plant's in service?**

17   A.   It seems intuitively correct, but it's

18   absolutely wrong. The AFUDC return is allowed on CWIP

19   investment because CWIP investment is not eligible for

20   rate case inclusion particularly in Missouri by act of

21   law. In many other states it's not included -- CWIP is

22   not included in rate base as a matter of regulatory

23   policy. AFUDC provides a return during that period of

24   construction.

25   Then when construction is completed and the

1   asset is placed in service, everything changes. When I

2   say everything changes, what I mean is when you complete

3   construction on an asset that's replacing another asset,

4   there's a retirement of the old asset, installation of the

5   new asset. If the old asset was creating or contributing

6   to maintenance problems, there may be O&M savings. If the

7   new asset is the installation of new technology that

8   brings new efficiencies to the business, there may be

9   displacement of operating expenses.

10   So the general ratemaking framework says

11   for assets that are completed and in service they are

12   eligible to be considered along with the rest of rate base

13   whenever the utility elects to bring a rate case. The

14   importance of that election is when the utility brings a

15   rate case, they have to make accounting for everything

16   that changed. They have to update the billing

17   determinants, the sales volumes and revenues. They have

18   to tell you about how many employees they have today, what

19   the labor and non-labor costs are today. They have to

20   update the full gamut of what touches the revenue

21   requirement, and that achieves the matching that's

22   important.

23   If you look in isolation at a particular

24   asset, this pattern is routine and recurring literally

25   continuously. Utilities are in both the construction

 1   business and the utility business. They're constantly

 2   building and replacing assets. AFUDC answers the problem

 3   of those assets not being includable and able to earn a

 4   return through rate base.

 5   That problem stops when the asset is placed

 6   in service and the utility can make the decision to bring

 7   a rate case forward, account for all of the changes in its

 8   costs and revenues and tell you what its revenue

 9   requirement is.

10   Q.   **I think I also heard you say, though, that**

11   **once that asset is placed in service, there may be some**

12   **countervailing expense that's offset because of that new**

13   **piece of equipment being in service?**

14   A.   There can be incremental expenses. There

15   can be cost savings. There can be -- there often is in a

16   replacement scenario the retirement of an existing asset,

17   the capitalization of a new asset, the cessation of

18   depreciation on the old asset, the commencement of

19   depreciation on the new asset.

20   The elegance of the traditional model is,

21   we provide an opportunity, indeed an obligation to

22   quantify and update all of those things instead of looking

23   in isolation at this one known increase in costs and

24   picking it out for preferential or extraordinary rate

25   treatment, and that's why it's objectionable.

1   COMMISSIONER KENNEY: Thank you.

2   JUDGE WOODRUFF: All right. Then we'll

3   move on to recross based on questions from the Bench,

4   beginning with Public Counsel.

5   MR. MILLS: No, thank you.

6   JUDGE WOODRUFF: Staff?

7   MR. THOMPSON: No, thank you.

8   JUDGE WOODRUFF: Ameren?

9   MR. BYRNE: Just a couple.

10 RECROSS-EXAMINATION BY MR. BYRNE:

11   Q.   Mr. Brosch, Chairman Gunn asked you at the

12 beginning about whether treating the ESOP tax deduction as

13 you have proposed would provide a disincentive for Ameren

14 Corporation to continue its 401K plan. Do you remember

15 that question?

16   A.   I do recall that.

17   Q.   I guess my question is, you don't have any

18 knowledge of Ameren Corporation's thinking about whether

19 or not they're going to keep their 401K plan, do you?

20   A.   That's correct. I have not discussed with

21 anyone at the company the motives behind or variables

22 considered in continuing to offer that plan.

23   Q.   You were also asked, I believe by

24 Commissioner Kenney, about the impact of adoption of plant

25 in service accounting on the company's return on equity.

1   Do you recall those questions?

2   A.   I do, yes.

3   Q.   And first of all, you're not a return on

4   equity expert, are you?

5   A.   I am not.

6   Q.   And I think you offered the opinion that

7   there should be some adjustment to the return on equity,

8   but you weren't able to give a quantification; is that

9   fair to say?

10   A.   Yes.

11   Q.   Okay. And when you say there should be an

12   adjustment to the return on equity, the way I think about

13   that is there should be an adjustment to the return on

14   equity compared to what it would have been if there was no

15   plant in service accounting. Am I thinking about that the

16   right way? Is that what you mean by an adjustment?

17   A.   That is how I understood the question and

18   attempted to answer the question, yes, that incrementally,

19   all else constant, if you were to approve plant in service

20   accounting, there would be a reduction in the operational

21   risks faced by the company and an enhancement in its

22   opportunity to earn a return between rate cases.

23   Q.   I think one -- in response to one of the

24   Commissioners' questions, you said one reason that you

25   don't believe plant in service accounting is justified is

1   **that you saw some documents which showed a relatively**

2   **constant investment in rate base by the company; is that**

3   **correct?**

4   A.   I referred -- excuse me. I referred to

5   Mr. Weiss' testimony where he has monthly values for rate

6   base over a multiyear period and observed that while there

7   was a significant step increase at about the time this

8   Sioux scrubber was completed, changes in rate base didn't

9   explain much of the company's increased revenue

10   requirement over those periods of time. Instead, where

11   there were changes, they appeared to be changes in

12   operating income rather than rate base.

13   Q.   **Was he -- was his schedule showing the**

14   **amount of money that was being invested in rate base or**

15   **the total rate base balance?**

16   A.   It was the total rate base balance, which

17   is an important point because the total rate base balance

18   accounts for the substantial increase in accumulated

19   deferred income taxes over the years that in recent years

20   have paid for much of the company's incremental investment

21   in plant.

22   Q.   **And I'm assuming if -- if -- all of that**

23   **could change, though, if the company made additional**

24   **investments in response to plant in service accounting or**

25   **for other reasons; is that fair to say?**

1   A.   Yes. It's more than fair to say. In fact,

2   a theme in my testimony is that we shouldn't be focused on

3   historical results at all. The more important

4   consideration is whether the company's made a showing

5   prospectively that there's an earning attrition issue to

6   be addressed, and I maintain they have not.

7   **Q.   You talked about once plant -- the reason**

8   **that red line isn't -- the reason the company shouldn't**

9   **get a return on its investments during the period covered**

10   **by the red line after the plant goes into service is that**

11   **at that point the plant is eligible to be included in**

12   **rates, and so if the company chooses to file a rate case,**

13   **it could recover those costs; is that correct?**

14   A.   I don't -- if I said the company shouldn't

15   earn a return, that's not what I meant to say. What I

16   meant to say is, at the time construction is completed,

17   the asset is eligible for consideration in rate base.

18   Given the dynamic environment that occurs between test

19   years, there's a continue -- a continual process of

20   building new plant, retiring old plant. Everything's very

21   dynamic.

22   So you can't say that a specific asset that

23   was completed in August of 2012 is not being allowed to

24   earn a return. An overall revenue requirement is being

25   established in this case that may be sufficient to pay a

1   return on all the new assets added for the next two or

2   three years.

3   Q.   Isn't it really true that when assets go

4   into service, it's not -- they're not really eligible to

5   be immediately included in rates, and what I mean by that

6   is because of the way the ratemaking process works,

7   there's a true-up date in every rate case that's usually

8   about five months before the rates go into effect.

9   So even if rate cases are timed perfectly

10   with respect to the addition of a PISA plant, there's

11   still going to be a five-month lag in between the true-up

12   date and the date that the rates goes into effect

13   reflecting that investment; isn't that true?

14   A.   I hear you asking me about explicit

15   recognition and inclusion of a plant asset in rate base,

16   and if you look for explicit recognition and inclusion of

17   a particular asset, yes, you have that regulatory lag

18   phenomena to consider. The bigger issue is holistically

19   is the overall revenue requirement sufficient to provide a

20   return on completed new construction net of retirements of

21   old plant and all the other changes.

22   Q.   Let me ask you a holistic question. What

23   if holistically an electric utility is filing rate case

24   after rate case after rate case after rate case as fast as

25   it can file them and yet it's still not recovering the

1   **cost of its investment in rate base that's reflected in**

2   **the red period, isn't that a holistic problem that we have**

3   **with the regulatory process?**

4   A.   You know, I don't think it's the problem

5   that you've made it out to be. I think that, as I said,

6   you look at Mr. Weiss' calculations and rate base is

7   relatively stable but for the Sioux scrubber addition.

8   What you see is volatility in the income

9   statement that suggests that an inability to contain

10   expenses at the same rate of growth that revenues are

11   growing is really the root cause of the historical

12   earnings problem. But as I said, the more important issue

13   is prospectively do we have a problem that's crying out

14   for a solution.

15   MR. BYRNE: Thank you, Mr. Brosch. No

16   further questions.

17   JUDGE WOODRUFF: Redirect?

18   MR. DOWNEY: Just a few.

19   REDIRECT EXAMINATION BY MR. DOWNEY:

20   Q.   **Mr. Byrne was asking you about ADIT, and I**

21   **think you indicated that ADIT in part finances the**

22   **company's investment in plant. Do you recall that**

23   **testimony?**

24   A.   I do, yes. Accumulated deferred income

25   taxes have grown significantly in the last four or five

1   years in no small part due to congressional approval of

2   various stimulative, economic stimulative measures,

3   including bonus depreciation provisions, as well as the

4   utility industry's adoption of some tax accounting changes

5   that make immediate deductions for repairs available for

6   costs that previously were capitalized for tax purposes.

7   **Q.   Would you walk the Commission through an**

8   **example that shows how ADIT balances help finance the**

9   **construction of plant?**

10   A.   Yes. The company when it files its tax

11   returns takes advantage of opportunities to defer tax

12   payment obligations. That is done by first looking to

13   costs that can be characterized as repairs rather than

14   capital additions. For T&D plant and for production

15   plant, that has given rise to very large current

16   deductions for tax purposes.

17   By aggregating plant and redefining units

18   of property so that when small, relatively small plant

19   additions that are considered units of property for book

20   purposes have to be capitalized, those replaced assets are

21   not so large for tax purposes as to require capitalization

22   but instead can be deducted currently on the tax return.

23   That repairs deduction approach has given

24   rise to large incremental new tax deferrals. When Ameren

25   Corporation and other utilities are able to defer the

 1   payment of income taxes, that's a significant cash flow

 2   opportunity because deferred income tax expense is charged

 3   to and collected from ratepayers as part of the revenue

 4   requirement.

 5   If the company collects deferred income

 6   taxes but doesn't have to pay those taxes to the

 7   government, that represents a significant source of

 8   capital that's available to assist in the funding of new

 9   construction. And that's a large reason why when you

10   account for the overall change in Ameren's rate base, it

11   hasn't grown much because in large part what's increased

12   in net plant additions has been funded by changes in

13   accumulated increases in accumulated deferred income

14   taxes.

15   MR. DOWNEY: Thank you.

16   JUDGE WOODRUFF: You can step down.

17   THE WITNESS: Thank you.

18   JUDGE WOODRUFF: Next witness is

19   Mr. Cassidy. Mr. Cassidy, you are also still under oath.

20   You may inquire.

21   MR. THOMPSON: I would yield Mr. Cassidy

22   for cross-examination.

23   JUDGE WOODRUFF: Okay. For

24   cross-examination, begin with MIEC?

25   MR. DOWNEY: No cross.

 1   JUDGE WOODRUFF: Public Counsel?

 2   MR. MILLS: No questions.

 3   MR. THOMPSON: Ameren?

 4   MR. BYRNE: No questions.

 5   JUDGE WOODRUFF: Up for questions from the

 6   bench then. Mr. Chairman?

 7   CHAIRMAN GUNN: I don't have any questions.

 8   JUDGE WOODRUFF: Commissioner Jarrett?

 9   COMMISSIONER JARRETT: No questions.

10   JUDGE WOODRUFF: Commissioner Kenney?

11   COMMISSIONER KENNEY: No, I don't think so.

12   Thank you.

13   JUDGE WOODRUFF: All right. Commissioner

14   Stoll?

15   COMMISSIONER STOLL: No questions.

16   JUDGE WOODRUFF: No questions. No need for

17   recross or redirect. Mr. Cassidy, you can step down.

18   And I believe that completes the income tax

19   issue. Let's go ahead and move straight into the rate

20   case expense issue if we're -- if everybody's ready for

21   that, or do we need to switch attorneys?

22   MR. THOMPSON: We would request a brief

23   recess prior to starting the rate case expense issue.

24   JUDGE WOODRUFF: Let's take ten minutes

25   again and come back at 3:20.

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1                   (A BREAK WAS TAKEN.)

2                   JUDGE WOODRUFF:  Let's go ahead and get

3      started again.  We move on to the rate case expense issue,

4      and we'll start with mini openings on that, beginning with

5      Ameren.

6                   MR. BYRNE:  Thank you, your Honor.  May it

7      please the Commission?

8                   In this case Ameren Missouri is requesting

9      an allowance for rate case expense based on its estimate

10     of $1.922 million that it expects to spend on this case.

11     That amount is exactly in between the $2.1 million that

12     the company actually spent in the 2010 rate case and the

13     $1.7 million that it spent on the 2011 rate case.  The

14     company's actual request is 12/15 of that amount or

15     $1.538 million because the company's history has been that

16     it files a new rate case every 15 months.

17                  The Staff is supporting a $1 million

18     allowance for rate case expense in this case based on

19     their alleged analysis of, quote, other large utilities,

20     unquote, in the state.  When asked for the underlying

21     analysis, the Staff refused to provide it on the grounds

22     that it was confidential.

23                  Ameren Missouri's rate cases are unlike

24     those of other large utilities in the state, with the

25     possible exception of Kansas City Power & Light Company.
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 1   As a large electric utility with a large generating fleet

 2   that participates in regional transmission organization,

 3   the complexity of our rate cases is significantly greater

 4   than those of water or gas or even smaller electric

 5   utilities. I note that Kansas City Power & Light's last

 6   rate case the company incurred $7.7 million in rate case

 7   expenses, and the Commission allowed the vast majority of

 8   it. The Staff has presented absolutely no support for its

 9   adjustment and it should be rejected.

10   Public Counsel's position on this issue is

11   even worse. They propose to disallow all costs of all

12   outside lawyers and all consultants and then only allow

13   the recovery of half of the remaining costs, whatever they

14   might be. Maybe there wouldn't be any.

15   This is a completely unreasonable position.

16   There are only about 16 or 17 practicing attorneys at

17   Ameren that have to handle all the legal issues for Ameren

18   Corporation, which is a Fortune 500 company, and all of

19   its subsidiaries. Those attorneys are responsible for all

20   work -- and there's only 16 or 17 of them. They're

21   responsible for all work on contracts, real estate,

22   Illinois and FERC regulatory issues, nuclear issues,

23   corporate governance, transactions, financing, lawsuits of

24   various kinds, environmental work and other work in other

25   areas.

 1   It's unimaginable, as Mr. Robertson

 2   suggests, that those lawyers could be expected to stop

 3   doing the work they were hired to do and work on Ameren

 4   Missouri's rate case, and it would not be prudent for the

 5   company to incur the cost of staffing up with additional

 6   regulatory lawyers to meet the peak conditions of a rate

 7   case.

 8   Like all of the other utilities in the

 9   state, Ameren Missouri uses outside lawyers and outside

10   consultants to help it handle the peak work load imposed

11   by a rate case. Nonetheless, we do what we can to keep

12   rate case expenses low. The reason you know me and

13   Ms. Tatro so well is that we are directly involved in

14   working on rate cases and trying issues in every rate

15   case, but we need some help when we have a $376 million

16   rate case with 15 other parties, all of whom have

17   attorneys and many of whom have expert witnesses.

18   MIEC, for example, has numerous lawyers

19   from Bryan Cave, one of the largest and most expensive law

20   firms in the Midwest, diligently working on this case.

21   MIEC has also hired two separate outside consulting firms,

22   Utilitech and Brubaker & Associates, to support its case.

23   The Staff has, I don't know, five or six

24   lawyers assigned to the case, along with a whole staff of

25   auditors and other technical experts who are deeply

 1   involved and deeply knowledgeable about the ratemaking

 2   process. And there are numerous other parties represented

 3   in this proceeding by attorneys.

