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2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS

5 Hearing
6

7 March 20, 2007
8 Jefferson City, Missouri
9 Volume 25

10 In the Matter of Union Electric)
11 Company d/b/a AmerenUE for)
Authority to File Tariffs)
12 Increasing Rates for Electric)Case No. ER-2007-0002
Service Provided to Customers)
13 In the Company's Missouri)
Service Area,)
14

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

17 JEFF DAVIS, Chairman,
18 STEVEN GAW, Commissioner,
ROBERT CLAYTON, Commissioner,
19 CONNIE MURRAY, Commissioner
LINWARD "LIN" APPLING, Commissioner
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: All right. Let's come to
3 order, please. Welcome back. I guess it's Tuesday
4 morning. It's hard to keep track these days.

5 Before we get started on testimony today,
6 there's a couple kind of housekeeping matters to take care
7 of.

8 First of all, I have marked some exhibits that
9 were mentioned by Commissioner Gaw yesterday evening.
10 They are documents from earlier cases involving the EEInc.
11 process.

12 As we indicated last night, we'll go ahead and
13 take administrative notice of those documents. But since
14 they are obtained from the Commission's microfilm records,
15 which are difficult to find at times, or difficult to
16 access, I finally had to mark them as exhibits so that the
17 parties could have them so it's easier to refer to them.

18 The application in Case No. 12064 from 1950 is
19 marked as Exhibit 970. The report and Order from that
20 case is marked as Exhibit 971. And the report and Order
21 from Case No. EF-77197 is marked as 972.

22 And I've got extra copies here. I'll leave them
23 up here if somebody can distribute them for me. Or come
24 up and grab them at the first break.

25 All right. Mr. Dottheim, I believe you also had

1 some exhibits you wanted to mark?

2 MR. DOTTHEIM: Yes. I have the errata sheets to
3 Mr. Michael Moehn's deposition. The -- the deposition has
4 been marked Exhibit 260. Since we've been, I believe,
5 marking the errata sheets separately, I think the Moehn
6 errata sheets would be marked Exhibit 265.

7 JUDGE WOODRUFF: That is correct.

8 MR. LOWERY: 265, Steve?

9 MR. DOTTHEIM: Yes.

10 MR. MILLS: 264?

11 MR. DOTTHEIM: 265. These are Moehn -- Michael
12 Moehn's errata sheet.

13 MR. MICHEEL: Excellent. Thank you.

14 JUDGE WOODRUFF: All right. Exhibit 265 has
15 been offered. Are there any objections to its receipt?

16 MR. LOWERY: No objection.

17 JUDGE WOODRUFF: Hearing none, it will be
18 received into evidence.

19 (Exhibit No. 265 was offered and admitted into
20 evidence.)

21 JUDGE WOODRUFF: Any other housekeeping matters
22 anyone needs to bring up before we get started? I did
23 have a question for the parties. And that involves the
24 various stipulations and agreements that have been filed
25 so far. I've seen two come in. Are there any other

1 issues that are still being worked on for stipulations?

2 MR. DOTTHEIM: Yes.

3 JUDGE WOODRUFF: Okay. Do you know when those
4 will be filed?

5 MR. DOTTHEIM: This week.

6 JUDGE WOODRUFF: Okay. I'm just, of course,
7 anxious to get them in as soon as possible so if there is
8 an objection to them, we still have hearing time to deal
9 with it.

10 MR. DOTTHEIM: Yes. Yes.

11 JUDGE WOODRUFF: I don't want to come back on
12 Easter Sunday or something.

13 MR. DOTTHEIM: No. I would expect in the next
14 several days.

15 JUDGE WOODRUFF: All right. Thank you. All
16 right, then. It appears we're ready to begin with our
17 first witness of the day. And it looks like Mr. Moehn has
18 taken the stand. And you were -- you -- you testified
19 earlier, so you're still under oath.

20 MR. MOEHN: Correct. Yes.

21 DIRECT EXAMINATION

22 BY MR. CYNKAR:

23 Q Mr. Moehn, do you have any corrections to your
24 submitted testimony?

25 A I do.

1 Q Do you have any corrections to your direct
2 testimony?

3 A I do.

4 Q What are those?

5 A On page 2, line 15 -- this is a typo. It should
6 read AmerenUE's portfolio, not AmerenUEs' portfolio. Page
7 13, line 18 should read "in EEInc.'s case at the FERC"
8 instead of "in EEI's case at at the FERC."

9 MR. MICHEEL: Do that again. I'm sorry.

10 MR. MILLS: What page?

11 A Page 13, line 18 should read, "In EEInc.'s case
12 at the FERC" instead of "in EEI's case at at the FERC," so
13 delete at. And let's see. Page 1, the last line of the
14 first paragraph of my executive summary attachment, A-1
15 should read, AmerenUE's portfolio instead of AmerenUEs'
16 portfolio.

17 Q (By Mr. Cynkar) Do you have any other
18 corrections to your testimony?

19 A Yes. To my rebuttal testimony.

20 Q Okay.

21 A Page 16, line 23 should read 83 percent instead
22 of 80 percent.

23 Q Mr. Moehn, could you slow down for a second? My
24 colleagues need to catch up with you. And I don't think
25 they've had enough caffeine to catch up that fast.

1 A Ready to go? Page 16, line 23 should read 83
2 percent instead of 80 percent. And page 17, line 13
3 should read 17 percent instead of 20 percent.

4 MR. DOTTHEIM: What line is that?

5 A Page 17, line 3, I believe.

6 Q (By Mr. Cynkar) Do you have any other
7 corrections?

8 A That's it.

9 Q That's it.

10 MR. CYNKAR: Your Honor, I tender the witness
11 for cross-examination.

12 JUDGE WOODRUFF: Thank you. And for
13 cross-examination, we'll begin with Aquila? Laclede?
14 Joint Bargaining? DNR? Missouri Retailers?

15 MR. OVERFELT: (Mr. Overfelt shakes head.)

16 JUDGE WOODRUFF: MO-KAN? MASW? MIEC?
17 Commercial Group? MEG? AARP?

18 MR. COFFMAN: No questions.

19 JUDGE WOODRUFF: Noranda? For the State?

20 MR. MICHEEL: Yes. I have questions.

21 JUDGE WOODRUFF: All right.

22 MR. MICHEEL: Sorry, your Honor. I'm a little
23 disorganized this morning. I think I left my questions
24 back at the -- I had questions.

25 CROSS-EXAMINATION

1 BY MR. MICHEEL:

2 Q Mr. Moehn, you started with Ameren in 19 -- or
3 in 2000; is that correct?

4 A Correct.

5 Q And -- and prior to that, you worked for Price
6 Waterhouse Cooper's?

7 A Yes.

8 Q And -- and could you give me an idea of what you
9 did at Price Waterhouse Cooper's?

10 A I worked in the audit services side, supervised
11 auditing the agents.

12 Q And in -- in your work there, did you supervise
13 audit engagements of public actualities?

14 A Yes. Among other type of companies.

15 Q Okay. What public utilities did you supervise
16 audits of?

17 A I was involved in Dayton Power & Light and
18 Ameren.

19 Q Any others?

20 A Not that I recall.

21 Q And -- and what were the nature of those audits?
22 Just your general audit?

23 A Yeah. Uh-huh.

24 Q Okay. Have you ever testified before the
25 regulatory body before this appearance?

1 A I have not.

2 Q Have you ever negotiated a purchase power
3 agreement?

4 A I have not.

5 Q Have you ever reviewed purchase power
6 agreements?

7 A No.

8 Q Have you ever offered any -- outside of this
9 proceeding, any regulatory adjustments of any kind before
10 a Public Service Commission?

11 A No. Not before a Public Service Commission.

12 Q Are you aware of something referred to as a
13 regulatory compact?

14 A Sure.

15 Q Could you describe that for me, sir?

16 A I think it -- to me, it means investing in the
17 business and improving customer satisfaction and hopefully
18 receiving a return, a fair return, on that investment.

19 Q Do you believe that a -- the management of a
20 public utility has a duty to the utility's customers by
21 virtue of the natural monopoly associated with retail
22 sales of electricity in Missouri?

23 A I believe we do. Uh-huh.

24 Q Do you believe that UE has a duty to provide
25 safe and adequate and reliable electric service?

1 A Yes.

2 Q Do you believe that UE has a duty to be
3 efficient and cost effective in operating a business?

4 A Yes, I do.

5 Q Do you believe UE has a duty to deal fairly with
6 affiliated companies?

7 A Can you explain deal fairly with affiliated
8 companies?

9 Q Well, let me ask you this: Do you think they
10 have that duty? What -- what part don't you understand?

11 A What do you mean by duty?

12 Q Well, what's your idea of what a duty is?

13 A I -- I suppose they have the -- the right to
14 negotiate with affiliates.

15 Q Well, are you aware that the Missouri Public
16 Service Commission has affiliated transaction rules?

17 A Yes. I'm aware of the rules.

18 Q Have you reviewed those rules?

19 A I have.

20 Q Are you familiar with those rules?

21 A I'm familiar with the concept.

22 Q Do you know that those rules set out certain
23 obligations that -- that a public utility in Missouri is
24 required to follow when dealing with affiliates?

25 A I do.

1 Q And do those rules set out many duties that a
2 public utility is supposed to follow?

3 A That's correct.

4 Q And would you agree with me that they have a
5 duty to deal fairly with affiliate companies?

6 A Yes.

7 Q Now, respecting your direct testimony, it's my
8 understanding -- you had your deposition taken in this
9 case, did you not?

10 A Correct.

11 Q And you've had an opportunity to look at that
12 deposition, make any corrections that -- that you thought
13 were appropriate. Have you done that?

14 A Right. Yes.

15 Q Now, is it correct that with respect -- your
16 direct testimony involves more topics than the EEInc.
17 topic that we're talking about today, correct?

18 A Correct.

19 Q You're going to be up later in the week to talk
20 about those?

21 A Uh-huh.

22 Q Is it correct that Mr. Byrne, for your direct
23 testimony with respect to EEInc., provided you draft
24 questions and answers for that testimony?

25 A He did, with respect to -- you know, on pages 10

1 through 16 with respect to questions related to prior
2 positions taken by other parties related to EEI.

3 Q And, in fact, in your deposition, you testified
4 that it was pretty much completely written by Mr. Byrne;
5 is that correct?

6 A I don't think I ever said it was completely
7 written by Mr. Byrne.

8 Q Okay. Largely written by Mr. Byrne?

9 A Tom assisted me and provided Q&A with respect to
10 on pages 10 through 16, Q&A with respect to prior
11 positions other parties have taken in this case.

12 Q And -- and you made some changes to that, did
13 you not?

14 A Sure. I reviewed -- I reviewed it all. Yes.

15 Q And at the time of your deposition, you couldn't
16 recall what those changes were, could you?

17 A No, I don't.

18 Q Do you recall what those changes are now?

19 A I don't.

20 Q Could you point to me on the pages 10 through 16
21 what parts of that testimony that -- that you did
22 exclusively as opposed to what Mr. Byrne gave you?

23 A The question and answer with respect to the
24 long-term power supply agreement.

25 Q What page are you on, sir, and line?

1 A Page 10, line 9.

2 Q Okay.

3 A Line -- Question 20 on page 10.

4 Q Okay.

5 A Tom provided me Q&A around a question on page 10

6 -- or on page 11, line 10 and page 11, line 16.

7 Q Uh-huh. Question and answer?

8 A Correct. And I provided line -- question on

9 line -- page 12, line 3.

10 Q Okay. Did you provide the answer?

11 A I did.

12 Q Okay.

13 A Tom provided the Q&A with respect to the

14 question on page 6. I'm sorry. Page 13, line 6.

15 Q Okay.

16 A I provided the question on 5 -- on page 14, line

17 5 as well as question 16 -- or line 16, page 14. And Tom

18 provided the question and answers -- no. I'm sorry. Tom

19 provided the question and answer with respect to page 14,

20 line 16. And I provided the question and answer on page

21 15, line 5.

22 Q What about the question and answer for page 15,

23 lines 14 through 23?

24 A Yes. I did that as well.

25 Q Let me ask you this, Mr. Moehn. In the event

1 management of a public utility bases a decision whether it
2 can either conduct a business transaction beneficial to
3 its ratepayers or change the transaction to the benefit of
4 the shareholders, how do you recommend that that dilemma
5 be resolved?

6 A Can you give me an example?

7 Q Well, let me give you this hypothetical. You
8 have a purchase power supply agreement, and the utility
9 has the ability to extend that power supply agreement.
10 And it's a power supply agreement that is cost plus. So
11 let's say a guaranteed 15 percent return. Or the utility
12 -- and this is dealing with an affiliate -- or the utility
13 can let the power supply agreement expire and allow its
14 non-regulated sub to sell that power into the market.

15 And by allowing that power supply agreement to
16 lapse, hypothetical power supply agreement, the -- the
17 utility has to purchase higher cost replacement power than
18 what they would get otherwise.

19 A And this P -- this power supply agreement you're
20 referring to is coming from a separate company?

21 Q It's an affiliate company?

22 A A separate company?

23 Q Sure.

24 A Okay. Well, with respect to that example, I
25 think that -- that Board of that separate company needs to

1 do what's in the best interest as they have a fiduciary
2 obligation to those shareholders.

3 Q Let's -- let's bring it down to the UE level.
4 Let's say that UE controls it all and that UE can either
5 enter into a power supply agreement or they can sell the
6 power off their system. Okay?

7 A Uh-huh.

8 Q How do you resolve that?

9 A When you say UE controls it all, what do you
10 mean?

11 Q Well, Union Electric is on every side. Union
12 Electric can make the decision on whether or not it's
13 going to sell to regulated or use the power for regulated
14 or it's going to sell the power into the market.

15 A Again, I guess the way I look at it is I don't
16 think the shareholders control the company. I believe
17 that the Board makes the decision as to what's in the best
18 interest of that company.

19 Q Well, let me ask you this: When a utility sells
20 to an affiliate, does it seem reasonable for regulators to
21 insist that the utility receives the higher of cost or
22 market value for what they sell?

23 A Repeat the question.

24 Q When a utility sells to an affiliate --

25 A Uh-huh.

1 Q -- does it seem reasonable for regulators to
2 insist that the utility receives the higher of cost or
3 market value for what they sell?

4 A Sure.

5 Q And that's consistent, is it not, with the --
6 the affiliated transaction rules that this Commission has
7 promulgated and approved; is that correct?

8 A That is correct. That's one side of the -- the
9 rules. Yeah. And vice versa. They cannot buy from --
10 they have to buy from an affiliate to lower their cost
11 market.

12 Q So they're symmetrical in that way; is that
13 correct?

14 A Asymmetrical, yeah. However you want to look at
15 it.

16 Q Okay. Do you have your rebuttal testimony with
17 you, sir?

18 A I do.

19 Q I want to ask you some questions about that
20 testimony. And I'm -- I'm focusing, I think, on -- let me
21 ask you this first with respect to the EEInc. issue.

22 Did Mr. Byrne provide you any draft question and
23 answers for your rebuttal testimony?

24 A He did not.

25 Q Okay. So that practice ended after the direct

1 testimony?

2 A He did not provide me any comments.

3 Q Okay. You talked there on -- on the first Q&A,
4 the first answer, you say, "It is important to properly
5 characterize this unique notion of support sometimes
6 referred to in various testimony as -- as financial
7 support"; is that correct?

8 A Yes.

9 Q And you know indicate that -- that the -- the
10 50-year purchase power contract that -- that Union
11 Electric had with EEInc. is, to use your term,
12 unremarkable; is that correct?

13 A That's what it says. Yes. Uh-huh.

14 Q Well, you stand by that, do you not?

15 A I do.

16 Q Okay. Do you know, sir, if most purchase power
17 -- most long-term purchase power agreements do not involve
18 owning the seller or at least owning an ownership interest
19 in the seller?

20 A I don't know that.

21 Q Okay. And -- and you haven't even looked at
22 enough purchase power contracts to know that one way or
23 another; is that correct?

24 A No. Just the other one related to the -- that
25 UE has with Arkansas Power & Light.

1 Q We're going to get to that one.

2 A Uh-huh.

3 Q Is it -- is it remarkable where the buyer owns
4 part of this -- well, is it remarkable where the buyer
5 guarantees the debt service of the seller?

6 A I think the way that the PSA was structured that
7 it was -- it was a cost base contract and included all
8 costs of -- of providing that power.

9 Q Well, you were here yesterday, were you not,
10 sir?

11 A I was.

12 Q And you were here today when we marked and put
13 into evidence Exhibit 972, you were not?

14 A Yes.

15 Q And you certainly reviewed the Commission's
16 report and Order in Case No. EF-77197, have you not?

17 A Which one -- which one is that?

18 Q Exhibit 972. I can -- I can give it to you.

19 A Yeah. If you could, please.

20 Q Let me -- let me -- let me just back up the bus
21 here and lay some foundation for this. Did -- did you
22 review the Commission's initial -- or your company's
23 initial application and the report and Order that approved
24 the application to -- to purchase the stock in EEInc.?

25 A If you're referring to Orders 12064 and 12364,

1 yes.

2 Q And so you're aware that -- that Union Electric
3 company had to come to this Commission and seek permission
4 to -- to guarantee the debt of that; is that correct?

5 A I thought those original was in -- authorized
6 they could purchase the stock.

7 Q Okay. You're right. Let's start -- to purchase
8 the stock; is that correct?

9 A Correct.

10 Q And the Commission did that; is that correct?

11 A Yes. I believe at the time EEI was an Illinois
12 utility, and they had to get authorization to do that.

13 Q And that's because UE was purchasing some stock;
14 is that correct?

15 A Correct.

16 Q Okay. And then the -- the -- the 1977 case,
17 have you reviewed that case?

18 A Yes, I have. That ER-77197?

19 Q Yes, sir.

20 A Uh-huh.

21 Q And -- and that's the guarantee, is it not, of
22 the debt?

23 A Yes.

24 Q And so you would agree with -- well, is it
25 remarkable that there's a purchase power supply agreement

1 where one of the people purchasing the power is
2 guaranteeing the debt of the power supplier? Is that
3 unique?

4 A Again, I'm not sure if it was or not. I mean,
5 again, this was a cost based contract that included all
6 costs.

7 Q Well, do you think it's common for -- for -- let
8 me ask you this: You talked about the energy contract,
9 did you not, that UE has right now?

10 A Correct.

11 Q Is that a provision of that contract? Are you
12 guaranteeing Entergy's debt?

13 A I'm not sure we're guaranteeing their debt.
14 There's cost of debt in there.

15 Q That's not my question, sir. Are you
16 guaranteeing the debt like Ameren -- I mean, you know the
17 difference, don't you, sir?

18 A I do.

19 Q And my question was a simple one. In the
20 Entergy contract, the only other power supply agreement
21 that you're familiar with is AmerenUE guaranteeing the
22 debt?

23 A No.

24 Q Do you think that's a remarkable part of the old
25 power supply agreement that EEInc. had with Union

1 Electric?

2 MR. CYNKAR: Your Honor, excuse me. I'm going
3 to have to object. I believe, unfortunately, Mr. Micheel
4 is mischaracterizing this, that this so-called guarantee
5 of the debt is not part of the power supply agreement.
6 And so that link of whether this is unique or not, this is
7 a separate agreement between AmerenUE as a shareholder as
8 opposed to the power supply agreement. So I think we just
9 need to get the characterization of this right.

10 JUDGE WOODRUFF: Mr. Micheel?

11 MR. MICHEEL: Well, to the extent this witness
12 hasn't told me he doesn't understand the question, I don't
13 know, you know, the appropriateness of that objection.
14 And if you know, Mr. Cynkar wants to testify, he can file
15 some testimony.

16 I mean, if he doesn't understand the question or
17 if he's -- if he says that's not the way the power supply
18 agreement works, you know, I'll go on. He hasn't said
19 that yet.

20 MR. CYNKAR: Mr. Moehn is not a lawyer, and I
21 object to the form of the question.

22 JUDGE WOODRUFF: I'll overrule the objection.

23 Q (By Mr. Micheel) Mr. Moehn, I'm not asking for
24 any legal --

25 A Right.

1 Q I understand that you're not a lawyer.

2 A Uh-huh.

3 Q And when I ask you any of these questions, I'm
4 not asking for a legal -- I'm just asking for your
5 understanding, sir.

6 A I'm sorry. Can you -- can you ask it one more
7 time?

8 Q Well, let me ask you this: Is it correct that
9 AmerenUE guaranteed the debt of EEInc.?

10 A I believe that was the case.

11 Q Are you aware of any other company that AmerenUE
12 has a power supply agreement with where AmerenUE
13 guaranteed the debt?

14 A No, I'm not.

15 Q So as far as you know, that's a unique factor,
16 is it not?

17 A Sure. I think it was a -- it was a way to keep
18 the cost as low as possible for everybody.

19 Q Now, you also indicate in your -- in your
20 rebuttal testimony there that the support provided to
21 EEInc. is the same as the support provided to Schnuck's or
22 Target by shopping there over the year; is that correct?

23 A That's correct.

24 Q Now, when you shop at Schnuck's or Target, you
25 don't pay prices that guarantee a 15 percent return to

1 Schnuck's or Target, do you?

2 A I assume there's some return in there.

3 Q That wasn't my question, sir. And listen very
4 closely because I'm trying to ask really, really narrow
5 questions?

6 A Okay.

7 Q When you shop at Schnuck's and Target, you do
8 not pay prices that guarantee a 15 percent return on
9 equity for Schnuck's and Target; is that correct?

10 A I do not know what Schnuck's return on equity
11 is.

12 Q Okay. Do you think you -- so you don't know
13 whether you guarantee -- they guarantee 15 percent return?

14 A I don't.

15 Q Okay. Do shoppers commit to buy all the
16 products at Schnuck's and Target that others won't buy?

17 A Not that I'm aware of.

18 Q Do shoppers guarantee the debt service for
19 Schnuck's and Target?

20 A It would be a component of the price, I assume.

21 Q But do they guarantee the debt, sir?

22 A No.

23 Q Okay. Now, let's -- let's talk about what this
24 PSA did between EEInc. and AmerenUE. Is it correct that
25 the PSA guaranteed EEInc. a 15 percent return on equity

1 after taxes?

2 A It did.

3 Q Is it correct that the PSA committed to Union
4 Electric to buy all of the energy that others wouldn't
5 buy?

6 A Correct.

7 Q Is it correct that Union Electric guaranteed the
8 debt service for EEInc. should they fail?

9 A Correct.

10 Q And those are all differences between when I go
11 out to Target or Schnuck's; isn't that correct?

12 A Sure.

13 Q So this is really a transaction that's a smidge
14 bit different than shopping at Target and Schnuck's; isn't
15 it, sir?

16 A A PSA that was in place between EEI and UE, it
17 was meant to recover and guarantee all the costs for EEI.
18 That did not mean that the shareholders of EEI would
19 receive everything in return.

20 Q Well, do you have a copy of Exhibit 7 -- or 972
21 there, the report and Order in EF-77197?

22 A If you have a copy, that would be helpful.

23 Q Yeah. I do. I'm -- I'm focusing there, sir, on
24 page 3 with the underline said there. Why don't you read
25 that to yourself and let me know when you're ready?

1 A Okay.

2 Q Does that indicate that the obligations to pay
3 under the PSA of the sponsoring companies are
4 unconditional obligations?

5 A It does say that.

6 Q Does it say that in the event that EEI is unable
7 for any reason to generate or deliver any power or energy
8 to the sponsoring companies, they will nonetheless be
9 obligated to continue payments to EEInc.?

10 A Correct.

11 Q Now, that is a difference between shopping at
12 Schnuck's and Target because if you choose not to shop at
13 Schnuck's or Target, you don't have to go there; is that
14 correct?

15 A Yes. Right. I agreed with that point earlier.

16 Q But -- but the -- the purchase power agreement
17 that -- entered into between the parties required them to
18 pay for that energy whether or not they got that energy.
19 It was an unconditional absolute guarantee; is that
20 correct?

21 A Again, what -- I think what the point of it was,
22 you're guaranteeing the cost back to EEI so they had full
23 -- full recovery of the costs. It didn't necessarily mean
24 that the shareholders would, in fact.

25 Q Well, whether or not they were unable to

1 generate or deliver the energy; isn't that correct? I
2 mean, do you quibble with that?

3 A I do not. But I guess what I'm talking about,
4 I'm not sure at the end of the day who ultimately would
5 have had to pay that.

6 Q Well, we don't know that because, for 50 years,
7 isn't it correct, that ratepayers paid for all of the
8 costs and the 15 percent return in that PSA; isn't that
9 correct?

10 A That is correct. Because I'm assuming that
11 everyone thought it was prudently incurred economical
12 costs.

13 Q We're going to go a lot faster if you just
14 answer my questions. I know you're chomping at the bit to
15 talk about prudent and economical, and we're going to get
16 there.

17 A Okay.

18 Q All in good time, sir.

19 A Sorry.

20 Q But it's going to go a lot quicker if you just
21 answer my questions. Now, at page 3, line 3 of your
22 rebuttal testimony, you indicate all parties appear to
23 agree that EEI stock was bought with shareholders' money;
24 is that correct?

25 A Correct.

1 Q Would you agree with me that -- that no party
2 has found that fact to be relevant or important, except
3 Union Electric?

4 A Sure.

5 Q Now, is it your testimony -- and you're new at
6 the regulatory game; is that correct?

7 A That's correct.

8 Q Is it your view that -- that that stock
9 investment would be put into rate base?

10 A Again, I mean, it's' purchase power agreement.

11 Q That wasn't my question, sir. AmerenUE owns 40
12 percent of the stock in EEInc.; is that correct?

13 A Correct.

14 Q And my question was, are stock investments put
15 into rate base?

16 A No, they're not.

17 Q Okay. Do you know if the purchase power charges
18 from EEI were booked below the -- above the line?

19 A They were.

20 Q And would you agree with me that EEInc.
21 recovered all of its costs for the 50-plus years it was
22 operated from its DOE and its sponsoring company owners?

23 A I'm sorry. Can you repeat the question?

24 Q Yes. EEInc. recovered all of its costs for the
25 50-plus years the Joppa plant has operated from the

1 Department of Energy and its sponsoring company owners; is
2 that correct?

3 A Yeah. One example I cite in my testimony, back
4 to this coal terminal, they did not recover.

5 Q Well, we're going to get there. Let me ask --
6 since you want to talk about that, that wasn't covered by
7 the PSA, isn't that correct, that sub?

8 A The actual coal terminal was written off. I
9 don't think that was in the sub. I believe that was
10 actually in EEI.

11 Q Okay. Well, we're going to get there because
12 that was owned by MEDI, was it not, sir?

13 A I'm sorry. Which one?

14 Q The coal terminal.

15 A Owned by which one?

16 Q MEDI.

17 A I'm sorry. I'm not familiar with MEDI.

18 Q Okay. Well -- so, did -- at any time during the
19 50 years of the PSA, did the sponsoring companies or DOE
20 fail to pay?

21 A Not that I'm aware of.

22 Q Now, you talk at page 4, line 2 about the
23 prudence of the PSA, and you say, The PSA has always been
24 ruled as a prudent expense incurred by AmerenUE on behalf
25 of its customer; is that correct?

1 A Correct.

2 Q Have -- have -- did you look to see if there
3 were any rulings of imprudence, sir?

4 A No, I did not.

5 Q Did you look to see if there were any rulings
6 that said the EEInc. PSA was prudent?

7 A No, I did not.

8 Q Are you aware of any dispute or order dealing
9 with EEInc.?

10 A I'm not.

11 Q So do you believe that all of UE's costs were
12 included and recovered in rate?

13 A Yes, I do.

14 Q Okay. And then at -- at page 11, you indicate
15 that, Nor would I have expected the Missouri Commission to
16 ever have allowed costs not associated with the power
17 capacity that served ratepayers to have ever been paid by
18 ratepayers. Do you see that, sir?

19 A I'm sorry. Which --

20 Q I'm on page 4 of your rebuttal testimony, line
21 11, when you say, Nor would I have expected the Missouri
22 Commission to ever allow costs not associated with power
23 capacity that serve ratepayers to have ever been paid for
24 by ratepayers. Do you see that, sir?

25 A I do.

1 Q And you've cited no disallowances there --

2 A Correct.

3 Q -- did you not?

4 A Correct.

5 Q And you had every incentive, did you not, to

6 search and find any disallowances to prove that there was

7 some sort of risk involved with this contract?

8 A Yes.

9 Q Okay. Then you talk about at line 18, page 4,

10 sir, again, if the Joppa plant had experienced some type

11 of catastrophic failure. Do you see that, sir?

12 A Yes.

13 Q The fact of the matter is, the Joppa plant never

14 incurred any catastrophic failure; is that correct?

15 A That's correct.

16 MR. MICHEEL: I'd like to get an exhibit marked,

17 if I could.

18 JUDGE WOODRUFF: Sure.

19 MR. MICHEEL: And I don't know. Exhibit

20 5-something.

21 JUDGE WOODRUFF: Yes. It would be 515.

22 Q (By Mr. Micheel) Okay. Exhibit 515. Sir, you

23 have what's been marked as Exhibit 515.

24 A Correct.

25 Q And do you recognize that data request as AG/UTI

1 Data Request 332?

2 A I do.

3 Q And are you familiar with that response, sir?

4 A Yes.

5 Q And does that indicate that you're unaware of
6 any catastrophic failure or equally bad and unforeseen
7 events that have ever occurred at EEInc.?

8 A It does.

9 MR. MICHEEL: With that, your Honor, I would
10 move the admission of Exhibit 515.

11 JUDGE WOODRUFF: 515 has been offered. Are
12 there any objections to its receipt?

13 MR. CYNKAR: No objections.

14 JUDGE WOODRUFF: Hearing none, it will be
15 received into evidence.

16 (Exhibit No. 515 was offered and admitted into
17 evidence.)

18 Q (By Mr. Micheel) Would you agree with me, sir,
19 that it's purely speculative theories of what may have
20 been absorbed by shareholders versus ratepayers?

21 A Yes. I don't have any evidence to prove that.

22 Q On -- on -- you note there again at line 20 of
23 page 4 that AmerenUE would not have sought recovery from
24 ratepayers because AmerenUE's shareholders were at risk
25 for this unrelated investment. Do you see that?

1 A I do.

2 Q That's more speculation, is it not, because we
3 never had that situation; is that correct?

4 A Yeah. That situation never occurred.

5 MR. MICHEEL: I need to get an exhibit marked.
6 I guess this is going to be Exhibit 516, your Honor.

7 JUDGE WOODRUFF: Okay.

8 Q (By Mr. Micheel) I've handed you what's been
9 marked for purposes of identification as Exhibit 516, sir.
10 Is that your company's response to AG/UTI 333?

11 A Correct.

12 Q And are you familiar with that response, sir?

13 A Yes.

14 Q And is it correct that in that response UE was
15 unable to identify any Commission denial of cost recovery
16 with respect to the Joppa plant?

17 A Correct.

18 MR. MICHEEL: With that, I would move admission,
19 your Honor, of Exhibit 516.

20 JUDGE WOODRUFF: 516 has been offered. Are
21 there any objections to its receipt?

22 MR. CYNKAR: No objection

23 JUDGE WOODRUFF: Hearing none, it will be
24 received into evidence.

25 (Exhibit No. 516 was offered and admitted into

1 evidence.)

2 Q (By Mr. Micheel) Now, you indicate at line 22,
3 sir, of your rebuttal testimony there at page 4 that
4 AmerenUE had no assurances of any kind from the Missouri
5 Public Service Commission. Do you see that, sir?

6 A I do.

7 Q What forms of assurance are ever given by
8 regulators?

9 A None that I'm aware of.

10 Q Which UE plants have assurances that Joppa
11 didn't get as related to recovery of costs?

12 MR. CYNKAR: Asked and answered.

13 MR. MICHEEL: It's a little bit of a different
14 question.

15 JUDGE WOODRUFF: It's -- the objection is
16 overruled.

17 A I'm sorry. Can you repeat the question?

18 Q (By Mr. Micheel) What UE plants have assurances
19 that Joppa didn't get?

20 A Not -- none that I'm aware of.

21 Q Okay. Is there any evidence that EEInc. was
22 afforded any less cost recovery assurance than any other
23 expense incurred by UE?

24 A No.

25 Q Now, you talk about on the top of page 5 that --

1 that UE shareholders would have had to absorb any loss
2 that would have resulted from such events, do you not?

3 A I do.

4 Q And that's pure speculation, is it not?

5 A Yeah. It's my belief the cost became
6 uneconomical.

7 Q Well, but -- but that's speculation, is it not?

8 A Correct.

9 Q Because --

10 A It's --

11 Q -- you don't know what the decision-makers are
12 going to do, do you?

13 A That's right. It's my opinion.

14 Q And you don't know what the company's going to
15 request or what the fact situation is; isn't that correct?

16 A Correct.

17 Q On -- on page 5, sir, line 9 of your testimony,
18 you say, Costs not associated with power capacity served
19 to pay ratepayers or for any cost capacity the Commission
20 determined to be imprudent would be excluded from UE rates
21 and those costs would be paid exclusively by AmerenUE
22 shareholders; is that correct?

23 A Correct.

24 Q You're unaware of any costs of power or capacity
25 at Joppa that the PSC -- Missouri PSC actually did

1 determine to be imprudent; is that correct?

2 A Correct.

3 Q Now, at Line 14, sir, page 5 of your rebuttal
4 testimony, you say, The purchase power from EEInc. has
5 always been economical; is that correct?

6 A That's correct.

7 Q And I think you -- and tell me if I'm wrong
8 here. The way I read that is because the power has been
9 economical, that may have excused some disallowance that
10 otherwise would have been made. Is that your argument
11 there, sir?

12 A Yes.

13 Q Would you agree with me that economy does not
14 exclude -- excuse the imprudent?

15 A Sure.

16 Q At line 16, you suggest the parties want to
17 recharacterize the below the line treatment of -- of
18 costs. You say, Parties who now apparently want to
19 recharacterize the below the line treatment of AmerenUE's
20 investment ever question the terms, price pertaining to
21 power. Do you see that, sir?

22 A I do.

23 Q Aren't the parties really just noting the above
24 the line regulatory treatment of all Joppa costs for the
25 50-plus years that the contract had been between EEInc.

1 and Union Electric?

2 A Yes.

3 Q Now, you talk on page 6, do you not, sir, that
4 some subsidiary companies of EEInc. have experienced
5 financial losses; is that correct?

6 A That's correct.

7 Q And the one you talk about there is Midwest
8 Electric Power Generating; is that correct?

9 A Yes. And, also, an abandoned coal terminal as
10 well.

11 Q Well, let's just -- let's just focus on that.
12 You talk about there just the Midwest Electric Power
13 Generating; is that correct?

14 A Correct.

15 Q And those losses are unrelated to the Joppa coal
16 plant; is that correct?

17 A The -- the MEPI is a subsidiary of EEInc.

18 Q And but my question was those are unrelated to
19 the Joppa coal plant, is that correct?

20 A Yes.

21 Q And they were outside the power supply
22 agreement; is that correct?

23 A Correct.

24 Q And so they have nothing to do with the issue
25 surrounding the power supply agreement; isn't that

1 correct?

2 A That's correct.

3 Q Now, I think you called them MEPI. Is that your
4 acronym for them?

5 A I believe that's what --

6 Q MEPI?

7 A Yeah. I believe that's what EEI calls them,
8 yes.

9 Q Okay. Well, I'll just use that, then. They own
10 some combustion turbines and operate some -- those
11 combustion turbines for others; is that correct?

12 A Correct.

13 Q And those combustion turbines were added as
14 recently as the year 2000?

15 A I think that was around the time. Uh-huh.

16 Q And you would agree with me, would you not,
17 those combustion turbines were never part of the power
18 supply agreement between EEInc. and DOE and the sponsoring
19 company?

20 A I don't know if they were never. I know they
21 currently are not.

22 Q Well, have you reviewed the power supply
23 agreement, sir?

24 A I've seen the recent one.

25 Q The 1987 power supply agreement?

1 A The 1987. Correct.

2 Q With the seven modifications?

3 A Uh-huh.

4 Q Or the 17 modifications --

5 A Uh-huh.

6 Q -- correct?

7 A Uh-huh.

8 Q They're not part of that agreement, are they,

9 sir?

10 A Correct.

11 Q And we just talked about the fact that those

12 combustion turbines were built in the year 2000?

13 A Right.

14 Q So there's really no way they could be part of

15 that power supply agreement unless they were in a

16 modification; isn't that correct?

17 A I'm sure -- although I think in the PSA

18 agreement they had the ability to add costs, you know, to

19 the facilities. So I don't --

20 Q Oh, I'm not arguing about whether or not they --

21 you know, those costs are going to come through the

22 ratepayer. But those weren't part of the power supply

23 agreement; isn't that correct?

24 A Well, right. I mean, they couldn't have been in

25 1987.

1 Q Okay. So when you say at line 10, Those losses
2 were not included in the cost of DOE and the sponsoring
3 companies under the terms of the power supply agreement,
4 they shouldn't be because they weren't part of the
5 contract; isn't that correct?

6 A With MEPI, I certainly -- I would agree with
7 that with respect to this coal terminal --

8 Q Hold on. Let's -- okay. You -- you know,
9 Mr. Cynkar is very good, and he'll probably bring that up
10 on redirect. I know you want to talk about it. But if
11 you'd just answer my questions, it will go quicker.

12 Did you dispute the fact that the State's
13 adjustment excludes the MEPI values?

14 A No.

15 Q So that's not included in the State's
16 adjustment, correct?

17 A Correct.

18 Q Now, you indicated at page 6, line 19 that any
19 risks associated with the Joppa plant were borne by UE
20 shareholders; is that correct?

21 A Correct.

22 Q Now, there, are you talking about MEPI that we
23 just talked about or the Joppa coal-fired steam plant?

24 A The Joppa coal-fired steam plant.

25 Q Okay. Did EEInc. maintain insurance on plant

1 assets?

2 A I'm -- I'm sure they probably did.

3 Q If any equipment failed prematurely or was
4 damaged by a casualty event, can you cite any part of the
5 PSA, power supply agreement, the '87 power supply
6 agreement that would deny EEInc. the ability to fully
7 recover any capital expenses or expenses incurred to
8 replace such equipment?

9 A No. That was part of the power supply agreement
10 for EEI to recover the costs.

11 Q Even if there was a catastrophic loss; is that
12 correct?

13 A Correct.

14 Q And -- and is that the same for the power supply
15 agreement that -- that Union Electric has with Entergy?

16 A I don't believe that provision is in there.

17 Q Have you seen any other power supply agreements
18 that has a provision like that?

19 A No.

20 Q And on -- on page -- page 9 of -- of your
21 testimony -- again, I'm in your -- your rebuttal
22 testimony. You're talking about the guarantee or not the
23 guaranteed provided; is that correct?

24 A Correct.

25 Q Now, we talked about the fact that Union

1 Electric has a purchase power agreement with Entergy; is
2 that correct?

3 A Yes.

4 Q And UE's offered no financial guarantee to
5 Entergy as part of that deal; is that correct?

6 A No financial guarantee.

7 Q And the financial guarantee with respect to the
8 EEInc. contract exists because of the unique relationship
9 between the sponsoring companies and EEInc.; isn't that
10 correct?

11 A Yeah. Again, the PSA was designed to have EEI
12 recover their costs. Correct. They didn't --

13 Q Plus a 15 percent tax return?

14 A Plus a 15 percent return.

15 Q And typical power supply agreement doesn't
16 involve those kind of financial guarantees; is that
17 correct?

18 A That's correct. I think it was done in an
19 attempt to keep the costs low.

20 Q Now, on -- on page 11 of -- of your rebuttal
21 testimony, you have a Q&A starting on -- on -- well, on
22 the answer starting on line 12 and a question starting on
23 line 9. Could you take a look at that and read it? And I
24 want to ask you some questions about that. Let me know
25 when you're ready, sir.

1 A Yeah.

2 Q Would you agree with me that the PSA between
3 EEInc. and Union Electric was a contract negotiated
4 between affiliated -- affiliated companies?

5 A I'm sorry. Can you repeat the question?

6 Q Yeah. Was the contract negotiated between
7 affiliated companies?

8 A The PSA?

9 Q Yes, sir.

10 A Yes.

11 Q And would you agree the PSA has an affiliate
12 relationship where Ameren Corporation had some influence
13 over both sides of the negotiations?

14 A Can you repeat the question again, please?

15 Q Would you agree that the PSA is an affiliate
16 relationship --

17 A Uh-huh.

18 Q -- where Ameren Corp. had some influence on both
19 sides of the negotiation?

20 A If they would have been on both sides. Correct.

21 Q Again, there at the bottom of page 11, you say,
22 Since the power costs from Joppa were so low, there was
23 never any question of whether or not they were prudently
24 incurred. Do you see that?

25 A I'm sorry. Where are you?

1 Q I'm on page 11, sir, line 20. You say, Since
2 the power costs from Joppa were so low, there was never a
3 question of whether they were prudently incurred.

4 A Correct.

5 Q Let me just highlight this. Low cost does not
6 excuse prudence, does it, sir?

7 A No, I guess not.

8 Q And high cost does not automatically indicate
9 imprudence, does it, sir?

10 A Sure.

11 Q Now, you noted at -- at line 23, page 11 pouring
12 over to -- to page 12, line 1, Ameren would not have
13 sought the costs to pass those costs through its cost of
14 service as part of the purchase power expense. Do you see
15 that, sir?

16 A Yes.

17 Q And that's speculation, and we'll never know
18 what the Commission may or may not have done because that
19 didn't come to pass; is that correct?

20 A It's my opinion. Yes.

21 Q Now, you talk about on -- on page 12 there, the
22 question and answer starting on line 5 through line 10,
23 the Pinckneyville and Kinmundy and Raccoon Creek
24 combustion turbines; is that correct?

25 A That's correct.

1 Q Should we assume because Pinckneyville and
2 Kinmundy costs -- or should we -- should the Pinckneyville
3 and Kinmundy costs be assumed to be prudent because
4 they're relatively high compared to the Raccoon Creek and
5 other more recently purchased turbine purchases?

6 A That's clearly not Ameren's position.

7 Q Well, should we make that -- is that a fair
8 assumption?

9 A No.

10 Q And we would want to look at evidence, wouldn't
11 we?

12 A Correct.

13 Q And Ameren just didn't absorb the risks of
14 Pinckneyville and Kinmundy. The company is seeking full
15 recovery for those assets. Are -- is the company not?

16 A Correct.

17 Q So that's -- that's an example where AmerenUE
18 has sought recovery of high cost assets; isn't that
19 correct?

20 A I believe that's the position being taken by
21 some parties, that they're high costs.

22 Q Compared to the Joppa, is energy -- is the
23 Pinckneyville, Kinmundy energy high?

24 A They're totally different assets.

25 Q That wasn't my question, sir. My question was

1 based on cost. Do you know? Could you answer that
2 question?

3 A Cost.

4 Q Are the Pinckneyville and Kinmundy costs high
5 costs compared to the cost of the Joppa power?

6 A The -- the fuel and purchase power?

7 Q Yeah.

8 A Yes.

9 Q Now, you start on -- on page 12 talking about
10 the Arkansas Power & Light purchase power agreement, and
11 -- and Arkansas Power & Light is a subsidiary of Entergy;
12 is that correct?

13 A As far as I know. Yes. Uh-huh.

14 Q And I've been referring to that as the Entergy
15 power supply agreement. And you understand that to be one
16 in the same with the Arkansas Power & Light one?

17 A I do.

18 Q Arkansas Power & Light's not a UE affiliate, are
19 they?

20 A They're not.

21 Q And so UE had no opportunity to sit on both
22 sides of the negotiating table with Arkansas Power &
23 Light; is that correct?

24 A That's correct.

25 Q Would you agree with me that the affiliate rules

1 to the Public Service Commission do not apply to the
2 Arkansas Power & Light Deal?

3 A Yes.

4 Q If you'll turn to page 15 of your rebuttal
5 testimony, sir. And at line -- well, at line 11, you have
6 a question and answer there with your answer going on to
7 line 15. Would you read that to yourself and let me know
8 when you're ready?

9 A Okay.

10 Q There you indicate you can't identify any other
11 situation in the utility industry or power supply
12 agreements that pursue such an ongoing claim; is that
13 correct?

14 A Correct.

15 Q You haven't done any studies, have you, sir?

16 A I have not.

17 Q And when we talked earlier today, you told me
18 that -- that you were familiar essentially with two power
19 supply agreements; is that correct?

20 A Yes.

21 Q Let me ask you this: Is it -- is it impossible
22 to draft a power supply agreement with -- with evergreen
23 terms?

24 A I don't -- not-- not --

25 Q And could you tell me what an evergreen term is?

1 A Just it continues on.

2 Q Okay. Is it impossible to draft a power supply
3 agreement with a purchase option?

4 A No. Anything's possible.

5 Q And anything's possible in the buyer and seller
6 affiliate; is that correct?

7 A Sure.

8 Q Now, you indicate at the bottom of page 15, sir,
9 that the terms of the PSA between EEInc. and the sponsor
10 companies are no different than any other long-term
11 purchase power agreement utilities frequently enter into
12 on behalf of their retail customers; is that correct?

13 A I do.

14 Q Here we had affiliates involved, did we not?

15 A Yes.

16 Q And that's different from most power supply
17 agreements, is it not?

18 A I don't know.

19 Q Okay. Here we had a power supply agreement that
20 had a term of 50 years. Is that a difference?

21 A I mean, it had varying terms that expired and
22 they re-entered. So, I mean, the last agreement was in
23 '87.

24 Q The last agreement was a 17-year term; is that
25 correct?

1 A Correct.

2 Q And that's unique for a power supply agreement,
3 is it not?

4 A I don't know.

5 Q Well, the pop -- the two power supply agreements
6 that you've looked at have terms of 17 years. And how
7 long is the Entergy power supply agreement? Is that
8 highly confidential? I don't think it is, but --

9 A I don't think it is. I think it's -- I think
10 it's publicly available.

11 Q Okay. I just don't want the secrets to get out.

12 A Sure. Tell me again what the question was.

13 Q How long is the term of the Entergy power supply
14 agreement?

15 A I believe when it expires in 2008, it will have
16 been 16 years.

17 Q Okay. Debt guarantees are not involved with
18 Entergy's power supply agreement; is that correct?

19 A Correct.

20 Q And that -- that Entergy power supply agreement,
21 had that been renegotiated on numerous occasions?

22 A One other time, I believe.

23 Q Was there an unconditional -- you say, There's
24 no difference, but in the -- the Joppa power supply -- or
25 the PSA with EEInc. there's an unconditional payment due

1 to seller even with no output, is that correct?

2 A That's correct.

3 Q And that's a big difference from a normal power
4 supply agreement, isn't it?

5 A I don't know.

6 Q Well, let me ask you this: You're a Vice
7 President of Ameren Services?

8 A Services.

9 Q But you recommend to -- if you were negotiating
10 a power supply agreement with, let's say, Entergy, would
11 you recommend that -- that your company pay for the power
12 even if it isn't supplied?

13 A I guess it all depends on the price.

14 Q Let's say the price is a -- a market price.
15 Would you recommend paying for power you're not going to
16 receive?

17 A No. There would be a -- need to be an exchange
18 of value there.

19 Q Now, on -- on page 18, you're responding to
20 Mr. Brosch talking about the accounting rules, are you
21 not? I'm on your rebuttal testimony. So you have a
22 question that starts on line 1 there.

23 A Yes. Uh-huh.

24 Q You're talking about the accounting rules
25 provided clearly defined boundaries and limitations; is

1 that correct?

2 A Correct.

3 Q Let me ask you this: Is the Public Service
4 Commission limited by accounting rules as to what can be
5 done in setting rates?

6 A No. I don't believe so.

7 Q And accounting rules do not define rate-making
8 decisions, do they?

9 A No.

10 Q You talk about the concept of prudence
11 throughout your testimony. And my question to you is,
12 what accounting rules define prudence?

13 A I don't know a specific accounting rule that
14 defines prudence.

15 Q Are you an accountant by trade?

16 A I am.

17 Q And are you a Certified Public Accountant?

18 A I am.

19 Q You would know that, would you not?

20 A I would hope so.

21 Q Let me ask you this: Are you familiar with any
22 regulatory decisions involving imputation to address
23 affiliate transactions?

24 A I -- I've -- I've read some from time to time.

25 Q Okay. And what -- what ones have you read?

1 Tell me about those.

2 A Yeah. I'm not sure I can give you the
3 specifics. I mean, I just remember reading in the trade
4 magazines, et cetera, between when affiliates were doing
5 transactions with one another.

6 Q So there can be regulatory imputations; is that
7 correct?

8 A Correct.

9 Q And that's something that regulatory bodies have
10 done on a regular basis for a long time; is that correct?

11 A Sure.

12 Q Okay. I want to move on to your surrebuttal
13 testimony, sir. And I'm -- I'm starting there on -- on
14 page 4, line 17 where you're talking about AmerenUE has
15 consistently treated the investment in EEInc. as below the
16 line. Do you see that, sir?

17 A Yes.

18 Q You would agree with me that the power supply
19 agreement was treated as -- treated as jurisdictional,
20 included -- and included the purchase power expenses in
21 rates for the last 50 years?

22 A I'm sorry. What do you mean by jurisdictional?

23 Q Well, in rates in Missouri, jurisdictional.

24 A I would agree that the -- the costs associated
25 with the power supply agreement went through purchase fuel

1 and purchase power.

2 Q And they were recovered from ratepayers, right?

3 A They would have affected factors into the rates,
4 yes.

5 Q Now, you indicate on page 5 of your surrebuttal
6 testimony that in today's wholesale market the power from
7 the Joppa plant is no longer available at the low market
8 prices of the now expired PSA; is that correct?

9 A Correct.

10 Q When you're talking about no longer available,
11 it's still available to EEI; is that correct?

12 A Correct.

13 Q And it's still available to Ameren to be sold by
14 Ameren Energy Marketing, correct?

15 A Correct.

16 Q And income is still produced by Joppa as
17 requested in Ameren's consolidated income; is that
18 correct?

19 A Correct.

20 Q That's just like before the -- the expiration of
21 the PSA; is that correct?

22 A I'm sorry. What -- what's just like?

23 Q The fact that -- that Ameren is getting profits
24 from EEInc.

25 A Correct.

1 Q Now, at page 5, line 7, you talk about UE does
2 not set the rules and cannot turn back the clock. Do you
3 see that, sir?

4 A Yes.

5 Q What rules are you talking about?

6 A I was referring to the fact that this was an EEE
7 -- EEInc.

8 Q My question is what rule?

9 A UE cannot make EEI sell them power.

10 Q Okay. Can you cite any rules that are being
11 broken by Staff or the State?

12 A No.

13 Q Is there any rule prohibiting the adjustment
14 being made by the State?

15 A Not that I'm aware of.

16 Q Now, on -- on page 7 the line -- line -- line
17 23 --

18 A Yes.

19 Q -- you -- you note that the problem with these
20 claims is they simply do not reflect the undisputed fact
21 and, as I mentioned, rest on incorrect legal opinions that
22 these witnesses recognize that they are not competent to
23 make. Do you see that, sir?

24 A Correct.

25 Q And there -- part of your criticism there is to

1 state's witness, Mr. Brosch; is that correct?

2 A Yes.

3 Q Could you identify each incorrect legal opinion
4 that's being attributed to Mr. Brosch?

5 A Pull out his testimony?

6 Q Well, I'm just trying to understand -- you have
7 a statement there that says it rests on incorrect legal
8 opinions. Okay?

9 A Right.

10 Q And so when you wrote that, you must have known
11 what those incorrect legal opinions were, correct?

12 A Correct.

13 Q And so I'm asking you, because you don't
14 enumerate them in your testimony, to enumerate them for me
15 now.

16 A That UE somehow could force EEI to sell them the
17 cost.

18 Q Is it your position that the State's adjustment
19 in this case forces EEI to sell to Union Electric at cost?

20 A No, it doesn't.

21 Q okay. So that is not an incorrect -- so that
22 wouldn't apply to Mr. Brosch; isn't that correct?

23 A That -- that's correct.

24 Q Okay. You say opinions plural there, sir.

25 You've given me one. There's got to be more. Or do we

1 need to make a correction and make that legal opinion?

2 A It probably should just be opinion.

3 Q Okay. So let -- so you want to correct that to
4 incorrect legal opinion, singular, delete that S?

5 A Correct.

6 Q And you just told me that -- that Mr. Brosch's
7 recommendation does not require EEI to sell power to Union
8 Electric; is that correct?

9 A It does not.

10 Q So that's not an incorrect legal opinion, is it?
11 Should we delete that or say that doesn't apply to
12 Mr. Brosch?

13 A Well, I thought -- in his initial direct
14 testimony, I thought this was the position they were --
15 they were taking. I would agree with you that --- that
16 that is not the position that's being taken in surrebuttal
17 testimony.

18 Q So you think -- you think the State is changing
19 its position from direct testimony? Or you didn't
20 understand its position in direct testimony?

21 A I don't recall.

22 Q I need you to identify each undisputed fact
23 that's not being reflected by Mr. Brosch.

24 A I believe Mr. Brosch, in his testimony, is
25 challenging whether or not this is an above the line or

1 below the line investment.

2 Q Okay. My question is, you talk about undisputed
3 facts. Okay? That's a disputed fact. What I want to
4 know is -- I want you to identify each undisputed fact
5 that's not being reflected by Mr. Brosch. That's what
6 your testimony is there, and I'd like to know what those
7 are because you don't enumerate those.

8 A Well, I outline what I believe the undisputed
9 facts are on page 5 and 6 in my testimony.

10 Q So they're on page 5 and 6?

11 A Right.

12 Q And which one of those facts isn't Mr. Brosch
13 recognizing? Or which one is not reflected in
14 Mr. Brosch's testimony?

15 A I don't recall.

16 Q Do you have a copy of Mr. Brosch's rebuttal
17 testimony, sir?

18 A Yes.

19 Q Could you get it out? And I'm focusing there,
20 sir, on page 11 of his rebuttal testimony on a sentence
21 that starts on line 17. The first word of that sentence
22 is Notably. Let me know when you're there.

23 A I'm sorry. Where are you?

24 Q I'm on page 11 of Mr. Brosch's rebuttal
25 testimony, line 17, the sentence that starts Notably, sir.

1 A Okay.

2 Q Could you read that into the record?

3 A Notably, the rate-making adjustment that I
4 propose is not dependent on Commission action to compel
5 more reasonable EEInc. -- EEInc. voting action by Ameren
6 management.

7 Q Keep reading.

8 A Instead, the State's recommended a rate-making
9 adjustment that recognizes and corrects the inequitable
10 outcome created in Missouri by management actions that
11 were actually taken.

12 Q Okay. And that's, in essence, the State's
13 proposal, is it not?

14 A What -- what management actions is taken? I --

15 Q Well, I tell you what, when I sponsor testimony
16 and I'm a witness and you go to law school, you'll get
17 your chance to ask me questions.

18 A Sorry. Sorry. Sorry.

19 Q Till that happens, you just need to answer mine.
20 On page 8, sir, of your surrebuttal testimony, line 21,
21 you note that Mr. Brosch's uses -- use of the word
22 jurisdictional is unclear; is that correct?

23 A Correct.

24 Q Do you have Mr. Brosch's direct testimony there,
25 sir?

1 A Yes.

2 Q Could you turn page 20 of Mr. Brosch's direct
3 testimony? And why don't you read that to yourself going
4 over to page 21, lines 1 and 2. And let me know when
5 you're ready.

6 A I'm sorry. Which -- which question?

7 Q The question that starts on line 16 and goes to
8 -- page 20, and going over to page 21, lines 1 and 2. Let
9 me know when you're ready?

10 A Okay.

11 Q That's where Mr. Brosch is explaining his idea
12 of jurisdictional. What part of that don't you
13 understand, sir?

14 A Well, he's saying that 40 percent of the share
15 of the Joppa investment has been included in rate base. I
16 don't agree with that.

17 Q Well, but you understand what his position is,
18 right?

19 A No.

20 Q And you're -- you're noting -- you don't
21 understand?

22 A Well, he seems to be implying that 40 percent of
23 -- of EEI's rate base --

24 Q He says analogous, does he not?

25 A Forty percent -- he does.

1 Q He doesn't say 40 percent shares in rate base;
2 isn't that correct? He's making an analogy?
3 A Well, to make his point, correct.
4 Q But he's not stating that as a fact, right?
5 He's saying, it is analogous to?
6 A He's using it as an example. Yes. Uh-huh.
7 Q Now, tell me what else is unclear about
8 Mr. Brosch's use of the word jurisdictional.
9 A I don't know what he means by jurisdictional.
10 Q Okay. You just don't know. Did you ask him a
11 DR?
12 A I did not.
13 Q Did you have the ability to do that?
14 A I did.
15 Q Now, you have a quote from Mr. Brosch's
16 testimony on page 5. Or page 9. Excuse me, sir. Line 5
17 of your surrebuttal testimony, do you not?
18 A I'm sorry. One second.
19 Q Sure.
20 A Okay. I'm sorry. Where are you?
21 Q I'm on page 9, line 5 of your surrebuttal
22 testimony.
23 A Correct.
24 Q And you would agree with me there that you
25 truncated Mr. Brosch's quotation; is that correct?

1 A Right.

2 Q And you left out some key phrases there, did you
3 not?

4 A I left out some phrases.

5 Q Well, let me ask you this: Why didn't you quote
6 the entire sentence from Mr. Brosch's rebuttal testimony,
7 page 9, line 13, which says, In reality, the company's
8 investment has been consistently treated as jurisdictional
9 by this Commission in all prior rate cases because the
10 long-term cost base purchase power agreements obligating
11 Missouri to pay for costs of Joppa plant output have been
12 treated as jurisdictional?

13 A I don't recall.

14 Q And that -- and that changes meaning of those
15 two quotes, does it not, that you include in your
16 surrebuttal testimony?

17 A No. I don't think it does.

18 Q Let me ask you this: It's correct that UE is
19 talking about UE's investment in the stock of EEInc.; is
20 that correct?

21 A I'm sorry. Can you repeat the --

22 Q Well, let me -- in this -- in this case, is it
23 only Union Electric that believes that common stock might
24 be put into rate base?

25 A That -- that's the -- right. That's the

1 position we're taking.

2 Q Can you point me to any element of UE's rate
3 Bates for common stock?

4 A No. All its plant -- all its other plants are
5 in rate base.

6 Q Because they -- do you know if any Missouri
7 utility for -- for which common stock of a subsidiary has
8 been included in rate base?

9 A I would assume it hasn't been.

10 Q Okay. So that's kind of an apples to oranges
11 comparison; is that correct?

12 A I'm -- I'm not following you.

13 Q Well, I guess the -- the point I'm trying to
14 make is common stock isn't put in rate base; isn't that
15 correct?

16 A Correct.

17 Q Now, on page 13, line 15 of your surrebuttal
18 testimony, again you posit if a catastrophic event --
19 catastrophic -- excuse me -- event happened, the full cost
20 recovery from ratepayer cannot have occurred. Is that
21 correct?

22 A Correct.

23 Q And that's speculation; correct?

24 A It's my opinion, yes.

25 Q Is it possible that a catastrophic event might

1 include a fire or explosion?

2 A Sure.

3 Q Such as happened at KCP&L's Hawthorne plant a
4 few years ago?

5 A I'm not familiar with them.

6 Q Would you be shocked to find out there was an
7 explosion at the KCP&L Hawthorne plant and ratepayers were
8 required to fit the bill?

9 A Now that you tell me that's the case.

10 Q I don't want you to speculate, I guess. If you
11 don't know, you don't know. Is it possible the plant
12 might be rebuilt including any capital investment that was
13 written in the PSA, if the Joppa plant had this
14 catastrophe?

15 A I suppose it's possible.

16 Q So it's possible the catastrophic event might
17 yield proceeds to help pay for the proceeds of the damaged
18 equipment?

19 A It could.

20 Q Again, you beat the horse at page 13 line 18, If
21 AmerenUE sought recovery, the Commission clearly would not
22 have allowed that. Do you see that?

23 A I do.

24 Q Could you tell me how the Commission's going to
25 rule in this case?

1 A I don't know.

2 Q So it's really never clear what a Commission is
3 going to do. You present evidence, and they weigh it;
4 isn't that correct?

5 A Correct.

6 Q Let me ask you this: If the company prudently
7 responded to the catastrophe and was not at fault for the
8 occurrence, why would the Commission disallow those costs?

9 A Well, again, if it's -- the power purchase
10 agreement made it uneconomical. That's -- that's what I
11 was --

12 Q That wasn't -- that wasn't my question. My
13 question was if the company prudently responded to a
14 catastrophe and was not faulted for the occurrence, why
15 would the Commission have not allowed recovery of those
16 costs?

17 A If it made the power and economic --

18 Q So if it was an accident that -- that Ameren had
19 absolutely nothing to do with -- unlike Tomsauk, okay?
20 Just -- I don't -- you know, something went wrong.
21 Everybody did everything right. Wouldn't it be fair to
22 allow recovery?

23 A That's your position. Yeah. Right.

24 Q You don't think it would be fair to allow
25 recovery?

1 A I don't ultimately know, I guess, what the
2 Commission would do.

3 Q Okay. What cases have you reviewed where the
4 PSC has disallowed casualty losses for generating
5 resources that have historically been included in rate?

6 A I haven't reviewed anything.

7 Q Again, on page 14, you talk about -- of your
8 surrebuttal testimony, sir, you talk about Midwest Energy
9 Power's capacity losses there, do you not, on the -- the
10 abandoned coal terminal?

11 A I did.

12 Q Those have nothing to do with the Joppa steam
13 plant or the PSA; isn't that correct?

14 A The -- the CTs at MEPI, correct.

15 Q Well, Midwest Electric Power's capacity law
16 says --

17 A Right.

18 Q That's a -- another sub of EEInc.; isn't that
19 correct?

20 A Correct.

21 Q And that's not a sub that's included -- that was
22 included in the PSA that was entered in 1987. Isn't that
23 correct?

24 A I agree with that one. Yes. Uh-huh.

25 Q Okay. Now, you talk on page 20 about -- page

1 14, line 20, windfall profits, and you say that's an
2 inflammatory phrase; is that correct?

3 A Correct.

4 Q Now, have you seen Mr. Brosch's schedule MLB-12
5 at page 28 attached to his surrebuttal testimony?

6 A I believe I reviewed it at one point.

7 Q Would you agree with me that actual 2005 EEInc.
8 net income -- well, does that show actual 2005 EEInc.
9 income in the last year, the cost based PSA?

10 A I don't --

11 Q Let's see if we can pull that out. Was it
12 director -- I think it's in the surrebuttal testimony.
13 Let me -- maybe I've got the wrong cite there. MLB-12,
14 page 28.

15 A It is surrebuttal; is that right?

16 Q Yes, sir. It's -- there's a schedule?

17 A I'm sorry. I don't have a copy of it.

18 Q Okay. I'm sorry. Let me --

19 MR. MICHEEL: May I approach?

20 JUDGE WOODRUFF: (Witness nods head.)

21 Q (By Mr. Micheel) Here you go. Let me first ask
22 you, have you -- have you reviewed that?

23 A I have seen it.

24 Q Okay. And that shows the actual 2005 EEInc.
25 net income in the last year of the cost based PSA; is that

1 correct?

2 A Correct.

3 Q It shows the projected 2006 amounts for EEInc.
4 for the first year after the expiration of the cost based
5 PSA?

6 A Correct.

7 Q What caused the revenues to more than double?

8 A Going to market.

9 Q The output of the Joppa plant didn't change
10 materially, did it?

11 A It did not.

12 Q Management didn't do anything particularly
13 noteworthy to increase sales or profits besides removing
14 Joppa from Missouri regulatory oversight, did it?

15 A It did not.

16 Q And the Joppa plant was the same set of assets
17 on January 1, 2006, that it was on December 31 of 2005; is
18 that correct?

19 A Correct.

20 Q Now, did you view Schedule MLB-12 to be
21 inflammatory? I mean, those are the facts, right?

22 A Correct.

23 Q And although we may not like the facts, they are
24 what they are, correct?

25 A That's correct.

1 Q And do you believe that the Commission should
2 care that EEInc. has managed to increase its net income
3 about six-fold in a single year, largely at the expense of
4 UE ratepayers?

5 A I'm sorry. Can you repeat the question?

6 Q Sure. Should the Commission care that EEInc.
7 has managed to increase its net income about six-fold in a
8 single year largely at the expense of UE ratepayers?

9 A I don't have it.

10 Q Let me retrieve that document. Almost finished
11 here, sir.

12 A Okay.

13 Q Thanks for your patience. You -- you note on
14 page 15 at line 5 that UE ratepayers have only paid about
15 16 percent of the total for the Joppa power plant; is that
16 correct, sir?

17 A That's correct.

18 Q And you seem to make that point to imply that
19 shareholders or DOE have -- well, let me ask you this:
20 The other part was paid for by DOE or the predecessor
21 federal agents; is that correct?

22 A Yeah. The piece would be paid for by the
23 sponsoring company of MDOE.

24 Q And the sponsor company such as UE had to take
25 or pay for whatever UE -- or whatever DOE didn't use; is

1 that correct?

2 A DOE and the sponsoring -- other sponsoring
3 companies.

4 Q And -- and so DOE and the other sponsoring
5 companies paid the other hundred -- or let me try to do
6 the arithmetic. It's not my strong point. The other 84
7 percent; is that correct?

8 A Correct.

9 Q You have to be verbal.

10 A Correct. Sorry.

11 Q And so shareholders didn't pay anything for
12 that, right?

13 A I wasn't trying to imply that shareholders paid
14 anything.

15 Q Okay. But -- but they didn't?

16 A Correct.

17 MR. MICHEEL: Okay. Thanks for your time, Mr.
18 Moehn. I appreciate it greatly.

19 JUDGE WOODRUFF: Thank you, Mr. Micheel. We're
20 due for a break. We'll take a break now and come back at
21 10:15.

22 (Break in proceedings.)

23 JUDGE WOODRUFF: All right. Let's come to
24 order, please. All right. Welcome back from break. And
25 just before break, the State had completed its

1 cross-examination. Does Public Counsel have any cross?

2 MR. MILLS: I do. Thank you.

3 CROSS-EXAMINATION

4 BY MR. MILLS:

5 Q Good morning, Mr. Moehn.

6 A Good morning, Mr. Mills.

7 Q I believe you said in response to questions by
8 Mr. Micheel that this is the first time you've been
9 involved in a proceeding like this?

10 A It's the first time I've testified. Correct.

11 Q Okay. Did anybody at UE give you any guidance
12 about what your responsibilities are?

13 A With respect to?

14 Q How -- how to prepare testimony, how to respond
15 to DRs, how to testify on the stand.

16 A I had discussions with counsel about preparing
17 my testimony.

18 Q Okay. And -- and you -- I won't even go there.
19 And did you have any discussion with counsel about how to
20 respond to data requests?

21 A I did not.

22 Q Okay. What -- what is your general -- your own
23 policy in terms of responding to data requests?

24 A Well, I -- I believe the requirement is we need
25 to respond within 20 days.

1 Q Okay. And do you make every effort to respond
2 fully within 20 days?

3 A Sure. Yes.

4 Q Okay. And the data requests that you respond
5 to, you verify the information provided?

6 A I attempt to. I know there were a couple
7 instances where some information went out under my name
8 that I did not initially see.

9 Q What do you mean "initially see?"

10 A The -- the data requests -- we responded to the
11 data requests, and I had not seen the information.

12 Q So we got a data request signed by Michael Moehn
13 that you had never seen?

14 A That is correct.

15 Q Is that what you're saying?

16 A That's what I'm saying.

17 Q How many times did that happen?

18 A One that I'm aware of.

19 Q Which one is that?

20 A I think it is the one related to the resource
21 plans, the two latest, the 2005 and then the --

22 Q Okay.

23 A -- the file named Breeze or whatever. That's
24 the one I remember.

25 Q In the deposition, I believe it's referred to as

1 Breeze. The actual file is Brief. I think that was a
2 mistranscription --

3 A Okay.

4 Q -- of which there were many in the -- in the
5 deposition. I don't know if you recognized that there
6 were about seven references to turban, as in the
7 headwrapping.

8 A Yes.

9 Q I'm fairly certain we didn't talk much about
10 turbans during the deposition.

11 A Not that I recall.

12 Q Okay. So -- so other than -- other than the DR
13 29-D8, which had the earlier resource plan attached to it,
14 you did verify all the other data requests that you sent
15 to us; is that correct?

16 A Correct.

17 Q Now, with respect -- and the DR, I believe, that
18 you -- that -- that I want to talk about first is -- has
19 been previously marked as DR-4 -- as Exhibit 430 in this
20 case. Do you have a copy of that exhibit?

21 A I don't know if I do or not.

22 Q Okay.

23 A Do you know what the number was, the data
24 request number?

25 MR. LOWERY: Louis, what DR number is that? do

1 you know?

2 MR. MILLS: It's the original response to 2005.

3 MR. MICHEEL: You do go. 430.

4 MR. MILLS: Thank you.

5 Q (By Mr. Mills) Mr. Moehn, I've just handed you
6 copies because I'm going to be asking you about both of
7 those exhibits, Exhibit 430 and 431?

8 A Right.

9 Q Do you recognize Exhibit 430 as the response
10 that you initially provided to Public Counsel, DR-2005?

11 A I do.

12 Q Okay. And you signed that response, did you
13 not?

14 A I did.

15 Q Okay. Can you explain what -- how -- in the
16 course of this rate case you came to be designated to
17 response to certain DRs in general and this one in
18 particular?

19 A Well, with respect to this -- to the EEI issue,
20 you know, previous positions taken by parties in this, it
21 is a resource planning issue. Or at least that's the
22 position that we've taken. So I responded to this because
23 of the nature of the issue.

24 Q Now, some other issues responded to some other
25 EEI -- or some other UE people or Ameren people responded

1 to some other EEI DRs. Do you know how that
2 responsibility was -- was created within UE about who
3 would answer DRs with regard to EEI?

4 A Are you referring to like by Mark Vantrease
5 or --

6 Q And others.

7 A I mean, they're --

8 Q Do you know of all the people that answered DRs
9 with respect to EEI?

10 A I would assume it's myself, Mark Vantrease and
11 possible legal.

12 Q Okay. Do you know who Mr. Robert Powers is?

13 A Yes, I do.

14 Q Do you know who he works for?

15 A EEI.

16 Q Okay. Do you know why he was -- do you know
17 that he answered DRs in this case about EEI?

18 A I guess that wouldn't surprise me.

19 Q Well, I didn't ask if it would surprise you. I
20 asked you, did you know?

21 A I think I recall seeing his name, yes, in a
22 couple DRs.

23 Q Do you know why someone from EEI rather than UE
24 was responding to data requests sent to UE?

25 A I don't recall that particular situation.

1 Q Did you as -- as -- in charge of the corporate
2 planning have any -- any role in deciding who would answer
3 which DRs in this case?

4 A We -- I did have discussions with Legal from
5 time to time.

6 Q Okay. Did you have any role in deciding that
7 Mr. Powers would answer some DRs?

8 A You know, I just don't recall. Sorry.

9 Q Now, with respect to -- to DR No. 430, which was
10 the initial response to Public Counsel DR-2005, did it
11 ever occur to you that it would be more appropriate for an
12 EEI director like Mr. Naslund or Mr. Whiteley or even
13 Mr. Voss to respond to this DR?

14 A No.

15 Q Okay. Now, Exhibit 430, does that appear to
16 contain the minutes for two EEInc. Board meetings, January
17 28th, 2005, and December 22nd, 2005?

18 A It does.

19 Q And do you recall that those are the -- the
20 minutes that you sent to us in your initial response?

21 A Correct.

22 Q Okay. When you sent us that response, did you
23 believe that it contained complete copies of the minutes
24 of those two meetings?

25 A I did.

1 Q Okay. Now, if we look at page 4 of Exhibit 430,
2 there is a statement in the minutes talking about
3 adjournment; is that correct?

4 A Okay.

5 Q And that's the adjournment of the January 28th,
6 meeting?

7 A Yes.

8 Q Is there something similar with the second set
9 of minutes that you provided in that response?

10 A I'm sorry. I'm not -- I'm not following you.

11 Q There are two sets of minutes there apparently;
12 is that correct?

13 A That's correct.

14 Q One set of minutes essentially goes from opening
15 the meeting through adjournment?

16 A Okay.

17 Q Does the second set of minutes say anything
18 about adjourning?

19 A Not that I see.

20 Q Okay. Did you notice that when you prepared the
21 response to DR 2005?

22 A No, I did not.

23 Q Okay. Do you recall how much time you spent in
24 preparing this response to DR-2005?

25 A Very little time. I didn't -- I did not have

1 any Board minutes in my files. As -- as you well know,
2 EEI is a separate company. I had to go and get these,
3 with Legal's assistance, from EEI.

4 Q Okay. And when -- when you say you had to go
5 and get these, what do you mean by these?

6 A The Board minutes.

7 Q All of the Board minutes or just these
8 particular pages?

9 A Well, I believe the sequence of events was we
10 got an initial one for all the Board minutes, and I
11 believe Legal objected to that. I don't recall on what
12 grounds. And then we ended up providing minutes related
13 to the discussion concerning the power supply agreement.

14 Q Okay. And that isn't really what I asked you.
15 When you said, I went with Legal and got these, what do
16 you mean by "these" in that sentence? Do you mean those
17 particular pages, or do you mean all of the EEInc. Board
18 minutes?

19 A There was a request made of EEI to provide any
20 Board minutes related to the PSA, discussion about the
21 PSA.

22 Q So you asked EEI to provide you with Board
23 minutes -- Board meeting minutes that discussed the PSA?

24 A Correct.

25 Q And they gave you those seven pages and sent

1 them on to us?

2 A That is the sequence of events.

3 Q Okay. You did no checking on -- of yourself to
4 see if those were complete minutes or if those were the
5 only minutes that discussed the PSA; is that correct?

6 A I did not have any in my possession.

7 Q Okay. Is there anything in that response that
8 indicates that -- that you simply relied on what EEInc.
9 sent you?

10 A No.

11 Q Okay. Now, let's --and I'm still -- given
12 that, I'm still struggling with why you are a witness on
13 the EEInc. issue. Do you recall when I asked you that in
14 your deposition about why you were the witness for EEInc.,
15 and you said, They decided I would be the witness?

16 A I -- I don't recall that. But --

17 Q Okay.

18 A -- if that's -- if that's what it says, that's
19 what it says.

20 Q Okay. Who -- who made the decision that you
21 would be the witness on EEInc.?

22 A I had discussions with counsel about it. We had
23 looked at the positions taken by other parties in the
24 past. This is essentially a resource planning issue.
25 They're basically taking the position that the 400

1 megawatts --

2 Q I'm sorry, Mr. Moehn. I didn't ask you why. I
3 said who.

4 A Counsel.

5 Q Counsel decided you would be the witness?

6 A Counsel and I discussed it. I decided I would
7 be the witness.

8 Q In your deposition when you said, They decided I
9 would be the witness, that would be a misstatement?

10 A That would be a misstatement.

11 Q Okay. Did you correct that in your corrections?

12 A I -- I don't recall.

13 Q Can you check?

14 A What page in my deposition?

15 Q Page 6 -- page 64, line 14.

16 A Are you talking about this exchange where it
17 says, It was agreed upon by whom? It made sense for me to
18 be the witness. Who did you tell that you planned to be
19 the witness. I discussed it with counsel.

20 Q No. At least on my copy, the answer beginning
21 on line 12 says, Again, being Vice President of Corporate
22 Planning and having responsibility for the resource plan,
23 they decided I would be the witness.

24 A It's -- then I go on to say that it was my
25 decision two lines down.

1 Q There -- there is further discussion with that
2 where you said you discussed it with counsel. But my
3 question was, you said, They decided I should be - I would
4 be the witness; is that correct?

5 A I guess it should have been we -- we decided.

6 Q Okay. And my question was, did you correct that
7 in your list of corrections?

8 A I did not.

9 Q Okay. Now, when you got those seven pages that
10 you provided in response to OPC/DR-2005, did you get them
11 directly from EEI, or did you get them from someone else?

12 A I don't remember the chain of events. The -- it
13 could have gone to counsel. It could have come directly
14 to me. I don't recall.

15 Q All right. Have you now reviewed the full set
16 of EEInc. Board minute -- Board meeting minutes that start
17 with 2003?

18 A I have.

19 Q And when did you do that review?

20 A Last week when they were -- when they were
21 turned over as part of the DR.

22 Q Okay. Do you recall both Mr. Dottheim and I
23 asking about -- asking you questions about that partial
24 response at your deposition on January 26th?

25 A I vaguely do. Yes.

1 Q Do you recall that we raised concerns about the
2 completeness of your answer to DR-2005 at that point?

3 A I don't.

4 Q Okay. Well, let's -- let's go through your
5 deposition again, then.

6 A Where are you?

7 Q Hang on just one second. I need a page
8 reference. Well, I didn't note the pages. We'll come
9 back to that question when we have time to look through
10 it.

11 A Great.

12 Q So you don't recall any specific conversation
13 with Mr. Dottheim or I about that issue?

14 A I'm sure we had a discussion about it.

15 Q Okay. Now, you said you did the review a couple
16 of -- when did you do the review of the full set of --

17 A Of what.

18 Q -- the full set of minutes?

19 A Sometime, I believe, last week.

20 Q Okay. And why did you review that -- the full
21 set of minutes last week?

22 A I saw that there was a DR, and we were
23 responding and providing all the minutes.

24 Q So did you do it in order to be prepared for
25 your testimony today?

1 A I just -- I wanted to know it was going out the
2 door.

3 Q But you didn't feel it was necessary to -- to --
4 to know it was going out the door the first time you
5 responded to 2005; is that correct?

6 A Mr. Mills, as I said before, I relied -- maybe
7 wrongly, I relied on -- on counsel and EEI to -- what I
8 thought they were providing related to the PSA discussion.

9 Q Okay.

10 A I, in hindsight, obviously, was incorrect.

11 JUDGE WOODRUFF: Now --

12 A I'm sure there is no nefarious motive here. So,
13 again, it -- it should have been done. It didn't happen.
14 I apologize.

15 Q Do you know how much the EEInc. issue is worth
16 in this case?

17 A I know, yes, what, what parties are proposing.

18 Q And what is the difference in -- what is the
19 range of differences in terms of dollar values attributed
20 to this issue?

21 A I think it ranges from \$20 million to 80,
22 something like that.

23 Q \$80 million is a lot of motive, isn't it?

24 A I said -- motive in what sense, sir?

25 Q Well, you're the one that brought up motive. I

1 was just asking if there was some sort of reason UE would
2 provide an incomplete response in the first response.

3 A Sir, I didn't think it was an incomplete
4 response.

5 Q Okay. Well, let's explore that. Do you have a
6 copy of Exhibit 431, which is the complete set of minutes?

7 A I do.

8 Q Now, is this a supplemental response to DR-2005
9 that -- that you responded to initially on December 8th,
10 2006?

11 A Correct.

12 Q Can you please turn to page 63 of Exhibit 431?
13 Are you there?

14 A Got it.

15 Q Is that the beginning page of the minutes for
16 December 22nd, 2005?

17 A It is.

18 Q Can you please turn to page 65?

19 A Yes.

20 Q Is page 65 where the minutes originally provided
21 in your December 8th, 2006, response which is 430 in this
22 case, stopped?

23 A Right.

24 Q And Exhibit 431, do the minutes for that meeting
25 continue?

1 A They do.

2 Q And through what page do they continue?

3 A Ninety-six.

4 Q All right. So you provided three pages of --
5 three pages of a document that's actually over 30 pages
6 long, and it's your testimony that you never knew that you
7 were providing an incomplete document?

8 MR. CYNKAR: Your Honor, I must object now.

9 I've let this go on for a while. And I think in the
10 record of this Commission knows that on -- that we
11 interposed an objection on November 9th, 2006.

12 And I'm prepared on redirect to introduce the
13 objection letter. That objection was -- was lodged then.
14 We've now had testimony that several of my colleagues were
15 concerned in January about the completeness of the
16 response.

17 But Mr. Moehn is not a lawyer. We lodged what I
18 believe was a perfectly proper response to that and
19 objecting to the DR. It was only the week right before
20 this hearing that the -- whatever concerns my colleagues
21 had about the completeness or incompleteness, which was
22 based on our lawful objection, was raised by their Motion
23 to Compel and properly adjudicated. The one that wasn't
24 adjudicated, we fully responded.

25 But I believe in light of that series of facts

1 and filings, this is not relevant to any issue here, and
2 it is certainly not proper to imply that Mr. Moehn in any
3 way did anything improper by not giving opposing counsel
4 all the documents they wanted when we advanced a
5 legitimate objection.

6 JUDGE WOODRUFF: Mr. Mills, what is the
7 relevance of this line of inquiry?

8 MR. MILLS: The relevance is that -- well,
9 there's a couple of ways that this is relevant. One is
10 actual evidence on the record in this case about what
11 really did happen with response -- with that response, the
12 partial response and the later complete response, I think
13 will be directly relevant to a Motion for Sanctions should
14 we choose to -- to file one. And since this is -- this is
15 the witness when knows what happened, knows why it
16 happened, getting his testimony under oath about what
17 actually happened will be able to lead us to file or not
18 file a Motion for Sanctions with respect to the -- to
19 discovery violations on these issues.

20 JUDGE WOODRUFF: Well, I'm just concerned about
21 trying to -- to move this hearing along. I understand
22 there's no -- there's not been a Motion for Sanctions
23 filed at this point.

24 MR. MILLS: That's true.

25 JUDGE WOODRUFF: And I don't know if there's a

1 basis for one or not.

2 MR. CYNKAR: Your Honor, I think Mr. Mills just
3 made my point. This is not relevant to setting rates in
4 this case. Plus, the implication of what Mr. Mills was
5 saying was that our objection was improper.

6 But if this -- if there was a concern about the
7 objection, the way you test that is consult. And then if
8 there's no agreement on -- on producing documents, the way
9 you test that is file a Motion to Compel. You don't
10 impugn the motives of people who legitimately offer a
11 legal objection. That's absurd.

12 So the proposition that there's something to
13 sanction here I -- I find offensive and particularly when
14 the opposing parties sat on their rights for so long.
15 This is ridiculous, and this really should not go on.

16 MR. MILLS: Well, as -- as the Bench is fully
17 aware, the Commission's rules require good faith efforts.
18 A number of conference calls to bring a Motion to Compel.
19 A lot of those things took time.

20 And I -- in retrospect, we certainly should have
21 done this earlier in the process. But the fact that it
22 took that long to get the resources freed up to get it
23 pushed through to the Commission's decision, which was
24 almost entirely in our favor, I don't think is really --
25 you know, I don't think that reflects in any way on the

1 importance of the issue, the fact that it took us a while
2 to get to it.

3 JUDGE WOODRUFF: I'm going to direct you to move
4 on from -- from this issue about the motivation for the
5 responses. I don't think it's relevant to the issue --
6 the EEInc. issue.

7 If you have evidence indicating that some sort
8 of -- if there was something in these additional responses
9 that was relevant that you didn't know about before, you
10 can go into that.

11 MR. MILLS: Okay. I will -- I will move on to
12 that.

13 JUDGE WOODRUFF: All right. Thank you.

14 Q (By Mr. Mills) Now, if I can get you to turn to
15 page 29 of Exhibit 431, is that the beginning page of the
16 minutes for October 29th, 2004?

17 A Correct.

18 Q Can you turn to page 30, which would be the
19 second page of the October 29th minutes? Can you read the
20 third paragraph on that page, please?

21 A The Chairman introduced, that paragraph?

22 Q Uh-huh.

23 A The Chairman introduced Mr. James Helm who
24 reviewed the earnings report for the third quarter 2004.
25 Mr. Helm discussed each of the earnings components for the

1 quarter.

2 Q No. That's not the right paragraph. Let me --
3 do we have another copy of that? I gave him mine. It's
4 the paragraph beyond that that read, Mr. Helm entered into
5 a discussion of the need to clarify the company's existing
6 power contracts and proposed a modification of the
7 Department of Energy contract and the sponsors' power
8 supply agreement.

9 After general discussion, it was agreed to
10 improve the following resolution and sponsors power supply
11 agreement letter supplement. And then it goes on to talk
12 about Modification No. 16 to the power supply agreement.
13 Do you -- do you see that section of this document?

14 A I do.

15 Q Okay. Does that seem to you to be a reference
16 to the power supply agreement concerning EEInc. and the
17 sponsoring companies?

18 A It would.

19 Q And had you seen that at the time you made your
20 initial response to DR-2005, would you have considered
21 this to be responsive?

22 A I would have.

23 Q Now, let's turn, please, to page 45 of Exhibit
24 431. Is that the first page of the meeting minutes from
25 the meeting of May 13th, 2005?

1 A That appears to be the case.

2 Q And if you'll flip to the second page of those
3 minutes, which is page 47 of the exhibit, that paragraph
4 says, The Chairman entered into a general discussion
5 regarding the power supply agreement.

6 MR. CYNKAR: Your Honor, excuse me. Mr. Mills,
7 I'm going to object on a couple of grounds. First of all,
8 with respect to documents that are already in evidence,
9 this habit of reading stuff into the record is cumulative,
10 and I object to it. We will be here till May if we keep
11 doing that.

12 I realize Counsel has to refer to documents, but
13 any experienced counsel can do that more expeditiously
14 than this.

15 Second of all, I believe I want to renew my
16 objection. We have already had testimony on exactly how
17 this process worked. We know the objection was there.
18 Mr. Moehn has explained how he asked to get these -- this
19 material from EEI.

20 He's even apologized if he didn't do something
21 right. This is a course that is long dead. I -- it's
22 cumulative, and I renew my other objection, too.

23 MR. MILLS: Well, I understand the objection
24 about cumulative. I'm not sure I understand the dead
25 horse objection.

1 MR. CYNKAR: But it's relevant. It's -- it's
2 already been ruled as being irrelevant. And -- and I
3 don't believe that -- respectfully, that Counsel is doing
4 anything different than he was doing before.

5 MR. MILLS: Your Honor, I believe I was directed
6 to point out the additional material in Exhibit 431 that
7 was not additional -- that was not originally provided in
8 Exhibit 430.

9 And there are a number of instances in which the
10 power supply agreement was discussed at length in meeting
11 minutes that we were not provided in our initial response.

12 JUDGE WOODRUFF: And the witness has already
13 acknowledged that.

14 MR. MILLS: No. I don't believe he has. I
15 think he's acknowledged that there are some. I don't
16 think he's acknowledged where they are or how many there
17 are.

18 JUDGE WOODRUFF: Is it relevant how many there
19 are?

20 MR. MILLS: It's relevant both how many there
21 are and what the references are and what was being
22 discussed. I mean, how the parties approached the -- the
23 idea that the power supply agreement would expire at the
24 end of 2006 is -- is crucial to this issue.

25 UE, as we've testified, as we've talked about

1 before, UE approached it in a different manner than KU.
2 And what the parties were thinking and how they got there,
3 I think, is relevant to the Commission's decision on
4 whether or not UE's decision not to side with KU is
5 imprudent.

6 JUDGE WOODRUFF: I'm going to overrule the
7 objection. But, Mr. Mills, as Counsel indicated, we will
8 be here until May -- actually, we may be here on Saturdays
9 and Sundays until the end of April because we can't go
10 into April. But we do want to keep things moving along,
11 any way you can move it along quickly.