 4   In seeking outside help, we have not gone

 5   to law firms in New York or Chicago like some utilities

 6   have and like Ameren has in the past for that matter. We

 7   don't even use large firms in St. Louis or Kansas City.

 8   We use mid Missouri lawyers charging mid Missouri rates to

 9   help us.

10   And although in my opinion the outside

11   lawyers we are using, Mr. Tripp, Mr. Mitten and

12   Mr. Lowery, provide the highest quality of service, they

13   do so at very reasonable rates. Mr. Lowery and Mr. Tripp

14   have negotiated discounted rates under a multiyear

15   contract that was negotiated by Ameren Missouri's legal

16   department in conjunction with our strategic sourcing

17   department. Ameren Missouri has also negotiated a

18   discounted hourly rate for Mr. Mitten's representation in

19   this case that's lower than the hourly rates usually

20   charged by his firm, which are low to begin with.

21   In short, the company has been very

22   diligent in keeping its legal expenses for this rate case

23   as low as possible.

24   The same is true with outside witnesses we

25   have used. It would not be prudent for Ameren Missouri to

 1   hire an economist like Mr. Reed or a weather expert like

 2   Mr. Dutcher or a cost of capital witness like Mr. Hevert

 3   full-time. Contracting for their service is perfectly

 4   appropriate, and it's the lowest cost way to get the

 5   benefit of their expertise. And Mr. Robertson has

 6   provided no persuasive evidence to support a disallowance

 7   of these costs.

 8   Finally, Mr. Robertson's recommendation to

 9   split whatever remaining rate case expenses there may be

10   between shareholders and customers is without merit. I'm

11   not aware of any jurisdiction in the country where such a

12   splitting of rate case costs is allowed or required.

13   Ameren Missouri's entitled to recover all the reasonable

14   and necessary costs of operating as a regulated utility,

15   and requesting needed rate increases is one of those

16   costs, and it should be 100 percent recovered.

17   In summary, Ameren Missouri's been diligent

18   in controlling its rate case expenses. The rate case

19   expenses are relatively low, and no disallowance or

20   splitting of costs should be ordered. Thank you.

21   JUDGE WOODRUFF: Questions?

22   CHAIRMAN GUNN: I have a quick question.

23   Does Ameren Missouri concede that if the Commission grants

24   a rate increase, that the shareholders of Ameren

25   Corporation benefit?

 1   MR. BYRNE: Yes.

 2   CHAIRMAN GUNN: Thank you. I don't have

 3 anything else.

 4   JUDGE WOODRUFF: Commissioner Kenney?

 5   COMMISSIONER KENNEY: I'm going to ask it a

 6 slightly different way but a similar question. Do you

 7 agree that the regulatory compact or the regulatory scheme

 8 is such that those costs and expenses that benefit

 9 ratepayers should be borne by ratepayers and those things

10 that benefit shareholders should be borne by shareholders?

11   MR. BYRNE: No, I don't think so. You

12 know, I answered Chairman Gunn's question with a one-word

13 answer, yes, but I think the larger answer is lots --

14 everything we do benefits our shareholders. Building

15 plants benefits our shareholders. Hiring employees,

16 billing customers benefits our shareholders. I mean, just

17 being in business and all that goes along with it is where

18 our shareholders get their value from.

19   So you should no more split the legal costs

20 of a rate case than you should split the billing costs and

21 say, well, billing customers help shareholders. Being in

22 business helps shareholders. There's no doubt about it,

23 but the cost of being in business ought to be paid for by

24 customers.

25   COMMISSIONER KENNEY: You have a limited

1   number of ways in which you can generate and deliver

2   electricity, right? I mean, there's multiple ways you can

3   do it, but there's not an infinite number of ways.

4   MR. BYRNE: I would agree there's not an

5   infinite number of ways, but there are a lot of ways.

6   COMMISSIONER KENNEY: But there are

7   infinite attorneys you could decide to hire. You could go

8   to Chicago. You could go to New York. You could bring in

9   this tax expert from DC, which is like the first tax law

10   firm in the country or something like that.

11   MR. BYRNE: Sure.

12   COMMISSIONER KENNEY: You have multiple

13   ways to prosecute your rate case.

14   MR. BYRNE: Sure.

15   COMMISSIONER KENNEY: And there are

16   multiple strategic decisions that you can make and there

17   are multiple variables that go into all of these legal

18   strategic decisions, correct?

19   MR. BYRNE: Yes.

20   COMMISSIONER KENNEY: Would you agree that

21   there's more permutations of how to prosecute a rate case

22   than there would be to generate, transmit and deliver

23   electricity?

24   MR. BYRNE: Maybe. Maybe there are. I

25   guess -- I guess --

1   COMMISSIONER KENNEY: There's lots of

2   lawyers in mid Missouri. There's lots of lawyers in the

3   state of Missouri.

4   MR. BYRNE: Sure. If every lawyer's a

5   permutation, sure. There's lots of people. Our point is

6   if we're imprudent in incurring costs, they absolutely

7   should be disallowed, but --

8   COMMISSIONER KENNEY: But what if you're

9   not imprudent? I guess what I'm saying is that, if you --

10 you talked about $2.1 million in rate case expense in

11 2010, right?

12   MR. BYRNE: Right.

13   COMMISSIONER KENNEY: 1.7 in 2011, and

14 you're asking for 1.99 in this case?

15   MR. BYRNE: Correct.

16   COMMISSIONER KENNEY: Do you know what

17 OPC's budget is for its ability to prosecute its rate

18 case?

19   MR. BYRNE: I don't know.

20   COMMISSIONER KENNEY: What about MIEC?

21   MR. BYRNE: I suspect theirs is larger than

22 ours, but they haven't told me.

23   COMMISSIONER KENNEY: You think it's larger

24 than that?

25   MR. BYRNE: I can't imagine it -- well, I

 1   don't know. They won't tell us what their budget is.

 2   COMMISSIONER KENNEY: Did you guys ask?

 3   MR. BYRNE: Trust me, my belief is Bryan

 4   Cave charges a whole lot more than mid Missouri firms.

 5   COMMISSIONER KENNEY: I would agree with

 6   that, yeah. Their hourly rate is, probably is, yes.

 7   That's probably correct. Did you ask that? Did you guys

 8   ask that in a DR?

 9   MR. BYRNE: I think we did in a previous

10   case and they objected. I think we just gave up.

11   COMMISSIONER KENNEY: But you would agree

12   with me that your budget far outstrips OPC's?

13   MR. BYRNE: I think so. I'm sure you're

14   right.

15   COMMISSIONER KENNEY: Essentially they have

16   Ted Robertson, Ms. Meisenheimer and Ryan Kind are the

17   three people that are testifying.

18   MR. BYRNE: But it's not just OPC against

19   us. It's all the people on the Staff, all the people on

20   MIEC, it's all the people for 15 other parties. We're

21   alone in this case. All the other parties are against us,

22   with the possible exception of Kansas City Power & Light

23   Company. I mean, that's how I look at it. I'm -- that's

24   how I look at it.

25   COMMISSIONER KENNEY: I'm not sure I'd

1   characterize it as Ameren against the world, but that is a

2   way to look at it, certainly.

3   But I guess what I'm saying is that, in

4   terms of having discretion over when your case is filed,

5   how it's prosecuted and what you're going to spend, right,

6   I mean, it's -- the regulatory scheme as it is now is such

7   that, assuming that the costs are prudent, there's an

8   insurance policy in place to pay for all those costs?

9   MR. BYRNE: We should be held to a strict

10   prudence standard. If we're imprudent in how we do it,

11   that's one thing, but it's necessary, and particularly if

12   we filed frivolous cases that weren't justified by the

13   costs that we're incurring, that would be a whole

14   different thing.

15   But in every one of the cases that we've

16   filed, I think all the other parties have acknowledged

17   that we need a pretty significant rate increase and then

18   we fight about how much it is. There's no doubt that

19   we -- that we're -- we need to have these rate increases.

20   And so in that situation where the rate case is a

21   legitimate rate case and where we're prudent in managing

22   the costs of prosecuting that case, I believe we're

23   entitled to 100 percent of those costs.

24   COMMISSIONER KENNEY: So then ultimately

25   you would not leave any room for the notion that rate case

1 expense is distinguishable from those expenses associated

2 with the generation, delivery and transmission of

3 electricity?

4   MR. BYRNE: I do not believe they're

5 different. I believe a lot of those other expenses our

6 shareholders get value from, too, things like billing our

7 customers, things like building generation facilities,

8 things like getting access to cash from the financial

9 markets. I think all those things benefit our

10 shareholders, but they're an incident of being in the

11 utility business, and filing needed rate cases is also an

12 incident of being in the utility business. We should be

13 entitled to recover our reasonable costs of doing so.

14   COMMISSIONER KENNEY: Why not share with

15 the shareholders with, like, executive bonuses and stuff?

16 If everything's an incident of providing service --

17   MR. BYRNE: Sure. If those were -- now,

18 our executive bonuses aren't charged to customers because

19 we've chosen to take them out, and I think that's

20 appropriate. But if it was a reasonable cost of service,

21 the customers should pay the reasonable cost of providing

22 them service, and that includes things like asking for

23 needed rate increases.

24   COMMISSIONER KENNEY: Okay. I just -- I'm

25 just -- this is a question I ask of you, and I'll probably

1 ask it of Ms. Barnes, too. It's policy. It's not -- it's

2 not strictly based upon the testimony.

3   Let me ask one final question. You made an

4 argument that this -- you're not aware of any other

5 jurisdiction in the country that calls for equal division

6 of rate case expense between shareholders and ratepayers?

7   MR. BYRNE: Correct.

8   COMMISSIONER KENNEY: Is that the basis

9 upon which we should be making that decision, though,

10 about whether any other jurisdiction in the United States

11 does it?

12   MR. BYRNE: No. I mean, I understand the

13 analogy to the plant in service accounting. I mean,

14 that's a fair point. I don't think that should determine

15 the outcome of this issue, nor should it determine the

16 outcome of the plant in service accounting issue, but it's

17 a relevant consideration, I think.

18   COMMISSIONER KENNEY: Are you aware of any

19 jurisdictions that have explored it by statute and didn't

20 get it passed?

21   MR. BYRNE: I'm not, but I really don't --

22 I wouldn't know. So that doesn't tell you one way or

23 another.

24   COMMISSIONER KENNEY: All right. I don't

25 have any other questions.

1   CHAIRMAN GUNN: I actually have a couple

2   that I -- I was going to let you off easy, but I decided

3   not to.

4   One of the things that you said is that as

5   evidence of your trying to get 100 percent is that you've

6   been granted rate increases, but on certain issues within

7   rate -- within rate cases we make the determination that

8   the company -- the request by the company is absolutely

9   unreasonable.

10   MR. BYRNE: That's true.

11   CHAIRMAN GUNN: So if that's -- so if -- so

12   why should then, based on that assertion, should you be --

13   should you get recovery of costs that we have determined

14   that the filing of that particular issue, the prosecution

15   of that particular issue was borderline frivolous or

16   unreasonable?

17   MR. BYRNE: Well, I do think -- I do think

18   if it was so -- if it was frivolous or unreasonable for us

19   to have prosecuted the issue, I don't think just because

20   you lose the issue you should have the legal expenses

21   thrown out.

22   CHAIRMAN GUNN: I'm not saying that.

23   MR. BYRNE: Yes, if we were unreasonable

24   and frivolous and imprudent in bringing the issue before

25   the Commission, I think that's a legitimate thing for you

 1 to consider.

 2   CHAIRMAN GUNN: I want to separate out

 3 prudence because I've got a separate question on prudence.

 4 I just -- and let me be clear that our examination of the

 5 rate case expense in no way reflects on the quality of

 6 lawyers. I think you've gone through. I think these

 7 are -- we've got some -- these processes go easier because

 8 of the quality of lawyers that we have here, both

 9 internally, agency staff and external folks. I think

10 we're all thankful that there is a group of qualified

11 people that do that.

12   But with there being -- and I get your

13 point about billing and all that, all that other things

14 are benefit, benefit the shareholders, but customers pay

15 for that through the regulatory process. So there is

16 nothing to stop -- you talk about how you may have very

17 prudently managed the lawyers and the rates and everything

18 so that internally your budgets are fine, but the only

19 thing that keeps you -- the only thing that -- if we

20 granted 100 percent of rate case expense 100 percent of

21 the time, the only thing that keeps -- and this is a

22 broader policy issue. The only thing that keeps you doing

23 that is Ameren's desire to be a good part of the process.

24   In one of the last cases, we had a -- we

25 had a single month bill from a law firm that was equal to

 1 the entire year's budget of the Office of the Public

 2 Counsel.

 3   MR. BYRNE: I don't think you should grant

 4 every -- I don't think you should allow every rate case

 5 expense that every utility attempts.

 6   CHAIRMAN GUNN: That's what I want to just

 7 clarify, that this Commission does not only have the

 8 authority but sometimes is well within its rights to make

 9 a determination as to whether or not to award 100 percent

10 of the rate case expense. It shouldn't be automatic.

11 There should at least be an inquiry into whether those

12 expenses are reasonable?

13   MR. BYRNE: Absolutely. And, for example,

14 if you thought Mr. Tripp's fees were unreasonable or his

15 hourly rate or he frivolously -- I don't know. There is

16 an element of us having the right to prosecute our case as

17 we see fit. If he did something frivolous or imprudent or

18 his hourly rate's just ridiculously too high, I think this

19 Commission has thrown out hourly rates or adjusted hourly

20 rates that they found to be too high. But usually they

21 use the mid Missouri standard as what they aspire to.

22   CHAIRMAN GUNN: And again, this is a

23 broader policy question that I'm asking. I actually plan

24 to ask the same questions to the other utilities that come

25 in.

 1   But the second question is, is under a

 2   prudence standard, doesn't -- isn't it much more difficult

 3   to determine -- don't we have -- shouldn't we go by a

 4   reasonableness standard, because doesn't the prudence

 5   standard potentially -- isn't a prudence standard

 6   potentially defeated by the attorney/client privilege? I

 7   mean, how do we make a determination whether an argument

 8   or a presentation was prudent within the confines of the

 9   attorney/client privilege? Because you are absolutely

10   entitled to have very candid conversations with your

11   attorneys. Rate case strategy is imperative to this.

12   People take positions on certain items for a -- for

13   strategic reasons or tactical reasons rather than actually

14   believing in them, which is all part of this process.

15   So doesn't the prud-- if we only go by the

16   prudency standard, can't -- isn't it -- isn't that a

17   problem based on the attorney/client privilege?

18   MR. BYRNE: I think -- I think you could

19   apply the prudency standard based on the way the issue was

20   presented to the Commission. I don't think you'd have to

21   get -- I don't think you'd have to go behind the issue to

22   judge the prudency, you know.

23   CHAIRMAN GUNN: I understand. I

24   understand. And I think it's a difficult -- and I guess

25   the reason I -- maybe we should use reasonableness in rate

 1 case expense synonymous with --

 2   MR. BYRNE: I think the standard in

 3 Missouri under Missouri law for a utility spending money

 4 on things that are -- things for its business is the

 5 prudence standard, and I think that is the standard, you

 6 know, and I think it's an appropriate standard, even in

 7 the case of rate case expense.

 8   CHAIRMAN GUNN: And one, in your opinion,

 9 that can be judged based upon performance in the open

10 hearing without having to go through the -- lifting the

11 veil of the attorney/client privilege?

12   MR. BYRNE: Yes. And it's led to some

13 disallowances of expenses and I think appropriate

14 disallowances of expenses, too.

15   CHAIRMAN GUNN: I appreciate it. Thanks.

16   JUDGE WOODRUFF: Commissioner Jarrett?

17   COMMISSIONER JARRETT: You're aware that

18 the Commission opened a docket to look at Commission rules

19 and practices regarding rate case expense?

20   MR. BYRNE: Yes.

21   COMMISSIONER JARRETT: I believe that was

22 File No. AW-2011-0330. Does that sound right?

23   MR. BYRNE: That does sound right.

24   COMMISSIONER JARRETT: And I believe that

25 that case was opened on April 7th of 2011. Does that

 1 sound about right?