12 MR. MILLS: And I understand that. I understand
13 this material is in the record. The problem is when you
14 read through the transcript and you've got a stack of
15 documents that are five boxes full --

16 JUDGE WOODRUFF: I understand.

17 MR. MILLS: -- it's helpful to have the
18 reference there in the transcript with the discussion
19 about it. And I don't want to be unduly cumulative, and I
20 don't want to take a lot of time. And I think I could
21 have read those two sentences I was planning to read in
22 about half the time we had this discuss.

23 MR. CYNKAR: May I just ask this question as the
24 new kid on the block here in these proceedings? Given
25 that is in evidence, I would just suggest that that's what

1 the post-hearing brief is for. We' don't need to go --
2 that's why the transcript of depositions are in. And for
3 proficiency sake, you make the arguments, which it's a
4 legitimate argument if Mr. Mills wants to make it. But
5 that's what we're supposed to do, call it to the attention
6 of the Commission in our post-hearing briefs.

7 You have ruled, and I respect that. But I had
8 that question.

9 JUDGE WOODRUFF: All right. Thank you.

10 Q (By Mr. Mills) Okay. Mr. Moehn, we were on
11 page 47 of Exhibit 431. Is it -- just to speed things
12 along --

13 A Yes.

14 Q -- is it your sense that that entire paragraph
15 talks about the power supply agreement's coming expiration
16 and what to do about that?

17 A Correct.

18 Q Okay. And, again, had you -- if you had seen
19 these minutes before you provided your initial response,
20 would have you considered this to be responsive?

21 A I would have.

22 Q Now, let's turn to the -- to the minutes from
23 August 5th, 2005, which begin on page 49. And if I can
24 get you to turn to page 2.4 of those minutes, which is
25 page 52 of the -- of the exhibit. Is the -- the bottom

1 paragraph on that page, is there again a discussion about
2 the proposed -- the expiration of the power supply
3 agreement and the key issues of a proposed power supply
4 agreement to replace the expiring power supply agreement?

5 A This is.

6 Q Okay. And, again, if you had seen those minutes
7 when you made your initial response, would you have
8 considered that to be responsive?

9 A Yes.

10 Q And then let's turn to the September 8th, 2005
11 minutes, which start on page 54. At the bottom of that
12 page, is there, again, a discussion of a new power supply
13 agreement?

14 A Yes.

15 Q And, again, had you seen that -- that discussion
16 in -- in -- in your -- when you were preparing your
17 initial response, would you have considered this to be
18 responsive?

19 A Absolutely.

20 Q Okay. Okay. Now, Mr. Moehn, before you came to
21 Union Electric company, you spent a number of years
22 working for an accounting firm; is that correct?

23 A Correct.

24 Q Price Waterhouse, right?

25 A Correct.

1 Q And I believe you participated and even
2 supervised it -- supervised external audits; is that
3 correct?

4 A I -- I did. I was in the audit practice.

5 Q Right. When audit reports and financial
6 statements are prepared for third party review, isn't it
7 standard practice to disclose the extent to which your
8 findings are based on your own independent review and the
9 extent to which those findings are based on
10 representations of others?

11 A I'm not -- I'm not following. I'm sorry.

12 Q Okay. When you did an audit report --

13 A Correct.

14 Q -- does the audit report disclose the extent to
15 which the actual results are verified and audited and the
16 extent to which the auditor relied on the representations
17 of the audit -- of the company being audited?

18 A That would be included in the opinion, correct.

19 MR. MILLS: Okay. Your Honor, if I may have
20 just a minute?

21 JUDGE WOODRUFF: Sure.

22 MR. MILLS: In view of the -- the parties and
23 the Bench's desire to move along quickly, I may be able to
24 skip through a lot of this. Your Honor, before I get into
25 this, I have several other DRs that I think I can

1 demonstrate with this witness that the initial answers
2 were -- were not responsive. Is it your -- will it be
3 your ruling that that information is not relevant to this
4 proceeding?

5 JUDGE WOODRUFF: If you can handle it the way
6 you did the -- at the end of your last process and do it
7 quickly and efficiently, I'll -- I'll allow it.

8 MR. MILLS: Okay.

9 JUDGE WOODRUFF: Subject to objections that may
10 be made when you get into specifics.

11 MR. MILLS: Okay. Let me go ahead and mark an
12 exhibit quickly.

13 JUDGE WOODRUFF: And this will be 432.

14 Q (By Mr. Mills) Mr. Moehn, you've just been
15 handed a copy of what's been marked as Exhibit 432.

16 A Yes.

17 Q Do you recognize that exhibit as your responses
18 to OPC/DRs 2173 and 2255?

19 A I do.

20 Q And the -- the first one, the response is, See
21 the rebuttal -- the surrebuttal of Matthew T. Wallace in
22 the Metro East case. How did you determine that this
23 testimony was responsive to this DR?

24 MR. CYNKAR: Your Honor, I must interpose
25 another relevance objection. This is beyond -- about the

1 Pinckneyville and Kinmundy issue. They don't relate to
2 EEInc. at all. I object on the grounds of relevance.

3 MR. MILLS: We can certainly save these until
4 Mr. Moehn is back on the stand if that's the Bench's
5 preference.

6 JUDGE WOODRUFF: That would be my preference,
7 also. So 433 is marked, and we'll deal with it later.

8 MR. MILLS: Your Honor, before I decide that I'm
9 done, is it -- is it UE's intention to put Mr. Moehn on
10 the stand for Pinckneyville and Kinmundy?

11 MR. LOWERY: I believes he's on for
12 Pinckneyville and Kinmundy. Mr. Moehn is not a witness on
13 Pinckneyville and Kinmundy.

14 JUDGE WOODRUFF: Okay. Well, he is on -- all
15 right.

16 MR. LOWERY: And once again, your Honor --

17 JUDGE WOODRUFF: He's going to be back for the
18 SO2 allowances; is that right?

19 MR. LOWERY: He will be back for that.

20 JUDGE WOODRUFF: Mr. Mills, I'll revisit my
21 ruling before. If you want to go on and deal with this
22 exhibit now, you can go ahead.

23 MR. LOWERY: Your Honor, I must state again that
24 I think this is an entirely inappropriate thing to take up
25 when another party has a complete list of discovery

1 responses, whether objections were legitimate. The
2 Commission has a process for that. Public Counsel has
3 completed failed to do that, and I think it's completely
4 improper in a case that involves rate base and what the
5 appropriate rate should be to try to turn that case into a
6 discovery dispute, which is exactly what Mr. Mills is
7 doing.

8 So I object to this entire line of questioning
9 with any of these witnesses on relevance grounds to this
10 proceeding.

11 JUDGE WOODRUFF: All right. The objection is
12 overruled.

13 MR. MILLS: I was about to say I don't believe I
14 even have a question pending at this point.

15 Q (By Mr. Mill) But my question is, with respect
16 to 2173, how did you determine that the testimony was
17 responsive to this DR?

18 A I discussed it with counsel.

19 Q Okay. Did you read the -- the testimony in its
20 entirety before you provided it as an attachment?

21 A I did not read it in its entirety, no.

22 Q Now, the data request asked for a copy of all
23 responsive documents. Did you do a search for responsive
24 documents?

25 A I believe I would have sent it on to people who

1 I thought had -- had the information. I -- I personally
2 did not have any information.

3 Q And who did you send it on to?

4 A Some individual probably in Corporate Planning
5 and then also Legal.

6 Q Okay. And who came back with the surrebuttal
7 testimony of Matthew T. Wallace for you to include?

8 A Somebody in Legal did, I believe. Or -- you
9 know, I don't know. Or somebody in Corporate Planning. I
10 don't recall.

11 Q Okay. Did you contact anyone at any of UE's
12 affiliates?

13 A No.

14 Q Does Ameren have any other affiliates that own
15 generation resources?

16 A EEI, yes.

17 Q Okay. Did you ask EEI in reference to this DR?

18 A I did not.

19 Q Okay.

20 A I did not.

21 Q Now, the second page of this exhibit is your
22 response to OPC/DR 2255. Did you provide that response?

23 A I did.

24 Q And that DR essentially asks you to confirm that
25 the testimony of Mr. Wallace in the previous response is

1 the only responsive document; is that correct?

2 A Correct.

3 Q And you confirmed that it was?

4 A I checked with the same people.

5 Q Okay. So your -- your -- the way you confirmed
6 that your previous response was correct was to check with
7 the people you checked with the first time around?

8 A Yes.

9 MR. MILLS: Okay. That's all I have, your
10 Honor.

11 JUDGE WOODRUFF: All right. Cross by Staff?

12 CROSS-EXAMINATION

13 BY MR. DOTTHEIM:

14 Q Good morning, Mr. Moehn.

15 A Good morning.

16 Q Mr. Moehn, can you identify who Charles D.
17 Naslund is?

18 A He's head of our -- he's our Chief Nuclear
19 Officer at AmerenUE.

20 Q Is he a Senior Vice President, and as you've
21 indicated, Senior -- excuse me -- Chief Nuclear Officer at
22 AmerenUE?

23 A I believe that's his official title. Uh-huh.

24 Q Does he have testimony filed in this proceeding?

25 A Yeah. I think he does. Yes.

1 Q He is a Director of the EEInc. Board of
2 Directors, is he not?

3 A He is a Board member. Correct.

4 Q Okay. And he was deposed on EEInc., was he not?

5 A He was.

6 Q In fact, there was a telephone hook-up for
7 purposes of the deposition, and you listened in from St.
8 Louis, did you not?

9 A I do not believe I listened to Chuck Naslund's
10 deposition.

11 Q No? Okay. Excuse me. Did you confer at all
12 with Mr. Naslund in the preparation of either your direct
13 rebuttal or surrebuttal testimony?

14 A No, I did not.

15 Q Is there any reason why you did not confer at
16 all with Mr. Naslund?

17 A I didn't -- didn't see the relevance.

18 Q He's a member of the EEInc. Board of Directors,
19 and you didn't see any relevance respecting your -- your
20 testimony?

21 A No, I did not.

22 Q Okay. He is -- he was a member of the EEInc.
23 Board of Directors over the time period when the events
24 occurred when the 1987 power supply agreement ended; isn't
25 that correct?

1 A I was not aware of that. Oh, when it ended?

2 Q Yes.

3 A Yeah. I believe he was in 2005. Uh-huh.

4 Q Mr. Moehn, do you know whether EEInc. has a

5 General Counsel?

6 A I don't know the answer to that.

7 Q Do you know whether there is any individual

8 attorney or law firm that provides legal advice to the

9 EEInc. Board of Directors?

10 A I -- I don't know. I would assume so, but I

11 don't know.

12 Q Okay. And your preparation of your testimony,

13 rebuttal and -- and surrebuttal, you conferred with

14 counsel?

15 A Correct.

16 Q Could you identify that counsel?

17 A For which testimony?

18 Q On EEInc.

19 A For my rebuttal and surrebuttal?

20 Q Let's take them individually. Direct?

21 A Direct was Tom Byrne.

22 Q Rebuttal?

23 A I believe Mr. Cynkar reviewed it.

24 Q And surrebuttal?

25 A Mr. Cynkar.

1 Q Did you confer at all with -- with Mr. Downs?

2 A I have talked to Mr. Downs.

3 Q Has Mr. Downs reviewed your direct, rebuttal or
4 surrebuttal testimony?

5 A Not that I'm aware of.

6 Q Do -- to your knowledge, did Mr. Downs provide
7 you with any comments on your direct, rebuttal or
8 surrebuttal testimony?

9 A He -- he did not.

10 Q The -- the references that you -- you have in
11 your rebuttal, in your surrebuttal testimony, in
12 particular, surrebuttal testimony to -- to Mr. Downs, is
13 that then based upon reading Mr. Downs' rebuttal and/or
14 surrebuttal testimony?

15 A I did read his testimony, and then also through
16 discussion with Mr. Cynkar.

17 Q Returning to Mr. Naslund just for a moment, do
18 you know why Mr. Naslund did not file any testimony on
19 EEInc. in this proceeding?

20 A I -- I do not know the answer to that.

21 Q Mr. Moehn, do you know, what are the duties and
22 responsibilities of a member of the EEInc. Board of
23 Directors -- as a member of the EEInc. Board of Directors?

24 A I mean, I think as a -- as a Board member of
25 that stand-alone company, I think they have a fiduciary

1 responsibility to those shareholders.

2 Q And what is the basis for your understanding
3 that you just stated?

4 A I guess my professional background, being an
5 accountant. Just through school, I took a class in
6 Corporate Governance when I was in graduate school.

7 Q That's not based upon discussions with counsel
8 on that specifically relating to the EEInc. Board of
9 Directors?

10 A That I took a class in graduate school?

11 Q No, no. I'm -- your understanding of the duties
12 and responsibilities of the members of the EEInc. Board of
13 Directors, it's -- it's not related to any discussions
14 with legal counsel that you had?

15 A All right. I understand. I mean, I thought you
16 asked me how I came about knowing that. My prior
17 experience in school. And I've also -- I've certainly had
18 discussions with counsel about it.

19 Q And when you say you've had discussions with
20 counsel about it, it's the counsel that you've previously
21 identified in response to questions from me earlier?

22 A Correct.

23 Q Mr. Moehn, I'd like to refer you to your
24 surrebuttal testimony. I'd like to refer to you page 2,
25 line 3, your sentence, It was, as the common expression

1 puts it, a below the line investment. Could I find in an
2 industry publication or a manual or a textbook the
3 principles set out that an item not -- not in rate base
4 should be treated below the line?

5 A There might be some utility industry manuals I
6 think I've seen before.

7 Q At this moment, can you cite me to any?

8 A You know, I have a reference on my desk from
9 PG&E, which is a utility manual, that I think talks about
10 below the line and above the line.

11 Q Does it talk about it in that -- in that manner?

12 A I believe it talks about it in terms of above
13 the line and below the line, correct.

14 Q And PG&E is --

15 A Sorry. Pacific Gas & Electric.

16 Q Can you identify any other document, manual,
17 industry publication, manual or textbook?

18 A No.

19 Q And what is the basis for your -- your use of
20 the term "common expression?"

21 A I believe -- I believe this is a unique term to
22 the utility industry.

23 Q Your use of that term has been disputed by the
24 other parties, has it not?

25 A I don't recall.

1 Q You don't recall the -- the testimony of
2 Mr. Schallenberg or Mr. Brosch, for example, that --

3 A You know, it goes back and forth. In some
4 instances, I think it's been disputed. And sometimes I
5 think people concede that the common stock is -- is being
6 backed out of UE's cost of capital. You know, the
7 investment in UE to -- UE's investment of EEI is about
8 \$30 million on UE's books.

9 I know that Mr. Nickloy as part of his case has
10 backed that out of UE's cost of capital.

11 Q But Mr. Nickloy doesn't have any testimony filed
12 on the EEInc. issue, does he?

13 A No. Just the adjustments to cost of capital.

14 Q I'd like to refer you to page 7 of your rebuttal
15 testimony, lines 5 and 6. Your -- your sentence, The
16 Board of Directors of EEInc. made the decision to sell
17 from the Joppa plant at market based prices. The source
18 of your information --

19 A I'm sorry. I'm not -- what page are you on?

20 Q I'm sorry. Page 7, lines 5 and 6.

21 A Lines 5 and 6. Okay.

22 Q The source of your information for that
23 statement is?

24 A I'm sorry. I'm not -- my lines 5 or 6 say, All
25 of OPC's arguments were rejected by FERC.

1 Q I'm in your rebuttal testimony.

2 A Oh, sorry. Sorry. I'm in my surrebuttal.

3 Q Okay. What is the source of your statement?

4 A The source?

5 Q Yeah. I mean -- have you attended -- have you

6 attended any of the EEInc. Board of Directors meetings?

7 A I have not. I -- I reviewed the minutes we

8 talked about. It's indicated in the minutes.

9 Q Okay. All your knowledge is third-hand, is it

10 -- is it not?

11 A That -- that's correct. I do not -- I do not

12 possess any of the EEI Board minutes.

13 Q Okay. And Mr. Naslund's knowledge as a member

14 of the Board of Directors is firsthand, is it not?

15 A That's correct.

16 Q I'd like to refer you to your surrebuttal

17 testimony now. On page 5 starting over on line 17,

18 carrying over to page 6, the end of the page where you

19 assert that the material you set out therein is --- is not

20 disputed.

21 A Correct.

22 Q Okay. Now, this, of course, appears in your

23 surrebuttal testimony, does it not?

24 A Uh-huh.

25 Q So the parties -- the other parties have not had

1 an opportunity to respond to it in testimony; is that
2 correct?

3 A That's correct.

4 Q I'd like to refer you to -- to page 7 of your
5 surrebuttal testimony, the sentence at lines 22 to 24
6 where you state, The problems with these claims is that
7 they simply do not reflect the undisputed facts, and as I
8 mentioned, rest on incorrect legal opinions that the
9 witnesses recognize they are not competent to make.

10 What is the -- the source of your statement that
11 -- that the claims rest on incorrect legal opinions?

12 A In my discussions with counsel.

13 Q Okay. You're not an attorney yourself, are you?

14 A I'm not.

15 Q Okay. So your reference to incorrect legal
16 opinions is not a determination that -- of your own, is
17 it?

18 A You -- I'm not a lawyer. But I -- I didn't
19 disagree with what -- with the statement either.

20 Q Well, are you -- are you competent to agree or
21 disagree?

22 A I'm not an attorney.

23 Q I'd like to refer you to page 8 of your
24 surrebuttal testimony, the question and answer from lines
25 7 to 12. On -- on what do you base your -- your answer?

1 A Mr. Downs' testimony.

2 Q Okay. So you're just -- you're just restating
3 Mr. Downs' testimony?

4 A Correct. I -- yes.

5 Q Okay.

6 A Uh-huh.

7 Q Would it be fair for say that all references to
8 the law that -- that you -- you make, for example, in your
9 surrebuttal testimony, you're just referencing Professor
10 Downs' testimony?

11 A I -- I'm not an attorney.

12 Q Would you be -- would you be referencing, then,
13 in regards to what it -- whatever statements you're making
14 regarding legal conclusions or --

15 A I'd be referencing his testimony.

16 Q Mr. Moehn, I'd like to refer you to page 19 of
17 your surrebuttal testimony, lines 7 and 9.

18 A Okay.

19 Q Where you state, If Staff was so opposed to
20 EEInc. handling the ability to sell Joppa's output at
21 market base rates, why didn't the Commission itself
22 contest EEInc.'s market based rate MDR filing at FERC.

23 Mr. Moehn, do you know whether the Staff of
24 Missouri Public Service Commission ever files on behalf of
25 its -- of itself in FERC proceedings?

1 A The Staff itself does?

2 Q Yes.

3 A Yes. I would -- yes.

4 Q Are you saying the answer is yes?

5 A Yes.

6 Q And on what do you base your answer?

7 A My -- I think I've seen -- I think I've seen

8 filings that they've done.

9 Q Filings that the Staff has made on behalf of the

10 staff at the FERC on behalf of the Missouri Staff at the

11 FERC?

12 A Maybe it's on behalf of the Commission.

13 Q Which is it, Mr. -- Mr. Moehn?

14 A I guess it would be on behalf of the Commission.

15 Q Are you asking me, or is that correct, or are

16 you making a statement?

17 A I'm making a statement.

18 Q Do you know whether the Missouri Commission ever

19 makes a filing on behalf of the Missouri Staff?

20 MR. CYNKAR: I object, your Honor. Excuse me,

21 Steve. I object. Mr. Moehn has already said he's not a

22 lawyer. I'm just learning the regulatory aspects of --

23 JUDGE WOODRUFF: I'll sustain the objection.

24 MR. CYNKAR: Thank you.

25 Q (By Mr. Dottheim) Mr. Moehn, do you know

1 whether the FERC's order in EEInc.'s market based rate
2 authority case contains any statement about the Missouri
3 Commission's jurisdiction?

4 A I believe it does.

5 Q And what does that statement say?

6 A I don't know. I'd have to pull it out. I don't
7 recall.

8 Q Okay. If you have a copy with you --

9 A Yeah. I don't think I have a copy with me. I'm
10 sorry. I don't have a copy with me.

11 Q Do you have any recollection what the statement
12 of the FERC was regarding the jurisdiction of the Missouri
13 Commission?

14 A In essence, I believe it said the EE -- the
15 EEInc. issue was a state issue.

16 Q Did you recall whether Ameren has made any
17 statements before the FERC regarding whether the Missouri
18 Commission has state jurisdiction regarding EEInc.
19 Issues?

20 A No. I don't know that.

21 Q I'd like to refer you to, again, your
22 surrebuttal testimony, page 23, lines 14 to 16 where you
23 state, This statement shows that no matter what KU's
24 representatives on the EEInc. Board of Directors said or
25 how they voted, it was clear that KU fully recognized that

1 their contractual rights to any Joppa plant power at cost
2 base rates expired on December 31, 2005.

3 Mr. Moehn, have you talked with KU's
4 representatives on the EEInc. Board of Directors?

5 A I have not.

6 Q Mr. Moehn, have you talked with anyone at KU who
7 made that filing with the FERC --

8 A I have not.

9 Q -- that you're referring to?

10 A I have not.

11 Q So your statement is speculation, is it not?

12 A This is -- this is my opinion of what that
13 means. Absolutely.

14 Q So it's your opinion. It's your speculation,
15 correct?

16 A Well, it says because KU's contractual rights to
17 power expire on December 31st, 2005. How else should I
18 interpret that? I'm sorry. I'm asking a question.

19 MR. DOTTHEIM: If I could have a moment, please.

20 JUDGE WOODRUFF: Sure.

21 Q (By Mr. Dottheim) Mr. Moehn, I'm not asking you
22 substantively about the -- the item, so it's not my
23 intention to hold it up by doing so, but you seem to have
24 a chart behind you. Is that -- is that your chart that's
25 sitting behind you?

1 A Correct.

2 Q Did you bring that up to the witness stand with
3 you?

4 A We put it up here. I think someone from Ameren
5 did, yeah.

6 Q Did -- somebody put it up there?

7 A Uh-huh.

8 Q Do you know who put it up there?

9 A My counsel, I think, did. Yeah.

10 Q Do you know why he put it up there?

11 A I don't know why he brought it.

12 MR. CYNKAR: You're about to find out.

13 MR. DOTTHEIM: All right. Well, I expect that
14 you're hoping I'm about to find out. But I -- I --

15 MR. CYNKAR: Because no one can predict what the
16 Commission is going to do.

17 Q (By Mr. Dottheim) Mr. Moehn, I assume you know
18 why your counsel put that chart behind you?

19 A It -- it's a graph of some --

20 MR. CYNKAR: I object insofar as Mr. Dottheim is
21 going after my advice to my client.

22 MR. DOTTHEIM: I'm not asking to go into
23 attorney/client privilege. I -- and, again, I wasn't
24 asking questions so as to open it up substantively
25 respecting the -- the -- the chart that is placed behind

1 Mr. Moehn so that on redirect or possibly even on cross he
2 might be able to use that -- that visual.

3 Q (By Mr. Dottheim) Mr. Moehn, I think it was in
4 response -- in response to questions from Mr. Mills, who
5 indicated that you, too, came over from Price Waterhouse
6 Cooper's; is that correct?

7 A Correct.

8 Q Okay. And at one time, you were engaged in
9 doing at least one external audit of Ameren; is that
10 correct?

11 A Yeah. I worked for Ameren for a couple of
12 years.

13 Q And I -- I think this has been broached, but are
14 there rules or guidelines within the accounting industry
15 addressing matters such as crossing over -- accountants or
16 auditors crossing over from the industry performing
17 external audits taking employment with firms for which the
18 external audit previously had been performed?

19 A I believe there are now. Not -- not when I
20 joined Ameren. But I believe there are currently.

21 Q Okay. And -- and how recent are those rules or
22 guidelines?

23 A In the last four or five years, potentially. I
24 think, you know, they came out of a lot of the
25 Sarbane-Oxley work and --

1 Q And who -- who sets the -- the rules or
2 guidelines? What -- what organization?

3 A I'm sorry. You know, I don't know. I'm not
4 sure if it's set through the accounting industry or if
5 it's actually set through -- through other -- some
6 legislative process. I don't know.

7 MR. DOTTHEIM: Thank you, Mr. Moehn. You've
8 been very patient.

9 MR. MOEHN: Thank you.

10 JUDGE WOODRUFF: Thank you, sir. We'll come up
11 for questions from the Bench. Commissioner Murray?

12 THE COURT REPORTER: Excuse me. I need to
13 change paper real quick.

14 JUDGE WOODRUFF: Go ahead.

15 (Break in proceedings.)

16 CROSS-EXAMINATION

17 BY COMMISSIONER MURRAY:

18 Q Mr. Moehn, good morning.

19 A Good morning.

20 Q I'm going to start with some questions that I
21 had asked yesterday, I believe, of Mr. Rainwater, and he
22 indicated that you would probably be the appropriate
23 witness.

24 I asked him about a statement that
25 Mr. Schallenberg made in his surrebuttal testimony

1 yesterday regarding the date of December 22nd, 2005, when
2 Ameren -- as he said it, he said AmerenUE voted to approve
3 a power supply agreement that sold its share of the energy
4 from the Joppa plant to an affiliate and that Ameren
5 Energy Marketing -- or I'm sorry -- Ameren Energy
6 Marketing at a rate higher than the cost base terms
7 charged to AmerenUE under the prior agreement.

8 And on that same date, all of the EEI owners
9 voted to extend and modify cost based contract -- oh, this
10 is highly confidential.

11 COMMISSIONER MURRAY: I believe it is, judge.

12 JUDGE WOODRUFF: I'll ask the parties. Is this
13 highly confidential?

14 MR. DOTTHEIM: I -- I think at least what is --
15 what is -- what is presently shown on page -- on page 9 --
16 I think basically is covered -- I think it's basically
17 covered in Exhibit No. 431, which is the Board of
18 Directors meeting minutes, which is -- which is stamped
19 HC, but I don't think it's being treated as HC, so I don't
20 think it's -- it's highly confidential anymore.

21 MR. LOWERY: I agree. These are those minutes
22 that I think were incorrectly designated highly
23 confidential and that are not.

24 JUDGE WOODRUFF: All right.

25 COMMISSIONER MURRAY: And so these questions

1 that I asked yesterday were in-camera because I thought
2 they were HC.

3 JUDGE WOODRUFF: Well, they did not need to be.

4 Q (By Commissioner Murray) Anyway, on that same
5 date, all of the EEI owners voted to extend and modify the
6 cost based contract with the Department of Energy for
7 another year while the deleting only Sections 2.06, which
8 is Joppa Energy and 3.08 adjustment and extension
9 improvements.

10 And my questions were regarding the vote to
11 extend and modify the cost based contract with DOE. I had
12 asked Mr. Rainwater if the Board of directors would have
13 been violating their fiduciary duty to have voted to
14 extend the contract with AmerenUE at cost based rates, why
15 wouldn't this have been a breach of fiduciary duty?

16 And I don't know if you were here and heard his
17 answer yesterday, but he said you could expand on that.

18 A Sure. Yeah. I don't think they would have been
19 violating a fiduciary duty. I think you have the
20 references correct. It was modification 17. What had
21 happened was they deleted Sections 2.06 and 3.08, which --
22 and as you know, all of the power from Joppa now is going
23 to go out in all thousand megawatts. Those two sections
24 that are deleted out of the original Modification 12, the
25 only -- the only remaining section now is that EEI will

1 buy power on behalf of EEI -- on behalf of DOE when they
2 need it and then pass it on to them at a dollar markup so
3 they will purchase power from the market and pass it on to
4 them at -- at no more than a dollar markup.

5 Q And how is that in the interest of the EEI
6 shareholders?

7 A I mean, they're buying power from -- from the
8 market and then just passing it on -- passing that cost on
9 through to DOE.

10 Q Okay. So it has nothing to do with the cost
11 that they're getting to produce the power?

12 A Correct. The -- DOE no longer has any -- any
13 rights to the thousand megawatts at Joppa.

14 Q All right. And then on page 14,
15 Mr. Schallenberg, in his surrebuttal testimony, made
16 reference to that same date, December 22nd, 2005, Kentucky
17 Utilities sending a letter --

18 COMMISSIONER MURRAY: This is also not
19 confidential?

20 MR. LOWERY: No.

21 MR. DOTTHEIM: Yes.

22 JUDGE WOODRUFF: There's agreement among the
23 parties that it's not confidential.

24 MR. DOTTHEIM: That's right.

25 Mr. LOWERY: That's correct.

1 Q (By Commissioner Murray) Sending a letter to
2 EEI rejecting EEI's market base power agreement officer.
3 Now, was there, in fact, a -- an -- a separate offer
4 extended to K -- Kentucky Utilities for a market based
5 purchase power agreement?

6 A I -- I don't believe so. I -- I think they were
7 attempting to negotiate a -- a new cost based agreement,
8 it's my understanding.

9 Q So, really, you don't think there was any
10 specific market based purchase power agreement offered?

11 A Yeah. I don't think so. No. Where it
12 certainly was less than the -- the market that I guess EEI
13 felt it could get through the contract with AHEM and
14 decided to vote in that direction.

15 Q And then I want to go back to the statement that
16 Mr. Schallenberg made on page 11 again where he said on
17 that date that AmerenUE voted to approve a power supply
18 agreement that sold its share of the energy from the Joppa
19 plant to an affiliate, AEM. Was there actually such a
20 vote, or -- or did that power purchase contract just
21 simply expire on its own terms?

22 A Well, the '87 agreement expired on its own terms
23 on 12/31/05. And then I'm assuming there was a new vote
24 to enter into the new agreement.

25 Q Okay. And this may be a legal question that I

1 need to ask, so I may have to wait for another witness.

2 Do you know if this Commission approved AmerenUE's
3 entering into the PSA in 1987?

4 A No. I don't know if they approved that in '87
5 or not.

6 Q Do you know when the fuel costs were placed into
7 rates?

8 A I guess it would have transpired through --
9 through purchase power agreements. So any of the costs
10 going back as part of that agreement, you know, included
11 both demand and energy. And those were flowing through
12 fuel and purchase power of AmerenUE.

13 Q Some of these questions I need to ask Staff.
14 I'm going to turn to your testimony for a minute, your
15 surrebuttal testimony.

16 A Uh-huh.

17 Q On page 15, beginning on line 19 and going over
18 on to page 16 through Line 4, would you please clarify
19 that section, if you can, to the meaning of that section,
20 that paragraph?

21 A Sure. What we're attempting to show here is
22 just doing a -- a Prosimron (ph.) dispatching -- a
23 Prosimron with and without Joppa in it, the 400 megawatts.

24 Q Okay. And then the changes that are made -- the
25 net effect on Staff's proposed adjustment, is that what

1 Mr. Proctor was being questioned about a couple of days
2 ago? Do you know? Were you in the -- you probably
3 weren't in the room.

4 A Yeah. I wasn't here. I'm not sure.

5 Q Okay. And, basically, what you're saying there,
6 the reason for the adjustment would be that the amount
7 included in the 70 -- \$79 million impact includes what
8 should be removed?

9 A Again, just -- just to be clear, I don't think
10 we agree with -- with any adjustment.

11 Q I understand that. But assuming that there were
12 an adjustment?

13 A That's right. And what we're attempting to show
14 is just the \$79 million is supposed to represent just the
15 energy piece, the valuable cost with or without Joppa.
16 And there's the capacity that typically gets passed back
17 to UE as part of the purchase power agreement. And that
18 is the -- that number is roughly 30 to 35 million.

19 Q Okay.

20 A So the 79 would be energy, and the 35 would be
21 capacity.

22 Q Now, can you give me your explanation of the 15
23 percent ROE?

24 A In -- in terms of --

25 Q How did -- what it's based on?

1 A How -- sure. The 15 percent started in 1987 is
2 part of that power supply agreement. And the way it's
3 effectively calculated, there's been a couple of changes
4 over the years. But it's on the, effectually, the
5 original investment in the stock, so about 6.2 million for
6 the original investment. And then there's also been a few
7 modifications over time that allowed you to put a small
8 amount of retained earnings. And I believe that number is
9 roughly a couple of million.

10 So the 15 percent is effectively calculated on
11 about \$8 million, I believe, maybe a little bit higher
12 than that.

13 Q Now, if you're comparing the rates that AmerenUE
14 paid under the PSA to market based rates, what would go in
15 -- what, by comparison, would go into market based rates?

16 A In terms of what -- what price to use for market
17 power?

18 Q The components that would go into making a
19 market base rate.

20 A I think it would include all components, energy,
21 capacity, you know, all the fixed costs. And I think that
22 now with the advent of markets and MISO Day 2 and the
23 ability to -- you can basically see fairly liquid
24 transparent prices for electricity today, which would
25 include, you know, everything for electricity -- for the

1 whole -- all the costs.

2 Q Such as were included in the -- in the rates for
3 Ameren under the PSA; is that correct?

4 A Sure. I'm assuming that the market prices that
5 -- that's out there today would have to recover all those
6 -- the costs of doing business effectively.

7 Q And, historically, over the term of the PSA, is
8 it possible to determine what the difference would have
9 been in market based rates and the rates that AmerenUE
10 received?

11 A You know, I think that would be somewhat
12 difficult. I mean, I think in '87 when they entered into
13 this agreement, you -- utilities -- companies didn't have
14 market base rate authority and they could basically charge
15 these cost plus contracts. I don't think that -- really,
16 the really transparent liquid market really started
17 developing until the late '90s or early -- early 2000.

18 Q So -- and how is it possible today going forward
19 to quantify what would be the difference between the rates
20 under -- if the PSA had been continued as it was in market
21 based rates?

22 A Yeah. You're correct. I mean, there would be
23 some difficulty in that because the market's going -- the
24 market price is going to continue to fluctuate over time.
25 And so, therefore, that adjustment would fluctuate over

1 time. You know, because the -- the market can -- whatever
2 point in time you're looking at, it could be \$35 one day
3 and \$45 the next day, et cetera.

4 Q Is it possible that the rates under the PSA
5 could have been applied today or applied next year would
6 ever be higher than market based rates?

7 A Sure. I mean, at this -- I suppose that, yeah,
8 something could happen to -- to cause their cost structure
9 to -- to be higher than market.

10 For example, if you had carbon legislation, for
11 example, that was a very stringent carbon legislation,
12 that clearly could maybe take them out of the -- of the
13 marketplace, although they are a low cost producer. It
14 would have to be fairly -- fairly stringent.

15 Q You've cited somewhere in your testimony -- it
16 was in your direct testimony on page 13 language from one
17 of this Commission's report and orders. I don't see the
18 exact date. But it was EO-2004-0188, and it was on page
19 13 of your direct where the Commission said -- or found
20 that UE's share of EEI -- of EEInc. is an investment owned
21 by UE shareholders and UE has an obligation to maximize
22 the return on that investment. Is that correct?

23 A Correct. Correct.

24 Q And you even noted that Staff witness Michael
25 Proctor -- I'm trying to see where you said it. Or that

1 the Commission Staff -- and then you reference --

2 A Uh-huh.

3 Q -- Michael Proctor's surrebuttal testimony, that
4 this Commission Staff also disagreed with OPC's contention
5 that the Metro East transfer should be conditioned in some
6 way with respect to EEInc.; is that correct?

7 A Correct.

8 Q And it's your opinion that that Commission
9 decision was related to the finding that UE's share of
10 EEInc. is an investment of the shareholders and that UE --
11 that UE has an obligation to maximize the return for the
12 shareholders on that investment?

13 A Yes.

14 Q I want to go back to the PSA for a minute. The
15 -- the terms that were included there, cost plus 10
16 percent for the power that was delivered now, as I
17 understand it, that includes all of the costs in producing
18 the power. And the 10 percent, how does that compare with
19 other PSAs that you're familiar with?

20 A I think the -- the consent of the -- at the time
21 were these cost based contracts. And the way this worked
22 was the -- you're correct. All the costs were passed
23 through. There was a 10 percent added on fuelable costs
24 and then there was this return on this small amount of
25 equity.

1 Q Does that compare with other agreements that
2 you're familiar with? Or are you familiar with other
3 agreements?

4 A Well, it -- I'm not -- I'm not familiar with
5 specific agreements. I'm familiar with the concepts that
6 were in place at the time and the -- the concept of the
7 cost plus contracts.

8 COMMISSIONER MURRAY: Mr. Micheel was about to
9 make an objection. I don't -- he must have changed his
10 mind.

11 MR. MICHEEL: Always have to be ready,
12 Commissioner.

13 A The only thing else I would add to that is that,
14 certainly, the Arkansas Power & Light, while it does have
15 some differences, the overall structure is very similar
16 and the formula capturing all energy and capacity costs
17 plus the return -- a return on equity in there as well.

18 Q (By Commissioner Murray) Over the years that
19 the PSA has been in effect, have there been quantifiable
20 total savings?

21 A Quantifiable total savings to UE?

22 Q To -- yes.

23 A I -- I guess in terms of just looking at the
24 overall price that's been charged under that contract
25 versus -- certainly, I don't have market prices back in

1 '87 and '90. But you certainly look at where prices are
2 today and even in the late -- late '90s and early 2000s, I
3 think that it -- they argue that it was a very attractive
4 price.

5 Q That would not necessarily have been the case
6 early -- in the early time period; is that correct?

7 A That -- I mean, that's difficult -- it's
8 difficult to say because of the transparency of the market
9 at that time.

10 COMMISSIONER MURRAY: I think I'm finished,
11 although I'm sure I'll think of something else. Thank
12 you.

13 JUDGE WOODRUFF: Okay.

14 MR. MOEHN: Thank you.

15 JUDGE WOODRUFF: Commissioner, I assume -- or
16 I'll ask you, do you have extensive questioning for this
17 witness?

18 COMMISSIONER GAW: I do. But it will take
19 longer than ten minutes. So it's up to you.

20 JUDGE WOODRUFF: I figured it probably would.

21 COMMISSIONER GAW: What you want me to do?

22 JUDGE WOODRUFF: Of course, it is almost time
23 for lunch.

24 COMMISSIONER CLAYTON: And agenda.

25 JUDGE WOODRUFF: And agenda as well. Let's go

1 ahead and break for lunch now. We'll come back at 1:00.

2 MR. CHAMBERLAIN: Judge, before we do, could I
3 get a little clarification on scheduling, please?

4 JUDGE WOODRUFF: Sure. Why don't you come up to
5 the podium?

6 MR. CHAMBERLAIN: The Commercial Group's
7 witness, Kevin Higgins, is scheduled to testify tomorrow
8 on the EEInc. issues, also the fuel adjustment clause and
9 off system sales margin issues.

10 And judging from the list of witnesses between
11 where we are now and where he is on the list, I'm not sure
12 we're going to be able to get to him tomorrow, so I'm
13 wondering would it be possible to take him tomorrow out of
14 turn.

15 JUDGE WOODRUFF: I'm sure we could accommodate
16 that. I wanted to ask the parties about that also because
17 we've got all the return on equity coming up today. I
18 assume those are going to be in the same position.

19 MR. MICHEEL: That is true at least with respect
20 to my witness, your Honor. And I told Mr. Byrne, he can
21 be here through Thursday night at some point, but he
22 cannot be here on Friday.

23 And Mr. Byrne indicated they would work with
24 you. And I'm willing to work with any -- with Mr. Higgins
25 in terms of his availability, also, for Mr. Chamberlain's

1 witness.

2 MR. CHAMBERLAIN: I think Mr. Higgins is going
3 to be available at least tomorrow morning, perhaps
4 tomorrow afternoon. I'm not sure exactly when he's
5 scheduled to leave. But I wanted to get him on and get
6 him off if we could.

7 And the other question I had has to do with
8 responding to the company's revised off system sales
9 sharing mechanism that I think was offered in the
10 surrebuttal testimony.

11 Our witness has not had an opportunity to
12 respond to that. I don't know if the Bench has ruled on
13 that for other witnesses or not.

14 JUDGE WOODRUFF: I believe with the other
15 witnesses, we allowed some direct testimony, live direct
16 testimony to respond to that as well. We'll simply allow
17 the same thing to Mr. Higgins.

18 MR. CHAMBERLAIN: Great. Thank you.

19 MR. CYNKAR: Your Honor, with respect to
20 witnesses, one variable, Professor Downs may have to be
21 out of town, I believe, mid-day tomorrow. And so it is
22 possible and we'll over the lunch time come back with a
23 proposal, but it may be that -- right now we're supposed
24 to take Mr. Svanda after Mr. Moehn and --

25 MR. CHAMBERLAIN: We may switch that. Just

1 wanted to give everybody notice of that.

2 JUDGE WOODRUFF: Okay. That will be fine. With
3 that, then, we're adjourned until 1:00.

4 (Break in proceedings.)

5 JUDGE WOODRUFF: All right. Let's come to
6 order, please. And welcome back from lunch. The
7 Commissioners are still in their agenda meeting last time
8 I checked. So it may be a while before they actually get
9 down here.

10 I wanted to check to see if there are any other
11 matters anyone wants to bring up while we're waiting for
12 the Commissioners. Yes, Mr. Dottheim?

13 MR. DOTTHEIM: The exhibits to Mr. Naslund's
14 deposition are quite voluminous.

15 JUDGE WOODRUFF: Okay.

16 MR. DOTTHEIM: I have those available.

17 JUDGE WOODRUFF: Okay.

18 MR. DOTTHEIM: I could distribute those now.

19 JUDGE WOODRUFF: That would be good in just a
20 moment. Let's do some other things while we're on the
21 record, also.

22 I also wanted to specifically ask the parties if
23 we have -- if there are copies of the EEInc.'s articles of
24 Incorporation and bylaws in the PSA? Are they attached?

25 MR. DOTTHEIM: Yes. In fact -- in fact, they're

1 -- they are exhibits to Mr. Svanda's deposition.

2 JUDGE WOODRUFF: Okay.

3 MR. DOTTHEIM: Which I also have those copies
4 down here, too.

5 JUDGE WOODRUFF: Because we have the deposition
6 itself, but not the exhibits yet.

7 MR. DOTTHEIM: They're down here, and I can
8 distribute those at the same time, also.

9 JUDGE WOODRUFF: Okay. Anything else anyone
10 wants to bring up?

11 MR. CONRAD: Yes.

12 JUDGE WOODRUFF: Mr. Conrad?

13 MR. CONRAD: I just wanted to let your Honor
14 know, as long as we're talking about time, that what I
15 would call a loose amalgamation of non-utility parties in
16 this case, that includes at this point Ameren, probably
17 includes one or two others -- Mr. Micheel mentioned that
18 he hadn't had a chance to look at it.

19 But we have come to an agreement in principle
20 with respect to revenue allocation, class cost of service
21 and rate design issues.

22 Now, it doesn't address every rate design issue
23 that's been raised, so it's not totally comprehensive
24 insofar as that. Drafting is going forward --

25 JUDGE WOODRUFF: Okay.

1 MR. CONRAD: -- with that. It's our hope that
2 that may be filed. It would obviously have to be filed as
3 a non-unanimous document, but we would file that today in
4 order to, quite frankly, start the -- the clock running on
5 that --

6 JUDGE WOODRUFF: Sure.

7 MR. CONRAD: -- just looking where the calendar
8 is.

9 JUDGE WOODRUFF: We're in agreement on that. We
10 need to do that.

11 MR. CONRAD: Yes. And I thought it was perhaps
12 appropriate to do that. I believe, at last I heard, OPC
13 -- I guess I could start with ourselves, Noranda, OPC, I
14 believe Staff, AARP, MEG, MIEC, I think the Commercial
15 Group, last that I heard, I may have omitted somebody, I
16 don't mean to, are essentially part of this agreement in
17 principle.

18 JUDGE WOODRUFF: Has anyone indicated
19 opposition?

20 MR. CONRAD: At this point, no, because we -- we
21 surfaced this actually Friday and kind of walked it around
22 a little bit to some of the parties, the non-utility
23 parties. And I haven't -- we haven't heard formally from
24 all of those folks on this.

25 And we would -- we would not expect -- some of

1 them may want more time to look at it. I believe a moment
2 or two ago, Mr. Micheel was indicating he hadn't had a
3 chance. When we're here in the hearing room from eight to
4 nine --

5 JUDGE WOODRUFF: I understand.

6 MR. CONRAD: -- it's hard to -- to do that. And
7 I'm not at all unsympathetic with that. And that is
8 almost another issue for yours truly. But --

9 MR. DOTTHEIM: Mr. Conrad, I'm not aware -- have
10 we heard from the company? I wasn't aware that we had
11 heard from the company as to where they were.

12 MR. CONRAD: I didn't mention the company,
13 Mr. Dottheim, as one of the parties who had indicated that
14 they had acquiesced in this. It was discussed at length
15 with their representatives on Friday, so it ought not to
16 be a surprise.

17 JUDGE WOODRUFF: Okay.

18 MR. CONRAD: But we're -- we're proceeding on
19 that, and we'll try to keep you advised as best we can.

20 JUDGE WOODRUFF: Well, I certainly appreciate
21 that. And any shortening of the hearing -- of this
22 hearing would certainly be welcome.

23 MR. OVERFELT: And the Retailers. Missouri
24 Retailers.

25 MR. CONRAD: I did -- I did omit without

1 intending to slight my good -- good friend and senior
2 counselor, Mr. Overfelt.

3 MR. OVERFELT: With all of my hairs.

4 MR. CONRAD: Who has less hair than I.

5 JUDGE WOODRUFF: You said this would no be --
6 would not settle all issues -- all of the issues?

7 MR. CONRAD: It's hard to say on that. I think
8 it's -- it's an attempt at least to address most all of
9 those. But there -- there are some -- you know, two or
10 three that may -- may remain issues. But they probably
11 would be fairly narrow. I -- it probably would be best to
12 not get too far into it.

13 JUDGE WOODRUFF: I don't want you to speculate
14 at this point.

15 MR. CONRAD: To leave room for parties that are
16 not yet fully aboard for them to address those issues as
17 they want and see if there's still room among the
18 consensus group.

19 JUDGE WOODRUFF: Okay. And I just got a message
20 over the e-mail here that agenda is over, and Commissioner
21 Gaw is on his way down. So we've used up enough time here
22 apparently.

23 MR. MILLS: I had -- I had another sort of
24 scheduling issue.

25 JUDGE WOODRUFF: Yes, Mr. Mills.

1 MR. MILLS: As you're aware, the Commission
2 ordered an order last week to compel to Union Electric and
3 talked about an EEI issue this morning. And another one
4 was some data requests that -- that pertain to the
5 Pinckneyville and Kinmundy and possibly Peno Creek issues,
6 which are set for Friday.

7 Yesterday, we got a -- a very voluminous amount
8 of data in response to the Commission's area order to
9 compel and I -- depending on how things go, I may be
10 asking to move those issues from this Friday to next week
11 to give us the weekend to get through that data request
12 response --

13 JUDGE WOODRUFF: Okay.

14 MR. MILLS: -- to prepare for that issue. And I
15 think -- particularly, if we -- if we do manage to settle
16 rate design and class cost of service, we'll have a little
17 more time next week and this week anyway.

18 JUDGE WOODRUFF: And we may be forced to do that
19 anyway.

20 MR. MILLS: Yeah.

21 JUDGE WOODRUFF: Okay. And, Mr. Dottheim, if
22 you want to just wait until after the next break to go
23 ahead and distribute those -- those other documents.

24 And Commissioner Gaw has now joined us as the
25 agenda is over, and I'll hand it to him to ask his

1 questions.

2 COMMISSIONER GAW: Thank you, Judge.

3 CROSS-EXAMINATION

4 BY COMMISSIONER GAW:

5 Q Good afternoon.

6 A Good afternoon, Commissioner.

7 Q We may have to dodge through the court reporter
8 and her duties there.

9 COMMISSIONER GAW: Let's -- can we -- can we
10 start this off in HC, Judge, and then I'll come back?

11 JUDGE WOODRUFF: Yes, we can. Certainly. At
12 this point, we're going to go in-camera.

13 REPORTER'S NOTE: At this point, an in-camera
14 session was held, which is contained in Vol. 26, pages
15 2309 through 2317.

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1 CONTINUED CROSS-EXAMINATION OF MICHAEL MOEHN

2 BY COMMISSIONER GAW:

3 JUDGE WOODRUFF: And we're back in general
4 session.

5 Q (By Commissioner Gaw) Okay. You -- you've
6 testified several times, if I recall correctly, in your --
7 your testimony about the changes that came about as a
8 result of the Day 2 market in MISO. Would that be
9 accurate?

10 A Yes.

11 Q Is EEI in the MISO footprint?

12 A They are not in MISO.

13 Q Okay. When -- when energy is sold from EE --
14 the EEI location in the MISO market, can you describe what
15 has to occur in order for that transaction to take place
16 in regard to the -- to the MISO itself?

17 A No. I'm sorry. I don't -- I don't know that.

18 Q Who would know that?

19 A I'm not -- I'm not sure.

20 Q Do you know whether or not it matters that the
21 supply is outside of the footprint in regard to how the
22 transaction takes place and what has to occur with it?

23 A I mean, I think they would -- if they were going
24 to try to sell into MISO, they would need a path to MISO.

25 Q Okay. Who -- do you know where that path is?

1 Or paths?

2 A Yeah. It probably -- it might be paths. I -- I
3 don't know, though.

4 Q Okay.

5 A Now, I don't know if we have somebody that is --
6 is Maureen Bukowski testifying? I don't know. She
7 probably doesn't know.

8 JUDGE WOODRUFF: I think Maureen is scheduled to
9 testify. I don't know if it's on this subject.

10 A It's not on this topic, but --

11 Q (By Commissioner Gaw) Okay. In regard to -- to
12 the financial transactions that take place in MISO, you
13 have made statements that the advent of the market somehow
14 changed the dynamic in regard to -- to the sale of -- of
15 power at the wholesale level. And can you just -- can you
16 tell me what you mean by how it changed it? And --

17 A Sure. In the context I think in which I'm using
18 it here is just to indicate there is a transparent
19 basically liquid market where you can see, you know,
20 prices on a day ahead -- on a day ahead basis in the L&P.

21 Q Do you know whether or not the transactions that
22 are taking place with AEM currently involve exclusively
23 the sale of power of -- that originates at EEI through the
24 day ahead or spot market of a MISO?

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

1 Q Do you know whether or not there are
2 transactions that do take place in the MISO footprint that
3 -- where AEM is marketing power from EEI?

4 A I believe, yes, some of it does. That's
5 correct.

6 Q Okay. Now, are you suggesting that there was no
7 market prior to the implementation of the Day 2 market in
8 MISO, in the MISO footprint?

9 A No. I'm not.

10 Q In -- in fact, would you say there -- there were
11 significant wholesale power transactions that occurred
12 prior to the Day 2 market in MISO in that same footprint?

13 A Yes. There has been a wholesale market for --
14 you know, for -- some period of time, yes.

15 Q Do you know when that began?

16 A At -- you know, certainly, at least since 2000
17 and maybe a little bit further back from that. But
18 certain -- certainly from 2000.

19 Q And the -- the area that is south and east of
20 the Joppa plant, is there a -- an organized market in that
21 region of the country?

22 A I'm -- I'm not sure.

23 Q Do you know whether or not -- if you're not
24 sure, does that mean -- are you aware of whether or not
25 there are transactions of wholesale electric --

1 electricity in the southeast part of the United States?

2 A Yes. I would assume they occur. Yes.

3 Q And do you believe that those -- those
4 transactions are -- are somehow -- are somehow -- should
5 not be characterized as -- as a market, even though it's
6 not organized?

7 A No. I mean, I think that there are -- you know,
8 there are -- such as, you know, synergy index, there are
9 places to point you to and look at for transparency and
10 liquidity of prices that are being done and give an
11 indication of where that market is, you know, regards what
12 part of the country it's in.

13 Q Do you know whether or not AmerenUE, and in this
14 question, engaged in wholesale power transactions prior to
15 the Day 2 market in MISO?

16 A UE has a -- a few wholesale contracts that I'm
17 aware of with -- with certain cities.

18 Q Do you know whether or not in addition to those
19 long-term or -- term contracts AmerenUE engaged in off
20 system sales prior to the Day 2 market in MISO?

21 A Yeah. I believe they did.

22 Q All right. Do you know whether or not AmerenUE
23 would have engaged in off system purchases prior to the
24 Day 2 market in MISO?

25 A Most likely.

1 Q Are you familiar with whether or not there are
2 -- there have been findings by the FERC in the last two
3 years, we'll say, that indicate that areas of the country
4 that did not have a market, a Day 2 market such as exists
5 in MISO are somehow to be considered as -- as deficient by
6 the FERC in regard to -- to the transactions of the
7 wholesale transactions that take place in those regions?

8 A In -- in terms of someone -- I'm not sure what
9 I'm trying to -- I'm trying to think what the term is.
10 Mar -- market power. Is that --

11 Q Actually, I'm just asking more generally than
12 that.

13 A Okay.

14 Q I'm not getting into the market power issues so
15 much as I am asking you whether or not FERC has made some
16 sort of finding in the last two years that that -- that
17 non-organized market areas of the country -- let me back
18 up.

19 A Uh-huh.

20 Q Do you know whether or not there are areas of
21 the United States that are not in organized markets?

22 A In like Day 2 type markets?

23 Q We'll see. If you want to say that, let's --
24 we'll begin there by -- like that to not have a Day 2
25 market such as MISO has.

1 A Yes. I'm aware of that.

2 Q Can you tell me where?

3 A SBP, my understanding, doesn't have a Day 2

4 market.

5 Q That is -- that is an RTO area, however, is it

6 not?

7 A Right. Uh-huh.

8 Q Any other areas that you're aware of?

9 A Not that I'm aware of.

10 Q Does that mean that you believe the other areas

11 all have Day 2 markets?

12 A No. I -- I don't think that's the case.

13 Q Okay.

14 A But I --

15 Q You're just -- you're just not familiar?

16 A Just not familiar.

17 Q Okay. Before there was a Day 2 market in the --

18 in MISO, how did AmerenUE determine what the market rate

19 was for wholesale power that it -- it might sell or buy?

20 A I -- I assume they just entered into

21 transactions with willing sellers and buyers. And, again,

22 I think, you know, there are certainly indexes in place to

23 probably have a sense of -- if you're getting a market

24 rate for that.

25 Q Well, are you familiar with how the -- the

1 process or the way that AmerenUE would have engaged in --

2 A No. I'm sorry.

3 Q -- determining what their -- the market price
4 was?

5 A No. I'm not involved in the -- in the trading
6 organization.

7 Q Okay. But your suggestion was that there was
8 some great significance in regard to the advent of the
9 MISO Day 2 market, and I'm trying to gauge how you're
10 comparing the advent of that -- that market to what was in
11 existence prior to.

12 And if I'm understanding your -- your answer
13 correctly, you're saying you really don't have a great
14 deal of knowledge about what that market looked like prior
15 to the advent of the Day 2 market in MISO. Would that be
16 correct?

17 A That -- that's correct. I mean, I think that --
18 I would agree that certainly there's wholesale
19 transactions that -- that are occurring prior to MISO Day
20 2. And the MISO Day 2 was just that -- the final step in
21 creating -- in creating that -- the -- the L&P market.

22 Q Okay. What is the L&P market?

23 A Locational marginal pricing, see the different
24 prices at different nodes.

25 Q And how does what -- how does that pricing come

1 about?

2 A You know, my sense is through supply and demand.

3 Q What -- what makes the difference in regard to
4 the prices from one node to another?

5 A My understanding, congestion, potentially in
6 between those firm transmission rights might impact that.

7 Q Anything else?

8 A No. Not -- beyond that, I would be guessing.

9 Q Okay. So it -- would it be accurate to say this
10 is not an area that you generally have a lot of expertise
11 in?

12 A That -- that's correct.

13 Q Okay. So would it be fair to say that you
14 really don't know how much significance -- how much real
15 difference there was between the way markets ran prior to
16 Day 2 MISO and the way they run in MISO other than a very
17 basic understanding or very basic level of -- of what you
18 -- what you've described in your testimony?

19 A Right. I mean, certainly, you know, Day -- Day
20 1 versus Day 2, I -- yeah. I'm not sure I can sit here
21 and articulate all the -- all the exact differences. But
22 in terms of looking at what existed at the time that they
23 entered into this contract in '87, you know, my
24 understanding, based on some of the readings I've done,
25 it's basically cost based contracts really all that

1 existed because the transmission system wasn't open yet.

2 Q But that all changed with FERC Order 888, did it
3 not?

4 A Right. In '96. That was certainly, yeah, the
5 step to -- to move it in that direction.

6 Q Okay. And -- and at that point in time, what
7 occurred? What occurred with Orders 888 and 889,
8 generally speaking?

9 A Basically, unbundling the transmission service
10 from the affiliates.

11 Q And that -- what did that do in regard to
12 markets and the ability to conduct wholesale transactions?

13 A Giving generators access to -- to the market.

14 Q Giving them access to -- to transmission?

15 A To transition, yes.

16 Q In a non-discriminatory fashion?

17 A Correct. Yes.

18 Q Okay. So once that -- once that occurred,
19 wholesale transactions became -- or at least in theory,
20 more doable and the playing field somewhat more levels
21 from -- and -- would that be fair?

22 A I think that would -- that was absolutely the
23 idea.

24 Q Okay. So -- what I'm trying to get to here is
25 whether or not it was in reality that change that helped

1 to facilitate wholesale transactions in the market place.

2 A Uh-huh. Sure. I -- yeah. I don't think the --
3 the wholesale market would have developed without FERC
4 Order 888.

5 Q And, in effect, once that occurred, did -- did
6 not the -- the transactions on the wholesale level then
7 broaden out as to who might buy and sell in the market?

8 A That -- that is correct.

9 Q Now, do you know whether prior to 888 and 889
10 whether or not there were transactions between utility
11 companies that occurred on a basis other than cost?

12 A I -- I think there was potentially some limited
13 utilities that had -- maybe had market based authority.
14 I'm not positive about that, so --

15 Q Okay. Do you know who would know the answer to
16 that?

17 A I don't.

18 Q Okay. Now -- but subsequent to -- to allowing
19 open access to -- to the transmission system, there were
20 other owners of generation besides traditional utilities
21 that perhaps were added as -- as players in the market
22 that -- that may not have had the same kind of -- of
23 playing field -- even playing field prior to those orders.
24 Would you say that was true?

25 A Yeah. I'm -- I'm sorry. I just -- I don't

1 know.

2 Q It's okay. It helps me to know what -- what you
3 -- what it is --

4 A Yeah.

5 Q -- that you -- that you can testify to --

6 A Right.

7 Q -- and what's sort of beyond the scope of what
8 you're trying to tell us --

9 A Right.

10 Q -- what you have expertise in. So in regard to
11 the MISO, prior to the MISO Day 2 market, are you able to
12 testify as to the level of wholesale transactions that
13 were engaged in by AmerenUE post Rule 888 and 889 --

14 A The -- the actual --

15 Q -- orders regarding 888 and 889?

16 A The actual volume of transactions they were
17 entering into?

18 Q Yeah.

19 A I don't know the level of sales they were
20 getting into.

21 COMMISSIONER GAW: Did you -- I'm sorry. Did
22 you get that? Were you able to get that? We were talking
23 at the same time.

24 THE COURT REPORTER: Yes.

25 COMMISSIONER GAW: Thanks.

1 Q (By Commissioner Gaw) And as to the prices that
2 were obtained by AmerenUE, those wholesale transactions,
3 if they were off system sales, can you testify as to that?

4 A I'm sorry. I don't -- I don't have that
5 information.

6 Q Okay. And as to the comparison of the prices
7 that -- that -- there for that would have been made post
8 Day 2, you really can't testify as to the comparison post
9 Day 2 and pre Day 2 market in MISO?

10 A In -- in terms of actual prices?

11 Q Yes.

12 A No.

13 Q And I think you've already said that you really
14 can't testify as to the condition of the markets or the
15 sale of wholesale energy in the southeast part of the
16 country?

17 A Right.

18 Q Okay. Somewhere on -- this is -- this is just a
19 point of clarification. Somewhere on page 21, I think, of
20 your -- let me see which testimony it is. I think it's in
21 your surrebuttal. Actually, maybe it's your rebuttal.

22 It's -- it's your surrebuttal on page 21, line
23 -- lines 15 and 16. You make some statement about
24 Dr. Proctor correcting his reference to December 1st,
25 2004, as the start date of the MISO markets. Do you see

1 that there?

2 A Yes, I do.

3 Q Do you know whether, in fact, initially at the
4 time of that testimony that the markets were scheduled to
5 open on December 1st of 2004?

6 A I think yes. They kept delaying the start date,
7 yes.

8 Q And the eventual start date then was April 8?

9 A Correct.

10 Q Okay. In regard to -- in regard to the issue of
11 EEI in -- in general -- let me -- let me back up for a
12 minute. Do you -- do you know whether or not companies
13 are -- who are looking -- well, let me see. Whether or
14 not shareholders -- let me say it this way -- shareholders
15 who can -- who are looking to purchase into the stock of a
16 company, whether or not they view it as important to gain
17 a controlling interest in the company? Is that a
18 significant factor?

19 A I -- I don't know. I mean, I guess it would
20 depend on the situation.

21 Q Well, as -- as a CPA and dealing with the
22 business community, is there a significance to a
23 shareholder having controlling interests in a company?

24 A Sure. I suppose they could -- they could
25 nominate their -- their own directors.

1 Q Okay. And why would it be that they would view
2 that as important?

3 A Well, I suppose they think that -- they
4 potentially would carry out that fiduciary responsibility
5 to that Board, which is to protect the assets of that
6 company they're trying to gain control of.

7 Q Do you think that shareholder that seeks to gain
8 controlling interest in a -- in a company, do you think
9 that they -- they view that as an opportunity to -- to
10 provide direction to that company?

11 A You know, I -- no. I think -- I don't think
12 shareholders control companies. I mean, I think at the
13 end of the day, I think they can nominate directors who --
14 I guess they would feel would, again, act in, you know,
15 their best interest and carry out the objective of that
16 Board, which is the -- that fiduciary obligation. But I
17 don't think the shareholder actually controls the Board.

18 Q Is there a -- is there some legal or ethical
19 prohibition of a shareholder who owns a majority of the
20 Board controlling or -- controlling the -- the -- the
21 selection of Board members? Let me ask you that first.

22 A I -- I'm not an attorney, but I don't believe
23 there's a legal prohibition to -- to controlling a Board.

24 Q And is this any legal prohibition that you're
25 aware of or ethical prohibition against the shareholders

1 talking to those Board members that they elect or that
2 they have selected?

3 A I -- I don't know.

4 Q You've never looked into that?

5 A No.

6 Q Would it also be true, then, that you're not
7 aware about whether or not they would be able to -- that
8 it would be inappropriate or illegal to give them
9 direction on how to vote or suggest how they should vote
10 on a particular issue that might come in front of them?

11 A That's -- it seems like a -- a conflict in my
12 mind. I mean, in terms of if you're a member of this
13 Board and sitting on this Board to represent this company
14 and to -- you have this fiduciary obligation to that
15 company, I think it's up to that individual, again, who is
16 acting as that Director.

17 And so if someone from the outside is telling
18 him what to do, I -- again, I'm not an attorney, but that
19 -- that strikes me as a conflict. But --

20 Q You don't know?

21 A I don't know.

22 Q Is it -- is it required, if you know, that the
23 Board members of corporations be independent of the
24 interests of their shareholders?

25 A Be independent in what -- in what sense?

1 Q That they can't -- in other words, that they --
2 that there's -- that there's no -- well, let's -- let's
3 take an a example. Is it a requirement that Board members
4 elected to a -- a corporation can have no affiliation with
5 shareholders of that company on which they sit on the
6 Board?

7 A I don't believe there's a prohibition.

8 Q Okay.

9 A Again, if I can --

10 Q If you -- if you know -- if it's in furtherance
11 to my question --

12 A Yeah. I do. I hope it was going to be.

13 Q Go ahead. Go ahead, Mr. Moehn.

14 A Again, I mean, I think that Board member in that
15 the responsibility that he has to be to the -- to that
16 company.

17 Q And if he had dual responsibilities --

18 A I think --

19 Q -- which hat does he wear?

20 A My sense is he's wearing that hat of the Board
21 that he's presently sitting on.

22 Q And what if we're -- what if in selecting a
23 particular choice on that Board that he's violating his
24 duty to his other hat, as we say? What should he do?

25 A Well, again, if it's -- I guess if it's --

1 Q Or she.

2 A Or she. I think with respect to that Board that
3 he's sitting on, he has to represent that Board in its --
4 in its interest.

5 Q So how does he avoid the conflict of interest
6 with his other fiduciary duty, if he has one? Does he
7 have a fiduciary duty to this other company that he sits
8 on? Is he a Board member there also and they have --

9 A No.

10 Q -- Let's say an employee --

11 A Okay.

12 Q -- full-time --

13 A Uh-huh.

14 Q -- seven days a week.

15 A Right.

16 Q He doesn't get vacation time.

17 A Right.

18 Q He only gets phone bonuses or sometimes he gets
19 something else, incentive pay, I think.

20 A Right.

21 Q Now, what would happen in that event if he has
22 dual responsibilities, dual fiduciary duties?

23 A When you say dual fiduciary responsibilities, I
24 mean, he's an employee of this other company, right? So
25 I'm not --

1 Q Let's make him an officer as well.

2 A Again, I think being a Director, my sense is
3 that that duty --

4 Q Supersedes the duty of being an officer of the
5 other company?

6 A It would trump that, yes. Exactly.

7 Q And what authority do you have to tell me that
8 that's the case?

9 A It just seems to be logical to me.

10 Q Is this -- is this logic that we can look to in
11 books somewhere to -- or is this something that just
12 strikes you as being the right thing?

13 A It just -- it strikes me as being the right
14 thing.

15 Q Okay. So you don't have any authority to point
16 me to?

17 A I'm not an attorney. Yes.

18 Q Okay. Have you done audits of companies in the
19 past?

20 A Yeah. I was in the audit practice at Price
21 Waterhouse.

22 Q Did you ever in -- in that practice have
23 occasion to make or give opinions regarding conflicts of
24 interest?

25 A We would -- it was a requirement to review the

1 practices that the Boards would have in place to -- to try
2 to look at those potential conflicts.

3 Q Okay.

4 A We wouldn't -- we wouldn't make recommendations.
5 It was -- it was part of the -- one of the requirements of
6 the audit.

7 Q Well, would you make notes about -- about things
8 if you saw a -- a conflict of interest in the audit?

9 A Sure.

10 Q What was the determination of what -- of when a
11 conflict existed? How did you know that?

12 A Well, it was -- it was -- it was noted in the
13 disclosure requirements that they would provide us.

14 Q So in other words, they -- they told you where
15 the conflicts were and you didn't --

16 A Correct.

17 Q -- dig them out yourself?

18 A Correct. Correct.

19 Q Okay. So you weren't really making a judgment
20 call in regard to whether or not that was true or not
21 true?

22 A No. The -- those documents were just provided
23 to us as part of their corporate governance process.

24 Q I see. And so you just made -- you just
25 regurgitated basically what they told you in the audit

1 report?

2 A Correct.

3 Q Okay. Was there any -- I want to just briefly
4 ask you about this transition that we seem to have with a
5 number of the -- the people that work for Ameren in -- in
6 the upper levels today. And -- is it Price Waterhouse?

7 A Correct.

8 Q Do you know whether or not there are particular
9 rules or guidelines about moving from a position of
10 auditor in a company that does an audit of another
11 company, from that audit -- auditing company to the
12 company that has been audited by that auditing company? Do
13 you know what those rules are?

14 A I -- I generally know that they do exist and
15 they've existed for, you know, the last three or four
16 years.

17 Q Okay.

18 A And it's been a long time since I read it. But
19 my -- my basic understanding of it is there is a -- I
20 think a one-year lag that you have to wait in between
21 leaving the audit firm and then taking a job. And I think
22 it also is dependent upon what position you're taking
23 within that firm.

24 Q Okay. Do you know any of the details of that?

25 A No.

1 Q Okay. That -- that set of rules that you're
2 referring to, you say that came about in the last three or
3 four -- two or three years, three or four years?

4 A You know, I think it came post the Enron, Arthur
5 Anderson situation.

6 Q Yes. And your -- your employment -- just -- I
7 want to take you out of this if I can.

8 A I appreciate it.

9 Q Your employment with Ameren began --

10 A Predated this.

11 Q Before those rules, correct?

12 A That's correct.

13 Q Okay. Was there a pattern, if you know, and
14 since you brought it up, between Arthur Anderson's
15 auditors and Enron in regard to employment?

16 A You know, I don't really recall if there was a
17 pattern of people living there and going to Enron.

18 Q Okay. When you say there are rules, where are
19 -- who passes those rules and --

20 A You know, I'm not sure if they're promulgated by
21 the accounting profession or if it was potentially maybe
22 part of Sarbane's Oxley. I just -- I don't recall.

23 Q Okay. Do you know if there's anybody that's
24 coming up here from AmerenUE that would have some
25 familiarity with this?

1 A I'm certain that we could get you the rules.

2 I'd be happy to track them down myself, so --

3 Q Okay. That would be great. Let me move on.

4 COMMISSIONER GAW: I -- Judge, I need to have my
5 memory refreshed here. I think last week -- this witness
6 was here on demand side management. And I think that I
7 wanted to ask him questions now about that. But I cannot
8 remember for sure, and I don't want to --

9 A Right.

10 JUDGE WOODRUFF: I believe that's correct
11 because it was -- it was late in the evening, I believe,
12 and we were running through several witnesses at that
13 time.

14 A Yeah.

15 COMMISSIONER GAW: I just wanted to make sure,
16 add a little color to it?

17 A We talked about a couple demand response
18 programs that you were interested in, a pilot that we had
19 conducted at Ameren. And I offered up Rick Voyles who
20 oversaw it.

21 Q (By Commissioner Gaw) That's what I was looking
22 for. I was trying to make sure that I didn't re --
23 re-hash this again.

24 A Right. And I've spoken to him, and he is not
25 only willing, but looking forward to engaging in the

1 discussion. So --

2 Q That will be terrific.

3 COMMISSIONER GAW: So in that regard, Judge, I

4 am done.

5 JUDGE WOODRUFF: Okay. Very good.

6 COMMISSIONER GAW: Thank you sir, very much.

7 JUDGE WOODRUFF: And I believe Mr. Voyles is

8 scheduled to be up on Friday.

9 COMMISSIONER GAW: Thank you.

10 JUDGE WOODRUFF: Commissioner Clayton?

11 COMMISSIONER CLAYTON: I don't have any

12 questions.

13 JUDGE WOODRUFF: We'll go to recross based on

14 questions from the Bench, beginning with Aquila? Laclede?

15 Bargaining Committee? DNR? Missouri Retailers? MO-KAN?

16 MASW? MIEC? Commercial Group? MEG? AARP? Noranda?

17 MR. CONRAD: No questions

18 JUDGE WOODRUFF: State?

19 MR. MICHEEL: No questions.

20 JUDGE WOODRUFF: Public Counsel?

21 MR. MILLS: No questions.

22 JUDGE WOODRUFF: Staff?

23 MR. DOTTHEIM: No questions.

24 JUDGE WOODRUFF: Any redirect?

25 MR. CYNKAR: Yes, your Honor.

1 REDIRECT EXAMINATION

2 BY MR. CYNKAR:

3 MR. CYNKAR: First, your Honor, as a
4 housekeeping matter, I don't know where we are in exhibit
5 numbers. But over -- earlier today and then I believe
6 this came up last week, also, on this issue with Exhibits
7 430 and 431, I'd like to have marked at objection letter
8 that we referred to already.

9 JUDGE WOODRUFF: Okay.

10 MR. CYNKAR: This is I don't know what number.

11 JUDGE WOODRUFF: We'll be up to No. 111.

12 MR. CYNKAR: Okay.

13 MR. MICHEEL: What number is this?

14 MR. MICHEEL: It is a letter dated November 9th,
15 2006, from Mr. James B. Lowery to Mr. Lewis Mills. I'd
16 just move this into evidence.

17 JUDGE WOODRUFF: Do you have copies for the
18 Bench?

19 MR. CYNKAR: I'm sorry. Most important people.

20 JUDGE WOODRUFF: No. The -- we need six copies
21 for --

22 MR. MILLS: And, your Honor, I don't object to
23 marking this. I will note that it -- that it is -- it is
24 hearsay. I don't -- I don't object to it coming into the
25 record to show that Ameren did make these statements, but,

1 for example, it says that Ameren will provide copies of
2 requested documents, blah, blah, blah, blah, and I don't
3 want it to come in to prove that that is true.

4 I'm -- I'm certainly willing to -- to allow it
5 in to prove that those statements were made, but not for
6 the purpose of proving that such documents that it refers
7 to in here that it will provide were actually provided.

8 So subject to that hearsay objection, I have no
9 other objection.

10 MR. CYNKAR: I have no problem with that, your
11 Honor.

12 JUDGE WOODRUFF: All right. Subject to that
13 clarification that was offered in -- by Public Counsel and
14 agreed to by Ameren, 111 will be admitted into evidence.

15 (Exhibit No. 111 was offered and admitted into
16 evidence.)

17 MR. CYNKAR: Thank you.

18 Q (By Mr. Cynkar) Mr. Moehn, I'm tempted to ask
19 you actually since, as you said earlier, this was your
20 first time on the witness stand whether you would make the
21 same judgement to be a witness after your experience so
22 far.

23 A I might think about going back to Price
24 Waterhouse.

25 Q I -- I -- I -- I don't think I'll take you that

1 far. But since -- otherwise, I wouldn't have anything to
2 do here. The -- I think where I'd like to start, and
3 turnabout is fair play and Mr. Micheel very nicely
4 complimented me and you have been examined by some very
5 able attorneys, and now I'd like to un muddy the waters
6 that they've so effectively muddied, if I may.

7 During the course of your testimony, do you
8 recall you engaged in a number of conversations with
9 counsel about what was unique or not unique about UE's
10 relationship with EEI? Do you recall those discussions?

11 A I did.

12 Q All right. Let's -- let's talk about uniqueness
13 now. First of all, what was the purpose of EEInc.?

14 A The original purpose in 1950 was to provide
15 power to the DOE environment -- uranium enrichment
16 facility in Paducah, Kentucky for national defense.

17 Q Was that a unique purpose?

18 A I'm sorry. I --

19 Q Was that a unique purpose?

20 A It -- it was in the sense that this had not been
21 tried before with -- with utilities. It was something
22 that -- that the Government had basically provided up to
23 that time.

24 Q Do you know what the capital structure of EEInc.
25 was at that time?

1 A It was heavily leveraged, 95 percent debt,
2 something -- 5 percent equity.

3 Q And how did that -- how does that leverage
4 compare to what is normally a utility capital structure?

5 MR. MICHEEL: Objection. Calls for speculation.

6 JUDGE WOODRUFF: Overruled.

7 Q (By Mr. Cynkar) Do you -- you can answer the
8 question.

9 A Certainly, in UE's case and other utilities'
10 cases, 50/50 is kind of the typical capital structure.

11 Q Now, do you know whether that -- that unusual
12 capital structure required any action by the FCC?

13 A I believe they had to approve the transaction
14 just given the -- the leverage of the company.

15 Q Now, and as this was -- and I'm not sure exactly
16 how to ask this question. As this was a unique creation
17 for the Government --

18 A Right.

19 Q -- did EEInc. have any native load customers
20 other than the Government?

21 A No. It -- it did not have a franchise service
22 territory or captive customers, so --

23 Q Okay. Now, during the course of your
24 conversations with -- with my colleagues, the word
25 guarantee or guarantees was used concerning features of

1 the relationship between UE and EEInc. Do you recall
2 that?

3 A I do.

4 Q Okay. I'd like to ask you some questions about
5 that. And first of all, let's -- let's unpack this a
6 little bit, and let's focus on the PSA, which is our
7 shorthand term for the purchase power agreement, 1987
8 purchase power agreement between UE and EEInc. Are you
9 with me?

10 A Correct.

11 Q Okay. Now, there was reference to a commitment
12 that the sponsoring companies and DOE made to buy Joppa's
13 power sort of no matter what. Could you explain that?

14 A Basically, the contract was in place to -- to
15 guarantee cost recovery for EEI. Again, given the unique
16 situation of their capital structure, people were looking
17 for the ability of EEI to make sure they're going to
18 recover those costs and be able to pay off the debt.

19 Q So would you say that that commitment was
20 unique? Is it distinct? Use your own words.

21 A It was absolutely necessary in that situation.

22 Q And was it unique?

23 A It was very, very unusual, yes.

24 Q Okay. Now, if I recall, also, at least my
25 notes, that there's also reference to a -- a commitment

1 that the sponsoring companies made if DOE dropped out of
2 the contract, correct?

3 A Correct.

4 Q Could you explain that for the Commission,
5 please?

6 A Basically, the same sort of agreement. If DOE
7 for whatever reason stopped taking the power and didn't
8 need the power, the allocation would fall back to the
9 sponsors.

10 Q Okay. Now, there was also reference in your
11 earlier examination to financial guarantees. Now, as I
12 understand it, we were -- we've just been talking about
13 commitments. But this is financial guarantees. Now, what
14 financial guarantees were there in the PSA?

15 A There were -- there were two -- two different
16 financial --

17 Q Let me ask -- listen to my question. In the PSA
18 itself, were there any financial guarantees besides the
19 commitments we just talked about?

20 A There were financial guarantees back to EEI in
21 terms of the costs they would recover.

22 Q Well, we just talked about those. But in terms
23 of --

24 A No.

25 Q Okay. Now, when we talk about financial

1 guarantees that are not in the contract, not in the PSA,
2 what does -- what does that refer to?

3 A That the two -- two bond issues, that they
4 guarantee with respect to pollution control equipment.

5 Q Do you recall when those were?

6 A There was one in the late '70s and then another
7 one, I think, in the early '90s or the Clean Air Act.

8 Q And have those bonds been paid off?

9 A They've all been satisfied. Yes.

10 Q Okay. Now, let's talk -- now, let's talk to --
11 those financial guarantees, were those unusual?

12 A Yeah. I think they were unique in the
13 situation, yes. Uh-huh.

14 Q Okay. Now, let's talk about pricing, the
15 pricing of the PSA. I believe you testified that they
16 included capacity and energy charges in the pricing,
17 correct?

18 A That's correct.

19 Q Okay. And is such pricing customary for a firm
20 long-term contract?

21 A It would certainly include both -- both cost of
22 energy and -- and fixed cost.

23 Q And in that context, is it customary for
24 capacity and those fixed costs to include ROE?

25 A It would return -- include a return on equity.

1 Q Now, I also recall you testifying and I believe
2 it's in your written testimony also, and, of course, it's
3 in the documents that the ROE provided for in the PSA was
4 15 percent, correct?

5 A It was 15 percent.

6 Q Okay. Now, that ROE dates -- I mean, that has
7 been in the contract for quite some time, correct?

8 A Since 1987.

9 Q Okay. And it -- during any time over the life
10 of the contract, did anyone ever suggest that any feature
11 of the contract, including the ROE, was imprudent?

12 A Not that I'm -- not that I'm aware of.

13 Q Okay. A few moments ago, Commissioner Gaw was
14 asking you some questions about MISO and what was
15 significant and so forth. And I -- I guess I want to
16 return to that because I want to make sure that I
17 understand what you were trying to say.

18 Before FERC 888 -- well, was there a time before
19 MISO where FERC did not allow anyone participating in the
20 wholesale market to sell at above cost based rates?

21 A I believe at the time they entered into this
22 agreement in '87, cost based contracts were all that were
23 allowed.

24 Q Okay. And did -- do you know if sometime after
25 that FERC began to allow cost based contracts?

1 A I'm --

2 Q I'm sorry. Market based contracts.

3 A I believe they did, yes. Uh-huh.

4 Q Okay. And so the change -- if I understand your

5 testimony, is it correct that the change that you point to

6 is in the pricing, not necessarily the fact of

7 whether there is a market, per se?

8 A Correct.

9 Q Okay. Does AmerenUE own the Joppa plant?

10 A No. They own common stock.

11 Q Is that all they own in --

12 A That is correct.

13 Q Okay. Would AmerenUE have any reason to buy

14 casualty insurance for the Joppa plant?

15 A AmerenUE would not.

16 Q And does -- I mean, obviously, UE owns Tomsauk,

17 correct?

18 A Correct.

19 Q So if I understand you correctly, UE owns

20 Tomsauk. It does not own the Joppa plant?

21 A Tomsauk is in rate base. Common stock of EEI is

22 not.

23 Q Okay. Now, do you recall the exchange you had

24 with Mr. Micheel about the KCP&L Hawthorne plant?

25 A I do.

1 Q And he gave you the example of -- of -- and I am
2 not familiar with the events there, but I -- I suspect
3 that some disaster happened and Mr. Micheel posed that
4 KCP&L for prudently incurred investment were -- it's
5 appropriate under whatever principles could recover in
6 rates some of the costs of that accident, the Hawthorne
7 plant. Do you recall that exchange?

8 A I do.

9 Q And so would there be -- given what you've just
10 described, with the ownership interest of UE and EEInc.,
11 would there ever be a time where any accident at the Joppa
12 plant would be passed on to the UE ratepayers?

13 A Again, I can't imagine a situation where it's
14 not producing power how ultimately they'd be able to pass
15 that on.

16 Q So your answer to my question was no?

17 A No.

18 Q Thank you. If you could turn to your
19 surrebuttal, page 5 of your surrebuttal, line 10, do you
20 recall Mr. Micheel asked you about your reference to UE
21 not setting the rules?

22 A Yes.

23 Q Okay. Now, at the time, you suggested some
24 confusion about what you were referring to. Could you
25 read into the record the two sentences beginning at line 5

1 down to line 9, which immediately precede the reference
2 that Mr. Micheel directed you to?

3 A AmerenUE was successful in securing low cost
4 power from EEInc. from under the rules of the real world
5 that are transparent in the market in wholesale power and
6 in which power can be sold only at cost based prices.

7 Q The next sentence, please?

8 A AmerenUE intends to vigorously pursue low cost
9 power under the rules of the new market world in which it
10 must now operate.

11 Q Having reviewed that, is your understanding in
12 line 10 to the rules clarified at all?

13 A Yes.

14 Q What did you mean when you used the word rules
15 in line 10?

16 A Again, EEI didn't -- or UE did not have any
17 ability to extend the -- the EEI contract.

18 Q And isn't the -- could you turn your attention
19 to line 7? You see your reference to cost base price?

20 A Correct.

21 Q Does your reference to rules have anything to do
22 with the change from cost basis to market pricing?

23 A Yes, it does. And so in the -- you know, when
24 the contract was signed in '87, that was -- that was what
25 was available, cost base pricing. And today, market base

1 pricing is available for EEI.

2 Q Do you know whether Ameren ratepayers in the
3 whole relationship with EEInc. have ever paid -- have ever
4 had their money go to EEInc. for other -- for something
5 other than power that UE has purchased and received and
6 used on their behalf?

7 A No. I'm not aware of any situation.

8 Q Now, let's turn back to those unusual guarantees
9 and things that we talked about at the beginning. You
10 posited that AmerenUE would never -- if a disaster had
11 happened, a catastrophe -- I forget the exact word that
12 was being used in the exchange. But if a catastrophe
13 would happen, AmerenUE would not have sought to have those
14 costs, which were not connected with any power going to UE
15 ratepayers recover in UE's rates. Do you recall that
16 exchange with Mr. Micheel?

17 A I do.

18 Q Now, what is the basis of your view that is the
19 case?

20 A Well, you -- my -- certainly, my own opinion
21 that I can't imagine passing through power that's not
22 received. And, also, Mr. Rainwater testified yesterday to
23 that -- to that effect as well.

24 Q Now, also, I believe Mr. Micheel referred to
25 different concepts, evergreen terms and purchase options.

1 Do you recall that exchange with him?

2 A I do.

3 Q And he asked you whether a contract could be
4 written with such terms, correct?

5 A Correct.

6 Q Was the PSA written with any such terms?

7 A It was not -- expired by its own terms on
8 12/31/05.

9 Q And did the Board of AmerenUE take any vote with
10 respect to the expiration of the PSA?

11 A No.

12 Q Did any officers of AmerenUE take any action to
13 cause the expiration of the PSA?

14 A No.

15 Q Did any employee of the AmerenUE do anything
16 that caused the expiration of the PSA?

17 A No.

18 MR. CYNKAR: If I can have one second, Your
19 Honor. Actually, I -- I don't want to disappoint
20 Mr. Dottheim, and so I forgot one particular area.

21 JUDGE WOODRUFF: Okay.

22 Q (By Mr. Cynkar) Let's turn to that chart. What
23 -- what does that chart represent?

24 A What we're attempting to show here are total
25 Joppa -- Joppa sales.

1 MR. DOTTHEIM: Objection. Mr. Cynkar, what is
2 your redirect in -- in regard to? I mean -- I mean,
3 what's the foundation or the basis for your referring Mr.
4 Moehn to the chart you've just asked him, What is the
5 chart behind you?

6 MR. CYNKAR: I stand -- I stand duly corrected.
7 And I'll lay a more lengthy and time-consuming foundation,
8 your Honor.

9 Q (By Mr. Cynkar) Do you remember in the context
10 of your cross-examination that Mr. Micheel discussed with
11 you Mr. Brosch's claim that -- that the 40 percent
12 interest in E -- that AmerenUE has is analogous to a rate
13 base item?

14 A I do.

15 Q And -- and -- and speaking of the consequences
16 of the PSA and linking that with the notion that AmerenUE
17 has this 40 percent interest, correct?

18 A Yes, I do.

19 Q Okay. In your -- in your submitted testimony,
20 did you submit data concerning the amount of megawatt
21 hours AmerenUE has actually purchased over the course of
22 the contract?

23 A I included it as an exhibit, yes.

24 Q Okay. And is that blow-up behind you a blow-up
25 of that exhibit?

1 A It is.

2 Q Okay. Now, would you hold that up? And could
3 you explain what that's supposed to show for the
4 Commissioners?

5 A What we're basically trying show is just the
6 total Joppa sales from 1951 to 2005. The way this
7 works --

8 Q Mr. Moehn, I think you'll have to get a little
9 bit closer to the microphone.

10 A The way the contract worked -- the creation of
11 the agreement was that anything that DOE did not take, the
12 sponsor companies would take. And then after '87, the
13 sponsor companies had a lot more flexibility.

14 And the way in which it worked was DOE was
15 willing to take 75 percent of the plant, and the other
16 sponsors' utilities were going to take 25 percent of the
17 plant. And it also gave them the ability to increase that
18 over time.

19 So, for example, in 1989, UE was taking 45 of
20 the 25 percent that we were allowed to take. So they were
21 picking up 10 percent of the fixed costs. And they
22 obviously would take whatever energy they would take as
23 well.

24 And over here on UE's piece here that, again,
25 the contract had a lot of flexibility. It let them

1 actually schedule the capacity in the summer which is a
2 very nice feature for UE.

3 And then you can see over time they began to
4 take more and more. And eventually they were taking their
5 full 40 percent.

6 MR. CYNKAR: Thank you. I have no further
7 questions, your Honor.

8 JUDGE WOODRUFF: Thank you. And, Mr. Moehn, you
9 can step down. And I believe the agreement was that we
10 would take Mr. Downs next; is that right?