 2   MR. BYRNE: Sounds about right.

 3   COMMISSIONER JARRETT: And then the 27th of

 4 April 2011, we issued an order directing Staff to

 5 investigate and open a repository file. Does that sound

 6 right?

 7   MR. BYRNE: That sounds right.

 8   COMMISSIONER JARRETT: And I believe in

 9 that order we directed Staff to take a look at what other

10 states are doing regarding rate case expense and also what

11 other utilities in this state are doing regarding rate

12 case expense. Is that your understanding?

13   MR. BYRNE: Yes.

14   COMMISSIONER JARRETT: And then on

15 June 29, 2011, Staff filed a status report. Does that

16 sound about right?

17   MR. BYRNE: That does sound about right.

18   COMMISSIONER JARRETT: And is it your

19 recollection that Staff basically said we're getting that

20 information and as soon as we get information in, we'll

21 file a report?

22   MR. BYRNE: Yes.

23   COMMISSIONER JARRETT: That was 15 months

24 ago, and Staff hasn't filed a report yet, have they?

25   MR. BYRNE: Not to my knowledge.

 1   COMMISSIONER JARRETT: Do you have any

 2   knowledge why?

 3   MR. BYRNE: No, I really don't. I think --

 4   I'm not sure why.

 5   COMMISSIONER JARRETT: Okay. Thank you.

 6   Appreciate it, Mr. Byrne.

 7   JUDGE WOODRUFF: Thank you. Opening for

 8   Staff.

 9   MR. THOMPSON: One moment. May it please

10   the Commission?

11   Staff on this issue has kind of a median

12   position between that of the company and that of the

13   Public Counsel, and, in fact, our position is much closer

14   to that of the company than it is to that of the Public

15   Counsel.

16   Staff proposes that one and a half million

17   dollars be put in revenue requirement for the cost to the

18   company of prosecuting this rate case, and that's on an

19   18-month basis. So it works out to an annual revenue

20   requirement amount of $1 million even. That's based on

21   Staff's review of a number of past rate case costs and

22   estimates brought by this company.

23   This company's estimate of what it's going

24   to cost them to do this rate case is approximately

25    $1.9 million that they've proposed, it's my understanding,

 1   to amortize on a 15-month basis, which works out to about

 2   one and a half million dollars per year.

 3   But Staff has noticed that this company has

 4   consistently overestimated the cost of its rate cases by

 5   about 21 percent. So we would discount their estimate by

 6   21 percent, and as I indicated also, put it on an 18-month

 7   basis based on what we know about when they're planning to

 8   file their next case.

 9   Now, it's important to note that no one

10   knows how much a rate case costs until it's over and all

11   the bills have come in and been paid. So as of right now,

12   no one knows what this rate case is going to cost. We

13   only know the estimate that the company has proposed and

14   then we have some figures on what they have paid as of a

15   certain date that they've responded to in DRs and the

16   like.

17   And I should also indicate that based on

18   the testimony earlier today by Ms. Barnes about the next

19   case being --

20   JUDGE WOODRUFF: I'll caution you that was

21   highly confidential.

22   MR. THOMPSON: Okay. Thank you, because I

23   was just about to say that date, so I won't. But let me

24   just say that because of that date, that I will not say,

25   that secret date, that will affect Staff's figure, and

 1   that will have the effect of reducing Staff's figure on an

 2   annual basis to about $600,000.

 3   It's interesting, the questions that were

 4   being asked about rate case expense and how to charge it

 5   and how to -- whether or not to divide it between the

 6   shareholders and ratepayers. Certainly all of us who

 7   attended any of the local public hearings I think can say

 8   with confidence that those people didn't want to hear that

 9   they were paying for the privilege of having their rates

10   increased.

11   But that's only one very small factor to

12   consider. Before I came here quite some years ago, I

13   worked for a public interest law firm where we brought

14   lawsuits under the Federal Civil Rights Act and the

15   Individuals with Disabilities Education Act and the ADA,

16   the Americans with Disabilities Act, and all of those

17   cases have fee shifting provisions based on the success of

18   the litigation, and I'm sure you're familiar with how

19   they're calculated.

20   The federal judge is an expert on what

21   lawyers ought to be paid and what legal services are

22   worth, and if you prevail in litigation, you submit

23   detailed accountings of your fees, your hours and what

24   those hours were expensed on and what your expenses are,

25   and what they call a load star is then calculated based on

 1   the prevailing hourly rates for that kind of work in the

 2   locality where the work was done, where the case was

 3   brought. So if you bring it in St. Louis, it's St. Louis

 4   rates. Doesn't matter that these public interest

 5   attorneys are all out in central Missouri. And then the

 6   federal judge increases or more often decreases that

 7   amount based on the success that was achieved in all the

 8   various issues in the case. And I can tell you they

 9   winnow through those hours and they winnow through those

10   expenses sternly, sternly. So that's something the

11   Commission could consider in the future.

12   Thank you.

13   JUDGE WOODRUFF: Questions?

14   COMMISSIONER JARRETT: I wanted to ask you

15   the same questions I asked Mr. Byrne about the working

16   docket that we opened on the rate case expense. Why

17   hasn't Staff filed a final report in that case?

18   MR. THOMPSON: It's my understanding there

19   is a report. I myself am but a small cog in a big

20   machine. I do not know the answer to your question. I

21   can go find it out and I can bring it back to you, but as

22   I stand here, I do not know the answer.

23   COMMISSIONER JARRETT: It's your

24   understanding that there is a report that is --

25   MR. THOMPSON: That is my understanding.

 1   COMMISSIONER JARRETT: -- been completed

 2 but not filed?

 3   MR. THOMPSON: That is my belief.

 4   COMMISSIONER JARRETT: I guess I'd like

 5 some information on why that hasn't been filed.

 6   MR. THOMPSON: Yes, sir. I'll bring that

 7 back.

 8   JUDGE WOODRUFF: Commissioner Kenney?

 9   COMMISSIONER KENNEY: So you heard the

10 dialog between Mr. Byrne and myself --

11   MR. THOMPSON: Yes, sir.

12   COMMISSIONER KENNEY: -- about those

13 expenses that provide service to the ratepayers should be

14 borne by ratepayers and those that don't should be borne

15 by the shareholders. Do you agree with that general

16 proposition?

17   MR. THOMPSON: Absolutely.

18   COMMISSIONER KENNEY: Do you think that

19 rate case expense is distinguishable from plant and other

20 items and assets that directly provide service to the

21 ratepayer?

22   MR. THOMPSON: It's my personal belief that

23 the shareholder should bear a significant portion of the

24 rate case expense. That's not Staff's position in this

25 case.

 1   COMMISSIONER KENNEY: Under what theory?

 2   MR. THOMPSON: That it provides at least as

 3   much benefit to the shareholders as it does to the

 4   ratepayers.

 5   COMMISSIONER KENNEY: Well, but then how

 6   would you respond to the argument that, I mean, pretty

 7   much everything that the utility does provides a benefit

 8   to the shareholders theoretically? I guess it brings back

 9   my other question. How do you distinguish rate case

10   expense from everything else? Why should it be subject to

11   that special treatment?

12   MR. THOMPSON: Because it's different, I

13   think. It's different. In rate case expense when you're

14   trying to increase prices, you're also trying to increase

15   profit. That's what return on equity is ultimately,

16   profit. So what benefit does profit confer on the

17   ratepayers?

18   Now, we can make an argument that, well, if

19   there wasn't a profit there would be no investment, and,

20   in fact, that's absolutely true, but that's a little bit

21   removed, I think, from when you're saying here's an

22   advertisement, does it benefit the ratepayers, does it

23   benefit the shareholders and to what proportion?

24   The rate case brings a benefit to both

25   sides, both sides. The shareholders have a chance to have

1 the profit that they are earning addressed, increased if

2 necessary, and, in fact, we heard an awful lot of

3 testimony about exactly that so far in this case.

4 And that's a legitimate thing to do in a rate case and

5 necessary thing to do in a rate case, but no one can deny

6 that it benefits the shareholders.

7   At the same time we also look at how will

8 the ratepayers be benefited. After all, they need plant

9 sufficient to serve the load under whatever conditions.

10 They need transmission that's adequate and safe and that

11 operates. They need skilled labor that can do the work,

12 and we understand all that. That all has to be addressed,

13 and the ratepayers certainly need to pay for that.

14   I think it is a -- it confers a shared

15 benefit, partly on the shareholders, partly on the

16 ratepayers. And while I can't tell you how to divide

17 them, I know there are accountants here who could.

18   COMMISSIONER KENNEY: Are you aware of any

19 learned treatises or texts, law review articles, Public

20 Utility Fortnightly articles that support the position

21 that I understand you've just advocated on your own

22 behalf?

23   MR. THOMPSON: No, I am not.

24   COMMISSIONER KENNEY: Are you aware of

25 anywhere else in the country where this issue perhaps has

 1 not found its way into regulatory policy but has been

 2 explored or looked at?

 3   MR. THOMPSON: I'm not aware of any, no,

 4 sir.

 5   COMMISSIONER KENNEY: Do you think that

 6 your position that you just advocated, an equal sharing

 7 between ratepayers and shareholders, is supported by

 8 traditional notions of regulatory policy and public

 9 utility regulation?

10   MR. THOMPSON: No, absolutely not. The

11 traditional approach is that the ratepayers bear

12 100 percent of the cost of the rate case. After all, an

13 unregulated business can adjust its charges and its rates

14 and its regulations for service any time it wants and any

15 manner it wants, and customers vote with their feet by

16 going to get that service someplace else if they don't

17 like it. But this is a very unusual situation. The

18 customers can't vote with their feet, unless they move

19 outside of the service area.

20   COMMISSIONER KENNEY: Do you think it's

21 consistent with the notion that expenses that benefit

22 shareholders should be charged to shareholders and those

23 that benefit the ratepayers should be charged to the

24 ratepayers?

25   MR. THOMPSON: I believe it is.

 1   COMMISSIONER KENNEY: Why does not Ameren

 2   not charge executive compensation and bonuses to the

 3   ratepayers?

 4   MR. THOMPSON: It's consistently been

 5   Staff's position that incentive compensation can be

 6   charged to ratepayers. It depends on how it's calculated,

 7   how it's figured. If it's based on increasing earnings

 8   per share or value per share, then that is considered to

 9   be a shareholder benefit, and that type of executive

10   compensation or incentive compensation has been typically

11   disallowed.

12   If on the other hand it provides -- it's

13   linked to increasing service, improving efficiency,

14   something of that kind, then it is -- it does go into

15   rates.

16   COMMISSIONER KENNEY: I don't have any

17   other questions. Thank you.

18   MR. THOMPSON: Thank you.

19   JUDGE WOODRUFF: Thank you, sir. Public

20   Counsel? And I might add that they are having some

21   technical difficulties.

22   MR. MILLS: Good afternoon. May it please

23   the Commission? I'll be relatively brief. The Commission

24   is fairly well familiar with this issue, and as

25   Commissioner Jarrett has pointed out, has even opened a

1   case to study it.

2   Nonetheless, this is one of the most

3   visceral issues in this case and in any case. Some of the

4   questions from the Bench have revealed that maybe some of

5   you feel the same discomfort with charging ratepayers for

6   rate case expense that I do.

7   The company claims that it's just another

8   expense. I think anybody who's been to any local public

9   hearing, anybody who's thought about this issue, logic,

10 reason and most of all your gut tells you that that's just

11 not the case. There is something fundamentally different,

12 not just in amount but in kind, between asking ratepayers

13 to pay $600 an hour for a rate of return expert whose sole

14 purpose is to convince you to raise their rates than it is

15 to pay the salary of a lineman who goes out in the rain to

16 fix the service. The customers get a distinctly different

17 kind of benefit from the service that the lineman performs

18 than the service that the rate of return consultant pays,

19 and the regulatory process ought to recognize that

20 difference.

21   Now, one of the things that the Commission

22 has recognized in past cases, and I think this was most

23 recently brought up in the last KCPL rate case, is that

24 it's incumbent on the utility to demonstrate that it has

25 processes in place to control costs and that it is, in

1 fact, actually controlling costs.

2   And to that point, I want the record to

3 reflect in this case that during the hearing of the last

4 issue, the income tax issue, the company had present in

5 the hearing room two outside attorneys from two separate

6 firms sitting here through the entirety of the issue even

7 though neither of them contributed whatsoever to the

8 hearing process on that issue. And I don't know that

9 that's happened a lot in this case. It may have happened

10 in all the issues prior to this. I just happened to

11 notice it in the last case because we were leading up to

12 the rate case issue.

13   Whether it's happened a lot or whether it's

14 happened a little, I think that's indicative of a very

15 casual attitude toward cost control. I think if the

16 company were paying for those attorneys and knew that they

17 couldn't recover those costs from their ratepayers, I

18 think they might be more concerned about who's sitting

19 around and who's being paid and who's actually working on

20 behalf of the ratepayers and on behalf of the company.

21   You know, the company takes the point that

22 this -- that the rate case expense is just like any other

23 issue and that the prudence standard ought to apply, and I

24 disagree with that. But even if you do take that tact, I

25 believe in this case that, through the testimony of

 1   witness Ted Robertson, Public Counsel has shown that the

 2   company, given all of its resources it has in house, that

 3   the company has been imprudent in spending money to hire

 4   outside consultants and outside attorneys, and the company

 5   has not presented evidence to the contrary.

 6   So I think given Ted Robertson's testimony,

 7   that serious doubt has been raised which shifts the burden

 8   to the company to prove prudence, and the company has not

 9   done so. The company has not said that the attorneys

10   inside the company cannot perform these duties. It has

11   not said that the cost of capital witnesses can't do it.

12   They just said, oh, gosh, these guys are busy. They

13   didn't produce any time sheets. They haven't shown what

14   these people are doing. I think they have failed to prove

15   that they are prudent in using -- in not using their

16   in-house people first.

17   You know, one of the questions that came up

18   with Mr. Byrne and Mr. Thompson is, are there analogies,

19   are there other kinds of costs that are treated like

20   Public Counsel proposes to treat rate case expense? And

21   yes, there are. Advertising is one of them.

22   Traditionally the Commission looks at advertising

23   sometimes literally ad by ad, message by message to

24   determine whether the advertising benefits customers or

25   benefits shareholders. When it determines that a

 1   particular expenditure benefits shareholders, it does not

 2   allow that cost to be charged to ratepayers. May be

 3   perfectly prudent, may be perfectly reasonable, but if it

 4   doesn't benefit ratepayers, it does not go into rates.

 5   Incentive compensation, you just had some

 6   discussion about that. That is another analogy. If

 7   incentive compensation is tied to acts that actually

 8   benefit ratepayers, then it's allowed in rates. If it's

 9   tied to acts like simply increasing earnings per share,

10   then it's not included in rates. There are reported

11   Commission decisions that have made that distinction. I

12   don't think that we're plowing new ground with the

13   proposals that we're talking about in rate case expense.

14   And then the final thing I want to mention

15   with respect to rate case expense is -- and for the

16   record, I will note that my annual budget for this year is

17   $700,000, so it is considerably less than the amount that

18   Ameren is paying in this case.

19   But the notion that somehow it's the world

20   against the company I think is misplaced. In fact, I

21   think Mr. Byrne went so far as to say that the Staff is

22   against the company. The Staff cannot be against the

23   company. The Staff has -- the only role that the Staff

24   can play in this case is as a neutral party. The Staff by

25   law can't represent the public interest. The Staff by law

 1 can't represent a particular municipality or any point of

 2 view. So it must be a neutral interest.

 3   And if you take away the Staff as an

 4 opponent of the company, then it makes -- it makes the

 5 argument that it's Ameren against the world a lot less

 6 compelling. Thank you.

 7   JUDGE WOODRUFF: Questions?

 8   CHAIRMAN GUNN: Couple questions. So let's

 9 assume everything you've just said is absolutely

10 100 percent accurate.