11 MR. CYNKAR: You're correct, your Honor.
12 Actually, your Honor, I believe that I should probably
13 move into evidence Mr. Moehn's written testimony at this
14 point?

15 MR. MICHEEL: He's back on.

16 JUDGE WOODRUFF: He's back on, I believe, later.

17 MR. CYNKAR: I'm sorry. That's right.

18 MR. MILLS: Your Honor, before we completely
19 move away from Mr. Moehn, I would like to offer Exhibit
20 432 that I had marked before -- before we broke.

21 JUDGE WOODRUFF: 432 has been offered. Are
22 there any objections to its receipt?

23 MR. CYNKAR: I'm sorry. Lewis, could you just
24 reflect -- you don't have to show it to me. Just tell me
25 what it is.

1 MR. MILLS: It was a set of two DRs that --

2 MR. CYNKAR: Yes. We have no objection.

3 JUDGE WOODRUFF: All right. 432 is received
4 into evidence.

5 (Exhibit No. 432 was offered and admitted into
6 evidence.)

7 JUDGE WOODRUFF: Would you please raise your
8 hand?

9 ROBERT DOWNS,
10 being first duly sworn to testify the truth, the whole
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CYNKAR:

14 JUDGE WOODRUFF: You may be seated.

15 Q (By Mr. Cynkar) Professor Downs, do you have
16 any corrections to your testimony?

17 A There is one typographical error in my direct --
18 in my direct testimony on page 7 at the bottom on page --
19 on line 21. I believe the cite should read 444 Northeast
20 2nd, 549, and it says 599.

21 Q Thank you.

22 A And that was drawn to our attention in my
23 deposition, and I omitted tracking it with the errata
24 sheet.

25 Q Thank you.

1 MR. CYNKAR: With that, I tender the witness for
2 cross-examination, your Honor.

3 JUDGE WOODRUFF: Okay. And for
4 cross-examination, again, Aquila? Laclede?

5 MR. DOTTHEIM: Judge?

6 JUDGE WOODRUFF: Yes, sir.

7 MR. DOTTHEIM: One -- you have here the
8 correction sheet, which I believe there are actually no
9 corrections to the deposition of -- of Mr. Downs. But,
10 two, I'd -- earlier I think it was possibly in the opening
11 statements that -- I indicated that I'd have an objection
12 to Mr. Down's testimony, that I posited that in the
13 prehearing brief.

14 It raised legal arguments that provided
15 citations and suggested that I was seeking to have Dr. --
16 Professor Downs' testimony stricken or preclude him from
17 -- from testifying, that I would suggest that the
18 objection be taken with the -- the case.

19 JUDGE WOODRUFF: I recall that.

20 MR. DOTTHEIM: That -- that the objection could
21 be briefed. I just wanted to -- to renew that.

22 JUDGE WOODRUFF: All right.

23 MR. DOTTHEIM: And proceed in that manner.

24 JUDGE WOODRUFF: All right.

25 MR. DOTTHEIM: Would you want -- there's a one

1 -- one-page signature page of -- of Professor Downs. I
2 could have that marked or --

3 JUDGE WOODRUFF: Let's wait until it's -- it's
4 Staff's turn on that.

5 MR. DOTTHEIM: Okay.

6 JUDGE WOODRUFF: And we'll hear from the other
7 parties. Laclede? Aquila? Missouri DNR? Missouri
8 Retailers? MO-KAN? Missouri {}?

9 MS. VUYLSTEKE: No.

10 JUDGE WOODRUFF: Commercial Group? MIEC?
11 Noranda? For the State.

12 CROSS-EXAMINATION

13 BY MR. MICHEEL:

14 Q Mr. Downs, you're not an expert in regulatory
15 law; isn't that correct?

16 A That's true. That's not my area of expertise.

17 Q And you're not offering any expert testimony
18 with respect to regulatory law here today; is that
19 correct?

20 A That's true.

21 Q Is it correct, also, that you're not a fact
22 witness, you don't consider yourself a fact witness in
23 this case?

24 A That's also true.

25 Q And so you're just providing expert testimony on

1 what you believe the law is, is that correct, with respect
2 to corporate boards?

3 A I believe that's true. It is also true that
4 some of the comment in my direct testimony, rebuttal
5 testimony and surrebuttal testimony probably expands that
6 a little bit.

7 Q Could -- could you explain to me, sir, what the
8 State's proposed adjustment is in this case?

9 A Do you mean in terms of dollars? Or what do you
10 -- what do you mean?

11 Q Explain to me your understanding of the
12 adjustment.

13 A The adjustment on what topic?

14 Q EEInc.

15 A My understanding is that the State is proposing
16 -- and it may be more than just the State. I don't know
17 what everyone's position is. But my understanding is that
18 the adjustment with respect to EEInc. would to be
19 essentially act as though AmerenUE was entitled to
20 purchase power from EEInc. And some kind of a cost based
21 contract similar to the one that expired in 2005. And an
22 adjustment ought to be made as though that were true.

23 Q And how is that adjustment effectuated on
24 AmerenUE's books?

25 A I'm sorry. I don't know for sure what you're

1 asking.

2 Q Well, how -- how would -- how would Ameren make
3 that adjustment if the Commission accepted the State's
4 position?

5 A My understanding is that they would -- the -- an
6 -- essentially an assumption would be made that AmerenUE
7 were, in effect, buying power at something near the -- or
8 like the cost base contract that expired in 2005 as
9 opposed to the price of -- of market.

10 Q Do you know if there's a difference between the
11 recommended position of the State and the position of the
12 Staff in this case?

13 A I haven't tried to distinguish which party was
14 making which claim.

15 Q That wasn't --

16 A So I don't know.

17 Q That wasn't my question. My question was, and
18 listen real careful, do you know if there's a difference
19 between the recommended position of the State and the
20 Staff in this case?

21 A I don't believe I do know that.

22 Q Do you know if there is a -- a difference
23 between the position of the State and the Office of Public
24 Counsel in this case?

25 A I don't believe I do know that.

1 Q Do you know if the regulatory treatment that the
2 State is requesting in this case or suggesting that the
3 Commission take in this case is different than the
4 regulatory treatment recommended by the Staff?

5 A I don't know whether they're at differences or
6 not.

7 Q How about the State and the OPC? Do you know if
8 their regulatory treatment is different?

9 A That's the same answer. I don't know that.

10 MR. MICHEEL: Thanks for your time.

11 JUDGE WOODRUFF: Office of Public Counsel?

12 CROSS-EXAMINATION

13 BY MR. MILLS:

14 Q Good afternoon, Mr. Downs. My name is Lewis
15 Mills. I represent the Public Counsel in this matter.

16 A Good afternoon.

17 Q We spoke on the phone during your deposition.

18 A Oh, you were the mystery voice.

19 Q Yes. And I -- I think this is going to be very
20 brief because Mr. Micheel touched on the areas that I
21 wanted to touch on. But let me ask you this: Is it --
22 are you familiar enough with regulation of -- of utilities
23 in Missouri to know whether it's possible that the
24 Commission could accept that EEInc. Directors could have a
25 fiduciary duty as you've stated they do and yet still make

1 an adjustment for rate-making purposes for Union
2 Electric's books and records?

3 A I'm sorry. I missed the first part. Did you
4 say the directors of EEInc.?

5 Q Yes. Isn't your testimony primarily that the
6 Directors of EEInc. have a fiduciary duty to act in a
7 certain way?

8 A Yes, it is.

9 Q And my question is, do you know enough about
10 regulatory law to be able to know whether the Commission
11 could accept that position and still make an adjustment to
12 Union Electric's books for rate-making purposes?

13 A Not based on regulatory law. I can't answer
14 that.

15 Q Okay. Do you understand that the Public Service
16 Commission's primary job is to protect customers from the
17 power of a utility?

18 A I understand that's one of the things they do.

19 Q What are the other things they do?

20 A Well, they -- they set rates, which are not only
21 to protect the customers but also to result in some fair
22 return to the utilities. And they -- they review all the
23 -- the activity between companies and subsidiaries and so
24 on. But I don't object to your characterization as the
25 primary. It sounds right.

1 MR. MILLS: Okay. That's all the questions I
2 have. Thank you.

3 JUDGE WOODRUFF: For Staff?

4 CROSS-EXAMINATION

5 BY MR. DOTTHEIM:

6 Q Good afternoon, Professor Downs.

7 A Good afternoon.

8 Q Professor Downs, have you reviewed the other
9 AmerenUE witnesses' testimony on EEInc.?

10 A I believe that I have.

11 Q Have you had any conversations with the other
12 AmerenUE witnesses on EEInc.?

13 A I have had some conversations, yes.

14 Q Okay. And those witnesses are -- would you
15 please identify them?

16 A I'm not sure that I can identify all of them.
17 I've been on two or three conference calls that were
18 multi-party conference calls. And -- and I'm not sure
19 even then I was aware of who all was on the call.

20 Some of the people on the call were lawyers.
21 Some of them were staff members. Until recently, I was
22 not aware even of who the witnesses were going to be on
23 this issue from -- from AmerenUE's side of this.

24 Certainly, I have reviewed the -- and discussed
25 with Mr. Moehn his testimony, and there may be another one

1 or two.

2 Q Have you reviewed and discussed with Mr. Svanda
3 his testimony?

4 A I think he's been on one or more of the calls.

5 Q Okay. Professor Downs, are you aware that there
6 is an AmerenUE witness by the name of Charles Naslund?

7 A Yes, I am.

8 Q Okay. Are you aware that Mr. Naslund is a
9 member of the EEInc. Board of Directors?

10 A I am aware of that.

11 Q Are you aware that he does not have any
12 testimony filed on EEInc.?

13 A I was not aware of that. I think I -- I heard
14 on the remote display of these hearings some comment like
15 that. But until today or yesterday, I was not aware of
16 anything like that.

17 Q Have you had any conversations with -- with
18 Mr. Naslund?

19 A I had one telephone conversation with him and --
20 and counsel for AmerenUE I think last Saturday. He could
21 have been on one of the other conference calls as well. I
22 just don't know that.

23 Q Professor Downs, do you know whether EEInc. has
24 a general counsel?

25 A I don't know that.

1 Q Do you know how EEInc. obtains legal advice?

2 A I don't know firsthand. I've heard a comment
3 that a large firm, I think out of Cleveland, may do some
4 of their legal work or their major legal work.

5 Q Have you yourself ever provided any legal work
6 for the Board of Directors of the EEInc.?

7 A No, I have not.

8 Q Professor Downs, I'd like to refer you to your
9 surrebuttal testimony, page 9. And, in particular, I'd
10 like to refer you to lines 15 to 16 where you state, It is
11 common to supply contracts that are based upon cost plus
12 markup include an element of costs related to the use of
13 capital. What do you mean by the phrase, it is common to
14 see?

15 A It's just that in my own legal practice, I've
16 didn't a number of cost plus contracts in various industry
17 settings, and that includes a return on capital as well as
18 all other kinds of costs.

19 Q How many power supply agreements have you
20 reviewed?

21 A None in the electrical energy area. My -- my
22 experience only with -- with -- with long term supply
23 contracts involved the coal industry in which coal
24 companies, coal mines work out deals with buyers long-term
25 and have lots of different su -- pricing mechanisms in

1 them.

2 Q Professor Downs, do you know -- do you know
3 whether the Commission's adoption of the Staff's
4 adjustment of this case will result in EEInc.'s owning
5 energy or selling energy to Ameren at any cost?

6 A I don't believe it will be -- would result in --
7 in a sale by EEInc. because that's already happened. It
8 won't force a sale. An adjustment based on the lack of
9 that sale would certainly be based on -- on the absence of
10 that sale.

11 Q I'd like to refer you, again, to your
12 surrebuttal testimony, page 11 --

13 A Yes, sir.

14 Q -- lines 16 to 22 where you make reference to
15 the gas industry and take or pay clauses.

16 A Yes, sir.

17 Q What is your experience with gas industry
18 contracts?

19 A For a number of years, my law firm represented
20 gas pipeline companies. And we did some of the pipeline
21 work for a number of years. My law firm represented
22 sellers of gas and oil in -- in eastern Kansas and
23 Oklahoma and in parts of Texas. And we worked on -- on
24 contracts for pipeline supplied for -- and the gas being
25 produced by those things. And take or pay clauses were a

1 common kind of provision to encourage people to -- on both
2 sides of the fence, encourage people to do the drilling
3 and also to encourage pipelines to spend the money to put
4 the pipelines in place.

5 Q And when you make reference to your firm, was --
6 is that the law firm Lynde, Thompson, Van Dyke, Fairchild
7 and Koehn?

8 A Yes. It's actually Lynde.

9 Q Lynde?

10 A Uh-huh.

11 Q I'm sorry. And you were associated with that
12 firm from 1968 to 1978?

13 A That's right.

14 Q So would that be the -- be the time frame that
15 you're referring to as 1968 to 1978?

16 A Partly. In addition, I did oil and gas and coal
17 mining work as a part-time thing for a number of years
18 after I became a faculty member at the law school.

19 Q Okay. If I could refer you again to page 11 of
20 your surrebuttal testimony, you refer to a statement that
21 Mr. Schallenberg finds in the EEInc. FERC form one report,
22 do you not?

23 A Are you at Line 4?

24 Q Yes. It's -- it's actually directly in
25 question. Are you a -- indicating that -- that that

1 statement is -- does not appear in the EEInc. FERC form
2 one?

3 A Not at all.

4 Q Are you indicating that -- that the statement is
5 incorrect or misleading in any way?

6 A The -- not the statement in the sense that it's
7 in the FERC report. But only the use of the statement in
8 the way Mr. Schallenberg used it.

9 MR. DOTTHEIM: If I could have a moment, please?

10 JUDGE WOODRUFF: Sure.

11 MR. DOTTHEIM: Thank you, Professor Downs.

12 JUDGE WOODRUFF: Mr. Dottheim, did you wish to
13 mark that errata sheet at this time?

14 MR. DOTTHEIM: Yes.

15 JUDGE WOODRUFF: That would be No. 266. All
16 right. Exhibit 266, which is the signature page from
17 Robert Downs' deposition has been offered. Are there any
18 objections to its receipt? Hearing none, it will be
19 received into evidence.

20 (Exhibit No. 266 was offered and admitted into
21 evidence)

22 JUDGE WOODRUFF: And then we'll come up to the
23 Bench for questions. Commissioner Murray?

24 CROSS-EXAMINATION

25 BY COMMISSIONER MURRAY:

1 Q Good afternoon, Professor Downs.

2 A Good afternoon.

3 Q I just basically have a couple of questions for
4 you. Since the time of Enron, what has happened to the
5 requirements for Directors?

6 A Actually, a number of things have happened. The
7 -- one of the most important changes is the requirement
8 that the board establish certain committees that have
9 independent health assistance. The audit committee needs
10 to have somebody, for example, that has actual audit
11 experience.

12 The -- there is a suggestion to have more
13 outside non-employee directors. That's been a long-time
14 suggestion. Also -- the SCC and other places. But the --
15 there's also a lot of special rules regarding movement of
16 accountants and others from and to the company.

17 Also, lots of rules about overlapping
18 obligations or responsibilities, I should say, of
19 accounting firms. Some of the problems with Enron and
20 others were that the people giving the financial advice
21 and so on, financial consultants and whatnot, were too
22 tied in with the audit people.

23 And so some of the pressures that were there,
24 conflicts of interest within the accounting firms, played
25 out somewhat in Enron and WorldCom and some of the other

1 scandals and a real push to try to get as much
2 independence in the Directorate and as much competence in
3 the various phases of what they do as possible.

4 Q So would it -- is it fair to say that directors
5 are held to a higher standard now?

6 A I'm not sure they really are. The -- there are
7 more things you have to do. So -- and more rules you have
8 to follow to -- so to that extent, I would say that people
9 feel more pressured to behave in certain ways. So, yeah.

10 But those come really -- those standards come
11 from laws outside of your general corporate law. Basic
12 fiduciary duties of Directors really haven't changed much.
13 How those duties play out are affected by not only
14 Sarbane's Oxley but other securities laws that change from
15 time to time.

16 Q But you said there has been a push for more
17 independence. Do you think that the relationship between
18 the Board members who are designated by AmerenUE and EEI
19 create some independence problems in terms of -- let me
20 ask -- see if I can ask it a little more clearly.

21 If the Board members from AmerenUE had -- had
22 voted against going to market based rates, in your
23 opinion, would that have been creating a fiduciary or --
24 or -- let's see -- avoiding their fiduciary duty to EEI?

25 A In -- based on what I've heard about the

1 difference in the operating, I believe it would have been
2 very difficult for anyone on the Board of EEI to have
3 justified a vote in staying with cost plus pricing.

4 So -- I mean, they have an obligation, all of
5 them, whether they're somehow affiliated with AmerenUE or
6 not. They all have an obligation to look out for the
7 interests of EEInc and the shareholders of EEInc.

8 Those duties involve a lot of different things.
9 But the -- but the duty of care and the duty of loyalty
10 are pretty clear. How those play out you in the actual
11 fact changes from case to case. But there's -- anyone --
12 there's not much doubt, if any, that it would have been a
13 breach of duty of care, even if they had been independent
14 directors and also probably a breach of the duty of
15 loyalty because of the conflict of interest that existed
16 between their relationship with AmerenUE and EEInc.

17 Q And had they voted the way that I just
18 described, they would have been demonstrating loyalty to
19 AmerenUE over the shareholders of AmerenUE over the --
20 well, not necessarily the shareholders, but at least they
21 would have been demonstrating a loyalty to the ratepayers
22 of AmerenUE over the loyalty to the shareholders of
23 EEInc.; is that correct?

24 A I believe that is correct. And I did take some
25 time to try and -- and see if there was any peculiar law

1 out there with respect to any conflict of interest or
2 potential conflict between the duties to ratepayers or to
3 shareholders.

4 And there are a few cases. There are not in
5 Missouri or Illinois, but there are a few cases out there
6 that clearly say there is no fiduciary duty in the normal
7 sense that directors have fiduciary duties to their
8 ratepayers, per se.

9 They have a duty to follow the law. They have a
10 duty to do other things. But it's not the same as their
11 basic fiduciary duty to their corporation.

12 Q The -- fiduciary duties run to the shareholders
13 of the corporation upon whose Board they sit; is that
14 correct?

15 A Well, the way the -- the statement of fiduciary
16 duties normally is contained in the case law that the
17 Board of Directors has the obligation to manage the
18 corporation. And its fiduciary duty runs to the
19 corporation.

20 The shareholders are almost all included in that
21 situation, partly because it's the shareholders who bring
22 derivative cases and other kinds of cases against the
23 directors for misbehavior.

24 And it's -- and when you have a conflict between
25 whether to serve the corporation or somehow serve the

1 interest of those shareholders that are in conflict, I
2 don't think there's any doubt that the choice has to be in
3 favor of the corporation. That's who you've been elected
4 to serve, and that's where your obligation lies.

5 MR. DOTTHEIM: Thank you. I believe that's all
6 I have.

7 JUDGE WOODRUFF: Commissioner Gaw?

8 COMMISSIONER GAW: Thank you.

9 CROSS-EXAMINATION

10 BY COMMISSIONER GAW:

11 Q Professor, thanks for coming. Let me ask you
12 this: Let's assume you have a -- a corporation that is
13 solely owned by a parent company. This is a complete
14 subsidiary, total subsidiary of Company A. Company B is
15 the subsidiary.

16 Let's assume Company B is profitable and
17 producing -- producing income on a regular basis. The --
18 Company A, the parent company, makes a decision internally
19 that they wish to disband Company B. They want to get --
20 they want to get rid of it. The company, therefore, will
21 cease it exists.

22 Is it a conflict of interest, first of all, for
23 the Board of Directors to make that decision?

24 A It's not a conflict of interest. The decision
25 to dissolve the corporation is -- can be done by the Board

1 of Directors. It can also be done by the shareholders.
2 It doesn't take director action. It's one of the areas --
3 it's sort of like -- I mean, it's the death of the whole
4 thing.

5 Q Why?

6 A And, basically, the shareholders are entitled to
7 decide ultimately what to do with the entire business. Is
8 it impossible the Board of Directors in any case ever take
9 a vote to expand or dissolve the corporation? They can
10 take a vote to do so, but the -- and I can't speak for
11 every state.

12 But I can speak for Missouri and Illinois. And
13 in those states, the directors do not have the power to
14 dissolve the corporation without shareholder approval.

15 Q Well, let's assume that shareholders are in
16 favor of it. But the Board of Directors doesn't want to
17 vote to dissolve the corporation. Okay? In that event,
18 there is a conflict in the desires of the shareholders and
19 the Board of Directors. To whom do the Board members owe
20 their fiduciary duty in that case?

21 A The Board members still owe their fiduciary duty
22 to the corporation. In the case that you posit with a
23 hundred percent owner, that shareholder could do it on its
24 own so it wouldn't need Board approval.

25 Q Is it your -- is it your opinion based upon what

1 you told Commissioner Murray that if there's no reason for
2 the subsidiary's position to -- to dissolve the
3 corporation, because it's profitable, it's working fine,
4 there's not any issue there, is it -- is it contrary to
5 the fiduciary duties of the Board members to vote to kill
6 the corporation?

7 A It's not contrary to their fiduciary duty to
8 vote to dissolve. And that's just the peculiarity of --
9 of statutory law in most states, including Missouri and
10 Illinois.

11 Q And that's because?

12 A You mean the reason the statute is written that
13 way?

14 Q No. The reason why that is not -- why that is
15 not contrary to their fiduciary duty.

16 A Well, because the statute specifically gives
17 them the power and the right to vote to dissolve.

18 Q Well, the Board of Directors has the power and
19 right to do a number of things, but that doesn't
20 necessarily mean that it's in the best interest of the
21 corporation to do so, correct?

22 A I understand that.

23 Q So in this case, if it is -- is it -- is it not
24 contrary to the interest of the corporation that their
25 Board members to have kill itself?

1 A I think -- I think you could make the arguments
2 that it's always in the -- always contrary to the
3 interests of a corporation to no longer exist. It's
4 analogous to a suicide argument.

5 Q Yes.

6 A But, nevertheless, the power is there to do it
7 and the statute permits it. In fact, the statutes have a
8 number of ways that it is -- that you are able to do it.
9 And the fiduciary obligations that come in managing the
10 company really to do not come into play with that at all.

11 Q Do the Board of Directors in the company have
12 authority to approve or disapprove of contracts?

13 A Yes, they do.

14 Q Is that relevant to a determination of whether
15 they do or do not have a fiduciary ability to approve or
16 disapprove to certain contracts?

17 A Is what relevant?

18 Q The fact that they have that power.

19 A Well, they have the obligation to manage the
20 company and prove, in any party.

21 Q Yes. So the fact that they had the power
22 doesn't necessarily mean that voting to approve or
23 disapprove of the contract are automatically in line with
24 their fiduciary duty, does it?

25 A Well, but the -- the case law, and to some

1 extent statute, has forever essentially set up the basic
2 arrangement by which corporations are managed. And the
3 obligation of Director is to vote in the best interest of
4 the corporation. It's affirmed over and over and over in
5 the case law. And what you've done is put your finger on
6 an exception when you're talking about dissolution.

7 And that's also been part of the law forever.
8 Whether I can somehow justify that distinction, I'm not
9 sure anybody can. But it is, in fact, the way it was.

10 Q Is it -- is it not the case that there may be
11 occasion when the dissolution of that -- of that
12 corporation -- let's reverse it. Let's say the Board of
13 Directors wants to vote to dissolve the corporation and
14 the shareholders generally do not. The Board does not
15 have the power to dissolve it without shareholder
16 approval. Can they vote to dissolve it?

17 A Yes, they can because they can vote to dissolve
18 it and put resolution to the shareholder vote. And in
19 that case, it would take less and take majority -- less
20 than a hundred percent approval.

21 Q Now, in the event that you have a majority of
22 shareholder -- well, let me -- let me ask you this: Is
23 there a difference in your -- in your opinion when you --
24 when you have some shareholders who do want dissolution
25 and some who do not in regard to the fiduciary duty of the

1 -- of the Board of Directors members?

2 A I'm not sure I can -- I can answer that. I --
3 I'm trying to think of any case or any situation where
4 I've ever seen it. And I just have not.

5 Q Okay.

6 A And so I -- I don't think -- I would be very
7 surprised if there was any authority anywhere on that
8 point.

9 Q All right. Let me ask you this -- let's assume
10 that the parent corporation, again, 100 percent
11 shareholder in the subsidiary, and the parent corporation
12 wants to sell widgets to the subsidiary at above market
13 price. And overall, it's in the best interest of the
14 parent -- and both the parent and subsidiary as a whole to
15 do so. But it is company's determination. Is there a
16 fiduciary duty issue there for the Board of Directors?

17 A Of the subsidiary?

18 Q Yes.

19 A You bet.

20 Q Okay. And if they vote contrary to the interest
21 of the subsidiary, they've violated their fiduciary duty?

22 A Yes, they have.

23 Q Even though that's overall in the best interest
24 of the parent and subsidiary in my example?

25 A That's true. And the -- and the distinction

1 there is that the interest of the shareholder that the
2 directors of the subsidiary are supposed to worry about
3 are reflected in the benefits gained by the subsidiary.
4 It's the ownership interest in the corporation.

5 I mean, that's how you protect the shareholder
6 interest is by protecting the owner interest in the
7 subsidiary, not through contracts. Not through -- other
8 ways of getting money out of the corporation are not in
9 the interest of the subsidiary.

10 So if it the subsidiary got a good deal, that
11 benefits the shareholders as well, the subsidiary gets the
12 bad deal, that's harmful for the subsidiary, and also not
13 good for the shareholder.

14 Q You're making up your own example?

15 A I am. I beg your pardon.

16 Q My scenario, that was not the case?

17 A It's force of habit, I'm afraid.

18 Q I understand. When you -- when you're in front
19 of the class, you get to make up your own questions.

20 A I give. I give.

21 Q So it -- that would produce somewhat of a
22 quandry, wouldn't it?

23 A It's doesn't really. I mean, in your exact
24 example, the fiduciary duty of the directors of the
25 subsidiary owe the duty to the corporation that they

1 serve. And they're not entitled to see whether the parent
2 is gaining or not gaining from that transaction.

3 Q Is it illegal for the shareholders in my
4 scenario of the parent corporation to weigh in with the
5 Board members as to the direction they wish to have the
6 votes cast?

7 A I'm not sure what you mean by weigh in, but --

8 Q Give their opinion.

9 A Yeah. There's certainly nothing that prohibits
10 shareholders from expressing their opinion about any issue
11 that confronts the directors of a subsidiary. As you
12 probably know, it's very common for that to happen.

13 Q Okay. Is it -- is it illegal for them -- for
14 the -- in my scenario for the parent to give direction on
15 what -- how they want those Board members to vote?

16 A Well, first of all, they don't have the -- the
17 legal authority to tell the directors how to vote. They
18 have the -- the practical possibility of stating it that
19 way, but the directors of the subsidiary are not entitled
20 to listen to that.

21 The direct -- I mean, they're entitled to listen
22 to the comment, but they're not entitled to -- to decide
23 to vote on behalf of the subsidiary just in accordance
24 with the way they've been told to vote. They're supposed
25 to exercise their own independent judgement in whatever

1 they're deciding.

2 And that's the way the -- the thing is set up.

3 And -- and it may well be that parents do try to get
4 involved more in the decision-making of the subsidiaries
5 than -- than they are permitted to do. But it's the job
6 of the director to resist that.

7 Q Is it illegal?

8 A Which part, sir?

9 Q For the parent to give direction to those Board
10 Director -- Board of Directors, members of the subsidiary?

11 A Well, it's not a crime.

12 Q Okay. Now, let me -- let me ask you --

13 A Whether it's illegal is another matter.

14 Q Well, can you cite me -- cite me to somewhere
15 where it would say it was illegal?

16 A I can tell you that, under the law, they're not
17 entitled to do that. They're not entitled to tell those
18 people that, Unless you do this and so, bad things will
19 happen to you.

20 Q Where is that authority?

21 A I could find it. I'm sure of that.

22 Q You can't cite it to me today?

23 A I cannot. No.

24 Q All right. In regard to officers of a company
25 do they owe any duty to the company that they're officers

1 of?

2 A They do.

3 Q What is that authority and what's it based upon?

4 A What is it --

5 Q From a legal perspective. What is that
6 authority? Actually, the case law that -- or duty,
7 rather.

8 A Yeah. I thought that's what you meant.

9 Q Yeah. Sorry.

10 A The case law that refers to fiduciary duties for
11 directors almost always included officers in the same
12 breath.

13 Q Okay.

14 A Officers and directors have a fiduciary duty of
15 care and loyalty to the corporations they represent.

16 Q Okay. Are those duties similar in nature in
17 regard to the level of duty that officers have and --
18 regarding the corporation and -- and Board of Directors
19 members have?

20 A The -- the way the duties are -- are stated in
21 the case law sounds very similar. The actual
22 responsibility of officers is quite a little bit --
23 depending upon what officer and how high up and so on and
24 so. And the actual play out of those duties in day-to-day
25 living is quite different.

1 Q Okay. Is it possible for the duties of an
2 officer of one corporation to come into conflict with the
3 individual's duties as a Board of Directors member of
4 another corporation?

5 A That does happen. Yes.

6 Q When that happens, what is the appropriate
7 response for the individual that finds themselves in that
8 conflict?

9 A Well, there are a couple of ways that -- that --
10 that one can respond. One is to -- is to try and keep the
11 decision-making process separate, which is what they're
12 supposed to do and when they're wearing the subsidiary
13 hats to make their decisions for the subsidiary based on
14 that, and then when they're on the other side of the
15 transaction and it's being considered by the parent
16 company to exercise their judgment on behalf of the parent
17 company.

18 In contract disputes or contract arrangements,
19 that's not uncommon. And, basically, both -- both
20 entities are looking at the contractual arrangement trying
21 to decide whether it's in this interest to do it in the
22 way that it's being proposed.

23 Absent some kind of challenge to that, that
24 would not be an uncustomary basis for a decision to be
25 made. The fiduciary duties still run to both of those

1 separate entities in the decision process that's going on.

2 And I was about to make up another hypothetical,
3 but I won't.

4 Q Okay. So in the case that -- where an
5 individual finds themselves in a position where his or her
6 duty as a Board of Directors member comes directly into
7 conflict with his or her duty as an officer, which master
8 does that individual -- is that individual required to
9 choose, if either?

10 A They're not actually re -- I didn't finish my
11 other answer, which actually answers part of this one.

12 Q Okay.

13 A They're not actually required to choose. They
14 are required to exercise their judgment on behalf of each
15 of the two parties.

16 The -- if this is, in fact, a conflict in the
17 position of the two parties, which occasionally there is,
18 but what they're supposed to do is recuse themselves and
19 not be involved in the decision process. And there's a
20 whole statutory and case law scheme by which approval of
21 conflicted transactions can be accomplished.

22 Q Okay. Did you -- did you happen to know any of
23 those cites off the top of your head?

24 A Missouri -- I think it's Section 351, I want to
25 say, 327 or 347. It's a Chevy engine, if I remember

1 right. Chevrolet.

2 Q Okay.

3 A I think it's 347. In Delaware, there was a very
4 similar one which is identical to Missouri, Section 444.

5 Q Well, I'm familiar with the 327 being the Chevy
6 engine, and the 347 is a little bit -- at least clear one.

7 A And I have the Illinois statute somewhere, but I
8 don't remember the citation to it.

9 Q Okay. Now, so in the example where -- and I'm
10 giving you a different hypothetical now -- Company A has a
11 CEO who is a Board member of Company B. Company A and
12 Company B are not related and have a contract that comes
13 up, and Company B is examining that as a -- it includes a
14 request -- a request for a proposal that's out there.

15 And there are several bidders, and one of them
16 is Company A. What is the clear thing for the CEO of
17 Company A, who was also the Board member of Company B, to
18 do on that vote?

19 A Well, there are a number of things that can
20 happen. One possibility is to not take part in the
21 decision on behalf of either company. And that is
22 probably, in the terms of -- of being accused of bad
23 behavior, the safest and best action to take.

24 Q Okay.

25 A In many corporations, though, that's not

1 possible. So you have -- if there's no way to get an
2 independent disinterested majority of the Board to do
3 anything. And -- and that occasionally happens.

4 It certainly happens when you have a corporation
5 that has a couple of owners and the two owners are on the
6 Board and so on. And -- and there's just no way to get a
7 disinterested vote.

8 When that happens, the statute does provide a
9 scheme for how -- how the transaction itself can be
10 validated. It can be validated by a disinterested vote if
11 you get it if you can't get it to have been voted on by a
12 disinterested vote of the shareholders.

13 And, ultimately, when you have one of these that
14 there's no way to get a disinterested group to look at it,
15 that -- that ultimately -- if push came to shove and there
16 were litigation, it would be up to the interested
17 directors to prove that it was a fair contract to
18 whichever party was claiming that it was unfair.

19 Q Okay.

20 A And when you've got it from both sides, it --
21 unless it truly is a sort of neutral contract, it's pretty
22 hard for them to win on both of those sides.

23 Q Okay. You -- I believe you've testified already
24 that -- that it is -- and I don't want to mischaracterize
25 what you've said. Please feel free to tell me if this is

1 incorrect or you can rephrase it.

2 It is -- it is a fiduciary duty of the Board of
3 Directors to maximize profits for a corporation?

4 A That is implicit, I think, in the obligation to
5 management corporation.

6 Q All right.

7 A Which is their basic statutory duty to be in
8 charge of management of the corporation.

9 Q Okay.

10 A And that phrase does come up occasionally in the
11 corporate opportunity cases where a director has taken an
12 opportunity of the corporation for himself or for another
13 company that he or she is involved in. And implicit in
14 taking the corporate opportunity is have you failed to
15 benefit the corporation's bottom line, which is what
16 you're supposed to be about.

17 Q Okay. That doesn't necessarily mean that
18 maximizing profits for the next week is -- is the only
19 thing you look at. I assume you look at -- you're talking
20 about something over a longer period of time potentially
21 that it's -- it's more complicated than just saying, okay,
22 we know that this contract is coming up, and I can -- I
23 can get a lot of money out of this contract that lasts a
24 week.

25 If that -- if that contract somehow interferes

1 with longer term profits, that would be something that
2 would have to be weighed in.

3 A It's far more complicated than just saying
4 maximizing profits.

5 Q Okay.

6 A There are lots of interests that the directors
7 will consider in deciding what to do, long-term,
8 short-term, the amount of money, impact on employees,
9 safety of the company, the ability of the company to -- to
10 handle possible future risks in the -- the money coming
11 into the company for a lot of reasons and lot of uses.

12 And that's why companies don't pay out every
13 dime they make in profits to the shareholders every year.
14 It's partly because they're banking on the non-future
15 contingencies for growth, for worries, for all kinds of
16 things.

17 So you're right that the Board of Directors
18 considers a large number of things.

19 Q Now -- and I'm not suggesting that Boards of
20 Directors would get involved in this minutia. But let's
21 assume that there were -- that there was a price out there
22 for a product that somehow got transmitted to the Board
23 level. Would it be appropriate for the Board, if that
24 happened, to come in front of the Board to -- to examine
25 whether or not charging that price in -- in a competitive

1 environment would be able to -- to -- to -- would be so
2 high as to -- to cause it to lose a competitive advantage
3 to other companies who might underprice that same or
4 similar product?

5 A Well, the entire business of the corporation is
6 -- is subject to the overall management supervision of the
7 Board. So any factor that could impact the company
8 presently or in the future would be a -- something that
9 the Board could decision -- could include in making a
10 decision about what to do.

11 Q Okay. So if -- if a company was going to lose
12 customer base and long-term profitability by overpricing,
13 pricing too high some -- some product line, would that --
14 would that be something where the Board, as a part of its
15 fiduciary duty, should ensure the -- the long-term
16 profitability over that -- that -- that pricing -- higher
17 pricing?

18 A Those are all judgment calls made by -- by
19 Boards about what the long and short-term effects of a
20 decision might be. And they are entitled to consider all
21 of those things. How deep they go into some of those
22 issues, is -- is -- is problematic.

23 You know, you're not -- you're not required to
24 know every, you know, possible future risk or -- or
25 predict all outcomes. You're not guarantors of what's

1 going to happen.

2 Q Right. But let's say in my hypothetical it's
3 pretty clear that if you price this at X that -- and a
4 competitor is going to price 50 percent under that -- that
5 price and they -- that it's going to cost you market
6 share, that you're not going to be able to sell your
7 product, what is the responsibility of the Board -- or
8 perhaps this is an officer level decision, but what's
9 their fiduciary responsibilities to the company if it's a
10 clear choice?

11 A You're supposed to make reasonable business
12 decisions. And in your hypothetical, it would not be, in
13 my opinion, a reasonable business decision to
14 intentionally agree to buy something -- or agree to sell
15 something that you can't sell for the price you priced it
16 at. But --

17 Q It would be -- it would be rather -- it would
18 not -- I'm trying to make this as simple as possible. I'm
19 not trying to make it complicated.

20 From the standpoint -- if the -- if the -- if
21 the result was pretty good, the duty would be fairly clear
22 as well, wouldn't it?

23 A It may be. But it's a -- it's a question of how
24 -- how big a -- a transaction it is and how much is
25 involved.

1 Q Let's say -- let's say it's very substantial and
2 it's going to cost a --

3 A Yeah.

4 Q -- significant portion of your customer base and
5 your profits to make that price as high as what's being
6 proposed.

7 A Well, if you posit in your example that there's
8 no business justification for making the choice --

9 Q Go ahead and make that assumption.

10 A If that's what you're really saying, there's no
11 reason a business person would make that judgement, and it
12 would violate the quality of care.

13 JUDGE WOODRUFF: Commissioner Gaw, we're past
14 due for a break, so we'll take a break now and come back
15 at 3:20.

16 (Break in proceedings.)

17 JUDGE WOODRUFF: All right. Let's come to
18 reasonable doubt please. All right. Welcome back from
19 break, and we'll continue with Commissioner Gaw's
20 questions.

21 Q (By Commissioner Gaw) Thank you, Professor, and
22 thank you for your patience. We were discussing the
23 scenario when a Board of Directors or an officer of a
24 company were making decisions in a competitive environment
25 generally. That was generally my -- my basic -- basic

1 assumption.

2 Now, if -- in that -- in a competitive
3 environment, is it important for -- for a -- if a decision
4 comes in front of the Board or in front of that -- an
5 officer of the corporation for them to consider the growth
6 of market share or the maintenance of market share?

7 A I'm not so sure that you could -- you could make
8 that as a universal kind of comment or statement.

9 Q Is it a consideration?

10 A Well, it could be. But it wouldn't necessarily
11 be. I mean, there are businesses that are happier with
12 the smaller market share but a higher margin.

13 Q But they're not happy with no customers, I would
14 assume?

15 A No. That's true.

16 Q Okay. So in -- what I'm -- what I'm trying to
17 get to is -- is -- is maintaining or growing the customer
18 base generally something that's a consideration that would
19 be taken into account by a company in a competitive
20 situation?

21 A It certainly would be a rationale factor to
22 consider.

23 Q Yes. And that would be something that you would
24 expect a Board member to consider if there was a decision
25 that might -- that might have to -- where that might be a

1 factor or an officer in that situation?

2 A I think -- yeah. I -- I don't see any reason
3 why they wouldn't.

4 Q In fact -- in fact, it's important, is it not,
5 for -- for -- for the income profits of a company to have
6 customers if they're in a -- in a retail business, for
7 instance?

8 A I don't think anyone could deny that.

9 Q Okay. And in -- in your general assumption that
10 a company needs to maximize profits, that would be, among
11 other things, taken into consideration in deciding how
12 much to -- to maximize profits in the short run in
13 comparison to how that might impact long-term
14 profitability, correct?

15 A Well, anything that would impact the company
16 would be something that could be taken into consideration.
17 So I would -- I would not disagree with what you're
18 saying.

19 Q Okay. It is possible -- you've probably seen
20 this, as a matter of fact, or know of it. Is it -- is it
21 possible for -- for a company to actually sell products at
22 cost with no profit if, in the long run, that helps to
23 grow their customer base with the idea that it may in the
24 long run produce bigger profits?

25 A I really can't speak from -- from -- from

1 experience in terms of knowing any particular company that
2 had done that. I do know that companies occasionally give
3 away product or discount product in order to encourage
4 customers in the -- in the sense of advertising and
5 promotion kind of work.

6 But that's -- and the business justification for
7 doing that is that you believe that it's going to turn
8 into a greater customer base that will later pay higher
9 prices.

10 Q Okay. And in regard to -- in regard to that,
11 then, that would be in line -- if an -- if an officer --
12 corporate officer would have signed off on that decision
13 or if it happened to get to a Board of Directors level,
14 that kind of a policy to sign off on that, it very well
15 could be in line with their fiduciary duty to endorse such
16 a policy if that were the judgment that that would be the
17 end result, increased customer base and increased
18 profitability in the long run?

19 A It depends on whether that's a reasonable
20 business decision.

21 Q Assume that it is, though. Assume that that's a
22 reasonable judgment call.

23 A Directors are entitled to make reasonable
24 judgment calls.

25 Q Okay. So your answer would be yes in that

1 situation?

2 A Well, my answer is that it depends on -- on how
3 extreme it is and how long it goes and lots of other
4 factors. And it's hard to just -- just say that it's okay
5 to give the product away or to sell it at cost.

6 Q I'm not asking you to -- to make a decision on
7 the scenario with a whole lot of different factors. And
8 -- just whether or not, if that judgment were reasonable
9 that would produce long-term profitability, whether that
10 would be in line with the fiduciary duty of the corporate
11 officer or if it reached the Board of Directors level, of
12 the Board of Directors to approve that policy?

13 A I don't see why it wouldn't.

14 Q Okay. Now, in -- and part of the reason there
15 is, as you've already stated, that maintaining market
16 share can be an important consideration to a company. It
17 can be an important consideration, correct?

18 A It could be a consideration. Certainly.

19 Q Now, if you're in a situation where market share
20 is guaranteed, in fact, you're in a situation where you
21 have 100 percent of the market share and that cannot be
22 taken away from you and the fiduciary duty of the
23 corporate officers and the Board of Directors is to
24 maximize profits without any oversight of that situation,
25 what is the likely result of pricing?

1 A I think the likely result of such a monopoly
2 setting is that pricing would go up.

3 Q All right. And is there anything that -- that
4 acts as a control in that situation on the pricing itself?

5 A Only the prospect that your business will become
6 more regulated.

7 Q Aside from that?

8 A I don't know any.

9 Q Okay. And so the construct when we have natural
10 monopolies in the United States under the law is to
11 replace the competitive control of pricing with what? And
12 I think you've already said it.

13 A With some kind of rate-making regulatory
14 process.

15 Q Okay. And the degree of ensuring the
16 appropriate pricing to customers, then, comes from that
17 regulatory oversight, would you not agree?

18 A I'm sorry. Say that again.

19 Q Maybe I should have that read back in the
20 interest of time so I can make sure the question is the
21 same.

22 (The previous question was read back.)

23 A I -- my understanding of the regulatory scheme
24 is that that's -- that's how it works.

25 Q (By Commissioner Gaw) Okay. I want to ask just

1 a few questions on another topic real quick. You
2 mentioned earlier, I think, in conversation with
3 Commissioner Murray, about the rules dealing with
4 accountants.

5 A She asked me about Sarbane's Oxley.

6 Q Yeah. Excuse me. I'm curious about whether you
7 know the specifics of the rules regarding accountants and
8 -- who have been employees or partners in an accounting
9 firm that audited a company and then go to work for that
10 -- or want to go to work for that company. What are the
11 restrictions, if you know them?

12 A Yeah. It's been too long. I have read
13 Sarbane's Oxley and actually gave a talk about it one
14 time. I think it came into effect in about 2002 or
15 thereabouts.

16 And I know that there's a time frame after which
17 you leave the accounting firm before which you can go to
18 work for the audited company. I think it's a year. It
19 could be two years. But it's -- there's some time frame
20 to try and keep the swinging door thing from happening as
21 much as it does.

22 Q Do you know what the impetus for that -- what
23 the thought was behind those restrictions? You just
24 stated them generally, but I thought you might have a
25 little more detail.

1 A I really don't know. I've not read the
2 legislative history of Sarbane's Oxley. I know it was a
3 response to perceived abuses by Enron and Arthur Anderson,
4 but I really -- I can't tell you what the -- and probably
5 legislators who voted for it had different reasons. I
6 mean, who knows.

7 Q Well, we could all go into the legislative
8 history. I thought you --

9 A I don't know, really.

10 Q Okay. So -- and do you know whether prior to
11 the Sarbane's Oxley Act whether there were restrictions on
12 accountants moving into employment of companies whom they
13 had been auditing?

14 A I don't know that.

15 COMMISSIONER GAW: Okay. That's all I have,
16 Professor. Thank you very much.

17 MR. DOWNS: Thank you.

18 JUDGE WOODRUFF: Commissioner Clayton?

19 COMMISSIONER CLAYTON: Judge, I don't have any
20 questions for this witness. I just wanted to officially
21 welcome a representative from the law school of the State
22 of Missouri, especially since my colleagues aren't here to
23 -- to object to that. But we appreciate Professor Downs
24 being here. I didn't have the privilege of having him,
25 frankly, luckily, in law school for business

1 organizations. I probably would have taken a little extra
2 time to get out of law school. But I appreciate you being
3 here, and it's great to see you.

4 MR. DOWNS: Thank you.

5 JUDGE WOODRUFF: Thank you. All right. We'll
6 go to recross then based on questions from the Bench.
7 Does anyone wish to recross based on those questions? All
8 right. Beginning with public -- Public Counsel.

9 RECROSS EXAMINATION

10 BY MR. MILLS:

11 Q Professor Downs, how clear is the advantage to
12 EEI of pursuing market based rates for the indefinite
13 future?

14 A My understanding is that -- that it is pretty
15 clear. I mean, but I have no independent knowledge about
16 those other than just what people from AmerenUE have told
17 me.

18 Q And that was going to be my next question. Have
19 you -- you're not testifying as an expert in electricity
20 markets, are you?

21 A Oh, no.

22 Q And have you studied the long-term business
23 plans of EEI to know what choices on any given issue are
24 in EEI's best long-term interest?

25 A I am not.

1 Q Okay. And are you testifying that -- and in
2 response to the expiration of the power supply agreement
3 at the end of 2005 that the EEInc. Board could have taken
4 no other possible action other than what it did without
5 violating its fiduciary duty?

6 A I think what I put in my report was that --
7 something to the effect that it would be hard for them to
8 justify doing something other -- based on what I knew
9 about it.

10 It's not possible. It would be very difficult,
11 and they would have the burden of showing that.

12 Q Who would have the burden of showing what?

13 A The directors would have the burden of showing
14 that what they did was fair to their own corporation, the
15 conflicted directors.

16 Q What is your understanding of who has the burden
17 in this particular rate case?

18 A I have no knowledge about the burden of proof
19 here at all.

20 Q Okay. If the EEI Board members allowed the
21 power supply agreement to expire rather than renewing it
22 with no analysis of whether a renewal was a better or
23 worse option, would that have violated a fiduciary duty?

24 A I'm sorry. Could you say that again, please?

25 Q Yes. If the EEI Board members allowed the power

1 supply agreement to expire rather than renewing it with no
2 analysis of whether renewal was a better or worse option
3 than allowing it to expire, would that have violated a
4 fiduciary duty?

5 A Well, it depends on what they knew about the --
6 I mean, the directors are entitled to engage their own
7 knowledge about the market and about the future prospects
8 of the company and --

9 Q In my hypothetical, assume no analysis.

10 A Oh, you mean no knowledge at all?

11 Q No analysis.

12 A Well, there's no requirement that the Board as a
13 Board makes analysis. There's a requirement that the
14 directors inform themselves reasonably before they vote.
15 And so they may do that in a number of different ways.

16 It doesn't include a study or an analysis.

17 That's my only --

18 Q Okay. And is -- is -- is the degree of analysis
19 or knowledge or information dependent on the situation? If
20 they're talking about renewing a contract for paper that's
21 a teeny tiny bit of their business, does that require a
22 different standard than an entire shift in the focus of
23 the business?

24 A I think that's probably a fair statement in the
25 sense that directors are required to use reasonable

1 business judgment, and that includes informing themselves
2 about the choices. And so a big decision would require, I
3 would think, more than a little one.

4 Q Now, I want to -- to tweak one of the
5 hypotheticals that Commissioner Gaw gave you. Say a Board
6 makes a decision to sell its product in a certain way, and
7 in order to do that, it needs to contract with a marketer.
8 Okay? Are you with me so far?

9 A Okay.

10 Q And assume that -- that this is -- this is a big
11 deal. This is not just a small fraction of the company's
12 business. This is a big deal to the company, an important
13 deal. And assume that there are a number of qualified
14 marketers. Okay? Do you have all those assumptions in
15 mind?

16 A I think so.

17 Q Okay. If one or more of the Board members own a
18 marketing company which is in the running for the
19 marketing job, should those Board members recuse
20 themselves from a vote on choosing a marketer?

21 A As I mentioned earlier, there are a number of
22 ways to what might be called validate or insulate a
23 decision where you have a conflict of interest. One of
24 those would be to not vote and -- and have the transaction
25 determined then approved by a disinterested majority of

1 the Board.

2 If you don't have that option, then you can't
3 obviously choose it. And then have you to decide -- you
4 still have to decide for the corporation even if you have
5 a conflict of interest. You just -- it just enhances or
6 increases your obligation to create a fair transaction and
7 shifts the burden of proof to you to prove that it's fair
8 if it's ever challenged.

9 Q Then let me -- let me alter my -- my
10 hypothetical. Let me add to my hypothetical a little bit.
11 Assume that they're -- the Board members that own the
12 marketing company are the minority and there is a
13 disinterested majority.

14 In that case, should the interested minority
15 members recuse themselves?

16 A That certainly is the best practice. But there
17 is no legal requirement that they do so. If they
18 participate in the judgment, various states have different
19 rules about what happens then.

20 But one of the possibilities -- one of the
21 likely possibilities under Missouri law what would happen
22 is that -- and Illinois, for that matter, what would
23 happen is the -- in order to protect the decision from
24 challenge by a shareholder, you would need to submit it to
25 a vote of the shareholders and have a disinterested

1 majority of them approve it.

2 And if you don't get that, if you couldn't get
3 any of that done, then ultimately you would have to
4 approve the transaction as fair to the corporation.

5 Q And in that answer, when you say couldn't get
6 that done, what do you mean by that?

7 A I mean, if you don't have a disinterested
8 majority on the Board -- and many companies that are in a
9 relationship do not have a majority of the directors who
10 are not employed by the parent company, which is the
11 typical --

12 Q But don't forget I added to my hypothetical that
13 there was a disinterested majority.

14 A Oh, I beg your pardon. The best practice is to
15 not vote and put it to the vote of the disinterested
16 majority. But you don't have to do that is all I'm
17 saying.

18 Q Okay. And did you -- did I understand your
19 answer to be that if you don't do that, then you -- you,
20 being the Board, have to put it to a vote of shareholders?

21 A Yes. In order to -- well, in order to make sure
22 that it's not subject to attack by shareholders. These
23 issues in the sense that -- that -- that they're going to
24 be decided against the directors come up in litigation.
25 And -- and basically if it's not challenged, then it just

1 sits there.

2 But if it is challenged, then the question is
3 who's got the burden of proof and what do you have to
4 show.

5 Q Should -- should all Board members vote as
6 though their votes are going to be scrutinized by
7 shareholders or minority Board members at a later date?

8 A It's certainly a good idea to. I mean, in terms
9 of looking out for the corporation and ultimately the
10 interest of the shareholders, you should be paying
11 attention to that. You bet.

12 Q Okay. Would it that be a fiduciary duty of a
13 share -- of a Board member?

14 A To do -- to think about whether the shareholders
15 are going to sue you?

16 Q To keep that in mind, yes, in all votes.

17 A No. It's not a fiduciary duty to keep it in
18 mind. But it's a fiduciary duty to not do things that
19 permit the shareholders to sue you and win.

20 Q Okay. Now, continuing with my -- with my
21 hypothetical, if the marketing company owned by the
22 director or directors is the only company being considered
23 -- and remember my assumption. There are a number of
24 qualified marketing companies. If the director's
25 marketing company is the only one that's being considered,

1 should the other directors be concerned about the
2 appearance of impropriety?

3 A It depends on the -- on the deal and on the
4 transaction. The fact that something involves a conflict
5 of interest, which our law calls interested transactions
6 -- sometimes we just think of it as a conflict of interest
7 -- doesn't mean that the conflict is going to result in a
8 bad thing.

9 Of course, many smaller corporations, and often
10 big ones, too, do business with companies that are
11 affiliated because they know those companies, they know
12 what they can do. When companies -- when owners, for
13 example, and directors, for that matter, sell real estate
14 to their own companies, I mean, often it's the very thing
15 that's needed.

16 You know, there may not even be another place to
17 get it. And so, I mean, the --

18 Q But remember in my hypothetical there are other
19 qualified marketers.

20 A I understand that. Yeah. I'm getting around to
21 it.

22 Q Okay. Sorry.

23 A But the -- it may well be that the directors
24 believe that dealing with a company that you already know
25 something about that's affiliated will have good

1 ramifications.

2 And -- and so, I mean, it's probably safer in
3 terms of a challenge by a shareholder to take all the bids
4 and go through all that process. But the fact that you
5 didn't doesn't mean that the -- that the decision you made
6 to go with the one you considered is a bad decision.

7 That contract then is evaluated based upon
8 whether it's fair because now you've got the burden of
9 showing that it's fair. And -- and so -- but it can be
10 shown that it is. Or not.

11 I mean, that's why I said it -- it -- you know,
12 it's something you should consider because you want to
13 reduce your risks. But it doesn't mean that it can't be
14 done.

15 Q How can it be shown to be fair if there weren't
16 any other bids or other solicitations?

17 A Well, because you can show what the market is
18 out there. If you can show it -- and I -- and I will
19 grant you that if you don't take other bids, winning the
20 argument about whether the -- the decision you made was
21 fair to your own corporation is harder. There's no doubt
22 about that. Which is why companies do that. You know,
23 why when --

24 Q When companies do what?

25 A They will do other bids. I mean, there are

1 other reasons. But that's also why when -- when parents
2 are buying out the -- the minority shareholders of their
3 subsidiaries, they get fairness opinions because they want
4 somebody who is independent to have looked at it so that
5 when push comes to shove in the litigation, they can say
6 we paid \$24 a share because, you know, Solomon Brothers
7 Golden Sachs says it was a fair price. It's the same
8 idea.

9 Q Right. And if in my hypothetical the company
10 didn't take bids, didn't go out for fairness opinion, then
11 they would have a harder job of proving that the bid that
12 they -- that the -- the marketer that they did choose they
13 got a good deal on; is that correct?

14 A Fair deal. Yes.

15 Q A fair deal on?

16 A Yes. A fair deal.

17 MR. MILLS: Okay. That's all I have. Thank
18 you.

19 JUDGE WOODRUFF: Recross for Staff?

20 RECROSS EXAMINATION

21 BY MR. DOTTHEIM:

22 Q Professor Downs, what you know about the FAC
23 situation that you've provided testimony on is what you've
24 been told or provided by AmerenUE; isn't that correct?

25 A It's mostly correct. I've also read the

1 depositions and -- and direct and rebuttal and whatever
2 from a number of the other witnesses that are on the other
3 side of AmerenUE.

4 So to the -- to some extent, I'm sure I picked
5 up some of the factual statements that -- that they
6 asserted and incorporated those into what I think I know.

7 Q You've done no independent study or analysis,
8 have you?

9 A That's true. I have not. You mean about the
10 facts of this matter?

11 Q Yes.

12 A Yes. That's true.

13 Q Have you been provided any of the minutes of the
14 Board of Directors meeting minutes of EEInc. to review
15 over the time period in question?

16 A I think that I've seen one or two sets of
17 minutes from EEInc.

18 Q And when you say one or two sets, what do you
19 mean by sets?

20 A I just mean -- well, I assumed they were
21 complete. I didn't really -- didn't inquire about that.
22 But there were several pages that had on the front of them
23 the title Minutes of EEInc. and so on and then at the end
24 had a signature spot. So that's what I call a set of
25 minutes. And they were referring to what you mentioned,

1 the approval of the --

2 Q You haven't talked with anyone associated with
3 Kentucky Utilities, have you?

4 A That's true. I have not.

5 Q Are you aware of if there are any outside
6 directors on the EEInc. Board of Directors?

7 A I'm not certain, but I -- I -- just based on
8 what I've heard in the testimony, it sounded to me like
9 there were not any.

10 MR. DOTTHEIM: Thank you, Professor Downs.

11 JUDGE WOODRUFF: Thank you. Any redirect?

12 MR. CYNKAR: Just one, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. CYNKAR:

15 Q Professor Downs, in Mr. Dottheim's first round
16 of cross-examination, do you recall that he asked you
17 whether the Staff position would result in a compelled
18 sale of power from EEInc. And so on?

19 A I believe somebody asked me that, yes.

20 Q Does -- does that fact have any effect on your
21 analysis or on the opinion you're offering here?

22 A It does not.

23 Q Could you explain why not?

24 A Well, because I think that the -- assuming that
25 I'm correct, that the position of one or more of the

1 people opposing this is that an adjustment should be made
2 and the -- and the rates that AmerenUE comes out of this
3 hearing with should be based on a failure of EEInc. to
4 continue to sell power to AmerenUE on a cost plus
5 contract.

6 It seems to me that the only justification for
7 making that adjustment would be if you assumed that
8 somehow AmerenUE should have or could have forced the
9 Directors of EEInc. to approve the continuation of that
10 arrangement.

11 MR. CYNKAR: No further questions.

12 JUDGE WOODRUFF: Thank you. And, Mr. Downs, you
13 can step down. And I believe this is his only appearance;
14 is that correct?

15 MR. CYNKAR: Correct, your Honor.

16 JUDGE WOODRUFF: Would you like to offer his
17 testimony?

18 MR. CYNKAR: I am. And these are numbers -- the
19 direct testimony of Professor Robert C Downs is 044. The
20 rebuttal testimony of Professor Robert C. Downs is 045.
21 And the surrebuttal testimony of Professor Robert C. Downs
22 is 046.

23 JUDGE WOODRUFF: Exhibits 44, 45 and 46 have
24 been offered into evidence. Are there any objections to
25 its receipt?

1 MR. DOTTHEIM: Yes, judge. I raised the
2 objection that I raised earlier, that I raised in the
3 prehearing brief.

4 JUDGE WOODRUFF: All right.

5 MR. DOTTHEIM: As far as the -- the -- whether
6 the -- the nature of the testimony on the law that
7 Professor Downs is -- is offering is -- is proper.

8 MR. CYNKAR: Your Honor, if I may just address
9 Mr. Dottheim's point, which I know he's made before,
10 obviously, we did not brief in our prehearing brief this
11 issue.

12 And, indeed, frankly, I know Mr. Dottheim did
13 put cases in there. But we did not understand that to be
14 actually a motion to exclude testimony of Professor Downs.

15 Now, I would certainly be prepared to argue the
16 issue right now, but I would tend to think under normal
17 practice that it would be most appropriate for the Staff
18 to make a motion to that effect given, obviously, we're
19 all involved in the hearing and the post hearing brief
20 comes on the heels of all this, perhaps sometime after the
21 post hearing brief to have the Staff make a motion.

22 And we will respond and to -- to -- to tee up
23 the issue in that, I think, fairly normal way.

24 JUDGE WOODRUFF: Mr. Dottheim?

25 MR. DOTTHEIM: However, the Commission would

1 like to proceed, I think on items of this nature, at least
2 I -- and I don't mean this specific objection. The
3 parties have proceeded in various manners. I think -- I
4 think I, in essence, have made at least an oral motion,
5 and I certainly would be willing to file a -- a pleading
6 with the -- the Commission moving to -- to strike the
7 testimony and arguing the -- the cases that I've already
8 cited and -- and additional cases.

9 Again, I wanted to raise the objection now to
10 suggest that at least from the Staff's perspective, the
11 Staff was not literally suggesting that the -- the
12 testimony should be stricken prior to Professor Downs
13 taking the stand, being permitted to stand cross and even
14 the Commission, as it frequently does, taking the -- the
15 -- the issue, the objection --

16 JUDGE WOODRUFF: Okay.

17 MR. DOTTHEIM: -- the motion with the case and
18 deciding it with the case.

19 JUDGE WOODRUFF: I think it would be helpful to
20 the Commission to eventually file a -- a motion to strike
21 or however you want to term it.

22 Obviously, that doesn't have to be done today or
23 even during the course of this hearing. But sometime
24 before the -- the regular briefs come in so that it can be
25 given separate treatment.

1 MR. DOTTHEIM: Certainly. And it was -- and it
2 was not in any way an intention of precluding Union
3 Electric from having the opportunity to respond in any
4 manner.

5 MR. CYNKAR: And I wasn't trying to suggest that
6 at all, your Honor.

7 JUDGE WOODRUFF: I understand. And subject to
8 that objection -- go ahead, Mr. Micheel.

9 MR. MICHEEL: So, I mean, you're going to
10 reserve admitting his testimony until you've ruled on
11 motions to strike because, you know, once evidence is in,
12 it's in.

13 JUDGE WOODRUFF: Yes. That was what I was about
14 to do. Yes. I will reserve ruling on these objections
15 and the admission of this -- of this testimony until such
16 time as a further motion is made. I think that takes care
17 of it.

18 MR. CYNKAR: Thank you, your Honor.

19 JUDGE WOODRUFF: All right. All right. Then I
20 believe the next witness would be Mr. Svanda. Is that
21 where we want to go?

22 MR. CYNKAR: Yes, your Honor.

23 JUDGE WOODRUFF: All right. If you'd come
24 forward.

25 MR. CYNKAR: If I could just doublecheck with

1 Mr. Dottheim, Mr. Svanda does not have any changes to his
2 filed testimony. He did have some errata sheets, though,
3 and I think they've sort of percolated up our chain, and I
4 believe you have them.

5 MR. DOTTHEIM: Yes, I do.

6 JUDGE WOODRUFF: We'll handle those the way we
7 did. I believe this is your first time testifying, is it
8 not? Or have you been sworn before?

9 MR. SVANDA: I have not been sworn here before.

10 JUDGE WOODRUFF: All right. If you'd please
11 raise your right hand.

12 DAVID SVANDA,
13 being first duly sworn to testify the truth, the whole
14 truth, and nothing but the truth, testified as follows:

15 JUDGE WOODRUFF: All right. And did you tender
16 him for cross?

17 MR. CYNKAR: Yes. I'm sorry, your Honor. I
18 tender the witness for cross.

19 JUDGE WOODRUFF: All right. And is there anyone
20 before the State that would like to cross? All right.
21 Seeing that no one -- we'll go with the State.

22 CROSS-EXAMINATION

23 BY MR. MICHEEL:

24 Q (By Mr. Micheel) Hello, Mr. Svanda. How are
25 you?

1 A I'm great. How are you?

2 Q Is it correct that you have a contract for
3 services with Union Electric Company for this proceeding?

4 A Yes, it is.

5 Q And is it correct that you're being paid \$12,500
6 a month for those services?

7 A That is correct.

8 Q And how many months does that contract cover?

9 A It -- it covers from last June until the
10 conclusion of the proceeding.

11 Q When you say the conclusion of the proceeding,
12 does that mean the appeals, too?

13 A No.

14 Q So the eleven months?

15 A Roughly.

16 Q So you're being paid approximately \$137,500?

17 A Approximately.

18 Q And -- and for that, you've provided three
19 testimonies; is that correct?

20 A Correct.

21 Q And the purpose of those testimonies essentially
22 is policy; is that correct?

23 A Yes.

24 Q And more specifically, rate cases -- rate-making
25 policy, correct?

1 A That's a good broad characterization. Yes.

2 Q And you're a former Commissioner in the Michigan
3 Public Service Commission; is that correct?

4 A Yes.

5 Q And -- and I take it that your direct testimony
6 is all about rate making policy; is that correct?

7 A Broadly speaking, yes.

8 Q And you indicate at page 2 of your testimony
9 that essentially there are four purposes in your
10 testimony, your direct testimony, correct?

11 A Yes.

12 Q The first one is to discuss key regulatory and
13 public policy considerations and principles that should
14 guide the Commission's rate-making decision?

15 A Yes.

16 Q To address AmerenUE's superior performance and
17 its comparatively low rates, correct?

18 A Correct.

19 Q To discuss the challenges faced by Ameren in the
20 electric utility industry as a whole, correct?

21 A Yes.

22 Q And to put in perspective the magnitude of
23 Ameren's requested rate relief?

24 A Yes.

25 Q And so you give a -- a -- a summary of those

1 conclusions, do you not, starting on page 3 of your
2 testimony?

3 A I do.

4 Q And you note that the regulatory environment in
5 Missouri has been constructive in recent years; is that
6 correct?

7 A That's correct.

8 Q And has that regulatory environment in the State
9 of Missouri allowed Union Electric not to seek a rate
10 increase for over 20 years?

11 A That's been one component. Yes.

12 Q So that's constructive, is it not?

13 A Correct.

14 Q Because when a utility doesn't come in, it's
15 assumed that the utility is earning a reasonable return;
16 is that correct?

17 A That's one assumption. Yes.

18 Q Well, if -- if they don't come in, they're happy
19 with what they're getting, aren't they?

20 A Probably so. Yes.

21 Q And you've been here for a long time. I've seen
22 you sitting in the gallery. You've heard all about
23 fiduciary duties, have you not?

24 A I have.

25 Q And you've heard Ameren say people say their

1 main fiduciary duty is to bring home money for the
2 shareholder; isn't that correct?

3 A That is their main fiduciary responsibility.

4 Q And so during those 20 years, if they weren't
5 doing that, they'd be in for a rate case, don't you think?

6 A Probably so.

7 Q And this regulatory environment where Ameren has
8 been able to do a decent job, in that regulatory
9 environment, Ameren did not -- Union Electric did not have
10 a fuel adjustment clause; is that correct?

11 A On the electricity side, that's my
12 understanding. Yes.

13 Q Well, they had a PGA on the gas side. Is that
14 -- is that the hedge you're going for?

15 A Yes. Yes.

16 Q Okay. Now, you indicate on -- on No. 2 your
17 principle that UE achieved superior performance resulting
18 in a win-win; is that correct?

19 A That is correct.

20 Q And you note that they have a superior
21 performance of high service quality reliable service;
22 isn't that correct?

23 A Yes.

24 Q And if -- if I understand when I took your
25 deposition that was based on your review of -- of AmerenUE

1 folks' testimony; is that correct?

2 A AmerenUE testimony and other external sources
3 such as awards that they have received and those sorts of
4 publications.

5 Q But when -- when you did your testimony and
6 after you wrote your testimony, you hadn't reviewed the
7 transcripts from the local public hearings; isn't that
8 correct?

9 A No. That is correct.

10 Q You had or hadn't?

11 A I had not.

12 Q And you still have not; is that correct?

13 A That is correct.

14 Q So you don't know what the testimony of Ameren's
15 current consumers were; is that correct?

16 A Not totally correct.

17 Q Because you've been sitting here and you've
18 heard some of the testimony; is that correct?

19 A Exactly. And I have read some of the newspaper
20 articles that reflect back on it.

21 Q Are those -- what you've heard here and the
22 newspaper articles, are those -- are those generally
23 supportive of Ameren?

24 A They are generally not supportive of Ameren at a
25 snapshot in time.

1 Q Okay. Did you hear testimony earlier in -- in
2 this proceeding from Ameren witnesses that indicated that
3 their customer service levels have dropped into a -- the
4 mid level quartile?

5 A I did.

6 Q And that's a change from when you wrote your
7 testimony; isn't that correct?

8 A That is correct.

9 Q And so that's an indication that Ameren's
10 customer service is slipping, is it not?

11 A It is an indication that at the time that that
12 measurement was taken, they were perceived to be providing
13 lower service quality.

14 Q So since you filed your testimony -- and that's
15 the last survey that you're aware of, is it not?

16 A Yes.

17 Q And so the trend is downward there; is that
18 correct?

19 A The trend is downward for that time period.

20 Q Now, you note on -- on your No. 4 that the
21 regulators' key duty is to appropriately balance the
22 interest of all stakeholders; is that correct?

23 A Exactly.

24 Q Do you believe that any one of these
25 Commissioners needed you to tell them that, that that's

1 their obligation?

2 A I think in the course of a rate-making I,
3 certainly, as a Commissioner, appreciated reminders of
4 what the foundation was that we were about, that
5 Commissioners were charged with that responsibility
6 because it is easy to get caught up in feet worth of
7 documents and -- and the -- the timing as you indicated
8 having the documents, a snapshot in time with regard to
9 customer service.

10 Q Isn't that always the obligation of a
11 Commissioner any time they take the oath and they're
12 appointed to balance the interests of all stakeholders?

13 A That's an underlying assumption. Yes.

14 Q And aren't they required to do that in every
15 single case before them?

16 A That would be my understanding.

17 Q And did you ever forget that when you were a
18 commissioner?

19 A As I was responding before, I don't think --

20 Q That wasn't my question.

21 A Okay.

22 Q Did you ever forget that when you were a
23 Commissioner?

24 A No.

25 Q And you have no reason to believe that these

1 Commissioners have forgotten that, do you?

2 A No.

3 Q Now, you indicate that you believe that the rate
4 relief for Ameren -- that Ameren has requested is
5 balanced; is that correct?

6 A That is correct.

7 Q Did you do an audit of Ameren's books and
8 records to come to that conclusion?

9 A I did not do any independent studies of that --
10 of that nature.

11 Q Did you do any looking at their -- did you --
12 did you analyze each position taken by Ameren in this
13 case?

14 A Each position taken --

15 Q On the revenue requirement issues.

16 A At the time that I wrote this, I would have
17 looked at that, yes. And I -- and I -- and I'm giving you
18 a little bit of hedge because time has passed.

19 Q Okay. Well, tell me about their position on off
20 system sales.

21 A Off system sales, there have been revisions to
22 what was being discussed by them originally versus --

23 Q Tell me about their original position. Explain
24 it to me.

25 A Their original position -- and give me time to

1 think --

2 Q Sure.

3 A -- dredge that one up because it's been a while.

4 Q Take as much time as you need.

5 A Their original position, I believe, was to set a
6 determined amount that would be recognized as an amount to
7 net the off system sales. And I think it was a specific
8 -- a specific amount.

9 Q And -- and do you know how they arrived at that
10 amount?

11 A I don't recall right now. No.

12 Q Did you do any independent analysis to determine
13 that that amount was the right amount?

14 A I did not.

15 Q How can you determine, if you didn't do that
16 background work, that the request is balanced?

17 A It was balanced with all of the other
18 perspectives presented in the case.

19 Q Okay. What -- what are those perspectives?

20 A The --

21 Q Enlighten me on that.

22 A The amount of ROE requested, the continuation of
23 programs, energy assistance and those kinds of things.

24 Q Okay. What's the amount of ROE requested in
25 this case?

1 A It's 12 percent.

2 Q Okay. Based on average ROEs for electric
3 utilities, is that a high ROE or a low ROE?

4 A It's a reasonable ROE.

5 Q That wasn't my question. Based on ROE averages
6 in the United States, is this a high ROE or a low ROE?

7 A High.

8 Q And -- and you've got testimony, do you not,
9 that indicates that at least through the third quarter of
10 2006 that the average ROE given to an electric utility was
11 10.6 percent; isn't that correct?

12 A Yes.

13 Q And their ROE is 140 basis points above that;
14 isn't that correct?

15 A The --

16 MR. CYNKAR: Your Honor --

17 Q (By Mr. Micheel) Their proposed ROE.

18 A Oh, their proposed ROE. Yes.

19 JUDGE WOODRUFF: Mr. Cynkar?

20 MR. CYNKAR: This is about ROE, and Mr. Svanda
21 will be back on ROE, so we don't need to consume time on
22 this right now.

23 MR. MICHEEL: I asked him about the balance,
24 your Honor, and he brought up ROE. And now I'm trying to
25 unpack how we're balancing.

1 JUDGE WOODRUFF: I'll overrule the objection.

2 MR. DOTTHEIM: Also, we might have a
3 clarification, I -- I thought at one time -- and maybe I
4 misunderstood, that Mr. -- that it had been indicated
5 Mr. Svanda was going to take the stand on -- on EEInc.
6 and rate of return at the same time, that he wasn't coming
7 back for rate of return. That's not the case?

8 MR. MICHEEL: That wasn't my understanding.

9 MR. CYNKAR: Pardon?

10 MR. MICHEEL: That was not my understanding.

11 MR. CYNKAR: And that was not any understanding
12 either, Doug.

13 MR. MICHEEL: And I'm going to questions on ROE.

14 JUDGE WOODRUFF: We're on the overview on policy
15 right now.

16 MR. MICHEEL: And that's what I tried to
17 establish with his -- his direct testimony is the overview
18 on policy, and then I'm going to move into his rebuttal
19 testimony where he talks about EEInc.

20 JUDGE WOODRUFF: All right. That's fine.

21 MR. MICHEEL: Just bear with me. I'm trying to
22 move the train forward.

23 JUDGE WOODRUFF: That's all right.

24 Q (By Mr. Micheel) Okay. Other than the ROE and
25 the customer programs, what was the balance that you

1 looked at?

2 A The -- I guess what I would have been
3 referencing there was the balance that I talked about in
4 terms of what the Commission needs to give consideration
5 to, all of the various interests, what's fair to
6 ratepayers, what's fair to shareholders, what delivers
7 appropriate levels of customer service, what satisfies the
8 investment community in terms of allowing for the lowest
9 available investment, those -- those sorts of things.

10 Q Have you -- have you reviewed the testimony of
11 the State witnesses in this case?

12 A Sure.

13 Q Have you -- have you seen any -- any proposals
14 that the State has put out there that you find to be
15 balanced?

16 A Not as balanced. Just what I've proposed.

17 Q Okay. You've made proposals in this case?

18 A What I indicate in my testimony.

19 Q Okay. Why -- let's work with that. Why don't
20 you tell me what your proposals are in this case? Because
21 I was unaware that you'd made proposals in this case. So
22 why don't you tell me what those proposals are?

23 A That -- that's fair. I did not make my own
24 proposals in this case. So that's fair.

25 Q Okay. What you've done is you've looked at

1 Ameren's proposals and said, I find them balanced,
2 correct?

3 A By in large.

4 Q Now, this is your first time being directly
5 involved in a Missouri regulatory proceeding; is that
6 correct?

7 A That's right.

8 Q But you're bringing your perspective as a former
9 regulator to this proceeding; is that correct?

10 A As a former regulator and -- and as the
11 President of the National Organization of State
12 Regulators, yes.

13 Q You've never audited a utility company, have
14 you?

15 A Me personally audited them or --

16 Q Yes. You personally. I understand that you've
17 been a decision-maker, sir.

18 A Okay.

19 Q I get that part. I'm asking you, have you ever
20 audited a utility company, a regulated utility company?

21 A I'm taking a little bit of time there because
22 early on I was involved in agencies that did audits, and
23 they may have involved regulated companies. I'm not so
24 certain of -- of that.

25 And in addition, I guess it's definitional what

1 you mean by audit. I've not performed financial audits in
2 -- in a CPA sense, but have, in my decisional making
3 roles, been in a position to look at operations of
4 utilities and --

5 Q You and I share something in common. We have
6 BAs in Political Science, although they're from different
7 universities, right?

8 A If -- if you have a B.A. and I have a B.A., yes.

9 Q In Political Science?

10 A That's right.

11 Q So, nonetheless, you haven't presented revenue
12 requirement testimony as an expert witness; isn't that
13 correct?

14 A That is correct.

15 Q And you're not here today as an expert witness
16 presenting revenue requirement adjustments in this case,
17 are you?

18 A No.

19 Q You're here as a -- a policy witness to give
20 this Commission the benefit of your years of experience as
21 a former Public Service Commissioner?

22 A You are correct.

23 Q Okay. You talk a lot about -- in your testimony
24 about what the credit rating agencies say or did about
25 Missouri regulation; is that correct?

1 A Yes.

2 Q When you were a Commissioner, did you -- did you
3 make your decisions based on what the credit rating
4 agencies said or did?

5 A Certainly not exclusively.

6 Q Okay. Was -- so you had to look at a whole
7 bunch of things, did you not?

8 A Exactly.

9 Q Now, historically, AmerenUE has had its rates
10 reduced by this Commission; is that correct?

11 A Yes.

12 Q And it's remained a healthy utility; is that
13 correct?

14 A Yes.

15 Q And it's been able to earn a reasonable return
16 for its investors; is that correct?

17 A Historically.

18 Q And it's been able to provide safe and adequate
19 service to its customers; is that correct?

20 A Yes.

21 Q And that's despite whatever the regulate -- the
22 rating agencies may or may not have said, correct?

23 A Yes.

24 Q Now, you talk on page 8 of your direct testimony
25 again that AmerenUE has offered excellent customer

1 service; is that correct?

2 A Yes.

3 Q And that's where you get into the specifics of
4 -- of your proposal and that's Mr. Mark's direct testimony
5 and the J.D. Powers & Associates study; is that correct?

6 A Yes.

7 Q But that's not based on any independent
8 information that you've reviewed on your own, correct?

9 A I did not conduct independent studies. That is
10 correct.

11 Q So you relied on Ameren for that?

12 A Well, more importantly, on folks like J.D.
13 Powers who -- who are respected entities in the field of
14 evaluating service.

15 Q Well, how did you find out that J.D. Powers had
16 done the study respecting Ameren?

17 A I, in fact, asked the Ameren people if they had
18 any of those kinds of things from entities such as J.D.
19 Powers. I'm familiar with J.D. Powers. I'm familiar with
20 the respect that they have in the area. And so I asked
21 for those kinds of things.

22 Q After you filed your direct testimony, did you
23 ask Ameren if they'd had any updated J.D. Powers studies?

24 A I don't believe so.

25 Q And, in fact, they do, do they not?

1 A I'm sorry?

2 Q And, in fact, they do have updated customer
3 service studies, do they not?

4 A I don't have those. But --

5 Q Well, you were here when -- when -- when the
6 testimony of the Ameren witnesses was, We had new studies
7 done and we dropped a quartile, right?

8 A Yes, I was.

9 Q So they do have updated studies; is that
10 correct?

11 A Yes.

12 Q But you didn't ask for them?

13 A Correct.

14 Q They didn't give them to you?

15 A Correct.

16 Q Now, you have a statement on page 17 of your
17 direct testimony that many of the utility shareholders to
18 Ameren are senior citizens and state residents; is that
19 correct?

20 A That sounds like something I said. Could you
21 direct me to a line?

22 Q Yes, sir. I'm looking at lines 11 through 15.

23 A Yes.

24 Q And that's information you got from Mr. Baxter's
25 testimony; is that correct?

1 A Yes.

2 Q And you did no independent analysis to determine
3 whether that was right or wrong, did you not?

4 A I did not do independent analysis. It was
5 consistent -- and it was -- again, something else that I
6 asked about, it's consistent with my understanding of
7 Michigan utilities, for example, and who their
8 shareholders happen to be.

9 Q Did you do a study of the Michigan utilities?

10 A In my decisional role, yes. Did I conduct the
11 actual review? No.

12 Q So you had evidence placed before you in rate
13 cases that -- in Michigan that said a lot of senior
14 citizens and Michiganders -- citizens of Michigan owned
15 stock?

16 I'm not from Michigan. I don't mean to butcher
17 their -- their name.

18 A There's a debate in Michigan, in fact.

19 Q Okay. Is that what you're telling me?

20 A I'm -- I'm telling you that while I was there, I
21 would have asked the Staff of the Michigan Public Service
22 Commission for that information, and they would have
23 developed it. I would not have developed it
24 independently.

25 Q You indicated at -- at page 18 of your direct

1 testimony, you say, Unfortunately, some advocates who take
2 a short-term view, intentionally or unintentionally, use
3 seemingly -- intentionally or un -- short-term view of
4 the endless sets of numbers and data in the complexity of
5 the rate-making to argue for low, lower and lowest rates
6 now. Do you see that, sir?

7 A I do.

8 Q Are you referring to any of the parties in this
9 case?

10 A I -- I am referring to those that would take, in
11 my view, a short-term view of what's important with regard
12 to -- okay.

13 Q No. Keep going. I'm just -- it's late in the
14 day.

15 A Okay. I thought you were indicating that was
16 enough from me.

17 Q No, sir.

18 A Okay. The parties that would advocate, for
19 example -- for example, a -- an extremely low rate of
20 return. And I see that as damaging to the long-term
21 viability of the utility and damaging to the economic
22 health, well-being and climate even of the service
23 territory.

24 Q But you've done no studies to indicate that;
25 isn't that correct?

1 A Done no studies to indicate --

2 Q A low ROE will damage anything.

3 A I -- I have not carried out the individual
4 studies. That's correct.

5 Q And when you say low, I mean, you would agree
6 with me, would you not, that this Commission is supposed
7 to base its decision based on the evidence; is that
8 correct?

9 A That's correct.

10 Q And would you agree with me that the issue of
11 return on equity requires expert testimony to figure out
12 what the appropriate return on equity is for a utility?

13 A As one of the components of decision-making
14 process, yes.

15 Q In every -- well, let me ask you this: In every
16 rate case that you sat as a decision-maker in Michigan,
17 were there experts on the issue of return on equity?

18 A Probably, yes. But "every" might overstate it.

19 Q Every major rate case?

20 A Sure.

21 Q In this rate case, are there experts looking
22 into what the appropriate return on equity is in this
23 case?

24 A Yes.

25 Q In Michigan, when you were a Commissioner, did

1 the Michigan Commission utilize discounted cash flow
2 method for setting the return on equity?

3 A Yes.

4 Q Is that the primary method that -- that Michigan
5 utilized?

6 A Yes. Probably.

7 Q And that requires expert testimony, does it not?

8 A It does. Sure.

9 Q You just didn't ballpark it in Michigan, did
10 you?

11 A Not at all.

12 Q And you based it on the evidence and generally
13 the expert testimony; is that correct?

14 A Yes.

15 Q Now, do you have any duty -- well, let me -- let
16 me tell you -- let me ask you this: Do you know who the
17 State's witness is in this case on return on equity?

18 A By name, I would not, -- I would not know the
19 people if they walked in the door, truthfully.

20 Q Well, have you -- have you reviewed his
21 testimony?

22 A Sure.

23 Q Okay. Do you know that he is a full Professor
24 of Finance at Penn State University?

25 A (Witness nods head.)

1 Q And you -- you need to answer audibly.

2 A Yes. I'm sorry.

3 Q Do you know that he has an endowed -- he has the
4 Goldman Sachs endowed Chair of Finance at Penn State
5 University?

6 A I didn't know that right off the top, but I'll
7 take your word for it.

8 Q Do you know that he has published numerous
9 articles in professional financial journals?

10 A Sure.

11 Q Now, do you think he's in here just advocating
12 the lowest, low -- the lowest rate, or do you think he's
13 giving his expert professional opinion on what he believes
14 the appropriate return on equity is for this company?

15 A He is a professional. I'm certain he is giving
16 his best opinion. I think that it's way low.

17 Q And -- and that's based on your layman's view;
18 isn't that correct?

19 A It's -- it's based on what I see by way of other
20 returns. Absolutely. It's based on my understanding of
21 the importance of -- of return in order to maintain
22 viability and vitality.

23 Q Okay. Why don't you tell me what your
24 understanding is of return in order to maintain viability
25 and vitality?

1 A It has to allow for the company to make the
2 investments that it needs and -- and the infrastructure
3 needs to be sufficient to attract investors to make
4 certain that the investment community believes that the
5 risk reward equation is appropriate for the entity
6 involved, taking into account the service territory,
7 taking into account, as I get into the various parts of my
8 testimony, even global factors that are important today in
9 operating a utility.

10 Q And you think Dr. Woolridge took those factors
11 into account in making his recommendation?

12 A Sure.

13 Q And so he just disagrees with you, doesn't he?

14 A That's fair.

15 Q And he's got a Ph.D. in Finance, doesn't he?

16 A Yes.

17 Q And you have a BA in Political Science, right?

18 A And I -- I have that, and I have years of
19 experience sitting on a Commission and leading the
20 National Organization of Commissioners that deal with this
21 probably as much as he has as a professor.

22 Q Have you ever published any articles in the area
23 of return on equity, scholarly articles?

24 A No.

25 Q Michigan Commissioner, that's a political

1 appointee?

2 A It is.

3 Q And I note in your direct testimony that you ran
4 for the U.S. House of Representatives; is that correct?

5 A That's correct.

6 Q You were unsuccessful; is that correct?

7 A That's correct.

8 Q And then after you were unsuccessful, you were
9 appointed to the Commission; is that correct?

10 A Not immediately thereafter.

11 Q You went to work for Governor Engler?

12 A Correct.

13 Q And Governor Engler, had he asked you to run for
14 the House?

15 A No.

16 Q Now, you talked about UE's position being
17 balanced. Do you recall that, sir?

18 A Yes.

19 Q Do you remember initially how much Union
20 Electric was asking for in this case?

21 A In -- in dollars or in percentages or --

22 Q Dollars.

23 A In -- in very gross terms, 300-plus million
24 dollars.

25 Q \$360 million?

1 A Yes.

2 Q Are you aware that's the largest requested rate
3 increase in the history of Missouri?

4 A I don't doubt it at all given that they haven't
5 had one for so long.

6 Q Are -- are you aware that their current position
7 in the most recent reconciliation is they're requesting
8 \$236 million?

9 A Yes.

10 Q Has the balance changed?

11 A No. I think discussions have happened around
12 the balance.

13 Q Okay. So they've -- they've reduced that
14 request, if my arithmetic is right, by \$124 million,
15 correct?

16 A Sounds right. I did not do the math, but I will
17 trust your math. Yes.

18 Q Looks like -- yeah. I'm not even doing the
19 math. That's arithmetic, I think. So that drops
20 substantially; is that correct?

21 A That's a substantial drop.

22 Q Are -- you note at page 19 of your direct
23 testimony that this is particularly true when some
24 stakeholders argue for the lowest rates for themselves now
25 regardless of whether the results represent sound

1 regulatory policy for the not long run. Do you see that?

2 A I do.

3 Q Is it your position that there are stakeholders
4 here that are arguing for the lowest rates for themselves
5 now regardless of whether the result represents sound
6 regulatory policies in the long run?

7 A It is.

8 Q And how did you come to that conclusion?

9 A Based on the factors that we've been talking
10 about.

11 Q What analysis did you do of the State's revenue
12 requirement case to come to that conclusion, sir?

13 A My -- my analysis -- well, no independent
14 financial analysis, if that's what you're asking.

15 Q Did you do any non-independent financial
16 analysis?

17 A No.

18 Q You did no analysis, right?

19 A I did not run models.

20 Q Well, I mean, just -- just because the State is
21 recommending a rate decrease doesn't mean that that's not
22 justified by the evidence in the case; isn't that correct?

23 A I'm sorry. Run that by me again.

24 Q Just because the State is recommending a rate
25 decrease doesn't mean it's not justified by the evidence

1 in this case; isn't that correct?

2 A I guess I thought the models were -- were
3 presented as evidence in the case, not --

4 Q Right. I understand that. And my -- maybe --
5 maybe -- I mean, just because the State and the Staff are
6 recommending a rate decrease, that's based on their view
7 of the evidence in this case, isn't that correct, and
8 their audit?