11   MR. MILLS: Thank you.

12   CHAIRMAN GUNN: You're welcome. And let's

13 also -- let me take responsibility for the docket not

14 proceeding as quickly as it should. So with those two,

15 with those two things happening, isn't -- isn't there a

16 question because the Commission said we are -- we're going

17 to deal with this in a docket, in a rulemaking rather than

18 in a rate case process, doesn't that maybe in the short

19 term argue for saying, you know what, that that's the

20 policy statement we made and, yes, you're right, we

21 probably should be farther along than we are, but the fact

22 is that we're not.

23   So is there a fairness question about us

24 doing that in this case after we've made policy

25 pronouncements that we were going to do it in the docket?

1   MR. MILLS: I don't think so, because

2   Ameren certainly as much as any utility in the state has

3   been on notice that Public Counsel is going to challenge

4   them on rate case expense regardless of whether the

5   Commission has a docket that's open and pending. Ameren

6   knows that they're at risk of this. I don't think they

7   can claim unfair surprise if the Commission were to

8   disallow some rate case expense and say, oh, we never

9   thought we were at risk because the Commission had that

10   open docket that has not been going anywhere. If that's

11   your point, I don't think that's a valid point. I don't

12   think that's a valid defense that Ameren can raise.

13   CHAIRMAN GUNN: Well, but it's a -- I'm not

14   really looking at it from a defense that Ameren's raising.

15   I'm looking at it -- for example, I wanted to talk about a

16   rate stabilization mechanism, and everybody said we didn't

17   have time to do it, so we're not going to do it. I mean,

18   theoretically I believe I have the legal authority to do

19   it, and I could ask ROE witnesses and do that. I mean,

20   would that be fair?

21   I mean, one of the things that people

22   brought up was the fundamental fairness about not

23   really -- that we should do it somewhere else. So once we

24   agree to do it somewhere else, then we really take it off

25   the table for this -- for this conversation in this

 1 hearing.

 2   MR. MILLS: But the difference between that

 3 issue and the rate case expense issue is not only has the

 4 rate case expense issue been in this case since the direct

 5 testimony, but it's been in the prior cases, too. So it's

 6 not a brand-new issue that's coming in late. It's one

 7 that has been litigated from the beginning of this case

 8 and in prior cases.

 9   CHAIRMAN GUNN: In determining prudence,

10 how do we get around -- and this, quite frankly, was a

11 problem in one of the last cases where we were faced with

12 properly asserted attorney/client privilege, which made it

13 difficult for us to then make a line-by-line judgment, and

14 maybe you're not -- it sounds like you're more advocating

15 a sharing mechanism, which is we'll set policy about how

16 we split these things, but you also in your opening

17 statement made the argument that said now the burden has

18 shifted based on testimony for Ameren to have to prove

19 prudence. Well, how do they do that if they -- without

20 putting themselves at a disadvantage and giving up the

21 privilege, the attorney/client privilege?

22   MR. MILLS: First of all, just to clarify

23 our position, we are advocating a sharing, but first we're

24 advocating --

25   CHAIRMAN GUNN: Specific disallowances?

 1   MR. MILLS: Right, specific disallowances.

 2   With respect to the specific disallowances, you know,

 3   frankly if the company finds itself at a position where it

 4   believes that it has acted prudently but can't prove it

 5   without waiving its attorney/client privilege, you know,

 6   then I think they lose on that issue. They get the choice

 7   of deciding whether to prove prudence or whether to

 8   continue to assert a privilege.

 9   If they -- to my mind, it's the same sort

10   of thing as with highly confidential information. If they

11   have information that they believe, you know, proves a

12   particular point but they're not willing to give up that

13   information, if they have the burden of proof, they can't

14   win that issue.

15   CHAIRMAN GUNN: But it's different with

16   highly confidential because we're allowed to take a look

17   at the highly --

18   MR. MILLS: I'm talking about highly

19   confidential information that they won't provide, and it

20   may be that the only category of that is privileged

21   information. So there may not be a different category,

22   but I think the point is the same. If they have the

23   burden of proof and they chose not to bring forward

24   information that could help them carry the burden simply

25   because they can and choose to assert an attorney/client

 1   privilege, then I don't think they can win that issue.

 2   And frankly, my -- I don't have a lot of

 3   sympathy for that position because they could certainly

 4   waive attorney/client privilege if they need to if they

 5   want to win the issue.

 6   CHAIRMAN GUNN: They could, but you're also

 7   in a position where you're making the assertion that I

 8   look at costs and I am -- for example, you made an

 9   assumption in your opening statement that the two lawyers

10   that were sitting in the back of the room were getting

11   paid, were getting paid a certain hourly rate and were not

12   under any sort of other alternative fee contract. So you

13   made that assumption.

14   So would it be enough to have testimony

15   from Mr. Robertson come in saying there were two lawyers

16   sitting in the room who are employees of a large law firm

17   whose average billing rate is X, they were there, they

18   didn't participate in the hearing, but they were sitting

19   in the back of the room for four hours, and therefore it

20   was imprudent? Is that enough to shift the burden?

21   MR. MILLS: I think so.

22   CHAIRMAN GUNN: Really?

23   MR. MILLS: Yeah.

24   CHAIRMAN GUNN: Not knowing that they may

25   not be billing their clients, they may be billing other

 1   clients while they're on the phone or not having any of

 2   that and then you're going to force -- you're going to

 3   force then those lawyers, because there might be

 4   privileged issues that those lawyers have with other

 5   clients that is not the company's chance to do it, to say,

 6   if I'm working for another client, that -- the fact that I

 7   represent that client or might be doing work for another

 8   client may be privileged information. The privilege goes

 9   pretty -- I mean, attorney/client privilege is pretty

10   broad.

11   MR. MILLS: But in that particular

12   circumstance, the hypothetical that you've just

13   illustrated, all it takes is for the company to say they

14   were not billing us for that time. We didn't pay for it.

15   The attorney doesn't have to prove who they were billing

16   or who was paying that.

17   CHAIRMAN GUNN: So you just have to make an

18   allegation, the mere allegation without any proof of any

19   sort of -- any sort of imprudency? The mere allegation

20   shifts the burden, forces them to break attorney/client

21   privilege in order to prove prudence?

22   MR. MILLS: First of all, that's not the

23   situation in this case. This is a hypothetical that we're

24   talking about.

25   CHAIRMAN GUNN: Absolutely.

 1   MR. MILLS: I think, yes, if we had

 2   evidence that two attorneys who are clearly working on the

 3   case, have been hired to work on the case, are in the

 4   hearing room not doing anything apparently constructive, I

 5   think pointing that out and making an adjustment for it, I

 6   think that's enough to shift the burden and to make the

 7   company prove that they were doing something constructive.

 8   Again --

 9   CHAIRMAN GUNN: I will tell you, from a

10   policy standpoint, that's troubling to me on a different

11   and a lot of different levels and I'm not -- one of the

12   things that I -- when making kind of a broad policy

13   statement, you always have to worry about what mischief

14   can be created by that and what gaming of the system you

15   can make. And so that -- I'm not saying that I -- I mean,

16   I just need to think about that assertion because there's

17   -- I can't put my finger on it, but it's troubling me. I

18   think it's because of the potential mischief that could

19   potentially happen.

20   But I think one of the other broader

21   points, which is something that I wanted to put on the

22   record and I will say to everyone here, is that I think

23   under-funded Public Counsel's office is as much of a

24   danger to fair proceedings than any other, when we talk

25   about rate case expense, any other single issue. And I

 1   think the Legislature should take a very hard look at that

 2   and realize that these proceedings work better when the

 3   parties to the case can put on their case the way that

 4   they're supposed to put it on, whether it's MIEC, whether

 5   it's the company, whether it's the Staff or whether it's

 6   Public Counsel. One of the tenets of these proceedings is

 7   that everyone has an equal opportunity to present their

 8   case. That doesn't mean that you should have unlimited

 9   funding. It doesn't mean that people aren't resource

10   constrained. MIEC, Ameren, they all might be resource

11   constrained in their own particular way, but having the

12   opportunity to do that.

13   And if Public Counsel -- I'm not saying

14   this happened in this case, but just as a general position

15   statement, that if Public Counsel cannot present on an

16   issue and fully represent the public because their funding

17   has been cut through whatever budget is presented through

18   the administration of the legislation or legislature, I

19   think it's a real danger to these proceedings.

20   So I take your points very seriously, and I

21   think we're going to look at this. I do have a concern

22   about -- one of the reasons why we do things in the docket

23   is so that we don't create unintended consequences through

24   report and orders and we have the opportunity to do it. I

25   do take responsibility for not going as quick as it

1   should.

2   My question is whether we should -- whether

3   the alternative is to speed up that process rather than do

4   policy pronouncements in this case. Haven't made the

5   decision yet. Obviously it's a lot to think about. But I

6   appreciate your answer.

7   JUDGE WOODRUFF: Commissioner Jarrett?

8   COMMISSIONER JARRETT: Yes. Thank you,

9   Judge. Let me echo Chairman Gunn's last comments about

10 funding. I too have always taken the position that I

11 think the OPC deserves to be adequately funded to

12 prosecute or to represent the ratepayers in these cases,

13 so --

14   MR. MILLS: For the record, I agree with

15 both of you.

16   COMMISSIONER JARRETT: I do have some

17 questions, though, about the -- about the sharing of the

18 expenses between ratepayers and shareholders on the rate

19 case expense issue. I think in -- I can't remember which

20 rate case it was when we were discussing this, but I think

21 you and I had sort of the same conversation, and

22 Commissioner Kenney was asking Mr. Byrne about other

23 jurisdictions and whether there were treatises or law

24 review articles, and I think your answer was then you

25 weren't aware of any.

1   MR. MILLS: Right.

2   COMMISSIONER JARRETT: I'm certainly not

3   aware of any either. And I know that you are a member of

4   the National Association of State Utility Consumer

5   Advocates, correct?

6   MR. MILLS: Yes.

7   COMMISSIONER JARRETT: NASUCA is the

8   synonym.

9   MR. MILLS: Yes.

10   COMMISSIONER JARRETT: Synonym's not right.

11   MR. MILLS: Acronym.

12   COMMISSIONER JARRETT: Acronym. Thank you.

13   I got my nyms wrong there. Has NASUCA taken any type of

14   position on sharing of rate case expense between

15   shareholders and ratepayers?

16   MR. MILLS: NASUCA as an organization

17   operates a lot like NARUC does, and we take positions

18   through resolutions. To my knowledge, NASUCA has never

19   promulgated a resolution on rate case expense. I don't

20   believe officially we have a position on rate case

21   expense.

22   COMMISSIONER JARRETT: Thank you. That's

23   all I have, Mr. Mills.

24   JUDGE WOODRUFF: Commissioner Kenney?

25   COMMISSIONER KENNEY: Mr. Mills, thank you.

1 And I agree with my colleagues that said you guys should

2 be adequately funded. Frankly, a process that doesn't

3 adequately fund the Office of the Public Counsel is

4 arguably an inherently unfair process.

5   Regarding the rate case expense, you

6 indicated that there is an argument where you could reason

7 by analogy to executive compensation that's based upon

8 earnings per share and advertising that's purely

9 advocating something that benefits the ratepayers. You

10 said there are published cases. Could you provide

11 citations to those cases?

12   MR. MILLS: And I'm talking about

13 Commission decisions, not necessarily court cases.

14   COMMISSIONER KENNEY: Could you provide

15 citations to those in this docket and also in our rate

16 case expense docket?

17   MR. MILLS: Sure.

18   COMMISSIONER KENNEY: And in that regard, I

19 think Chairman Gunn shouldn't take responsibility alone

20 for the failure of that docket to advance. It's something

21 that I advocated at the time that we opened the docket.

22 It's an issue which I'm interested in, and I think I bear

23 equal responsibility for that docket languishing. I

24 suspect that after we finish these rate cases, it won't

25 languish any longer. So I don't want you to take on that

 1   burden by yourself. I think that that would be helpful if

 2   we had that information filed in this case and that rate

 3   case docket.

 4   And I'll ask you the same question I asked

 5   Mr. Thompson. Do you think it's consistent with the

 6   regulatory theory that those expenses that benefit the

 7   ratepayer should be borne by the ratepayer and those that

 8   benefit the shareholder should be borne by the

 9   shareholder?

10   MR. MILLS: I do.

11   COMMISSIONER KENNEY: Do you also think

12   that, in so doing, that that action in and of itself would

13   provide an incentive for the utility to -- and I'm not

14   talking about any specific utility, but a utility in

15   general to be especially mindful of its rate case expense?

16   MR. MILLS: Yes, I do, and I -- I don't

17   think it would cause utilities to fold and do a terrible

18   job presenting rate cases. I think it would just give

19   them the incentive to be more efficient than they are now.

20   COMMISSIONER KENNEY: You said that rate

21   case expense is different in quality and kind from other

22   things that are used to provide service to the consumer.

23   It -- well, never mind. I don't have any other questions.

24   I lost my train of thought. That's it.

25   JUDGE WOODRUFF: Do you want to jump in,

 1 Commissioner Stoll?

 2   COMMISSIONER STOLL: Your Honor, I have no

 3 questions, but I also have to say that I believe that the

 4 Office of the Public Counsel needs to be adequately

 5 funded.

 6   MR. MILLS: I agree with all four of you.

 7 Thank you very much.

 8   JUDGE WOODRUFF: All right. That completes

 9 the mini openings on rate case expense. Move to the first

10 witness. We do have witnesses. Lynn Barnes is the first

11 witness. Welcome back to the stand.

12   THE WITNESS: Happy to be here.

13   JUDGE WOODRUFF: You are still under oath.

14   THE WITNESS: Yes.

15 LYNN BARNES testified as follows:

16 DIRECT EXAMINATION BY MR. TRIPP:

17   **Q.   Ms. Barnes, your testimony you've offered**

18 **on this issue, rate case expense, is contained in your**

19 **rebuttal, which has been admitted as 12HC and -- 12HC and**

20 **NP and your surrebuttal testimony as Exhibit 13, correct?**

21   A.   Yes.

22   MR. TRIPP: Tender the witness for

23 cross-examination.

24   JUDGE WOODRUFF: And for cross-examination

25 we begin with Public Counsel.

 1   MR. MILLS: We do? Okay.

 2   CROSS-EXAMINATION BY MR. MILLS:

 3   Q.   Okay. Ms. Barnes, we had some questioning

 4   earlier in context of the PISA issue about the timing of

 5   your next rate case. Do you recall that?

 6   A.   Yes.

 7   Q.   Some of that was under seal, so I won't

 8   bring that up again, but has any -- has anything changed

 9   from your earlier testimony with respect to your knowledge

10   of the timing of your next rate case?

11   A.   Not unless we've issued an order in this

12   case since I left.

13   Q.   And in addition to that discussion, there

14   was also a discussion you had with Commissioner Jarrett

15   about a two to three-year gap before the filing of your

16   next rate case. Do you recall that discussion?

17   A.   Yes.

18   Q.   Is the timing of your next rate case,

19   regardless of the fact that it isn't known now, but at

20   least there's some information in the record about when

21   that might be, is that a relevant consideration for the

22   Commission to take into account when determining the

23   amount of rate case expense to allow in this case?

24   A.   No. Actually, I don't think it is, and I

25   guess this is the way I think about these expenses. As I

1   understand the regulatory process, we use historical data

2   and we normalize things where we think that's more

3   reasonable to come with. Really, we're using all of that

4   information in order to determine what a proper cost of

5   service should be for future rates when they go into

6   effect.

7   So in my mind, normalizing these expenses

8   like we normalize other expenses makes sense to me, and

9   whether or not we file another rate case imminently or in

10   several years, these costs, whether you take the position

11   we over-collected or under-collected them, it's going to

12   be just a cost of service.

13   And whatever our cost of service is in the

14   future, how it was derived using these historical numbers,

15   they lose their character when they just become part of

16   the cost of service in the future. And so we may

17   over-collect on rate case expense, then we under-collect

18   on labor or we under-collect on something else, and at the

19   end of the day it all sort of comes out in the wash.

20   So to me, trying to figure out when we're

21   going to file our next rate case is not a good measure to

22   determine how we should set rates for rate case expense in

23   the past. If these rate case expenses are deemed to be

24   prudently incurred, and we've got some history now because

25   we've been filing rate cases frequently that we can

1 normalize those expenses. It would seem that that would

2 be a reasonable approach, similar to how we normalized

3 expenses for other things before we set rates in the

4 future.