9 A It's based on their view of the world, yes.

10 Q When you were a Commissioner, you didn't take
11 everything that the utility said as gospel, did you?

12 A Not even close.

13 Q And so there were probably times when you sat on
14 a rate case where the Staff or other intervenors were
15 suggesting a significant reduction in a utility's rates or
16 maybe even a rate reduction; isn't that correct?

17 A That is correct.

18 Q And that's what's happening in this case, is it
19 not?

20 A Well, sure.

21 Q And so I -- I'm still -- I'm struggling with
22 this idea where you paint the various stakeholders with
23 this broad brush that -- that, you know, we're just
24 arguing for the lowest rates now when you haven't done any
25 sort of analysis to come to that conclusion.

1 A And I think it's definitional with what you mean
2 by analysis. I have not performed economic financial
3 analysis. I am certainly, you know, informed by Wall
4 Street on expectations that they have.

5 I am -- I am informed by the needs for
6 infrastructure investment across the board in electrical
7 systems. I'm informed by environmental considerations
8 that come into play. I'm informed by world pressures.
9 And that all, in my estimation, amounts to ability to
10 analyze informations that are presented.

11 It may not be a -- a modeling financial analysis
12 as -- as a Ph.D. professor might carry out, but it's not
13 an uninformed opinion to look at the data being presented.

14 Q Okay. Who did you talk to on Wall Street?

15 A I talk constantly to Wall Street people. My --
16 my wife is a financial analyst on Wall Street, is in -- is
17 in touch continuously throughout it. Scott Montgomery. I
18 talk to Stanford folks. I talk to Goldman people.

19 Q Who did you talk to on Wall Street about the
20 AmerenUE rate case?

21 A I did not talk specifically on the Ameren rate
22 case. You asked me who I talked to on Wall Street, and I
23 was telling you who I used to --

24 Q Right.

25 A -- to inform my opinion about where -- where the

1 world is headed.

2 Q And my question was -- I realize that I gave the
3 broad question. Now I've narrowed it down.

4 A Yes.

5 Q Who did you talk to on Wall Street about this
6 case?

7 A No one.

8 Q No one?

9 A Not specifically -- I did not walk into an
10 office of Goldman or any other Wall Street firm and say,
11 Let's talk about the Ameren case.

12 Q Why not?

13 A I just didn't do it.

14 Q Would have been better informed, wouldn't you?

15 A From my -- from my broad testimony, I'm not
16 certain that I would have been.

17 Q This -- this information that you're talking
18 about, Moody's reports and things like that, that's all
19 public -- publicly available information, correct?

20 A Yes.

21 Q And anyone could get that, could they not?

22 A Anybody that wanted the information could get
23 it, yes.

24 Q Anybody could read the paper and see that, you
25 know, there's a lot of infrastructure investments that are

1 needed, is that correct, in the electric industry?

2 A They could do that. They could -- they could go
3 to FERC meetings and observe the discussions. They could
4 read the DOE reports. They could read the EEI reports.
5 Absolutely. That information is out there. Just --

6 Q And AmerenUE is aware of all that information,
7 are they not?

8 A Well, I would assume so. Yes.

9 Q And, indeed, they put most of that information
10 in some of their testimony, did they not?

11 A They certainly used the information yes.

12 Q And, indeed, most of your testimony is -- I'm
13 trying to think of a way to say this, but I'll just say a
14 regurgitation of what Ameren put in its testimony; isn't
15 that correct?

16 A No. I don't think so.

17 Q Okay. Well, the facts and figures that you have
18 for the most part related to customer service come from
19 Ameren's testimony; isn't that correct?

20 A They came from my asking Ameren for this
21 information.

22 Q Okay. It's also found in Ameren's testimony?
23 Or you don't know?

24 A Yeah. Yeah. I'm not sure which is the cart and
25 which is the horse there, if my asking caused it to be

1 there or if they had it there anyway.

2 Q I don't know either. Let me ask you this: Has
3 Union Electric proposed any regulatory policies in this
4 case which you've objected to or that you disagree with?

5 A I don't believe so.

6 Q So on this one, you're in lock-step with the
7 utility; is that correct?

8 A I didn't find anything in their proposal
9 offensive.

10 Q Did you agree with it all?

11 A For your purposes, yes.

12 Q For your purposes, did you agree with it all?

13 A Yes.

14 Q Do you believe that the management of a public
15 utility has a duty to the utility's customers by virtue of
16 the natural monopoly associated with retail sales of
17 electricity in Missouri?

18 A Of course.

19 Q Do you believe they have a duty to provide safe
20 and adequate and reliable electric service?

21 A Of course.

22 Q Do you believe they have a duty to be efficient
23 and cost effective in appointment operating a business?

24 A Yes.

25 Q Do you believe they have a duty to deal fairly

1 with affiliated companies?

2 A Yes.

3 Q Let me give you a hypothetical. I want you to
4 assume with me that the management of a public utility
5 faces a decision where it can either conduct a transaction
6 beneficial to its ratepayers or change the transaction for
7 benefit of shareholders. How do you recommend that
8 dilemma be resolved?

9 A Who -- would you repeat it again? I -- I missed
10 who --

11 Q Sure. Assume with me --

12 A Yes.

13 Q -- than the management of a public utility faces
14 a decision where it can either conduct a transaction
15 beneficial to the ratepayers. Got that part?

16 A (Witness nods head.)

17 Q Or change the transaction for the benefit of
18 shareholders. Okay? Got that part?

19 A Got it.

20 Q How do you recommend that dilemma be resolved?

21 A I rec -- as in most of my perspective, I
22 recommend balance based on the -- all of the issues that
23 you just named to me and I agreed with.

24 Q Let me ask you this: Do you know if this
25 Commission has any rules governing a utility's

1 transactions with affiliated companies?

2 A Yes.

3 Q Have you reviewed those rules?

4 A I don't think I have reviewed all of the rules,
5 no.

6 Q Have you reviewed some of the affiliate
7 transaction rules?

8 A I have heard references to the affiliate rules.

9 Q Based on my cross-examination earlier in the
10 week?

11 A Probably so.

12 Q Okay. But you yourself haven't reviewed those
13 rules, correct?

14 A I have not read the -- the Missouri Commission
15 rules and affiliated transactions.

16 Q Do you know whether a utility is expected to buy
17 from an affiliated company at the low rate cost based upon
18 market pricing?

19 A Based on these proceedings, I was here for --
20 for that, yes.

21 Q So yes, they do, or yes -- what are you saying
22 yes to, sir? That's --

23 A Truthfully, I didn't pay real careful attention
24 to how you read that, and I don't know if you're trying to
25 reverse the order or something and get me quoted. So if

1 you would -- if you would re --

2 Q I'm not trying to trick anybody in these
3 proceedings.

4 A If you would -- if you would reread just so I
5 understand that the formula is correct there.

6 Q Do you know whether a utility is expected to buy
7 from affiliated companies at the lower of cost or market
8 pricing?

9 A Yes.

10 Q And when a utility sells to an affiliate, does
11 it seem reasonable for regulators to insist that the
12 utility receives the higher cost or market value for what
13 they sell?

14 A Yes.

15 Q And no tricks there, right?

16 A That's right.

17 Q Okay. I want to just talk to you now about
18 EEInc. Let me just start out with --

19 A We're finished with my direct?

20 Q Yes.

21 A And you're moving to --

22 Q Moving to your rebuttal.

23 A Okay.

24 Q We'll just do it sequentially. I might jump
25 around, but we'll see. I'm trying to do it sequentially.

1 Let me just first -- you did no independent analysis of
2 the EEInc. issue; isn't that correct?

3 A Independent analysis, meaning --

4 Q Didn't look at any independent information,
5 didn't go to EEInc. and look at the Board minutes. Didn't
6 -- didn't call Kentucky Utilities to find out why they did
7 what they did?

8 A I did not.

9 Q At page 9, sir, of your rebuttal testimony, and
10 I think it's at line 5, you indicate, AmerenUE had a
11 contract with EEInc. which by its terms expired at the end
12 of 2005; is that correct?

13 A Yes.

14 Q Would you agree with me that utility contracts
15 with corporate affiliates merit careful scrutiny by
16 regulators?

17 A Yes.

18 Q And when you were a regulator in Michigan, you
19 gave those type of contracts careful scrutiny, did you
20 not?

21 A Yes.

22 Q Are you aware -- when you were a regulator,
23 again, did you find any unreasonable utility affiliate
24 contracts?

25 A Don't know that I found contracts. Questionable

1 affiliate dealings, but not necessarily -- not
2 necessarily --

3 Q Did you ever --

4 A -- documented.

5 Q Did you ever make any disallowances for
6 affiliate dealings?

7 A I don't honestly recall.

8 Q You're aware, are you not, though, in all these
9 things you go to and stuff you read in NARUC and all of
10 that type stuff that there are affiliate transactions that
11 have been found to be bad?

12 A No question.

13 Q And there have been affiliate adjustments; is
14 that correct?

15 A Yes.

16 Q And -- and you would agree with me that that's
17 something that should get heightened scrutiny from a
18 Commission, right?

19 A Sure.

20 Q You note that -- that there was no provision in
21 the EEInc. contract which provided for extension; is that
22 correct?

23 A Yes.

24 Q Do you know why that was?

25 A It's what the parties agreed to.

1 Q Okay. Did you ask Ameren why they -- they
2 didn't put a provision in there seeking the extension of
3 the contract?

4 A I had no reason to ask that question.

5 Q Okay. Did you ask EEInc.?

6 A I had no reason to ask that question.

7 Q Let me ask you this: Would it have been
8 possible for an affiliate contract between EEInc. and UE
9 to contain an evergreen provision?

10 A If the parties agreed to it.

11 Q Would it have been possible for the affiliate
12 contract between EEInc. and UE to have a buy-out option
13 for Union Electric?

14 A If the parties agreed to it, I don't see any
15 reason why not.

16 Q Would it have been prudent for UE to insist upon
17 an automatic renewal clause or buy-out provision until
18 1987 power supply agreement?

19 A Prudent for whom?

20 Q Union Electric.

21 A I don't know why.

22 Q Well, let me suggest a reason why. The Joppa
23 plant provides low cost power, does it not?

24 A It does.

25 Q And that low cost power in the past has inerred

1 to the benefit of both consumers and Union Electric; is
2 that correct?

3 A That's correct.

4 Q And by not having such a provision now, Union
5 Electric has to go either by more higher priced purchase
6 power or generate that power with higher priced combustion
7 turbines; is that correct?

8 A Well, but in the context of -- was this --

9 Q That wasn't my question. Is that correct?

10 A In 1987, no.

11 Q In 1987, no. Well, I was asking you -- let me
12 -- let me start again. Has there been a detriment to
13 Union Electric and its consumers as a result of the
14 expiration of the power supply agreement?

15 A No.

16 Q So you don't believe, all things being held
17 equal, that rates are going to be higher than they
18 otherwise would have been if that contract weren't
19 continued?

20 A I do believe that.

21 Q Are higher rates a detriment to consumers?

22 A Higher relative rates?

23 Q Higher rates, are they a detriment to consumers?

24 A Not necessarily.

25 Q So -- so you think a lot of consumers want to

1 see their electric rates raised?

2 A Not at all.

3 Q Okay. So let me ask you again. Are higher
4 rates a detriment to consumers?

5 A Higher than --

6 Q Higher than UE's current rates.

7 A Not necessarily. I -- I'd be happy to expand on
8 that if you want.

9 Q Okay. Have at it. We'll unpack that after
10 you're done expanding.

11 A The -- the reason I say that is that higher
12 rates are sometimes justified. We're -- we're talking
13 about a public good. We're talking about infrastructure
14 investment. And you can't make investments without having
15 the funds to do that.

16 And -- and so when you ask me just in the
17 universe are higher rates higher than what -- justified,
18 are they good for customers, I hedge on that just a little
19 bit because sometimes they do make sense.

20 If you don't make those investments and the --
21 the customers, the footprint are exposed to brown-outs and
22 black-outs and other reliability issues, then you've made
23 a bad decision in not allowing the rates to -- to provide
24 sufficient funding for those types of activities.

25 Q Is it your view that if Ameren doesn't get its

1 requested rate increase that there will be brown-outs and
2 black-outs absent, like, the storm problems that we've
3 had?

4 A If they did not get -- I can't project that that
5 would be the -- the situation.

6 Q Let's -- let's assume that the Commission
7 believes the evidence of the intervenors and gives them a
8 rate decrease. Do you have any reason to believe that
9 there will be brown-outs and black-outs as a result of
10 that?

11 A There's a much greater risk of that occurring.

12 Q And how do you know that?

13 A My common sense and judgment from having worked
14 in the industry and understanding the need to make
15 investments to maintain a viable company.

16 Q So any time there's a rate decrease given to a
17 company, the risk of brown-outs or black-outs increase.
18 Is that your testimony?

19 A Not every time.

20 Q This company's had its rates decreased for the
21 last 20 years; is that correct?

22 A That's correct.

23 Q Any brown-outs or black-outs as a result of
24 that?

25 A Well, you've asked me about the last year. And

1 so --

2 Q Let me ask you this: Is it your view that those
3 storm outages were a result of -- of UE's lack of funding
4 to invest in infrastructure?

5 A No.

6 Q So those weren't a result of a failure to invest
7 in the infrastructure; is that correct?

8 A That -- that's correct.

9 Q Have you seen any evidence to suggest in -- in
10 this case that in the past Ameren hasn't made proper
11 investments in its infrastructure?

12 A I've seen only suggestions that they've managed
13 the company and its assets very well.

14 Q And they've been making infrastructure
15 investments; isn't that correct?

16 A Yes.

17 Q And even including all of those infrastructure
18 investments in the rate base, certain parties after a
19 thorough audit of the company's books and records, are
20 recommending a rate decrease; is that correct?

21 A That's correct.

22 Q And if this Commission chooses to believe that
23 evidence and gives the company a rate decrease, those
24 would be, by law, I would assume, just and reasonable
25 rates; is that correct?

1 A That's the role of the Commission, absolutely,
2 to establish -- to --

3 Q And --

4 A -- to establish just and reasonable rates.

5 Q And it would be assumed that those rates would
6 allow AmerenUE to get a return -- an opportunity to return
7 on its investments and recovery of its costs; isn't that
8 correct?

9 A If that's the decision that Commission makes at
10 the conclusion of the -- that the Commission would have
11 reached.

12 Q And they can come to that conclusion based on
13 the evidence in this case if -- if they choose to believe
14 the evidence of certain intervenors; isn't that correct?

15 A That's what they're empowered to do.

16 Q And you don't think that this Commission would
17 make a decision purposely to cause black-outs or
18 brown-outs, do you?

19 A I do not.

20 Q Do you think this Commission would make a
21 decision that would result in Ameren failing to invest in
22 its infrastructure?

23 A I do. I have the highest respect in regard for
24 this Commission.

25 Q Does Wall Street? I think I may have found a

1 place where you disagree with Wall Street.

2 THE COURT REPORTER: Excuse me. I need to
3 change my disk.

4 JUDGE WOODRUFF: The court reporter needs to
5 change her disk, so we'll go off the record.

6 (Break in proceedings.)

7 JUDGE WOODRUFF: All right. While we were off
8 the record, we had sort of discussion about where we're
9 going to go this evening.

10 MR. MICHEEL: I think your mic is off.

11 JUDGE WOODRUFF: Pardon me. I think my mic off.
12 Yes, it is. We had a discussion about where we would go
13 with this evening. I'm assuming we'll finish Mr. -- Mr.
14 Svanda later this evening. Where do we go after that?

15 MR. CYNKAR: I think Mr. Naslund is the next
16 witness, your Honor.

17 JUDGE WOODRUFF: Is he here?

18 MR. CYNKAR: Yes.

19 JUDGE WOODRUFF: Okay. We'll probably get
20 started on him, then. As has been the practice for the
21 last several nights, we need to take a dinner break and
22 come back at 6:00. And this seems to be a good point to
23 -- to stop for -- to stop for that dinner break. So we'll
24 stop now. We'll come back at six, and we'll go until nine
25 at the latest. So we're adjourned until six.

1 (Break in proceedings.)

2 JUDGE WOODRUFF: All right. Let's come to
3 order, please. Welcome back from dinner. Mr. Dottheim, I
4 believe you had something you wanted to state on the
5 record?

6 MR. DOTTHEIM: Yes. Yes, Judge. I -- I have --
7 as I think I indicated earlier today, I have copies of the
8 exhibits to two of the depositions. Mr. Svanda's
9 deposition, there were two exhibits. One of the exhibits
10 is the Articles of Incorporation and the -- the bylaws,
11 and there's also a tracking of -- of changes to those
12 documents.

13 Svanda 2, Exhibit 2 is a copy of the current
14 bylaws. The other document I have is the exhibit to the
15 Naslund deposition, and it is a -- a rather voluminous set
16 of documents, and there are approximately ten exhibits
17 that -- and so I -- are those in -- in packets last
18 Friday. I provided copies of the Naslund and the Svanda
19 and the depositions that the Staff --

20 JUDGE WOODRUFF: Right.

21 MR. DOTTHEIM: -- took. And these are the --
22 these are the exhibits to those depositions. They're --
23 it's my recollection that it was only the Svanda and the
24 Naslund depositions that had exhibits.

25 JUDGE WOODRUFF: So they are, in fact, parts of

1 the exhibit that were previously admitted?

2 MR. DOTTHEIM: Yes.

3 MR. MICHEEL: Mr. Brosch had an exhibit to his
4 deposition, and I don't know if they've gotten that yet,
5 that exhibit. That would be --

6 MR. CYNKAR: The PSA was an exhibit, I think, to
7 Mike's deposition. And the short answer is I don't know,
8 but I'll find out.

9 JUDGE WOODRUFF: All right.

10 MR. CYNKAR: I would assume so.

11 JUDGE WOODRUFF: Mr. Dottheim, did you give a
12 copy of those to the reporter?

13 MR. DOTTHEIM: No, I haven't. But I can do that
14 now.

15 JUDGE WOODRUFF: All right.

16 (Break in proceedings.)

17 JUDGE WOODRUFF: We're back on the record, then.

18 And at this point, we can continue with the

19 cross-examination with the State.

20 Q (By Mr. Micheel) Mr. Svanda, when we left, we
21 were talking about your rebuttal testimony. I want to
22 keep talking about your rebuttal testimony. And if I
23 could ask you to turn to page 10 of your rebuttal
24 testimony for me.

25 A Sure.

1 Q And I'm focusing on part of your answer there at
2 Line 2 where you say, They say that prudent demand and
3 AmerenUE compel some non-existent legal power of a
4 separate unregulated corporation to sell its power at
5 below market rates. Is that correct?

6 A Market price, not rates. But yes.

7 Q Oh, market price. I'm sorry.

8 A That --

9 Q Who is the "they" that you use there at line 2?

10 A That's referring to the sentence just above
11 that, the other witnesses.

12 Q Does that include State Witness Brosch?

13 A I would have included that, yes.

14 Q Can you cite to me in anywhere in Mr. Brosch's
15 testimony where -- where he makes that claim?

16 A No. I don't know that he makes that claim. I
17 am indicating what -- how I read the effect of what he's
18 proposing.

19 Q Well, you -- when you say "they say," what does
20 that mean to to you, "they say?"

21 A That means that I've read what they have
22 submitted, and it appears to me that that will be the
23 effect.

24 Q Well, you have a cite down there, do you not, a
25 Footnote 7? What's that a citation to, sir?

1 A I -- yeah. It is -- it is to that.

2 Q To what?

3 A It is to the comment there that you -- that you

4 just cited.

5 Q And what is that citation to? That's my

6 question. It's got an I.D. there. That means I.D.,

7 right? So that means see the previous footnote?

8 A Yeah.

9 Q And the previous footnote would be Footnote No.

10 6, right?

11 A Right.

12 Q Than would be on page 9, right?

13 A Correct.

14 Q And you cite the Greg Meyer deposition at page

15 50; is that correct?

16 A Uh-huh.

17 Q Do you cite anywhere where Mr. Brosch said that?

18 A Well, my reading of the general documents, yes.

19 Q Your reading -- what general documents are you

20 talking about?

21 A What Meyer and Brosch had submitted.

22 Q Do you have a copy of Mr. Brosch -- did you

23 review Mr. Brosch's testimony?

24 A Yes.

25 Q Do you have a copy of his rebuttal testimony

1 there with you?

2 A I do not.

3 MR. MICHELE: May I approach the witness, your
4 Honor?

5 JUDGE WOODRUFF: You may.

6 Q (By Mr. Micheel) I'm handing you a copy of the
7 Mr. Brosch's rebuttal testimony, sir, at page 11, starting
8 with the word "notably" going to the end of line 21.
9 Could you read that and then read that into the record for
10 me?

11 A It -- starting at which line, did you say?

12 Q Starting at -- I think line 17 with the word
13 "notably."

14 A Okay. Got it. Notably, the rate-making
15 adjustment that I propose is not dependent upon Commission
16 action to compel more reasonable EEInc. voting action by
17 Ameren management. Instead, the State's recommended
18 rate-making adjustment recognizes and corrects for the
19 inequitable outcome created in Missouri by management
20 actions that were actually taken.

21 Q So there's -- we're not -- we're not dealing
22 with some legal power or telling EEInc. what it has to do;
23 isn't that correct?

24 A Well, that's not a direct quote.

25 Q Okay. We're making an imputation, isn't that

1 correct, or recommending an imputation to be made?

2 A That's what's proposed, yeah.

3 Q And you saw that as a Commissioner in Michigan,
4 did you not?

5 A I understand imputation, sure.

6 Q And that's a standard rate-making matter; isn't
7 that correct?

8 A Relatively. I -- I don't know that I would
9 characterize it as standard, but sure, it happens.

10 Q Now, first let me retrieve that document. Also,
11 on page 10, you say, If successful here, they would next
12 suggest that other Illinois generating plants be forced to
13 sell power to UE at prices they determine prudent; is that
14 correct?

15 A Yes.

16 Q What's the basis for that statement?

17 A It's a rhetorical question on my part.

18 Q Did you ask for any discovery to see whether or
19 not that was a proposal Mr. Brosch might make?

20 A No, I did not.

21 Q Do you know that the facts regarding the 50-plus
22 years that -- of EEInc. contracting with UE are unique --

23 A Yes.

24 Q -- to Ameren --

25 A Yes.

1 Q -- UE? And -- and there aren't any purchase
2 supply agreements or power supply agreements with Illinois
3 plants like that, are there?

4 A I'm -- I'm sorry. I'm not --

5 Q With Illinois, Ameren Illinois plant like the
6 EEInc. contract, are there?

7 A Oh, not to my understanding.

8 Q Are you aware of any other affiliate plants in
9 Illinois that are controlled by Ameren that have sold to
10 AmerenUE under long-term cost based power sale agreements?

11 A AmerenUE?

12 Q Uh-huh.

13 A No. I guess not.

14 Q And it's speculation that anyone would make that
15 adjustment, isn't it? You say as a rhetorical statement.

16 A Sure. I was completing my answer to the
17 rhetorical there in asking that question. It -- it's such
18 a stretch, it seems to me, for this to occur. And -- and
19 so I just rhetorically said and if they get away with
20 this, then what are they going to do next.

21 Q And that stretch is based on what, your view
22 it's such a stretch, being a Commissioner?

23 A Yes.

24 Q Because you did no analysis of the EEInc.
25 contracts, right, and the 50 years or any of that, right?

1 A Well, I certainly read them and analyzed them as
2 I would.

3 Q Okay. Again, at Line 14 on page 10, you say,
4 The other parties mischaracterize commonplace aspects of
5 the cost plus contracts; isn't that correct?

6 A That is correct.

7 Q Which witnesses are you talking about there?

8 A I'm making a statement as a general grouping of
9 the people that I've referenced earlier in this testimony.

10 Q Does that include Mr. Brosch?

11 A Yes.

12 Q And what mischaracterizations of commonplace
13 aspects of cost plus contracts in your opinion has he
14 mischaracterized?

15 A The -- the ability that once the contract has
16 reached its natural termination there is some way to just
17 have it continue.

18 Q Well, we just went through that. Mr. Brosch
19 isn't asking that the contract continue; isn't that
20 correct?

21 A The -- the imputation has the same effect. Yes.

22 Q But we're -- but answer the specific question.
23 We're not asking that the contract be renegotiated, isn't
24 that correct, or that the contract continue?

25 A That -- that is my understanding as of today,

1 yes.

2 Q You didn't have that understanding before you
3 were confused?

4 A I was not confused. No.

5 Q You just didn't know?

6 A I knew.

7 Q Now, you talk about extraordinary legal
8 consequences there on Line 14, do you not?

9 A On which line?

10 Q Line 14, page 10 of your rebuttal testimony and
11 then try to give them extraordinary legal consequences?

12 A Yes.

13 Q What extraordinary legal consequences is
14 Mr. Brosch giving? Enumerate those specifically for me.

15 A Having the effect of extending a contract beyond
16 its natural termination date, reaching across the -- a
17 state boundary into another state, dealing with the
18 jurisdiction, assets of another jurisdictional entity.

19 Q And what jurisdictional entity is EEInc. an
20 asset of?

21 A FERC.

22 Q FERC. And what recommendations is Mr. Brosch
23 making to the FERC with respect to EEInc.?

24 A Well, having the effect of nullifying FERC's
25 approval of that facility as an EWG and an EWG with --

1 with market pricing.

2 Q Well -- well, will EEInc. still be able to sell
3 its power into the market? Or will it no longer be an EWG
4 if the imputation is made?

5 A If the imputation is made, there isn't any point
6 in -- in that jurisdictional approval.

7 Q Is it -- is it your testimony that if -- if the
8 imputation is accepted by the Commission that -- that
9 EEInc. will have no market base revenues?

10 A That it won't have any benefit of any market
11 base rates because what's taken by the left hand will be
12 lost by the right hand.

13 Q So is it your testimony that the State's
14 imputation will take 100 percent of the revenues from the
15 EEInc. off system -- or the EEInc. sales into the market?

16 A Well, I think the proposal is at the 40 percent
17 mark.

18 Q Okay. What happens to the other 60 percent?
19 Where would that go?

20 A Probably be available for market base.

21 Q So they'd -- they'd have that at least, right?

22 A That seems to follow. Yes.

23 Q Okay. Now, you're not a lawyer?

24 A That's correct.

25 Q Okay. On -- on page 11 of your rebuttal

1 testimony you note that AmerenUE bought power under the
2 terms of its contract with EEInc. just like it pays for
3 power from other generators and just like it buys and pays
4 for other vehicles and equipment needed to do its
5 business; is that correct?

6 A That's correct.

7 Q You would agree with me that those are
8 legitimate cost of service that with Commission approval
9 are included in rates; is that correct?

10 A Yes, I would.

11 Q When UE buys power from other generators, is he
12 referring -- are you referring to -- let me -- let me
13 start over. When you -- when you're referring to -- when
14 UE buys power from perhaps other generators, are you
15 referring to non-affiliates?

16 A Yeah. I would be talking about purchase power
17 agreements. Sure.

18 Q And generally those are from non-affiliates;
19 isn't that correct?

20 A Generally.

21 Q And AmerenUE would have no fund -- real
22 opportunity to engage itself in dealing power sales,
23 contracts with third parties like they may with affiliate
24 companies; isn't that correct?

25 A That's probably true.

1 Q And when UE buys -- let me ask you this: Have
2 you ever reviewed purchase power contracts?

3 A Yes. Yes.

4 Q Okay. And give me a flavor of what purchase
5 power contracts you've reviewed.

6 A They would be from my days as a Michigan
7 Commissioner and purchasing power immediate -- between and
8 among the utilities that service in Michigan.

9 Q Were they affiliated contracts, or were they
10 non-affiliated contracts? Or were they --

11 A Some of both probably.

12 Q Some of both. Let me ask this. When UE buys
13 power from non-affiliates, do you know if the contracts
14 contain terms in excess of 50 years in duration?

15 A When -- when AmerenUE does?

16 Q Uh-huh.

17 A I -- I don't know that as a certainty. But I
18 would guess not.

19 Q When you were a Michigan Commissioner, did you
20 ever find 50-year purchase power supply agreements?

21 A I don't believe so.

22 Q Did you ever look at a power supply agreement
23 with obligations to pay for power, even if none was
24 delivered?

25 A There may have been that provision here and

1 there. I'm not -- I'm not saying that there was not. But
2 it would not have been standard.

3 Q That would be a unique contract term?

4 A It would be a different characteristic, yes.

5 Q Okay. Were you aware of any time where the --
6 where one of the parties to a power supply agreement
7 guaranteed the repayment of the seller's debt?

8 A Well, truthfully, in reviewing contracts in
9 Michigan, I would not have reviewed a contract that
10 started 50 years ago that was a defense of the country
11 type of initiated project. And so I -- I would not have
12 been viewing the same sorts of documents as this one
13 represents.

14 Q Okay. Now, on -- on -- in your rebuttal
15 testimony at page 19 -- or I'm sorry. Your rebuttal
16 testimony, page 12, sir. Line 19, you say, And Ameren
17 shareholders would have to eat whatever amount of the
18 Joppa power costs that would be considered excessive. Do
19 you see that, sir?

20 A Yes.

21 Q That's -- that's pure speculation on your part;
22 isn't that correct?

23 A Well, it's what I say in the sentence above.

24 Q That's speculation?

25 A I said, Even if one speculates and asks what if

1 the facts were different. Yes.

2 Q So that's speculation?

3 A Sure.

4 Q Are you aware of any PSC decisions that exist
5 that purport to limit EEInc.'s purchase power costs in any
6 way?

7 A Purport to limit their --

8 Q Recovery of the purchase power costs.

9 A No, I'm not.

10 Q When the acquisition stopped -- let me ask you
11 this: Did you review all the Commission Orders with
12 respect to EEInc.?

13 A I believe I did.

14 Q When the Commission -- when the acquisition of
15 the EEInc.'s stock was approved, did the PSC tell UE they
16 could collect only a limited amount of the Joppa power
17 supply costs?

18 A Limited amount? Disproportionately limit?

19 Q Only a limited amount.

20 A I don't think -- I don't think so.

21 Q Has any past UE rate case had an issue regarding
22 the Joppa power costs?

23 A Not that I recall.

24 MR. MICHEEL: Let me get an exhibit marked, your
25 Honor.

1 JUDGE WOODRUFF: All right.

2 MR. MICHEEL: It's five-something. 17, maybe.

3 JUDGE WOODRUFF: 517.

4 Q (By Mr. Micheel) I've handed you what's been
5 marked as Exhibit 517. Have you had a chance to read that
6 data request?

7 A Yes.

8 Q Does that data request indicate that there are
9 no past instances of EEInc.'s operating losses?

10 A Yes.

11 MR. MICHEEL: With that, your Honor, I'd move
12 the admission of Exhibit 517.

13 JUDGE WOODRUFF: 517 has been offered. Any
14 objection?

15 MR. CYNKAR: No, your Honor.

16 JUDGE WOODRUFF: It will be received into
17 evidence.

18 (Exhibit No. 517 was offered and admitted into
19 evidence.)

20 Q (By Mr. Micheel) Now, you note at page 14 of
21 your surrebuttal testimony at line 17 that the Commission
22 did not protest EEInc.'s application regarding market base
23 rate authority; is that correct?

24 A That is correct.

25 Q That doesn't imply that the Commission

1 acquiesced, does it?

2 A No. I did not say that.

3 Q Do you dispute the fact that the -- this
4 Commission has jurisdiction over UE's rates?

5 A Over --

6 Q UE's rates.

7 A No, I do not.

8 Q Do you dispute the fact that that includes an
9 opportunity to remedy imprudent affiliate transactions?

10 A Yeah. I don't think they're limited.

11 Q Are you aware of any statement from the
12 Commission that it intended not to review the EEInc.
13 issue in future rate cases?

14 A I am not.

15 Q Did you read the FERC order that -- that you
16 talk about there in the market base rate authority?

17 A Yes. Yes, I did.

18 Q Are you aware that the Missouri Office of the
19 Public Counsel was a party to that?

20 A I am aware.

21 Q Do you have a copy of the FERC order with you?

22 A I do not.

23 Q Were you -- did you -- did you see the Footnote
24 10 in the FERC order that indicated that the EEInc. issue
25 was an issue that is better resolved at the state level?

1 A I remember that general language, yes.

2 Q So if I can, FERC punted to this Commission,
3 didn't they to use a football analogy? You like football.
4 Do you agree with me?

5 A I -- I think they agreed with the suggestion
6 made by someone else in the -- in the case that -- yes.

7 Q And that someone else were our good friends at
8 AmerenUE; isn't that correct?

9 A Probably among others, yes.

10 Q Would you agree with me that the Federal Energy
11 Regulatory Commission is primarily concerned with
12 competitive issues like market power concerns?

13 A That -- that's one of their issues as of today,
14 sure. But they -- they have a broader --

15 Q Yeah. That's one of the issues. But I -- yeah.
16 They cover up all interstate transactions --

17 A Yes.

18 Q -- in regulated gas and electric, right?

19 A Yes.

20 Q Wasn't trying to trick you. On -- on page 15 at
21 line 15 of your rebuttal testimony, you indicate, The
22 proposed imputation of a 40 percent share of Joppa's
23 output to AmerenUE at cost base rates effectively would
24 allow ratepayers to capture market value of this share of
25 Joppa's output. Is that correct?

1 A That is correct.

2 Q And that's what happened under the PSA up until
3 2005. UE got the Joppa capacity of cost and could sell it
4 into power markets and off system sales and at market
5 prices; is that correct?

6 A That is some of my point that that is how the
7 contract operated, and that was the world in which that
8 contract existed. Yes.

9 Q And the issue now is who gets this benefit after
10 2005, ratepayers or shareholders; isn't that correct?

11 A That's pretty much what it boils down to. I --
12 I would add that the two are not mutually exclusive
13 either.

14 Q Okay.

15 A There are times frequently when the interests of
16 the ratepayers and the shareholders are joined together
17 and -- so they're not mutually exclusive.

18 Q Did I suggest that they were?

19 A I hope not.

20 Q You note on page 16 of your rebuttal testimony
21 at line 7, Such action is in conflict with FERC's
22 exclusive jurisdiction over EWGs, and I assume that's
23 Exempt Wholesale Generators; is that correct?

24 A Yes.

25 Q If that's true, then why did the FERC state in

1 its order that the imputation matter is an issue better
2 resolved at the state level?

3 A Actually, could I see that? Could I see that
4 FERC order?

5 Q I don't have it with me. I -- you know, you
6 told me you had read it before and you --

7 A Right.

8 Q -- indicated you saw that comment, right? I
9 mean, I can go dig it up if we want to take a break. If
10 you'd feel more comfortable doing that, I'd be happy to do
11 it.

12 A The only thing I'm not certain of just from
13 recall is the word imputation. I -- if it was that direct
14 or not. That was the only thing I would check.

15 MR. MICHEEL: Well, may I approach the witness?

16 JUDGE WOODRUFF: You may.

17 Q (By Mr. Micheel) Here you go. Have at it.

18 A Did -- did you find it? Or were you --

19 Q I'll let you find it.

20 A Okay.

21 Q It should be in Footnote 10.

22 A It -- it does not refer to imputation.

23 Q What's it refer to?

24 A The argument is -- is not relevant to the
25 decision of this Commission as to whether EEInc. meets

1 this Commission's standards for market based rate
2 authority, and, further, is an issue that is better
3 resolved at state level.

4 Q And what argument are they referring to, sir?

5 A The Missouri office concerns essentially center
6 around the argument that it already made full payment of
7 AmerenUE's share of all capital costs on a front loaded
8 basis and no longer will have the right to receive power
9 from the plant once its contract expires.

10 In particular, the Missouri -- Missouri office
11 argues that Missouri ratepayers' historic costs support of
12 EEInc. entitles them to full value -- excuse me -- of the
13 plant for its remaining life.

14 Q And -- and that's what Mr. Brosch's adjustment
15 is designed to do, give full value to that plant training
16 life; isn't that correct? I don't quibble with you. It
17 doesn't say imputation.

18 A In effect. Yeah.

19 Q I'll -- I'll get it in a minute.

20 A All right.

21 Q On page 17 of your rebuttal testimony at line
22 11, you note that the other parties now years later
23 effectively want to go back, reopen the regulatory books
24 and impose negative regulatory and economic consequences
25 on AmerenUE as a result of those same transactions; isn't

1 that correct?

2 A That is correct.

3 Q Now, would you agree with me that the adjustment
4 proposed by the State will continue the pre-2006 treatment
5 of the Joppa plant value effectively maintaining the
6 status quo?

7 A If that were possible, that's what it would do.
8 But it isn't possible in that the contract expired.

9 Q When you say at page 18, line -- line 4 of your
10 rebuttal testimony, Nobody disputes that EEInc. was below
11 the line investment of AmerenUE's shareholders -- do you
12 see that, sir?

13 A I do.

14 Q You're talking about the common stock that was
15 purchased decades ago; isn't that correct?

16 A Sure.

17 Q And you would agree with me that none of the
18 other parties, save AmerenUE, thinks that's relevant to
19 the issue?

20 A No. I guess I think all of the parties think
21 that's relevant or we wouldn't be having this
22 conversation.

23 Q Okay. So -- so you think Mr. Brosch thinks the
24 fact that -- that AmerenUE owns 40 percent of the stock is
25 a big, relevant issue?

1 A I do.

2 Q Okay. Would you agree with me that everyone
3 disputes AmerenUE's view that the Joppa plant has been
4 treated as non-jurisdictional?

5 A Where are you reading?

6 Q I'm not reading anywhere in your testimony. I'm
7 asking you about the other parties' testimony.

8 A Okay.

9 Q And would you agree with me that everyone
10 disputes Ameren's view that the Joppa plant has been
11 treated as non-jurisdictional? Everyone but Ameren,
12 obviously.

13 A Every -- sure. It's certainly a real broad
14 term, but, yes, that -- that seems to be the case.

15 Q And you use the term "everyone" in your
16 testimony all the time, don't you?

17 A I do. I do. Maybe not all the time.

18 Q Is it correct the State disputes the notion that
19 the Joppa plant costs as reflected in the PSA billings
20 have been booked below the line?

21 A Repeat, please.

22 Q Is it correct that the State disputes the notion
23 that the Joppa plant costs as reflected by the power
24 supply agreement billings have been booked below the line?

25 A Yes.

1 Q Is it correct that State disputes that Ameren
2 has ever taken any significant risks or absorbed any
3 significant losses on the Joppa plant or EEInc.?

4 A That's my understanding.

5 Q Moving to your surrebuttal. We're getting
6 close.

7 MR. MICHEEL: Oh, I'm sorry. This is all on
8 ROE. I'll save that for tomorrow. Thank you very much
9 for your time, sir.

10 MR. SVANDA: Thank -- thank you.

11 JUDGE WOODRUFF: All right. Does Public Counsel
12 have any cross?

13 MR. MILLS: I do. Just a -- there may be a
14 couple left that Mr. Micheel didn't get.

15 CROSS-EXAMINATION

16 BY MR. MILLS:

17 Q Good evening, Mr. Svanda.

18 A Good evening.

19 Q In your direct testimony that -- and I'm looking
20 in particular at -- at page 3 towards the bottom, lines 20
21 through 22, you talk about high service quality, reliable
22 service and satisfied customers; is that correct?

23 A I do.

24 Q Now, you've also talked about the J.D. Powers
25 surveys; is that correct?

1 A Yes.

2 Q Did you review those in the course of preparing
3 your testimony?

4 A Yes.

5 Q Are you aware that there's been a new survey
6 with new results since your testimony was filed?

7 A I -- I am. And, in fact, we did cover this.
8 Maybe you were out of the room.

9 Q Yes. Do you --

10 Mr. MILLS: Well, hang on a second. Let me
11 check to see if something's confidential. May I approach?

12 JUDGE WOODRUFF: You may.

13 Q (By Mr. Mills) Mr. Svanda, I've just handed you
14 what has been marked as Exhibit 421-HC, although I have
15 just checked with counsel for AmerenUE, and the numbers
16 and the data that we're going to talk about is not highly
17 confidential.

18 A Okay.

19 Q Does that indicate that for 2006 Ameren's target
20 was to be in the -- either the first or the second
21 quartile in the J.D. Powers survey?

22 A That is correct.

23 Q And does it also indicate that, in fact, they
24 only made it to the third quartile?

25 A That is correct.

1 Q Okay. And the note on that portion, the triple
2 asterisks note, what does that say?

3 A It says, Due to storms.

4 Q Okay. Does that indicate to you that although
5 they did not make their targets that their compensation
6 was awarded nonetheless because -- because they didn't
7 make their targets because of the storms?

8 A Does this document indicate all of that?

9 Q Yes. Do you think that's what that note means?

10 A It just means they didn't hit their 2006
11 performance because of the storms.

12 Q And what did you think the word "allowed" means?

13 A Permitted.

14 Q Okay. Do you understand that that document is
15 the -- the score card on which incentive compensation is
16 based?

17 A I did not.

18 Q Okay. If -- if I were -- would represent to you
19 that that's what that is, would that change your
20 understanding of what the "allowed due to storms" might
21 mean?

22 A Yes.

23 Q Okay. And do you think that it might mean that
24 incentive compensation for that target was allowed because
25 the -- the target was not met because of the storms?

1 A I -- yeah. I would imagine that's the case.

2 MR. MILLS: Those are all the questions I have.

3 Thank you.

4 JUDGE WOODRUFF: All right. Thank you. For

5 Staff?

6 CROSS-EXAMINATION

7 BY MR. DOTTHEIM:

8 Q Good evening, Mr. Svanda.

9 A Good evening.

10 Q Mr. Svanda, are you an accountant?

11 A I am not.

12 Q Okay. Are you an engineer?

13 A No.

14 Q Are you an economist?

15 A No.

16 Q Are you a financial analyst?

17 A No.

18 Q Are you an attorney?

19 A No.

20 Q Mr. Svanda, in your direct rebuttal and
21 surrebuttal testimony, you cover a broad range of issues,
22 do you not?

23 A I do, based on my background.

24 Q Okay. Is there any topic in utility regulation
25 that you believe you're not qualified to submit expert

1 testimony on?

2 A On a broad basis and at the high level that I
3 have presented here, I do not. I spent a number of years
4 in the Commissioner's chair, with both the national
5 organization and regional organization of Commissioners.
6 And just like the five Commissioners that occupy the
7 chairs here, you develop expertise after great exposure to
8 the these subject matters.

9 In addition to that, I had a lot of relevant
10 background before I took a Commissioner's seat in all of
11 the -- the areas concerning regulation.

12 Q Do you believe that qualifies you to provide
13 testimony equal to an accountant, engineer, economist,
14 attorney or financial analyst?

15 A Not in the weeds. But as those disciplines are
16 -- are applied and as the Commission attempts to achieve
17 the balance that I have talked about in my testimony and
18 here on the stand, certainly, there has to be an achieved
19 level of competence in all of those areas for a
20 Commissioner to do their job.

21 Q You're President of Svanda Consulting?

22 A That's correct.

23 Q And how many persons comprise Svanda Consulting?

24 A I am -- I'm it.

25 Q Okay. And how many engagements or contracts

1 have -- have you provided consulting services on in the
2 years that Svanda Consulting was providing services?

3 A I haven't actually done a total of them. But I
4 have consulted extensively in the energy areas and in
5 telecommunications and in water.

6 Q Okay. Could you identify in what cases you've
7 filed testimony, in what proceedings?

8 A Not by number. But as you and I have discussed
9 before proceedings in the California Court regarding SBC,
10 proceedings in some mid America -- mid Atlantic states of
11 Maryland, Pennsylvania, District of Columbia in
12 energy-related issues.