5   **Q.   And if you take that approach, if you**

6 **entirely discount the timing of a possible future rate**

7 **case, then the other alternative is simply to look at your**

8 **past history, correct, and normalize --**

9   A.   Sure.

10   **Q.   -- from the past history?**

11   A.   Right.

12   **Q.   Would it make sense to normalize the**

13 **frequency of rate case filings over, say, the last 20**

14 **years?**

15   A.   I guess you could pick whatever normalized

16 period you want. We've got some pretty -- again, things

17 change over time, and we've got, you know, the last five

18 years or so we've been filing rate cases. We've got about

19 a 15-month gap between each of those. The amount of costs

20 that we've incurred is comparable because it's a near term

21 period. I'm not sure that rate case expenses incurred 20

22 years ago would be comparable to the cost of rates in the

23 current period, inflation and the like.

24   **Q.   If we're just looking at the timing of rate**

25 **cases, would not a longer history give a better**

1   **indication? If we're entirely discounting what we know**

2   **about the future, wouldn't a longer period of history give**

3   **us a better guide to the period over which we should**

4   **amortize whatever the cost level is in this case?**

5   A.   No.   I'm not sure why these should be

6   treated any differently than any other expense. I mean,

7   we go back and look at how we normalized in other rate

8   cases, we've normalized plant maintenance or we've

9   normalized storm costs or we've normalized vegetation

10 management costs or other things, we tend to use about a

11 four or five-year period. So that's why I would recommend

12 we would use a four or five-year period to normalize these

13 expenses for the same reason.

14   Q.   **Would you concede that if we did use a**

15 **longer period, that the amortization period would be**

16 **longer and, therefore, the amount included in rates would**

17 **be less?**

18   A.   I'm not sure I understand what you mean by

19 amortization period. I mean, essentially what we're doing

20 is just using historical information to set an amount to

21 put into base rates. We're not advocating amortizing

22 anything.

23   Q.   **If we are to use a longer period of time on**

24 **which to calculate the appropriate normalization period,**

25 **would not that period of time be longer if we looked**

 1 beyond the last five years?

 2   A.   Well, only because we didn't have a

 3 situation where rate cases needed to be filed.

 4   Q.   So it would be longer?

 5   A.   I guess, yeah. Mathematically that's how

 6 it works.

 7   Q.   And if we were to normalize using that

 8 period of time, then the amount included in rates in this

 9 case could be less?

10   A.   Mathematically, that would be correct.

11   Q.   Now, with respect to the rate case expense

12 in this case, do you account for the time that you

13 personally spend working on this case separately from the

14 time that you spend doing other tasks?

15   A.   I do keep track of it, yes.

16   Q.   So there's a task code or something on your

17 time sheet that bills your time for this case?

18   A.   Yes.

19   Q.   And how much time have you spent on this

20 case?

21   A.   I don't know. I mean, I put it in every

22 couple of weeks. Actually, my admin assistant puts it in

23 for me after I tell her how much it is. But I haven't

24 looked at the report to see how much in total I've

25 incurred since we filed this in February, or actually

1 before that because I would have been involved before

2 that.

3   Q.   You have no idea how much time you've put

4 in on this case?

5   A.   Not in a numbers basis. I can tell you it

6 ebbs and flows. In the last couple of weeks I've been

7 spending a lot of time preparing for the rate case. I

8 filed testimony back in February. I spent a lot of time,

9 and then not so much, and then it geared up again as we go

10 through the rounds of testimony.

11   Q.   Do you know in total how much time internal

12 Ameren Missouri folks have spent on this rate case?

13   A.   No. I don't have that information. We

14 track it, but I don't have the information in front of me.

15 I don't know what that is.

16   Q.   And what is your title with the company?

17   A.   Vice president of business planning and

18 controller.

19   Q.   As controller, do you have any

20 responsibility for controlling the cost it takes to

21 prosecute a rate case?

22   A.   Not direct responsibility. I mean,

23 obviously I manage and coordinate the budget process, but

24 I don't personally come up with what the amount is that we

25 should budget for rate case expense.

1   Q.   During the course of this rate case, has

2   anybody in management come to you and said, how many hours

3   are we putting in on this rate case?

4   A.   No.

5   Q.   No one is tracking that at the company?

6   A.   For internal labor you're talking about?

7   Q.   Yes.

8   A.   It's being tracked, but nobody has come and

9   asked me what that number is.

10   Q.   And you don't know what that number is?

11   A.   I don't know what that number is.

12   Q.   Do you believe that advertising is a

13   necessary and legitimate cost of running your business?

14   A.   I think advertising is the best way to

15   communicate with our customers given the broad service

16   territory that we serve in.

17   Q.   Is that a yes?

18   A.   Yes.

19   Q.   Is your incentive pay a necessary and

20   legitimate cost of operating your business?

21   A.   Yes.

22   Q.   Is your incentive pay included in rates in

23   this case?

24   A.   No.

25   Q.   How about the incentive pay for other

1   executives, is that a necessary and legitimate cost of

2   running your business?

3   A.   Yes.

4   Q.   Is the incentive pay for other executives

5   included in the cost of service in this case?

6   A.   Not for officers at my level, but for some

7   below.

8   Q.   And when you-all -- when the company filed

9   its case, did it include all the costs of advertising in

10 its filed case?

11   A.   Yes, I believe so.

12   Q.   You did not voluntarily exclude any cost of

13 advertising when you filed?

14   A.   I'm not that close to the cost of service,

15 so I don't know that they did, but I'm not aware that we

16 did directly.

17   Q.   Has -- well, I won't ask you about that.

18   I think that's a settled issue.

19   Now, in your rebuttal testimony on page 33,

20 I'll let you get there.

21   A.   Thank you. It's been a few hours since I

22 read it. Page 33?

23   Q.   Page 33, you assert that the company has a

24 right to utilize the resources it needs.

25   A.   Yes.

1   Q.   Okay. Has any party in this case said that

2   you cannot hire any experts that you want to hire?

3   A.   No, not that I'm aware.

4   Q.   Your understanding of Public Counsel's

5   position is that you can hire whoever you want, we just

6   don't believe that you should be able to pass all of the

7   costs through in rates; is that correct?

8   A.   That's my understanding of your position,

9   yes.

10   MR. MILLS: That's all the questions I

11 have.

12   JUDGE WOODRUFF: For Staff?

13   MR. THOMPSON: Thank you, Judge. May I

14 approach?

15   JUDGE THOMPSON: You may.

16 CROSS-EXAMINATION BY MR. THOMPSON:

17   Q.   Let me show you something, and this is

18 highly confidential. All right? So we'll try not to

19 solicit any answers that would be confidential. Do you

20 recognize that document?

21   A.   No. I've never seen it before.

22   Q.   You've never seen it before?

23   A.   Huh-uh.

24   Q.   Can you tell me who it was sent to? Is

25 there anything on there that indicates that?

 1   A.   It was sent to our legal counsel,

 2   Mr. Byrne.

 3   **Q.   Mr. Byrne. And who was it sent from?**

 4   A.   Concentric.

 5   **Q.   And who is Concentric?**

 6   A.   They're one of the consulting firms that

 7   we're using for this rate case.

 8   **Q.   Okay. Now, on there there are rates shown**

 9   **for certain individuals. Do you see that?**

10   A.   Yes.

11   **Q.   Who is the chairman and chief executive**

12   **officer, if you know?**

13   A.   I don't know actually.

14   **Q.   Who's senior vice president?**

15   A.   I don't know that either.

16   **Q.   Or the project manager?**

17   A.   No.

18   **Q.   Project assistant?**

19   A.   I have not worked directly with any of the

20   Concentric.

21   **Q.   Who would know that, other than Mr. Byrne?**

22   A.   Mr. Weiss potentially.

23   **Q.   Mr. Weiss. Okay. And we're going to see**

24   **him again in this case, aren't we?**

25   A.   Yes.

```
 1              Q.      Let me ask you this:  At the bottom you'll

 2      see an area that's indicated billings to date?

 3              A.      Uh-huh.

 4              Q.      Would those be billings to date with that

 5      particular vendor?

 6              A.      Yes.

 7              Q.      Okay.  That's all the questions I have

 8      about that.  Thank you.

 9                      As far as you know, is the figure

10      1.9 million, is that the current estimate of what this

11      rate case is expected to cost?

12              A.      As far as I know, yes.

13              Q.      Okay.  And who's in charge of that?  Is

14      there one person with Ameren who's in charge of rate case

15      expense?

16              A.      I don't know if there's one person in

17      charge.  The regulatory group would be the ones that have

18      the budget responsibility for rate case expense, and they

19      coordinate that with our legal department.

20              Q.      When would --

21                      JUDGE WOODRUFF:  Mr. Thompson, your

22      microphone again.

23                      MR. THOMPSON:  I apologize.

24      BY MR. THOMPSON:

25              Q.      When would you expect to know for sure how
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1 much this case cost, in fact?

2   A.   Well, I don't know exactly what the

3 responsibilities will be of all the consultants, but at

4 least through the hearings. We would get a -- receive a

5 billing once the hearing's completed, and then to the

6 extent that, for example, the attorneys are working on

7 briefs or any other documentation that's required for the

8 rate case, they would bill us subsequently after all of

9 that work was completed. So sometime between now and when

10 an order comes from the Commission I would suspect we'd

11 know.

12   Q.   **Perhaps even after the order?**

13   A.   Depends on when the work is performed. If

14 they're doing work right up until when the order is

15 delivered, then we may not get the bill from them until

16 after.

17   Q.   **And rates I think are expected to be**

18 **effective around January 1st?**

19   A.   Early January, uh-huh.

20   Q.   **So realistically bills might trickle in**

21 **until February?**

22   A.   I don't think they would wait that long.

23 Typically I think we receive the bills within 30 days of

24 when the work's performed.

25   Q.   **Okay. But would you agree with me that the**

1   amount put into revenue requirement in making rates for

2   this case is going to have to be an estimate?

3   A.   I questions the true-up hearings happen in

4   -- I'm not sure of the timing of that. They happen after

5   this hearing and then before the order. So to the extent

6   that we have a number at that point, we can fill that in.

7   The way the true-up process works, I mean, you don't use

8   actual numbers beyond July 31st.

9   Q.   But that may not be the final number; isn't

10   that right?

11   A.   It most likely won't be since the hearing

12   hadn't occurred by July 31st.

13   Q.   Right. And would you agree with me that

14   the amount that goes into revenue requirement to be

15   recovered on an annual basis, assuming that it's designed

16   to recover all of your rate case expense incurred in this

17   case by the time you file your next case, necessarily that

18   amount is going to depend on when you file your next case?

19   A.   Well, I guess I'm back to my discussion

20   with -- that I had with Mr. Mills. If this is just a cost

21   of doing business like every other cost of doing business

22   and we take the position that we should use historical

23   information to normalize that and build in a normalized

24   amount in rates, then I think this isn't something unique

25   that we're just trying to recover or under or over-recover

 1 rate case expense. It's no different than any other

 2 expense that we use to calculate a cost of service for

 3 going on in the future.

 4   Q.   Okay. So Staff's position is $1 million a

 5 year; isn't that right?

 6   A.   Yes.

 7   Q.   Okay. So let's say you prevail on this

 8 issue and, in fact, the Commission gives you $1 million in

 9 revenue requirement on an annual basis. Okay?

10   A.   If I prevail on this issue, they won't give

11 me a million. They'll give me a million and a half.

12   Q.   I'm sorry. Let's say Staff prevails.

13 Thanks for that correction. I assumed you -- never mind.

14 Let's say it's a million.

15   A.   Okay.

16   Q.   And let's say it's five years until you

17 file your next case. I know that may be unlikely, but

18 let's say that's what it is.

19   A.   Uh-huh.

20   Q.   So you would have recovered $5 million for

21 rate case expense?

22   A.   We would have recovered $5 million in cost

23 of service, and, you know, for the same reason that we

24 don't recover 100 percent of our labor expenses because

25 there are labor increases that occur after the rate case

1 and after the rates are put into effect, this is where

2 regulatory lag comes into play. And so if -- if the cost

3 of service is built based on a million dollars of rate

4 case expense, then that million dollars is part of cost of

5 service.

6   And if we don't file a rate case for five

7 years, that doesn't mean that we have over-earned. That

8 doesn't mean that we've over-recovered those particular

9 expenses. It just is a number that's baked into the

10 overall cost of service that's used to set rates in the

11 future.

12   Q.   Okay. And your position, in fact, is one

13 and a half million; isn't that right?

14   A.   Based on a normalization process rather

15 than picking a number out of the air.

16   Q.   So if you recovered one and a half million

17 for five years, how much money is that?

18   A.   Do my math.

19   Q.   Would you agree with me that's about seven

20 and a half million dollars?

21   A.   Uh-huh.

22   Q.   But that's not an over-recovery you say?

23   A.   Again, because we are not in the process --

24 as I understand the ratemaking process, we're not

25 recovering specific expenses. We are assigning -- we are

1 using historical information to develop a cost of service

2 for customers to pay for service in the future.

3   Q.   **But don't you think that those amounts that**

4 **are put into rate base to be recovered on an annual basis,**

5 **don't you think those are intended to be predictive of the**

6 **actual costs the company is going to have to pay year**

7 **after year?**

8   A.   Well, if we were going to take that

9 position, then we don't build in labor rate increases

10 beyond the true-up period, and I don't think the

11 assumption is that we're not going to pay raises to our

12 employees or that we're not going to have more or less

13 employees in the future than we have at the time that

14 rates are set.

15   I mean, you can go down the whole path of

16 all the different types of expenses that are part of cost

17 of service to make that argument.

18   Q.   **I'm glad you brought up labor. Isn't it**

19 **true that the reason we don't include labor rate increases**

20 **after the true-up is they're not known and measurable?**

21 **Isn't that true?**

22   A.   But rate case expenses aren't known and

23 measurable either, because I don't know with pinpoint

24 certainty when I'm going to file a rate case next.

25   Q.   **But if we take an average of historical**

1 **rate case expense and we adjust that to reflect on an**

2 **annual basis what you're going to pay between now and the**

3 **next rate case, isn't that the best we can do?**

4   A.   Well, I think the best we can do is look

5 back historically and say what has that time frame been

6 historically, and we have some history now that we're on

7 the fifth rate case that there's about a 15-month gap

8 between and take that as our position to normalize those

9 costs for the future.

10   MR. THOMPSON: Thank you. No further

11 questions.

12   JUDGE WOODRUFF: Come up to questions from

13 the bench. Mr. Chairman.

14 QUESTIONS BY CHAIRMAN GUNN:

15   **Q.   I'll ask you because you're actually sworn**

16 **in. Mr. Byrne wasn't. Assuming a commission in a rate**

17 **case grants an increase and doesn't deny or grant a**

18 **decrease, do shareholders of the utility benefit from**

19 **that?**

20   A.   Yes.

21   CHAIRMAN GUNN: Okay. I don't have

22 anything further. Thank you.

23   JUDGE WOODRUFF: Commissioner Jarrett?

24   COMMISSIONER JARRETT: I don't think I have

25 any questions. Thanks.

1   JUDGE WOODRUFF: Commissioner Kenney?

2   COMMISSIONER KENNEY: I just have a few

3   questions.

4   QUESTIONS BY COMMISSIONER KENNEY:

5   Q.   **Why does Ameren not include incentive**

6   **compensation in its request for rate increase? You said**

7   **at your level they don't.**

8   A.   Right. Because at the officer level,

9   incentive compensation is based on the results of our

10   earnings for Ameren Corporation, and in prior cases that

11   has been disallowed. So rather than bringing up a

12   frivolous issue that's more likely to get denied, we just

13   choose not to include it.

14   Q.   **Do you agree with the principle underlying**

15   **the disallowance?**

16   A.   Personally or --

17   Q.   **Yeah, personally.**

18   A.   Not particularly, but not my choice.

19   Q.   **All right. Fair enough. And do you know**

20   **if the costs associated with taking an appeal of one of**

21   **our decisions, is that included in the million and a half**

22   **dollars or is that strictly the cost of prosecuting this**

23   **rate case?**

24   A.   I don't know.

25   Q.   **Do you know as a general proposition, does**

 1   **Ameren seek to recover its costs associated with taking an**

 2   **appeal of one of our decisions under some other rubric**

 3   **other than rate case expense?**

 4   A.   I mean, they're part of our total costs, so

 5   I guess to the extent that we those types of costs in the

 6   test year, they're probably just part of all the other

 7   costs that are included in the test year. But I don't

 8   know of any purposeful way that we're tracking that to

 9   collect it.

10   Q.   **Would it just be included with other legal**

11   **fees?**

12   A.   Probably, yes.

13   Q.   **So it would be accounted for separately**

14   **from rate case expense?**

15   A.   I think so.

16   Q.   **You think? Okay.**

17   A.   Uh-huh.

18   Q.   **Even if you lose the appeal on the issue?**

19   A.   Yes. We still have to pay the bill. It

20   would be an expense.

21   Q.   **Are you aware of jurisdictions that would**

22   **disallow the cost of appeal where the appeal is lost?**

23   A.   I'm not aware.

24   COMMISSIONER KENNEY: I don't have any

25   other questions. Thank you.

1   JUDGE WOODRUFF: Commissioner Stoll?

2   COMMISSIONER STOLL: I have no questions,

3   your Honor.

4   JUDGE WOODRUFF: All right. Then we'll go

5   to recross based on questions from the bench, beginning

6   with Public Counsel.

7   MR. MILLS: I don't have any further

8   questions.

9   JUDGE WOODRUFF: Staff?

10   MR. THOMPSON: No questions.

11   JUDGE WOODRUFF: Redirect?

12   MR. TRIPP: Just a few, your Honor.

13   REDIRECT EXAMINATION BY MR. TRIPP:

14   Q.   You were asked several questions about in

15   terms of looking forward, in terms of looking to determine

16   when Ameren will file its next rate case in relation to

17   recovery of rate case expense. Do you recall those

18   questions?

19   A.   Yes.

20   Q.   As you sit here today, do you know when

21   Ameren's going to file its next rate case?

22   A.   No.

23   Q.   Is it likely that it's going to be five

24   years?

25   A.   I believe that we have requirements under

1   both the MEEIA statute as well as the FAC that we have to

2   file earlier than five years just to meet those

3   requirements.

4   Q.   And could it be as short as 15 months?

5   A.   Could be.

6   Q.   Don't know?

7   A.   We don't have a requirement that we have to

8   within 15 months, but I can't say that we wouldn't.

9   Q.   Fair enough. But with regard to looking

10 backward, at this case, the last three rate cases, we do

11 know?

12   A.   Yes. That has been the pattern.

13   Q.   What has been the pattern?

14   A.   15 months has been the pattern, as well as

15 spending about between a million and a half and $2 million

16 for rate case expense in those cases as well.

17   MR. TRIPP: No other questions, your Honor.

18   COMMISSIONER JARRETT: I'm sorry. I do

19 have some questions.

20 QUESTIONS BY COMMISSIONER JARRETT:

21   Q.   I apologize for jumping back in. Chairman

22 Gunn asked you whether if a rate case is granted, if the

23 shareholders benefit?

24   A.   Yes, he did ask that.

25   Q.   And you answered yes?

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 1          A.     Yes.

 2          Q.     If it is -- in the rate increase, you are

 3   given money to buy new poles to put up new lines.  Do the

 4   shareholders benefit from that?

 5          A.     To the extent that we don't earn our

 6   allowed return or that we don't get close to it by the

 7   actions that we take, then our shareholders do not benefit

 8   from that.  The customers directly benefit from any

 9   capital investment we make.  The shareholders benefit if

10   we're able to earn a return on that investment.

11          Q.     But having -- having a utility be able to

12   provide reliability by putting up new holes, does that

13   benefit the shareholders?

14          A.     No.  Shareholders don't directly benefit

15   from the level of reliability that our customers afford or

16   expect.

17                 COMMISSIONER JARRETT:  Okay.  Thank you.

18   No further questions.

19                 JUDGE WOODRUFF:  Anyone wish any recross

20   based on those questions?

21                 MR. MILLS:  No, thank you.

22                 MR. THOMPSON:  No, thank you.

23                 JUDGE WOODRUFF:  Any redirect?

24                 MR. TRIPP:  No.

25                 JUDGE WOODRUFF:  Ms. Barnes, you can step
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 1 down. And we'll call the next witness, which would be

 2 Lisa Hanneken with staff.

 3   MR. TRIPP: Just a query, Judge Woodruff.

 4 I anticipated being finished so I'd be in Columbia at

 5 6:15. If I don't, I just need to make a phone call

 6 because I had an appointment scheduled at 6:15 this

 7 evening. I can make a phone call and change that.

 8   JUDGE WOODRUFF: Let me ask the other

 9 parties, do you anticipate extensive cross on these

10 witnesses?

11   MR. MILLS: I have no cross for my own

12 witness, and I have very limited cross for the Staff

13 witness.

14   MR. TRIPP: It will probably me who will be

15 longer. I'm sorry.

16   JUDGE WOODRUFF: If you want to take a

17 five-minute break and make your call, we'll do that.

18   MR. TRIPP: All right. Thank you, Judge.

19   COMMISSIONER KENNEY: You're saying you're

20 going to keep us here, that you're not going to able to

21 keep your 6:15 appointment?

22   JUDGE WOODRUFF: Of course, the other

23 alternative would be to push them back, take these

24 witnesses tomorrow.

25   MR. THOMPSON: I would vote on that one.

1   JUDGE WOODRUFF: I'm sorry. What did you

2   say?

3   MR. THOMPSON: I was just saying I would

4   vote for pushing them 'til the morning.

5   JUDGE WOODRUFF: We can go ahead and get

6   started on Ms. Hanneken. We'll plan on ending at

7   five o'clock, then. I'm sure Mr. Robertson will be here

8   tomorrow.

9   MR. ROBERTSON: I have nowhere else to go.

10   JUDGE WOODRUFF: Ms. Hanneken. Good

11   afternoon. Please raise your right hand.

12   (Witness sworn.)

13   LISA HANNEKEN testified as follows:

14   DIRECT EXAMINATION BY MR. THOMPSON:

15   **Q.   State your name, please.**

16   A.   Lisa Hanneken.

17   **Q.   And could you spell your last name for the**

18   **reporter, please?**

19   A.   H-a-n-n-e-k-e-n.

20   **Q.   Are you the same Lisa Hanneken that**

21   **prepared or caused to be prepared certain contributions to**

22   **the Staff cost of service revenue requirement report that**

23   **we've discussed earlier and also surrebuttal testimony**

24   **that's been marked as Exhibit 236?**

25   A.   Yes.

 1   Q.   And do you have any corrections to either

 2   of those items?

 3   A.   No, I do not.

 4   Q.   And if I was to ask you those questions

 5   today, would your answers be the same?

 6   A.   Yes, they would.

 7   Q.   And to the best of your knowledge and

 8   belief, is the information contained in those pieces of

 9   testimony true and correct?

10   A.   Yes.

11   MR. THOMPSON: With that, your Honor, I

12   would offer Exhibit 236.

13   JUDGE WOODRUFF: 236 has been offered. Any

14   objections to its receipt?

15   (No response.)

16   JUDGE WOODRUFF: Hearing none, it will be

17   received.

18   (STAFF EXHIBIT NO. 236 WAS RECEIVED INTO

19   EVIDENCE.)

20   MR. THOMPSON: And I would tender

21   Ms. Hanneken for cross-examination.

22   JUDGE WOODRUFF: For cross then beginning

23   with Public Counsel.

24   CROSS-EXAMINATION BY MR. MILLS:

25   Q.   Ms. Hanneken, have you been in the hearing

 1   room during the previous questions and the opening

 2   statements on this issue?

 3   A.   Yes.

 4   Q.   And so you've heard some of the analogies

 5   drawn between rate case expense and advertising expense,

 6   correct?

 7   A.   Yes.

 8   Q.   And you are the lead auditor in this case,

 9   correct, for Staff?

10   A.   Correct.

11   Q.   Are you familiar with the company's filed

12   case with respect to its advertising expenses?

13   A.   Somewhat familiar. I couldn't quote exact

14   numbers.

15   Q.   Just in general terms, did the company not

16   in its direct case categorize its advertising into the

17   different categories that the Staff traditionally uses?

18   A.   I believe it did.

19   Q.   And so it would have categorized some of

20   its advertising as institutional, recognizing that that

21   would not be included in rate case, in the rate increase,

22   correct?

23   A.   Correct.

24   Q.   Okay. Have you testified on advertising

25   expenses in prior cases?

 1   MR. TRIPP: I'm going to object as to

 2   relevance, your Honor.

 3   MR. MILLS: The relevance is that the

 4   company is alleging that rate case expense is an expense

 5   that must be allowed in its entirety. It's our position

 6   that rate case expense is analogous to advertising in that

 7   some of it is beneficial to shareholders rather than

 8   ratepayers and should be disallowed on the same basis that

 9   rate case expense -- that advertising expense is

10   disallowed. I'm developing that analogy through

11   cross-examination of this witness.

12   JUDGE WOODRUFF: I'll overrule the

13   objection.

14   BY MR. MILLS:

15   Q.   **And the question was, have you testified on**

16   **the issue of advertising expense in prior cases?**

17   A.   Yes, I believe back in around 2002 for a

18   Laclede case.

19   Q.   **And in that case, did you take the -- take**

20   **the position on behalf of Staff that some advertising**

21   **benefits shareholders and should not be included in the**

22   **calculation of cost of service?**

23   A.   Yes, I did.

24   MR. MILLS: That's all the questions I

25   have. Thank you.

1   JUDGE WOODRUFF: All right.

2   Cross-examination for Ameren.

3   CROSS-EXAMINATION BY MR. TRIPP:

4   **Q.   Good afternoon, Ms. Hanneken.**

5   A.   Good afternoon.

6   **Q.   I wanted to begin with some at least what I**

7   **understood until today, may still be true, Staff's general**

8   **view on recovery of rate case expense. All right?**

9   A.   All right.

10   **Q.   First of all, staff agrees that a regulated**

11   **utility is entitled under traditional ratemaking concepts**

12   **to rates that allow a reasonable opportunity for recovery**

13   **of all reasonable and prudent amounts expended in**

14   **rendering utility service to customers, true?**

15   A.   Correct.

16   **Q.   And Staff agrees that this opportunity**

17   **extends to costs incurred by the utility to set new rates**

18   **within the established regulatory process in Missouri,**

19   **correct?**

20   A.   Yes.

21   **Q.   And Staff agrees that the general rules**

22   **governing rate case expense provide that those expenses**

23   **that are known and measurable, reasonable and necessary**

24   **and prudently incurred in the preparation and presentation**

25   **of the company's case may be included in the allowable**

 1   expenses of the company, true?

 2   A.   True.

 3   Q.   And Staff agrees that some expenses of rate

 4   case include legal fees from outside counsel, consulting

 5   fees, expert witness fees, shipping expense and costs

 6   incurred by the company employees to attend case-related

 7   activities in Jefferson City, true?

 8   A.   I believe those have been traditionally the

 9   types of expense.

10   Q.   So you agree?

11   A.   Correct.

12   Q.   Now, Staff agrees that utilities should

13   have reasonable discretion to hire outside consultants in

14   rate proceedings, true?

15   A.   When they're reasonably and prudently

16   incurred, yes.

17   Q.   And it's not been Staff's position that

18   rate case expenses should be shared by the company's

19   shareholders, true?

20   A.   It's not Staff's position in this case.

21   Q.   Well, it's never been Staff's position in

22   any other rate case that you've testified in; isn't that

23   true?

24   A.   None that I've testified in, no.

25   Q.   And Staff agrees that under the existing

1 regulatory system in this jurisdiction, a utility is

2 required to incur certain costs in attempting to establish

3 new rate levels, and given that fact, rate case expenses

4 are a necessary cost for utilities to incur, true?

5   A.   I'm sorry. Could you repeat that?

6   Q.   Yes. I'm sorry. Staff agrees that under

7 the existing regulatory system in this jurisdiction, a

8 utility is required to incur certain costs in attempting

9 to establish new rate levels, and given that fact, rate

10 case expenses are a necessary cost for a utility to incur,

11 true?

12   A.   Yes.

13   Q.   All right. Now, with those general

14 principles in mind, Ms. Hanneken, I want to ask you about

15 your recommendations in this case as I understand them.

16 As I understand your testimony, Staff's position is that

17 1.5 million is the appropriate level of rate case expense,

18 true?

19   A.   Correct.

20   Q.   And that amount assumes that the company

21 will not file another rate case, your amount assumes that,

22 for 18 months, correct?

23   A.   The 1.5 million is the overall amount in

24 totality that we believe the company will expend on this

25 rate case.

1   Q.   Right. And that's based on the assumption

2   that the company won't file another rate case until

3   18 months?

4   A.   No.

5   Q.   Do you remember giving your deposition --

6   no. But the total -- I'm sorry. Maybe I asked the

7   question incorrectly. I'm sorry.

8   But the 1.5 million is based on the fact

9   that this 1 million annualized expense that you recommend

10   will allow the company to recover 1.5 million over a

11   period of 18 months, true?

12   A.   1.5 million, if you back it into how much

13   the annual amount would be, meaning you would divide it by

14   18 months, times it by 12 times, you would get $1 million

15   as an annual amount.

16   Q.   And isn't that your recommendation in this

17   case?

18   A.   In my testimony, correct. Yes.

19   Q.   But in your testimony, in the cost of

20   service report your recommendation was $1 million annual

21   expense, correct?

22   A.   Correct.

23   Q.   And in your surrebuttal testimony that you

24   filed that was the same, true?

25   A.   Correct.

1   Q.   I take it by your answer that you're

2   telling me today there's a different recommendation that

3   you have now?

4   A.   Well, I believe that Ms. Barnes had stated

5   this morning that there is a certain date when the company

6   may anticipate filing. If that's the case, if I were to

7   take that into account, then my amount would be closer to

8   620,000 of an annual amount.

9   Q.   What is your opinion or your recommendation

10   today?

11   A.   Currently, my position as filed in my

12   testimony is $1 million of annual expense.

13   Q.   All right. Now, you heard Ms. Barnes

14   testify that this rate case and the last three rate cases

15   prior to this rate case resulted in the filing of a rate

16   case approximately every 15 months, true?

17   A.   True.

18   Q.   And, in fact, the information that you

19   looked at in this case regarding Ameren's past rate case

20   expense indicated that that was the case, that average

21   about 15 months between rate cases, true?

22   A.   For those three cases, yes, it does

23   average.

24   Q.   And then you take this case into account,

25   that's another 15 months, roughly, correct?

1   A.   If you look at the prior four cases, it's

2   actually like 17 months.

3   Q.   Well, you're throwing in the 2007 case,

4   correct?

5   A.   Correct.

6   Q.   And I'm talking about the last -- the three

7   cases since then and then this case.

8   A.   Correct.

9   Q.   And those four cases average about

10   15 months, correct?

11   A.   Yes.

12   Q.   All right. And whether it's 15 months or

13   your scenario of 18 months or whatever, if the company's

14   rate case expense exceeds $1.5 million, then the company

15   would not recover those amounts, true?

16   A.   Correct.

17   Q.   And as I understand it big picture wise,

18   Ms. Hanneken, staff's determination of the prudence and

19   reasonableness of rate case expense in this case is based

20   on whether it exceeds this appropriate level of rate case

21   expense, true?

22   A.   I'm sorry. Could you repeat that?

23   Q.   Yes. I'm sorry. It's late in the day. My

24   mouth is lazy. Staff's determination of the prudence and

25   reasonableness of rate case expense in this case is based

 1   on whether it exceeds this appropriate level of rate case

 2   expense that you've identified, true?

 3   A.   No, not -- not completely, no. I mean, as

 4   far as prudency, Staff also looked at ear factors to

 5   determine whether the costs were prudently incurred. We

 6   actually looked at each and every invoice to make sure

 7   there's no duplication of costs being paid, those type of

 8   things.

 9   Q.   I'm sorry. Just a moment. Ms. Hanneken,

10   do you recall giving your deposition in this case?

11   A.   Yes, I do.

12   Q.   And do you have a copy of your transcript?

13   A.   Yes, I do.

14   Q.   Can you turn to page 41 of that transcript,

15   please?

16   A.   All right.

17   Q.   All right. And if you go to the question

18   beginning on line 14, I'll read the question if you'll

19   read the answer for me, please. The question was: All

20   right. Let's see if I can remember where we were before

21   we chased all those rabbits. Sorry about that,

22   Commissioners. When you talked earlier about expenses

23   that were prudent and reasonable, my understanding of

24   Staff's position then is that how prudence and

25   reasonableness is determined at least by your proposal is

1   whether or not Ameren's rate case expense exceeds 1.5 to

2   $1.6 million. Is that that accurate? And your answer

3   was?

4   A.   Yes.

5   Q.   All right. And you don't know of any other

6   public utility commission in the United States,

7   Ms. Hanneken, that sets a particular dollar limit or cap

8   on rate case expense; isn't that true?

9   A.   Not to my knowledge.

10   Q.   And Staff knows that because they've

11   actually surveyed other public service commissions in the

12   United States?

13   A.   I have not seen any survey. I just don't

14   know whether that's the case or not.

15   Q.   But you're here on behalf of Staff,

16   correct?

17   A.   Correct.

18   MR. TRIPP: Your Honor, may I approach?

19   JUDGE WOODRUFF: You may.

20   BY MR. TRIPP:

21   Q.   First, just a couple preliminary questions.

22   You're aware that Mr. Oligschlaeger on Staff was in charge

23   of surveying other utility commissions across the United

24   States, true?

25   A.   I don't know if he was in charge of that,

1 no, I don't.

2   Q.   He worked on that, correct?

3   A.   He has been working on the AW docket.

4 That's all I'm aware of.

5   Q.   In fact, you actually went to him to get

6 information for your testimony, correct?

7   A.   No. He provided me something when we were

8 discussing the issue.

9   Q.   He provided you with information on a rate

10 case expense for other large utilities in Missouri, true?

11   A.   Correct.

12   Q.   All right.

13   MR. TRIPP: Now may I approach, your Honor?

14   JUDGE WOODRUFF: You may.

15 BY MR. TRIPP:

16   Q.   Ms. Hanneken, I've handed you a stack of

17 papers that include, first of all, a letter addressed to

18 me from Mr. Reed of the Commission, correct?

19   A.   Yes.

20   Q.   And then attached to it are a group of

21 surveys from various states, survey responses, correct?

22   A.   I'll see in a moment, yes.

23   Q.   Go ahead and look at it. I'm sorry.

24   A.   Yes. I believe there's e-mails in here as

25 well.

1   Q.   Indicating that survey responses had been

2 received, correct?

3   A.   And I believe some definitions, questions

4 being asked from other states.

5   Q.   All right. And so -- and so -- and if

6 you'll look on the first page of the letter, it says the

7 first sentence, enclosed you'll find 424 pages of

8 documentation responsive to your Sunshine Law request.

9 Surveys from various states commissions are included,

10 true?

11   A.   Yes.

12   Q.   All right.

13   MR. MILLS: Judge, I'm going to object at

14 this point. We're having a lot of questions about this

15 document without laying any kind of a foundation.

16   MR. TRIPP: That was the foundation. I was

17 just getting ready to move for its admittance, your Honor.

18   MR. MILLS: I would object to its admission

19 because there's been insufficient foundation laid. This

20 witness has never indicated she's ever seen the document

21 before, that she had any role in preparing it or that she

22 can verify any of the information contained therein.

23 There's simply been no foundation laid.

24   JUDGE WOODRUFF: Let me deal with marking

25 it first. It will be Exhibit 51.

1   MR. MILLS: Didn't we reserve 50?

2   JUDGE WOODRUFF: We reserved 50. This is

3   51.

4   (AMEREN EXHIBIT NO. 51 WAS MARKED FOR

5   IDENTIFICATION.)

6   JUDGE WOODRUFF: All right. And Mr. Mills,

7   your objection was lack of foundation?

8   MR. MILLS: Yeah. Well, for one thing, the

9   the cover letter seems to indicate that it's a 424-page

10 document, which is certainly not what we have attached

11 here. But beyond that, this witness has done nothing to

12 authenticate this document. Her name doesn't appear on

13 the cover letter. None of the e-mails that I've been able

14 to see within the document either come from her or go to

15 her. So I don't know that -- she certainly hasn't so far

16 done any authentication. I don't know that she can.

17   JUDGE WOODRUFF: Your response, Mr. Tripp?

18   MR. TRIPP: First of all, I can provide all

19 424 pages if the Commission would like that. So I'll

20 offer those just in case.

21   But my second response is, your Honor, is

22 it's an admission against interests. It's clear that it's

23 a representation from Staff. I don't have any other Staff

24 witness to ask about that in this case. She's the Staff

25 witness here representing the Staff. It's an admission

 1   against interest. And the letter clearly establishes on

 2   the first two pages that this was provided from the

 3   Commission and it's a survey that Mr. Oligschlaeger did.

 4   JUDGE WOODRUFF: Mr. Thompson, you wanted

 5   to be heard on this?

 6   MR. THOMPSON: I don't see how it's an

 7   admission against interest. It all seems to be material

 8   Mr. Oligschlaeger received.

 9   MR. TRIPP: That in and of itself, your

10   Honor, makes it admission against interest in that it has

11   information that would be consistent with the -- with the

12   recommendation by Staff in this case.

13   MR. MILLS: First of all, there's nothing

14   in here that indicates that this is information that

15   Mr. Oligschlaeger received.

16   Second, the whole notion of an admission

17   against interest assumes that Staff is a party opponent in

18   this case, and they're not. The Staff is not an opponent

19   to the company. They really have no interest in the case

20   to which they can have an admission against because they

21   are a neutral third party.

22   So I think regardless of even if this could

23   possibly be considered an admission against interests, it

24   still has to be authenticated. This witness still has to

25   be able to say, yes, these are the documents I received,

1   these are documents that I've authenticated, these are

2   documents that I know about, and these documents, you

3   know, operate against my interests, and none of that has

4   happened with this particular document.

5   MR. TRIPP: Your Honor, may I be heard?

6   JUDGE WOODRUFF: Yes.

7   MR. TRIPP: With regard to the

8   authentication by this witness, that's not necessary. If

9   she were to -- if it was just an admission against

10   Ms. Hanneken, true. This is an admission against the

11   Staff's recommendation or interest in this rate case. And

12   so she's here as the representative of Staff. In fact,

13   when she talks in her cost of service report about what

14   her opinion is or recommendation, she doesn't say Ms.

15   Hanneken. She says Staff's recommendation.

16   MR. MILLS: And the cover letter comes from

17   the Commission's general counsel, not from the

18   Commission's staff counsel.

19   MR. TRIPP: And I'd be happy to provide the

20   other 400-whatever pages.

21   JUDGE WOODRUFF: I don't care about

22   400-some pages.

23   MR. THOMPSON: Your Honor, if I could, I

24   don't understand how a mass of material provided by the

25   general counsel to Mr. Tripp in a Sunshine Law request and

 1   purportedly collected by a Staff member constitutes an

 2   admission. An admission is when Staff makes a statement,

 3   a representation in some way that's contrary to the

 4   position they've taken in this case.

 5   JUDGE WOODRUFF: If it's not an admission,

 6   then I assume it would be hearsay. Is that part of your

 7   objection also, Mr. Mills?

 8   MR. MILLS: It certainly would be. I just

 9   got this document. I've never seen it before, but it

10   seems to be at least partial e-mails from other state

11   commissions, but we don't -- we don't have the questions

12   that they're responding to. We don't know who the e-mails

13   went to. We have no way of authenticating that they

14   actually came from the people who they -- who at least

15   some of them appear to have come from.

16   There's just -- there's no way for us to

17   verify this document on its face, and there's no way that

18   this witness has been able to verify it either.

19   JUDGE WOODRUFF: Mr. Tripp, at this

20   point --

21   MR. TRIPP: I have nothing else to add,

22   your Honor.

23   JUDGE WOODRUFF: Pardon me?

24   MR. TRIPP: I have nothing else to add,

25   your Honor.

1   JUDGE WOODRUFF: I was going to give you

2   the opportunity for more questions. With the record as it

3   stands now, I'm going to have to overrule or deny the

4   admission of the document.

5   MR. TRIPP: I have one more issue.

6   JUDGE WOODRUFF: Document will not be

7   received.

8   MR. TRIPP: I have one more issue related

9   on this particular topic, your Honor. May I proceed?

10   JUDGE WOODRUFF: Go ahead.

11   MR. TRIPP: May I approach?

12   JUDGE WOODRUFF: You may. Do you want to

13   mark this one also?

14   MR. TRIPP: Yes, your Honor, please.

15   JUDGE WOODRUFF: This will be 52.

16   (AMEREN EXHIBIT NO. 52 WAS MARKED FOR

17   IDENTIFICATION.)

18   BY MR. TRIPP:

19   **Q.   Ms. Hanneken, you have seen this before,**

20   **correct?**

21   A.   I believe you provided it to me in my

22   deposition.

23   **Q.   Correct. And this was a presentation that**

24   **we talked about in your deposition that was prepared by**

25   **Mr. Oligschlaeger on the Staff, correct?**

1   A.   I believe it was something, a presentation

2   that he made to NARUC, not as a member of Staff per se,

3   but on his own accord.

4   MR. THOMPSON: I wonder if I might voir

5   dire? I think an objection would lie here.

6   MR. MILLS: I think we need to look no

7   further than page 2 and the disclaimer thereon to realize

8   that we're going down the wrong --

9   MR. TRIPP: I can get there, your Honor.

10   MR. THOMPSON: I was just hopeful that --

11   JUDGE WOODRUFF: We'll let Mr. Tripp go a

12   little bit further here and then you can voir dire when he

13   gets --

14   MR. THOMPSON: Very good. Thank you, your

15   Honor.

16   BY MR. TRIPP:

17   **Q.   Ms. Hanneken, on page 2 of that**

18   **presentation there's a standard disclaimer, correct, set**

19   **out?**

20   A.   Correct.

21   **Q.   And it sets out that any -- I don't want to**

22   **testify as to the substance. We'll get to that. It**

23   **disclaims basically that it's not the view of the**

24   **Commission Staff, correct?**

25   A.   Correct.

1   Q.   But it does set out a summary of the survey

2   results that the Commission received in AW-2011-0330,

3   correct?

4   MR. THOMPSON: I'm going to object. I

5   don't know that any foundation has been laid as to how she

6   would know that. The only thing we've heard about this

7   document is that Mr. Tripp provided it to her at her

8   deposition. When I asked to dire voir, I was going to ask

9   her how she knows that it was produced by

10   Mr. Oligschlaeger or that it's a presentation that he

11   gave. As far as I know, she only knows that because

12   Mr. Tripp perhaps told her that. I think that's

13   astonishing bootstrapping. I don't think that lays any

14   kind of foundation that would bring this into the case.

15   JUDGE WOODRUFF: Mr. Tripp, did you have

16   any further foundation?

17   MR. TRIPP: No, I don't, your Honor.

18   JUDGE WOODRUFF: You may voir dire.

19   MR. THOMPSON: Thank you.

20   VOIR DIRE EXAMINATION BY MR. THOMPSON:

21   Q.   Ms. Hanneken, how do -- if you know, why do

22   you believe that Mark Oligschlaeger prepared or produced

23   this?

24   A.   Because that is the way it was presented to

25   me by Mr. Tripp in my deposition.

1   **Q.   That's your only knowledge?**

2   A.   As far as I'm aware right now, yes.

3   MR. THOMPSON: Thank you. I'm going to

4   make that objection that it hasn't been authenticated.

5   There has been no foundation. She received a document

6   from Mr. Tripp, and all she knows about it is what

7   Mr. Tripp told her.

8   MR. MILLS: And Judge, if I may further add

9   to that, even if this witness could say, yes, absolutely

10 this was prepared by Mr. Oligschlaeger, the disclaimer

11 makes it irrelevant to this case because it's

12 Mr. Oligschlaeger's personal beliefs and it says it is not

13 the belief or the position of the Commission or the Staff.

14   So even if this witness could authenticate

15 it, which she can't, it doesn't have any relevance because

16 Mr. Oligschlaeger is not testifying about this issue and

17 he's not here and, furthermore, it's hearsay.

18   JUDGE WOODRUFF: Your response, Mr. Tripp?

19   MR. TRIPP: No. You can rule, Judge.

20   JUDGE WOODRUFF: All right. I'm going to

21 sustain the objections and the document will not be

22 received.

23   MR. TRIPP: Judge, may I continue inquiring

24 on another topic?

25   JUDGE WOODRUFF: You may.

1   CROSS-EXAMINATION (RESUMED) BY MR. TRIPP:

2   **Q.   Let's talk about how you determine that**

3   **$1.5 million rate case expense was prudent and reasonable**

4   **in this particular case.**

5   A.   All right.

6   **Q.   First, your recommendation for rate case**

7   **expense is based on the overall level of expenses and not**

8   **on whether a particular category of rate case expense**

9   **should be disallowed, true?**

10   A.   Correct.

11   **Q.   And, for example, you didn't look at a**

12 **Concentric bill and decide that shouldn't be disallowed,**

13 **true?**

14   A.   I did look at individual invoices, as I

15 said before, to determine that they were prudent and

16 reasonable, to check to see that you didn't pay a bill

17 twice or those type of things.

18   **Q.   Right. But you've not seen anything in**

19 **your audit in this case to indicate that the company has**

20 **not prudently utilized internal resources before hiring**

21 **outside consultants or outside attorneys to prosecute this**

22 **rate case, true?**

23   A.   Not in the documentation I received to

24 date, which is quite dated.

25   **Q.   Now, instead your methodology is described**

1   in Staff's cost of service report, which stated as

2   follows: Staff examined what other large utilities in

3   Missouri have spent in order to process recent rate cases

4   and then reviewed the actual costs from Ameren Missouri's

5   two previous rate cases and compared that to the projected

6   expenses for the current case. Did I state that

7   correctly?

8   A.   Correct.

9   Q.   And Staff's analysis, as your cost of

10 service report reads, of other large utilities was based

11 upon data received in response to informal data requests

12 as part of AW-2011-0330, correct?

13   A.   Correct.

14   Q.   And Staff viewed the amount of rate case

15 expenses required to complete various rate cases in the

16 past few years when they did this, correct?

17   A.   Not for the other large utilities, not the

18 amount. I looked at what they spent their money on, not

19 how much.

20   Q.   In DR response 16 it states, Staff reviewed

21 the amount of rate case expense required to complete

22 various rate cases in the past few years, true?

23   A.   I believe that's what it does state.

24   Q.   And it's true that this review was to gain

25 knowledge of what costs other large utilities incur for

1 rate case expense in order to assess if Ameren Missouri

2 was incurring costs which were unusual as comparable to

3 what other utilities typically incur. Isn't that what DR

4 16's response states?

5   A.   As to whether or not Ameren Missouri is

6 incurring the same types of costs as other utilities in

7 the state.

8   Q.   Are you saying that I did not read your

9 response to DR 16 correctly?

10   A.   I don't know if you read it word for word,

11 but that is -- that is what it states.

12   MR. TRIPP: May I approach the witness,

13 your Honor?

14   JUDGE WOODRUFF: You may.

15 BY MR. TRIPP:

16   Q.   Ms. Hanneken, I'm showing you Staff

17 response to DR 16.

18   JUDGE WOODRUFF: This will be 53.

19   MR. TRIPP: Thank you, your Honor.

20   (AMEREN EXHIBIT NO. 53 WAS MARKED FOR

21 IDENTIFICATION.)

22 BY MR. TRIPP:

23   Q.   Ms. Hanneken, first of all, you recognize

24 that that's the answer you gave in response to --

25   A.   Correct.

1   Q.   -- DR from Ameren Missouri, correct?

2   A.   Yes.

3   Q.   And that's dated July 19th, 2012?

4   A.   Correct.

5   MR. TRIPP: Your Honor, move to admit DR

6   Staff 16, which is Exhibit 53.

7   JUDGE WOODRUFF: 53 has been offered. Any

8   objections to its receipt?

9   MR. THOMPSON: No objection.

10   JUDGE WOODRUFF: Nearing none, it will be

11   received.

12   (AMEREN EXHIBIT NO. 53 WAS RECEIVED INTO

13   EVIDENCE.)

14   BY MR. TRIPP:

15   Q.   So, Ms. Hanneken, looking now at that DR

16   response, isn't it true at the very beginning of that

17   response said that regarding Staff's cost of service

18   report, Staff's analysis of other large utilities was

19   based upon data received in response to that AW-2011-0330

20   case, correct?

21   A.   Correct.

22   Q.   And then Staff viewed the amount of rate

23   case expense required to complete various rate cases in

24   the past few years, correct?

25   A.   Yes. What the amounts were spent on, yes.

1   Q.   And this review was to gain knowledge of

2   what costs other large utilities incurred for rate case

3   expense in order to assess or access if Ameren Missouri

4   was incurring costs which were unusual, correct?

5   A.   Correct.

6   Q.   And that's part of what you did, and that

7   was part of a reasonable check, at least was what you

8   state here, correct?

9   A.   Correct. To see if Ameren Missouri's costs

10   were in line with what other utilities spent their money

11   on, yes.

12   Q.   And those other utilities were Empire

13   District, KCPL, KCPL GMO, correct?

14   A.   Correct.

15   Q.   And though you reviewed this information to

16   determine whether Ameren Missouri's request was

17   reasonable, Ameren Missouri's unable to review that same

18   information that you looked at, aren't they, Ms. Hanneken?

19   A.   At the current time, yes.

20   Q.   And you were looking at that information

21   when you were determining what level of rate case expense

22   was reasonable or appropriate in this case?

23   A.   That amount did not play into the

24   calculation of the 1.5 million. That amount was just a

25   reasonableness check to ensure that Ameren Missouri was

1   not incurring costs that other utilities within the state

2   did not normally incur. So it's sort of like me looking

3   at the invoices to see if you were double paying. I was

4   making a prudency check to see if the costs you were

5   incurring were reasonable as compared to what other

6   companies were incurring. Like, for example, did KCPL

7   hire outside attorneys?

8   Q.   **Ms. Hanneken, let me ask you this question.**

9   **The truth is, is that I cannot look at the information**

10   **that you looked at when you were determining the**

11   **reasonableness or the prudency of Ameren Missouri's rate**

12   **case expense costs, correct? I cannot look at the**

13   **information that you looked at, true?**

14   A.   Not currently because it is classified as

15   highly confidential. We're trying to get it declassified.

16   Q.   **I understand that, but it's not even yet**

17   **been declassified?**

18   A.   Correct.

19   Q.   **Now, that spreadsheet data that you**

20   **reviewed for each of these large utilities would tell**

21   **Ameren Missouri how its rate case expense would have**

22   **stacked up against rate case expense of other large**

23   **utilities that you looked at, true?**

24   A.   I'm sorry. Could you repeat that?

25   Q.   **Yes. That spreadsheet data that you**

1   **reviewed about the other large utilities that you looked**

2   **at, that would tell Ameren Missouri how its rate case**

3   **expense would have stacked up against the rate case**

4   **expense of those other large utilities, true?**

5   A.   I'm not sure if I'm understanding your

6   question. Are you saying that the dollars in totality?

7   Are you talking about the types of expenses? Could you

8   clarify that, please?

9   **Q.   Sure.**

10   MR. TRIPP: May I approach the witness,

11   your Honor?

12   JUDGE WOODRUFF: You may. And this will be

13   54.

14   (AMEREN EXHIBIT NO. 54 WAS MARKED FOR

15   IDENTIFICATION.)

16   MR. TRIPP: And I believe this contains --

17   I believe this contains at least a couple columns of

18   highly confidential information, your Honor. We request

19   that it be marked highly confidential.

20   JUDGE WOODRUFF: It's 54HC.

21   BY MR. TRIPP:

22   **Q.   Ms. Hanneken, with regard to what I just**

23   **handed you which has been marked as 54HC, this is a**

24   **document that you provided to me during your deposition,**

25   **correct?**

1   A.   Correct.

2   **Q.   And this is information that you had**

3   **available to you and indeed reviewed and relied upon in**

4   **forming your opinion in this case as to the recommendation**

5   **of what rate case expense was reasonable, true?**

6   A.   Correct. It's what Ameren Missouri

7   provided to Staff.

8   MR. TRIPP: Your Honor, move to admit

9   Exhibit 9 into evidence -- or I'm sorry, 54HC.

10   JUDGE WOODRUFF: 54HC has been offered.

11   Any objections to its receipt?

12   MR. MILLS: Judge, I don't know that I have

13   an objection to its receipt. I'm not sure I agree it

14   should be categorizethis as highly confidential. I don't

15   see anything on here that indicates it's highly

16   confidential. It appears to be information from past rate

17   cases that are historical information which generally does

18   not fit into the Commission's classification of highly

19   confidential information.

20   JUDGE WOODRUFF: Mr. Tripp, why would this

21   be HC?

22   MR. TRIPP: Well, because it's the same

23   stuff that the Staff's refused to provide me that they

24   said was highly confidential about other utilities. So I

25   assumed that it was HC. It is historical information.

 1   It's never been published, but it doesn't meet the highly

 2   confidential designation, I understand.

 3   JUDGE WOODRUFF: Does Staff believe this is

 4   highly confidential?

 5   MR. THOMPSON: No, Staff does not. This

 6   is, in fact, Ameren Missouri's information. The

 7   information Mr. Tripp is talking about that he hasn't been

 8   allowed to see is information that belongs to other

 9   companies, and there's a statute that prohibits the Staff

10   from revealing it to anyone.

11   JUDGE WOODRUFF: Mr. Tripp, do you withdraw

12   the HC?

13   MR. TRIPP: I'll withdraw the HC.

14   JUDGE WOODRUFF: Any other objections to

15   it's receipt?

16   MR. THOMPSON: No objection.

17   JUDGE WOODRUFF: Then it will be received.

18   (AMEREN EXHIBIT NO. 54 WAS RECEIVED INTO

19   EVIDENCE.)

20   BY MR. TRIPP:

21   Q.   Ms. Hanneken, you told me in your

22   deposition that this spreadsheet was similar in terms of

23   the type of information that's recorded on it with regard

24   to KCPL, KCPL GMO and Empire, didn't you?

25   A.   Correct.

1   Q.   And that would be the information, just

2   another tab on the spreadsheet is what you told me it was?

3   A.   Correct.

4   Q.   So if I had this information, which isn't

5   highly confidential for Ameren Missouri, if I had that

6   information for KCPL, KCPL GMO and Empire, I'd be able to

7   look at these categories and compare those numbers,

8   wouldn't I?

9   A.   If that was your intent of looking at it,

10   yes.

11   Q.   And is it still your position that this

12   information with regard to those other utilities is highly

13   confidential?

14   A.   That is the way they classified it. I'm

15   not a legal expert, so I can't tell you one way or the

16   other.

17   Q.   All right. Just on this, while we're on

18   this Exhibit 54, it compiles the costs for outside

19   consultants and outside attorneys, true?

20   A.   It shows that they did hire them, yes.

21   Q.   Well, it also shows the amount?

22   A.   It does. Yes, it does.

23   Q.   And it also shows, for example, the total

24   rate case expense per customer, true?

25   A.   Yes, it does.

1   Q.   All right. And so again, if I had that

2   information, I could look at Ameren Missouri and look at

3   KCPL, look at KCPL GMO and Empire just to see as a

4   reasonable check, like you did, how reasonable Ameren

5   Missouri's rate case expenses have been, correct?

6   A.   No. I don't think that would be a good

7   comparison.

8   Q.   Well, I didn't ask if you thought it would

9   be a good comparison. I could do that comparison,

10   couldn't I?

11   A.   Yes.

12   Q.   All right. And, in fact, as I understand

13   it, your testimony is that when you looked at these other

14   tabs on this spreadsheet that had this information for

15   other utilities, you were just simply looking to see

16   whether or not KCPL, in fact, had expenses for outside

17   consultants or outside attorneys, true?

18   A.   Correct.

19   Q.   You didn't bother to look at what the cost

20   was?

21   A.   Correct, because that was not part of my

22   analysis.

23   Q.   So if KCPL had $10 for outside consultant

24   costs, for example, that wouldn't have mattered; it's just

25   that they had an expense for outside consultants, that was

1 the only thing that was relevant to you?

2   A.   I believe I said in my deposition that I

3 realized that everyone had around 100,000 range in

4 hundreds of thousands of dollars. So if there were a $10

5 item, I would have quickly recognized that and saw that

6 that was an outlier.

7   Q.   With regard to total rate case expense per

8 customer, the last three rate cases for Ameren Missouri

9 that are recorded on Exhibit 54, each of those averages

10 were lower than, for example, another large utility that

11 you looked at, true?

12   A.   I did not make that comparison.

13   Q.   Didn't look at, for example, KCPL GMO?

14   A.   No, because I think if you try to compare

15 those numbers, there's a lot of skewing. You can't

16 compare it apples to apples.

17   Q.   The bottom line is, though, the information

18 you looked at, regardless of what you looked at, we're

19 unable to look at today to determines the reasonableness

20 of prudency of Ameren Missouri's rate case expense, true?

21   A.   Yes.

22   Q.   I want to return to how you actually

23 determined that a potential recovery of $1.5 million in

24 rate case expense was appropriate. And let me know, your

25 Honor, if I need to stop at any point.

1   You contend in forming your opinion in this

2   rate case with regard to the appropriate level of rate

3   case expense, you did no analysis with regard to the

4   issues that face these other large utilities, true?

5   A.   Correct.

6   Q.   You didn't compare the number of issues

7   between those utilities and the number of issues in this

8   case, for example?

9   A.   I wasn't basing my $1.5 million on what

10   other utilities have spent.

11   Q.   So you didn't compare the relative size of

12   the utilities, the total number of witnesses filing

13   testimony?

14   A.   There was no need to for my analysis.

15   Q.   Didn't compare the number. Intervenors,

16   didn't -- in fact, you believe that that testimony is

17   irrelevant to what other utilities spend in rate case

18   expense, true?

19   A.   There are too many variables, and I had

20   actual Ameren Missouri history historical data to rely

21   upon.

22   Q.   Well, let's talk about that comparison that

23   you did. You didn't have any comparison regarding the

24   number of issues in this rate case with any of those prior

25   rate cases, did you?

 1   A.   Only what's been presented in prior

 2   testimony.

 3   Q.   But when I talked with you in your

 4   deposition at least, you had not done any comparison with

 5   regard to the number of issues in this rate case with

 6   Ameren Missouri's prior rate cases; isn't that true?

 7   A.   No.

 8   Q.   That's not true?

 9   A.   I'm sorry. Yes, it is true that I had not

10   made that comparison because I was very familiar with the

11   rate case.

12   Q.   You did not compare the total number of

13   witnesses in each rate case, correct?

14   A.   No.

15   Q.   Total number of outside consultants in each

16   rate case? We're just talking Ameren Missouri.

17   A.   Correct.

18   Q.   Did not compare the number of intervenors?

19   A.   That was not part of my analysis.

20   Q.   Number of outside consultants, right?

21   A.   Correct.

22   Q.   Before making your recommendation in this

23   case, you did not conduct any specific analysis to take

24   into account the fact that any number of intervenors such

25   as MIEC can hire attorneys to represent them in rate cases

1 and retain outside consultants to testify concerning the

2 company's request; isn't that true?

3   A.   Well, that happens in every rate case, so I

4 did not make an analysis.

5   Q.   I'll cut this short here. In preparing

6 your recommendation for this $1 million annualized rate

7 case expense, you didn't use any particular mathematical

8 formula to arrive at that amount in comparison with Ameren

9 Missouri's last rate cases, true?

10   A.   I looked at the declining balance and

11 looked at what the appropriate level of ongoing -- the

12 ongoing level of rate case expense, what it would be based

13 on the declining balance of the historic and also based on

14 the estimate.

15   Q.   Ms. Hanneken, you didn't do any

16 mathematical calculation, that was my question, correct?

17   A.   Not on paper, no.

18   Q.   All right. And you didn't conduct any real

19 analysis of this case compared with past rate cases but

20 based your recommendation at least in part on your

21 assumption that, as I think you've already said, rate case

22 expense would continue to decrease, correct?

23   A.   Correct.

24   Q.   And with regard to the sense that rate case

25 expenses have been decreasing, isn't it true that you're

1   not able to tell me whether in the last five years hourly

2   rates for attorneys have increased or decreased?

3   A.   Correct, because I did not look at it in

4   that microscopic type of view. I looked at in totality.

5   Q.   You can't tell me generally whether outside

6   consultants' fees, hourly rates have increased or

7   decreased in the last five years, true?

8   A.   True.

9   Q.   Didn't even consider that information to be

10 relevant is what you told us, correct?

11   A.   That was not necessary for my analysis.

12   MR. TRIPP: No other questions.

13   JUDGE WOODRUFF: I'll ask the

14 Commissioners, do you have extensive questions?

15   MR. TRIPP: I can stay.

16   COMMISSIONER KENNEY: I have nothing

17 extensive. Just a couple things.

18   JUDGE WOODRUFF: Mr. Chairman?

19   CHAIRMAN GUNN: I don't have anything.

20   COMMISSIONER KENNEY: I didn't think you

21 were going to get to me that quick. I don't have any

22 questions, Ms. Hanneken. You've been very helpful.

23   COMMISSIONER STOLL: No questions.

24   JUDGE WOODRUFF: Mr. Tripp, we -- I'm

25 sorry. We have no questions from the bench, so I guess

 1 we'll go back -- there's no need for recross. We'll let

 2 Staff do their redirect.

 3   MR. THOMPSON: Thank you very much, your

 4 Honor.

 5 REDIRECT EXAMINATION BY MR. THOMPSON:

 6   Q.   **Mr. Tripp asked you an extensive series of**

 7 **questions about things you did not do; is that correct?**

 8   A.   Correct.

 9   Q.   **And you didn't disallow any part of their**

10 **rate case expense based on any of those things, did you?**

11   A.   No, I did not.

12   Q.   **How did you calculate one and a half**

13 **million dollars given that the company's estimate is**

14 **$1.9 million?**

15   A.   Well, if you look at the historical data,

16 you can see that it's a downward trend, and you can see

17 approximately how much is declining. In addition, if you

18 look at -- if you noted, they historically overestimate

19 the amount of rate case expense, then you would be able to

20 say, okay, well, they normally overestimate about

21 20 percent, and you can apply that to the estimate in this

22 case, which would lead you to an approximate $1.5 million

23 number.

24   Q.   **Now, in calculating that recommendation,**

25 **was it your intention to disallow any of the actual**

 1   **expenses that Ameren Missouri incurred in this case?**

 2   A.   No.

 3   MR. THOMPSON: Thank you. I have no

 4   further questions.

 5   JUDGE WOODRUFF: Ms. Hanneken, you can step

 6   down. And we'll stop there for the day, and we'll resume

 7   tomorrow with Mr. Robertson on this issue, and then we'll

 8   go back into the remaining issues for tomorrow, which I

 9   believe are property tax refund property taxes and

10   renewable energy center costs. We'll come back at

11   8:30 tomorrow.

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                    AMEREN MISSOURI'S EVIDENCE:

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 2   C E R T I F I C A T E

 3   STATE OF MISSOURI   )

) ss.

 4   COUNTY OF COLE   )

 5   I, Kellene K. Feddersen, Certified

 6   Shorthand Reporter with the firm of Midwest Litigation

 7   Services, do hereby certify that I was personally present

 8   at the proceedings had in the above-entitled cause at the

 9   time and place set forth in the caption sheet thereof;

10   that I then and there took down in Stenotype the

11   proceedings had; and that the foregoing is a full, true

12   and correct transcript of such Stenotype notes so made at

13   such time and place.

14   Given at my office in the City of

15   Jefferson, County of Cole, State of Missouri.

16

                    _____

17   Kellene K. Feddersen, RPR, CSR, CCR

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