13 Q Okay. And --

14 A And one at the FERC level, too. I'm sorry.

15 Q Excuse me. You mentioned that SBC matter that
16 you had filed testimony in a California Court?

17 A Correct.

18 Q I -- I think you had indicated it was either a
19 California Court or a California PUC. You couldn't recall
20 at the time. I -- I think you indicated it was a -- a
21 pole attachment matter; is that correct?

22 A That is correct.

23 Q And the other matter that you indicated, I think
24 you just referred to it as a mid Atlantic energy matter.
25 I think you indicated that you had filed testimony in 2005

1 in Washington D.C. or before the Washington D.C.,
2 Pennsylvania and Delaware Commissions on behalf of an
3 association of merchant generators and others seeking
4 generally to allow their generation to be part of the
5 market in those jurisdictions; is that correct?

6 A That -- that is what -- what we talked about.
7 My errata sheet does correct from -- from Delaware to
8 Maryland, that one reference.

9 Q And thank you for reminding me. That -- you did
10 have errata sheets to the -- the deposition. And you made
11 reference to filing testimony before the -- the FERC, and
12 I think you previously in our discussion in the deposition
13 indicated that the testimony was -- was filed on behalf of
14 -- of the Midwest Independent System -- the Midwest
15 Independent Transmission System Operator?

16 A Yes. That -- that is correct. Most -- most of
17 my consulting work is, in fact, not rate case work or work
18 before Commissions in formal proceedings.

19 Q Okay. I'd like to refer you to your direct
20 testimony, page 7, lines 19 to 22 where you state,
21 AmerenUE has -- has also wisely stuck to its core
22 regulatory utility business and has remained focused on
23 the region in which it operates. It has avoided the
24 pitfalls some other utilities have experienced when they
25 shifted their focus to unregulated businesses in four

1 utility operations. You state that, do you not?

2 A I do.

3 Q Would your statements apply to Aquila, Inc.?

4 A It would.

5 Q Okay. Are you familiar with Great Plains
6 Energy, the holding company for Kansas City Power & Light?

7 A I am familiar, yes, with -- with their
8 existence.

9 Q Okay.

10 A I don't know what level of familiarity you're
11 asking, but --

12 Q Okay. Are you familiar with the Strategic
13 Energy subsidiary of Great Plains Energy?

14 A Yes.

15 Q Okay. So you're familiar that Strategic Energy
16 is licensed to serve electricity customers in deregulated
17 energy market, including California, Connecticut,
18 Delaware, District of Columbia, Maryland, Massachusetts,
19 Michigan, New Jersey, New York, Ohio, Pennsylvania and
20 Texas?

21 A I would not have been able to name those off
22 from memory, but, yes, I know they operate in that space.

23 Q Well, would Great Plains Energy be one of the
24 entities that you would include along with Aquila on lines
25 19 to 22 on page 7 of your testimony?

1 A I'm truthfully a little more familiar with the
2 -- with Aquila and other Michigan utilities than
3 Strategic.

4 Q Okay. Okay. I'd like to refer to you page 9 of
5 your direct testimony, lines 12 to 13 where you refer to
6 the -- the company having decreased rates steadily for
7 approximately 20 years.

8 Do you know where the -- whether Union Electric
9 company has offered in that 20-year period voluntarily
10 reduced rates or reduced rates as a result of Commission
11 Staff audit investigations?

12 A I believe the latter is the appropriate
13 characterization.

14 Q I'd like to refer you to page 18 of your direct
15 testimony, lines 11 to 13 where you state, Unfortunately,
16 some advocates who take a short-term view intentionally or
17 unintentionally use the seemingly endless set of numbers
18 and data in the complexity of rate-making to argue for
19 low, lower and lowest rates now. Do you not?

20 A I do.

21 MR. DOTTHEIM: Okay. May I approach the
22 witness?

23 JUDGE WOODRUFF: You may.

24 Q (By Mr. Dottheim) Mr. Svanda, I have provided a
25 copy of a document that's been marked as Exhibit 254.

1 It's an AmerenUE mailer. And I'd like to direct you to
2 the second to last paragraph from the bottom of the -- the
3 page, the second to last paragraph in the -- in the
4 letter.

5 And I'd like to direct you to the last sentence
6 in the letter which states, I assure you that we will
7 continue to work with regulators, community -- community
8 leaders and to provide reliable electricity at the lowest
9 possible price.

10 Doesn't Ameren UE itself tell its ratepayers
11 that its committed to the lowest rates now in that
12 document?

13 A It -- it does qualify that providing reliable
14 electricity at the lowest possible price. But I
15 understand what you're saying.

16 Q Mr. Svanda, I'd like to direct you to your
17 rebuttal testimony, page 3, lines 1 and 2 where you state,
18 The Board of Directors has a fiduciary duty to run their
19 company profitably. How do you define fiduciary duty?

20 A I define it based on my experience, I guess, and
21 maybe in this room have had some unique opportunities to
22 sit in a fiduciarily responsible position clear back to my
23 city manager days as I was responsible for a municipal
24 budget, but also sat on the Police & Fire Pension Board
25 having to make determinations about the level of funding

1 for the -- the larger city entity as well as water and
2 sewer fund.

3 I have sat on the NARUC Educational Trust Board
4 with the same fiduciary responsibilities between the NARUC
5 Educational Trust and the Board of Directors in the
6 corporate proper of NARUC. And probably the -- the most
7 exciting would be -- was a family trust where I had to
8 exercise fiduciary responsibility and -- and demonstrate
9 that responsibility to my brother, who is probably the
10 most difficult fiduciary responsibility critic that there
11 might be.

12 Q In attempting to -- to determine the meaning of
13 fiduciary duty, have you ever sought legal advice --

14 A I would -- yes. Early on. As I was
15 understanding my responsibility with the Police & Fire
16 Board in conjunction with my city management
17 responsibilities, that was an important learning time.

18 In addition, we had fairly extensive counsel
19 with the NARUC Educational Trust Foundation to assure that
20 -- that we were structuring that organization and carrying
21 out its responsibilities appropriately.

22 Q One moment, please. Mr. Svanda, I'd like to
23 refer you to pages 16 and 17 of your rebuttal. And in
24 particular, on page 16, starting at line 18, carrying over
25 to -- to page 17, starting on line 18, you state,

1 Moreover, AmerenUE and other utilities in Missouri
2 participate in the Midwest ISO to create a robust regional
3 wholesale power market in the Midwest. Taking a portion
4 of the Joppa plant off the market would work against these
5 efforts burdening the full participation of the Joppa
6 plant in that market by visiting negative economic
7 consequences on one shareholder of EEInc. Simply because
8 Joppa is participating in that market, it is equally at
9 war with its national and regional direction. Have I read
10 that accurately?

11 A Yes, you have.

12 Q Respecting the -- the MISO energy market, aren't
13 the AmerenUE plants bid into the MISO energy market?

14 A I believe that they are, yes.

15 Q Do you know if the 400 megawatts of Joppa
16 previously available to AmerenUE remained available to
17 AmerenUE, wouldn't it be bid into the MISO energy market?

18 A Probably so.

19 Q One moment, please, again. Mr. Svanda, do you
20 know the name of the entity or entities that EEInc. sold
21 its capacity and energy to after the contract that was in
22 effect from 1987 with the sponsoring companies -- after
23 that contract expired on December 31, 2005?

24 A I don't know the exact name. I understand it to
25 be the marketing affiliate.

1 Q Do you recall when I asked you that question at
2 your deposition whether you knew that answer?

3 A I probably didn't know it then either.

4 Q Mr. Svanda, is it your understanding that EEInc.
5 was profitable when it was receiving cost based rates from
6 DEO and the sponsoring companies?

7 A That is my understanding.

8 MR. DOTTHEIM: Thank you, Mr. Svanda.

9 MR. SVANDA: Thank you.

10 JUDGE WOODRUFF: Mr. Dottheim, did you wish to
11 offer those errata sheets?

12 MR. DOTTHEIM: Yes. I guess we need to give
13 them a -- a separate exhibit number.

14 JUDGE WOODRUFF: Yes. It will be 267. I'm
15 assuming you're offering 267?

16 MR. DOTTHEIM: Yes. I'm offering 267 at this
17 time.

18 JUDGE WOODRUFF: Any objections to 267? Hearing
19 none, it will be received.

20 (Exhibit No. 267 was offered and admitted into
21 evidence.)

22 JUDGE WOODRUFF: And we'll come up with
23 questions from the Bench, beginning with Commissioner
24 Murray.

25 CROSS-EXAMINATION

1 BY COMMISSIONER MURRAY:

2 Q Good even, Mr. Svanda.

3 A Good evening.

4 Q I don't know about you, but when there are this
5 many parties opposing what it the utility is attempting to
6 do, but it seems like these issues are absolutely beaten
7 to death, and I'm going to try not to spend too long with
8 my questions.

9 I -- I just want to verify a couple of things.
10 In that your experience was questioned earlier, and I'd
11 like to ask you, how many years were you on the Michigan
12 Commission?

13 A Seven and a half years.

14 Q And part of that time, you served as Chairman,
15 did you not?

16 A I was not ever the Chairman of the Michigan
17 Commission.

18 Q You were President of the MARC (ph.) at some
19 point; is that correct?

20 A Yes.

21 Q And you were also President of NARUC?

22 A I was. I also served as Committee Chair of a
23 number of committees at NARUC.

24 Q Yes. Can you tell me, what is your concept of
25 the prudence and purchasing power?

1 A Prudence in purchasing or and purchasing power?

2 Q Well, prudence in the determination of how a
3 utility purchases power.

4 A Okay. Prudence -- prudence is also a -- a test
5 that incorporates a number of factors, very importantly,
6 judgmental factors. The -- the operating environment --
7 if the decision makes sense economically, if it's an
8 ethical decision, if it's a legal decision, all of those
9 kinds of consideration -- considerations get taken into
10 account in ultimately determining the bottom line of
11 prudence.

12 Q Okay. I'm going to go back to that in a minute.
13 But Mr. Micheel asked you a question earlier regarding
14 EEInc.'s -- whether it had any operating losses during the
15 term of the PSA. Do you recall --

16 A Yes.

17 Q -- he asked you something about that? Does the
18 fact that EEInc. did not experience any operating losses
19 during that time mean that the directors had no further
20 duty to improve the bottom line from the shareholders?

21 A Oh, not at all. I think -- and that's what I
22 said. It's a judgmental thing. And judgment occurs over
23 time, and constant improvement should be the monitor of --
24 of any Board of Directors for any organization, including
25 EEInc. over time.

1 Q Indeed, I would think a Board of Directors who
2 did nothing but prevent operating losses would not be
3 considered very successful. Would you --

4 A That's exactly -- not prudent and not, in fact,
5 being responsive to their fiduciary officer
6 responsibilities.

7 Q You were also asked some questions about
8 imputation versus trying to re-implement the contract. Do
9 you recall those questions?

10 A I do.

11 Q In your experience, have you ever seen a
12 Commission make a disallowance of -- in terms of a revenue
13 requirement based on a utility not having performed an act
14 that was not possible for it to perform?

15 A Not ever.

16 Q And if the Commission does impute to AmerenUE
17 the benefit of the PSA, which is no longer available to
18 AmerenUE, won't it, in effect, be holding the company to
19 an -- a standard of prudence that would require it to do
20 something it had no option to do?

21 A I -- I believe that you are exactly right with
22 that analysis. And to -- to do so in whatever method,
23 whether it's holding a figurative gun to the head and
24 saying, Do this, or if it's imputing the revenues away
25 from the company, the -- the effect is the same, and it's

1 as damaging either way.

2 COMMISSIONER MURRAY: Thank you. That's all I
3 have.

4 MR. SVANDA: Thank you.

5 JUDGE WOODRUFF: Commissioner Gaw?

6 COMMISSIONER GAW: I have no questions of this
7 witness.

8 JUDGE WOODRUFF: Thank you. Commissioner
9 Clayton?

10 COMMISSIONER CLAYTON: I don't have any
11 questions either.

12 COMMISSIONER CLAYTON: Commissioner Appling.

13 CROSS-EXAMINATION

14 BY COMMISSIONER APPLING:

15 Q Hi, sir.

16 A Good evening.

17 Q My question is not traditional. It's not out of
18 your testimony, so you can sit back in your seat. I'm
19 going to ask you to do one thing for me.

20 I'm Rainwater, the CEO of Ameren, and I'm
21 sitting on the stool with you tonight and asking you to
22 give me three things that I can use that would be helpful
23 to Ameren. What would you tell me?

24 While you're thinking about that, how much of
25 the testimony have you read? Have you read most of the

1 testimony?

2 A I have read most of the testimony, yes.

3 Q Okay. You see what I'm trying to get to? I
4 need --

5 A Definitely.

6 Q I need a little wisdom here, and I need some
7 understanding of what you see as some of the things that
8 trouble you in this company. Share with me your thoughts.

9 A The -- the first one would be to have a run of
10 luck with regard to weather and other natural occurrences,
11 and that's outside of the control of most.

12 I would say that, secondly, and I think this was
13 borne out with the -- the testimony that Mr. Rainwater
14 gave yesterday, was -- was to provide them the -- the
15 opportunity to take some action that helps to get them
16 back into their target of top quartile in terms of
17 customer service that -- that allows them to deliver to
18 customers the -- the level of service, the quality of
19 power, the other types of -- of services that customers
20 expect today.

21 And he was acknowledging that today's customer
22 is different, has different expectations than the
23 customers of yesterday, that going forward, they -- they
24 need to be able to deliver a level of -- or a level
25 quality of power that is another magnitude or so higher

1 than what was acceptable in the past, that they need to be
2 able to reach up into the 99.9 percent of reliability so
3 that the -- the quality of power runs computer equipment
4 for homes and businesses, allows homes and businesses in
5 their footprint to -- to be vibrant and -- and to thrive.

6 And -- and that leads to providing a level of
7 underlying support, ROE, the fuel adjustment factor and --
8 and some of those kinds of things that would allow that
9 company to continue to be a leader in service quality and
10 low rates and -- and service provided into the future.

11 Q Ameren has a perception problem right now with
12 -- for the public as well as their customers. What did
13 you have to offer that would help us mend that fence by?

14 A I think it is a perception problem. And in some
15 of my testimony, I've characterized what they are
16 witnessing today as being the result of a snapshot. And
17 in the snapshot is maybe a little bit more like a DVD or
18 something like that.

19 It runs over a period of time. They started a
20 year ago. They started less than a year ago with -- a
21 good image. The testimony that I provided in my direct
22 testimony was -- was my cumulative experience with how
23 they're perceived as a company, and that cumulative
24 experience goes to conversations with the five of you that
25 sit here today and -- and with people who have sat in your

1 chairs before, as we would on a stool, compare notes about
2 the companies that we work with in our home states.

3 I believe that Ameren was perceived to be a pretty
4 good actor in this whole utility space, that they had
5 delivered good service at low rates, and customers were
6 satisfied with what they were getting. And that -- that
7 has -- I'm sorry.

8 That did take a detour starting with the summer
9 storms and -- and the winter storms and I think the
10 momentum gathered around how they are perceived today.
11 And -- and I would certainly acknowledge -- and I think
12 the CEO, Mr. Rainwater, sat here yesterday and
13 acknowledged on a number of occasions in response to a
14 number of you that they have things to work on and things
15 to cure and -- and just need the tools in order to -- to
16 get on with that.

17 COMMISSIONER APPLING: Thank you for your --
18 thanks for your time, and good to see you again.

19 MR. SVANDA: Thank you. Likewise.

20 JUDGE WOODRUFF: Chairman Davis?

21 CROSS-EXAMINATION

22 BY CHAIRMAN DAVIS:

23 Q Good evening, Mr. Svanda.

24 A Good evening.

25 Q You're here to give testimony on the overall

1 policy as well as the EEInc. issue; is that correct?

2 A Yes.

3 Q Okay. Based on your experience as a
4 Commissioner and as an observer of Commission decisions,
5 can you tell me if you've ever seen or heard of a company
6 filing a rate case and then voluntarily agreeing to a rate
7 reduction?

8 A Volunteering to a rate reduction?

9 Q Voluntarily agreeing to a rate reduction.

10 A That is not the standard.

11 Q Okay. That's not the standard. Have you --
12 have you ever -- in your vast years of regulatory
13 experience, have you ever -- have you ever seen it happen?

14 A No.

15 Q Okay. Are you familiar with the earnings
16 complaint that Staff filed --

17 A I am.

18 Q -- against Ameren in 2001?

19 A I am.

20 Q And then they subsequently filed a rate case?

21 A Yes.

22 Q And then they -- they subsequently agreed to
23 reduce their rates; is that correct?

24 A In -- in that sequence, yes.

25 Q In that -- in that sequence?

1 A Sure. And I -- I take that sequence as similar
2 to many settlement patterns that -- that occur.

3 Q Uh-huh. Mr. Svanda, have you reviewed Ameren's
4 positions in this case?

5 A Yes.

6 Q Okay.

7 A I -- I can't say that I'm absolutely current.

8 Q Okay. You're not absolute current, but you've
9 got a rough idea?

10 A Yes.

11 Q Now, do you -- do you have a rough idea of what
12 the -- what the ballpark values are for each of those
13 positions?

14 A Relatively, yes.

15 Q Relatively, yes.

16 A Yes.

17 Q Do you believe that Ameren has taken an
18 aggressive position on any of those issues in this case?

19 And if so, where?

20 A Aggressive in -- aggressive as in too much? Too
21 little? I'm not sure -- aggressive --

22 Q Okay. Well, would you characterize any -- any
23 of the PSC Staff's or any of the State's or any of the
24 OPC's positions as aggressive?

25 A I -- I would consider them aggressive --

1 aggressive in a negative way, yes.

2 Q Okay. Well, has -- has Ameren taken any
3 positions in this case that you would consider to be
4 aggressive in a, quote, positive way, being the opposite
5 of what -- what you referred to as Staff being as in a
6 negative way?

7 A I -- I really don't believe so, taken in
8 balance. Again, I focused so much of my testimony on --
9 on trying to communicate the importance of balance between
10 the stakeholders and an electric utility and its footprint
11 and in balance with what -- what the company is
12 confronting, what the utility world looks like going
13 forward.

14 I -- I don't think their positions are out of
15 balance or overly aggressive in -- in the terms that we're
16 using here.

17 Q Okay. Have you had cause to -- to look at or to
18 review the -- the last two decisions of the Missouri
19 Commission for Electric Utilities, the last two rate case
20 decisions? Have you had any opportunity to look at those
21 at all?

22 A I have not.

23 Q You have not?

24 A No.

25 Q Have -- have you heard any discussion about

1 them?

2 A Not -- not enough to be comfortably discussing
3 them with you.

4 Q Okay. Okay. So have you -- have you looked at
5 any of the other utilities in this state to do any
6 benchmarking at all?

7 A Sure.

8 Q Okay.

9 A Benchmarking with regard to rates and -- and
10 ROEs and those kind of things, yes.

11 Q Okay. So if you were benchmarking concerning
12 ROEs, how could -- how could you -- how can you benchmark
13 without having looked at the last two decisions in this
14 case that this Commission handed down only in December?

15 A I could do that because, as we've established, I
16 pay a lot of attention to the news that comes out of Wall
17 Street and the Trade Press and things like that. So to
18 the extent that there are some headliner kind of issues
19 associated, I would pick them up.

20 Q Okay. Let me -- so you have looked at the other
21 utilities in this state, right?

22 A To that extent.

23 Q To -- to that extent.

24 A Yes. What I haven't done is read the orders and
25 things like that. And I don't --

1 Q You haven't read --

2 A And I don't have the level of knowledge that you

3 have.

4 Q Right.

5 A So that's why I'm reluctant to --

6 Q Okay. All right. Well, based on what you do

7 know, do you think Ameren has more or less risk than

8 either Empire District Electric or Kansas City Power &

9 Light?

10 A I think in --

11 Q AmerenUE.

12 A Sure.

13 Q AmerenUE, not anybody else.

14 A The footprint -- I understand. I think they

15 have equal risk with regard to some of those global

16 pressures that I talk about on -- on prices. I think they

17 have equal risks when it comes to competing for capital

18 and those kinds of things.

19 There are other risk factors where the unique

20 characteristics of those other utilities set them -- set

21 them apart.

22 Q Okay.

23 A There are risks associated with Ameren's

24 footprint that are fairly unique to Ameren as well, those

25 having to do with serving a large metropolitan area. The

1 -- the kind of -- the types of services that exist in a
2 metropolitan area versus in a non-metropolitan area can
3 often act to increase costs in ways separate from other
4 areas.

5 Q Okay. When you say Kansas City Power & Light,
6 doesn't that imply that they're also serving a major
7 metropolitan area?

8 A They're serving a major metropolitan area, but
9 they're not serving a St. Louis metropolitan area type of
10 service territory. St. -- St. Louis is one of the -- one
11 of the larger SMSAs within the country. And -- and so
12 looking at them, they get categorized, characterized with,
13 you know, some -- some of the larger municipalities.

14 Q Okay. All right. Do you think Ameren's done a
15 better job serving their customers than either of those
16 utilities?

17 A Not in a spot to judge that. I -- going back to
18 my testimony, I do know the -- the awards that Ameren has
19 received for its level of service and things like that. I
20 -- I truthfully don't know if the others have received
21 those kinds of awards or not.

22 Q Mr. Svanda, how long have you been on the Ameren
23 -- on the Ameren payroll?

24 A I -- I've been a consultant to them since last
25 June.

1 Q Okay. And in the last six months or at any
2 time, did you ever stop and say, Hey, boys, it may not be
3 a real good idea to be handing out a bunch of bonuses in
4 the middle of a rate case? That's a yes or no question.

5 A No.

6 Q No. Okay. Did the thought ever cross your
7 mind?

8 A Yes or no question again?

9 Q Yes.

10 A No.

11 Q No. When you were on the -- on the Michigan
12 Public Service Commission, did you -- did you ever have
13 instances where executive compensation inflamed the public
14 or the Legislature?

15 A Almost at every discussion.

16 Q Almost at every discussion?

17 A That's right.

18 Q Okay. But that thought of saying that to -- to
19 the folks at Ameren never crossed your mind? It's okay if
20 it didn't.

21 A It really didn't in that it wasn't a discussion
22 item that -- that we were having, you know, when -- when
23 that --

24 Q Okay. So you're only answering the questions
25 that were asked?

1 A When that news happened, it was already an
2 accomplishment. I -- certainly, if I had been asked, I
3 would have advised probably very differently.

4 Q All right. Harkening back to your experience on
5 the -- on the Michigan Public Service Commission, did you
6 ever have an encounter with the utility where you just
7 weren't sure whether or not they were being forthright
8 with you concerning the numbers or the information they
9 were providing you?

10 A In the regulatory setting, I think that's the
11 attitude that Commissioners always assume. So it -- it
12 was a natural instinct to want to understand the -- the
13 information that was being provided. And -- and that's
14 what this whole hearing process is about.

15 Q Okay. So when you were -- when you were in the
16 process -- when you were in the hearing process and you
17 still weren't sure, what did you do?

18 A It would depend on the issue. And it would
19 depend on the circumstances as they presented themselves,
20 the -- the exercise of judgment as -- as the five of you
21 are expected to be doing in this instance or any other
22 rate case considerations. There -- there wasn't a -- a
23 pat answer, textbook kind of solution to go to and say,
24 Well, in this instance, do this. It really was a -- a
25 looking in the eye sort of judgment call --

1 Q Uh-huh.

2 A -- whether or not the circumstances that they're
3 describing going forward are believable or not, believable
4 in the context of real world, those kind of judgment
5 influences.

6 Q Did you ever have a situation where you felt
7 like a utility had one set of internal numbers and another
8 set for the Commission?

9 A In certain instances, yes.

10 Q And what did you do about that?

11 A Dig as much as you can dig.

12 Q Did you ever take any punitive action towards
13 the utility?

14 A Hopefully not punitive. And -- and, again,
15 based on that judgment call that's -- that's so necessary,
16 you try at the end of the day to -- to get that squeezed
17 out of the equation in terms of the decision that -- that
18 I was making at that time.

19 Q I believe early on, you and Mr. Micheel might
20 have had -- had some discussions with rating agencies.
21 You talked to the rating agencies rather frequently?

22 A That -- that's a reasonable -- and rating
23 agencies and Wall Street folks generally speaking.

24 Q Uh-huh. I --

25 A I am -- I am drawing some distinctions there in

1 terms of the -- Wall Street isn't just -- just the
2 monolithic --

3 Q Right.

4 A -- entity.

5 Q Is the -- is the fair impression to have that
6 the rating agencies and the Wall Street people seem to
7 think that, just in general, when a -- when a company
8 files a rate increase that they're entitled to a -- you
9 know, a certain percentage of that rate increase as -- you
10 know, just based on their experience or -- or whatever?

11 A Any -- my impression of -- specifically on the
12 rating agencies, do you want to focus on -- on the rating
13 agencies and their function?

14 Q Uh-huh.

15 A My -- my perception of them is -- is that they
16 are a fairly risk averse bunch, that -- that they are --
17 are always making sure that the financial imperatives are
18 -- are dealt with foremost.

19 And so they, in -- in making their ratings, pay
20 careful attention. It's the reason I give in my testimony
21 to the whole issue of measurements of -- of risk and --
22 and perception and how those become factors, then, and --
23 and how investors view their relative possibilities with
24 the deployment of their capital.

25 And so the -- the rating agencies are careful.

1 But -- but they are also a very good feedback mechanism,
2 kind of a looking glass into the bigger Wall Street
3 picture because investment communities from individual
4 investors right through the institutional folks pay
5 considerable attention to what those ratings are. And to
6 this day.

7 Q Right. Right. Right.

8 A And they can very quickly do damage --

9 Q All right. Thank -- thank you -- oh, thank you.
10 Okay. Let's -- let's move on.

11 A Okay.

12 Q Do you think the rating agencies actually look
13 at the filings that -- that companies make to -- to make
14 an actual determination as to -- as to whether or not what
15 they're asking for is -- is somehow valid or invalid?

16 A I do. They run extensive models on -- on every
17 company that they cover.

18 Q Well, I'm not talking about -- I'm not talking
19 about modeling. I'm asking do they -- do they ever look
20 at this stuff and say, Well, you know, that's reasonable
21 or that's not, not -- not -- we're not talking metrics at
22 this point.

23 A I -- I don't think they would do it in the same
24 way that -- that a Commissioner exercising judgement would
25 do it. And -- and it goes back again to -- to their --

1 Q Right.

2 A -- their particular focus in the world.

3 Q And do you look at rating agency reports in --
4 in the normal course of your -- your work?

5 A I do.

6 Q Okay. And in your experience looking at these
7 rating agency reports, specifically, the ones that relate
8 to Commission decisions, have you ever seen a rating
9 agency report that says, Gee, the company really fouled
10 this up in front of the Commission, or is it always just
11 the fact that the Commission made a bad decision,
12 therefore, it's a bad regulatory environment?

13 A I -- I have -- I have seen rating agencies get
14 on the case of a company, yes. And they may not put it in
15 quite the terms that -- that you just used, but in their
16 own way, they will -- they will signal to the investment
17 community if they think there is something not quite
18 right.

19 Q Is the -- is the fair impression of the rating
20 agencies that their solution for most problems, including
21 bad management, is to throw more money at it? That does
22 seem to be a frequently recurring theme in many of their
23 reports, doesn't it?

24 A That's -- I wouldn't disagree with that
25 characterization. They -- again, we'll use qualifying

1 language in there most of all concerned with the
2 instruments that -- that matter to Wall Street.

3 But they will not -- you know, for example, say,
4 throw more money at a specific maintenance item in a
5 utilities budget or something of that nature.

6 CHAIRMAN DAVIS: No further questions at this
7 time, Judge.

8 JUDGE WOODRUFF: Mr. -- Commissioner Clayton?

9 COMMISSIONER CLAYTON: Judge, I just had a few
10 clarifying questions based on some of the other questions
11 that were up here, if it would be all right.

12 CROSS-EXAMINATION

13 BY COMMISSIONER CLAYTON:

14 Q Mr. Svanda, I think I heard you say that you
15 thought Ameren's public relations problems or some of the
16 difficulties they've been experiencing recently was a
17 perception problem of the public and the customers. Did I
18 accurately hear that?

19 A A -- a perception in developing the momentum
20 that has Ameren in the spot that they're in today with
21 regard to how customers view them, yes.

22 Q Developing the momentum?

23 A Yes.

24 Q Could you explain that?

25 A Absolutely. I think -- I think had the storms

1 not occurred that the -- what we see by way of the
2 public's perception of Ameren today would not be the issue
3 that it is today. I think that the storms were the real
4 catalyst for that and that momentum built on itself in
5 terms of people saying, well, I wasn't happy with the
6 storm response, and that reminds me, maybe I shouldn't be
7 happy about this either.

8 And -- and so I think there is a magnifying
9 effect that -- that goes around, especially -- I -- it's
10 another piece where I didn't do individual research. And
11 I think you guys are probably even more sensitive it than
12 me in terms of how many headlines in this area over the
13 last eight or nine months have dealt with weather related
14 issues and how those weather patterns have -- have caused
15 power difficulties and all of that.

16 Q So -- so you're saying --

17 A So it's out there in people's minds.

18 Q So you're suggesting that -- that people's --
19 that the customer dissatisfaction is based on their
20 perceptions? It's not based on their experiences or the
21 treatment that they've received?

22 A No. No. I -- I didn't mean to convey that in
23 terms of perception. It -- it wasn't -- I wasn't trying
24 to convey that it's in people's heads. There are real
25 issues that -- and I believe Mr. Rainwater confirmed this

1 yesterday -- real issues that the company needs to be
2 dealing with and needs to develop ways for dealing with
3 that probably have existed within the company in the past.

4 Q So -- so you believe some degree of
5 dissatisfaction is warranted by customers because of
6 things that have occurred in the Ameren service territory?

7 A Oh, absolutely. Absolutely. And including the
8 issues of power quality and things that I was talking
9 about. That's -- that's all real stuff.

10 Q Okay.

11 A It's -- it's the way the world has evolved.

12 Q So you're not blaming it on the newspapers like
13 we heard the other night?

14 A Oh, no. No.

15 Q Okay. When you -- when you were doing your
16 preparation for this case, did you interview any customers
17 of Ameren?

18 A No, I did not.

19 Q Did you -- did you meet with the Office of
20 Public Counsel in learning of any quality of service
21 problems that may be experienced out in the service
22 territory?

23 A I did not.

24 Q Okay. Did you meet with any legislators to hear
25 of their concerns?

1 A I did not.

2 Q How about local government officials?

3 A No.

4 Q Okay. When did you leave the Michigan
5 Commission?

6 A In August of 2003.

7 Q August of 2003. It was right after I was
8 appointed. It was 2003. I remember that. Do you know
9 what the -- at the time that you left what the average ROE
10 for an electric utility was in the state of Michigan?

11 A I do not remember.

12 Q Could you venture a guess after being there
13 seven years? Was it all over the -- was it all over the
14 field? I mean, were there under ten and over eleven and
15 everything? Or would you say everything was between ten
16 and eleven or not? What -- what do you think?

17 A I -- I would guess the points on the graph would
18 hover around the ten point.

19 Q Okay. Between ten and eleven, something like
20 that?

21 A Uh-huh.

22 Q Did you ever have an ROE in Michigan lower than
23 10 percent on an electric utility?

24 A Quite possibly.

25 Q Did you ever vote for ROEs less than 10 percent

1 on an electric utility?

2 A I didn't research --

3 Q Don't remember?

4 A Huh-uh.

5 Q Okay. Okay. Do you recall the highest ROE that

6 you ever voted for?

7 A I don't.

8 Q Never -- you don't think back and go, Whoa,

9 don't believe I did that?

10 A No. Not yet.

11 Q Didn't wake you up at night?

12 A No.

13 Q Wake up in a cold sweat, worry about things like

14 that?

15 A No.

16 Q Okay. Do you know where Mich -- the state of

17 Michigan ranks in terms of retail rates in terms of it --

18 the state for the entire country?

19 A I -- I don't know the exact ranking, but it

20 would not be favorable.

21 Q Meaning it would be --

22 A Rates are high in Michigan.

23 Q Rates are high?

24 A Yes.

25 Q Okay. Maybe at the top quartile or top third,

1 something like that?

2 A Sure. Easily.

3 Q Okay. Is -- is Michigan a riskier state to be
4 operating in as an electric utility?

5 A Just directly to -- to Missouri? Is that --

6 Q Yeah. In comparison to Missouri. I'm sorry.

7 A Two big states to run a comparison on like that
8 quickly. But I would say not because, for example, as you
9 know, Michigan was one of the states that went through a
10 restructuring. And as such, Michigan was also one of
11 those states that allowed for the securitization of
12 utility assets as part of the formula to -- to get there.

13 And so big parts of -- of Michigan utilities
14 assets have been securitized and -- and, as you know,
15 reduces risk greatly in terms of balance sheets for the
16 companies. And so in -- in that regard, Michigan's
17 utilities have a pretty safe operating environment.

18 Q Okay. So on -- all things being equal, do you
19 believe a state that is restructured versus a state that
20 is a traditionally regulated, vertically integrated
21 monopoly type of state like Missouri, all other things
22 being equal, which state would be -- would carry more
23 risk?

24 A It's --

25 JUDGE WOODRUFF: Before -- before you answer the

1 -- the court reporter needs to change her paper.

2 MR. SVANDA: Okay.

3 (Break in proceedings.)

4 JUDGE WOODRUFF: All right. You can go ahead
5 and give your answer now.

6 A It did -- I'm having trouble getting my head
7 around all things being equal because there are -- there
8 are so many differences.

9 Q (By Commissioner Clayton) That's what I said,
10 all things being equal. I'm just talking about, in
11 general, your opinion as former President of NARUC,
12 someone who's traveled around the country, has spoken with
13 probably hundreds of regulators. You've worked with many,
14 many different utilities that operate around the country.

15 My question is, basically, in general, is it
16 more risky to operate in a state that is restructured, or
17 is it more risky to operate in a state that is a
18 vertically integrated monopoly state?

19 A I just -- I just have trouble boiling it down to
20 all things equal. There are so many different levels and
21 possibilities of risk. What -- you know, there's the
22 economic risk factor. There's -- there's the political
23 risk factor. The approaches that got taken were -- were,
24 for example, in Michigan's instance, rates were reduced
25 and then frozen.

1 And that becomes just a -- a huge factor that
2 isn't a restructuring issue so much as it is a legislative
3 issue. And -- and so I -- I can't get to all things being
4 equal between a restructured and non-restructured, I
5 guess.

6 Q You can't comprehend the hypothetical is what
7 you're saying?

8 A Yes.

9 Q Okay. Refresh my memory. Did you say Michigan
10 was less risky than the state of Missouri?

11 A I -- I did. And what led me to that for today
12 is the level of securitization of assets that have
13 occurred there. There were a couple of billion dollars of
14 assets securitized. And as you know, the securitization
15 process represents ultimately a mortgage on ratepayers for
16 those assets. And -- and so that just removes a huge
17 amount of -- of potential risk in -- in consideration
18 there.

19 Q Okay. I think in your testimony -- I think I
20 read and I think I heard today, you suggested that -- that
21 Missouri is operating on a more constructive regulatory
22 policy in recent years. Did I read that accurately?

23 A You -- yeah. And that's pretty much my words.
24 And it's basically going back, again, to -- to some of the
25 Chairman's questions on other people's perceptions of --

1 of kind of the improving trend that -- that they've all
2 witnessed over the years.

3 Q So, I mean, saying that Missouri's operating in
4 a constructive regulatory policy now suggests that
5 Missouri was not in a constructive regulatory policy
6 before. Can I make that assumption, take that inference?

7 A You may. And then we just need to designate one
8 before we get started.

9 Q Okay. Well, I think you said now. I'm sure
10 it's just in recent years. But I was going to ask when --
11 when -- if you know of the time period when Missouri was
12 not operating with a constructive regulatory policy?

13 A And -- and that goes back to some of the
14 references coming out of -- of Wall Street and the
15 concerns that were getting expressed by the raters and
16 those folks -- raters and those folks five or six years
17 ago.

18 Q So -- so that policy that you're referring to is
19 not based on research on prior decisions of the
20 Commission? It was based on what the rating agencies told
21 you?

22 A Correct.

23 Q Okay. And -- and also based on what Wall Street
24 told you? Investors?

25 A Correct.

1 Q Okay.

2 A Things, for example, as -- as legislation was
3 considered and then ultimately enacted with regard to fuel
4 adjustment clause that -- that that scored big points in
5 terms of the perception of the state in terms of how many
6 other states have that provision and how it's worked well
7 for them and -- and -- and now the opportunity presented
8 itself in this state as well.

9 Q Well, if we go back into that period where --
10 where Missouri was not -- did not implement or did not
11 have a constructive regulatory policy, did you go back and
12 review Ameren's books to determine whether or not --
13 whether or not it was injured financially because of that
14 regulatory policy?

15 A I -- I did not specifically go back and review
16 their books, no. I --

17 Q Okay. Are you aware of what AmerenUE's return
18 on equity was, say, for the ten years in the
19 non-constructive period, what there are or would have
20 been?

21 A No.

22 Q You didn't do that?

23 A No.

24 Q Did you go back and review any Missouri
25 utilities during that non-constructive period to determine

1 whether they had been injured financially?

2 A I -- I didn't review their books, if that's what
3 you're asking. I -- I know certain -- certainly the
4 credit rating agencies took that into account in what they
5 were saying and -- and the ratings that got applied.

6 Q Okay.

7 A And whether or not, you know, credit watches
8 happened and those kinds of things.

9 Q Did you read any of the reports and orders
10 issued by the Commission during this non-constructive
11 period for any other utilities to evaluate regulatory
12 policy?

13 A Any other Missouri utilities?

14 Q Yes.

15 A I didn't read the orders, but read the
16 references to those -- to other utilities --

17 Q Okay.

18 A -- and what they're experiencing.

19 Q So, basically, can -- can we summarize that the
20 constructive period was based on enactment of legislation
21 for fuel adjustment clauses?

22 A No. I was -- I was just giving that to you as
23 an example.

24 Q Okay.

25 A I -- the -- I think there was a financial

1 community recognition, again, going back probably five or
2 six years that things had moved around.

3 Q Did -- did any Missouri utilities credit rating
4 change as a result of the change in constructive policy?

5 A Yes.

6 Q They did?

7 A Yeah.

8 Q Which utility was that?

9 A The -- the changes were taken into account, and
10 I can't -- you know, I can't say Fitch's that there was a
11 new environment and so they moved the ratings from -- from
12 B to A or something like that. What they did do is take
13 notice as they were either maintaining or considering what
14 ratings would be applied.

15 Q But you don't have any examples of anyone going
16 from BBB to BBB plus or BAA to BBB or something --

17 A No. Not directly.

18 Q -- or something of that nature?

19 A Not directly, no.

20 Q And you don't have any knowledge of any credit
21 rating change of any Missouri utility after these changes
22 in regulatory policy?

23 A Well, credit -- credit rating changes were
24 happening over that time period, yes.

25 Q But you're not aware of any specific changes on

1 Missouri utilities?

2 A Not in a direct relationship way.

3 Q Okay. Last question, do you -- or last series
4 of questions. Do you know -- does the state of Michigan
5 have administrative rules? Does it have rules and
6 regulations?

7 A Sure.

8 Q Okay. Does it have rules to enforce or set
9 reliability standards?

10 A Yes.

11 Q Like SAIDI, SAIFI, CAIDI, CAIFI and -- the court
12 reporter is probably going to need a spelling of those.
13 But those -- those reporting items, does Michigan have
14 those in the books?

15 A There are -- there are -- yes. There are
16 measures of reliability, yes.

17 Q On those reliability measurements, did -- did
18 Michigan implement those while -- on your watch while you
19 were on the Commission? Or did they predate you, I guess
20 is my question.

21 A Probably some of both. I -- and I say that
22 because we went through a -- with Act 141 and 142
23 significant statutory changes in the state. And I believe
24 that some rule-makings with regard to reliability were
25 required, but they were probably updates to -- to rules

1 that had existed previously.

2 Q Okay. Do you believe reliability rules -- and I
3 ask this as a former Commissioner, one who sat in the
4 chair, do you believe having rules on reliability and
5 setting standards for utility reliability performance is
6 important?

7 A Of -- of course.

8 Q Okay. Does it make a difference on reliability
9 for utility performance when have you those rules on the
10 books?

11 A It -- it does. I -- and -- and it helps this
12 Commission or any Commission really to -- to do its work
13 in terms of evaluating how their companies are doing.

14 Q Do you believe Missouri implementing reliability
15 rules would improve Ameren's reliability performance
16 assuming -- or I'll tell you we don't have any reliability
17 rules rights now.

18 A I think it would be good for any state. Sure.

19 Q Good answer. Does Michigan have any rules on
20 infrastructure inspection or replacement? Do you
21 remember? How quickly you forget.

22 A That's the truth. For example, requiring on a
23 schedule structure?

24 Q A cycle of inspections of poles, transformers,
25 wires, sub stations, mandatory change-out provisions,

1 anything like that?

2 A No. I don't think so.

3 Q You don't think so?

4 A No.

5 Q Okay. How about vegetation management or tree
6 trimming standards? Does Michigan have any standards in
7 that regard?

8 A Probably not prescriptive. It is -- it is
9 probably more a -- an issue that comes up in a rate-making
10 setting or something like that. But -- but not a rule
11 on --

12 Q So there are not specific standards that are set
13 out for each utility under which it will operate?

14 A I don't -- I don't know -- I truthfully don't
15 know. And some of it, for me, is I haven't paid attention
16 to that level of detail, for example, since the August of
17 '03 black-out and the changes that have gone on with
18 reliability standards on a larger scale than on a state by
19 state basis.

20 And so I truthfully don't know if Michigan has a
21 separate response to that or if there's just a reliance on
22 MARC standards and --

23 Q Were you on the Commission when the black-out
24 hit? You just said that you left August of '03, and you
25 said the black-out was August of '03. Were you still on

1 the Commission?

2 A Not on my watch.

3 Q Not on your watch. You were gone by then; is
4 that right? Lucky you.

5 A I was gone by, I don't know, a week or ten days,
6 something like that.

7 Q Look at that. Did you call the Governor and
8 tell her, Look, This is what happens when I'm -- when I
9 leave?

10 A I told the new Commissioner in Michigan. That's
11 for sure.

12 Q I bet you did.

13 A We -- we laughed about that.

14 Q Did -- after that black-out, did the Michigan
15 Commission implement any new rules on reliability or
16 system maintenance or anything following that? Do you
17 know?

18 A I don't know.

19 Q You don't know.

20 COMMISSIONER CLAYTON: Okay. Okay. I don't
21 think I have any other questions. Thank you,
22 Mr. Svanda.

23 MR. SVANDA: Thank you.

24 COMMISSIONER GAW: I'm sorry.

25 JUDGE WOODRUFF: Commissioner Gaw?

1 COMMISSIONER GAW: I wasn't going to do this,
2 but now I feel obligated.

3 MR. SVANDA: Not on my account.

4 CROSS-EXAMINATION

5 BY COMMISSIONER GAW:

6 Q Mr. Svanda, tell me, do you know what the rating
7 is for Ameren today, credit rating?

8 A I don't have a committed memory, no.

9 Q Do you know whether or not it's changed in the
10 last two weeks?

11 A I believe that it has.

12 Q And in this more positive regulatory framework,
13 has it changed up or down?

14 A In the last couple of weeks, I think it has gone
15 down.

16 Q Yes. Okay. And do you know what the -- do you
17 know what the regulated -- the credit rating was for
18 Ameren, say, two years ago?

19 A I -- I have not committed --

20 Q It's okay if you don't know.

21 A -- any of those ratings to memory.

22 Q I'm just asking you --

23 A No, no.

24 Q -- three years ago would you know?

25 A No, no.

1 Q Four years ago?

2 A No.

3 Q Five?

4 A No.

5 Q If I keep going back, will the answer be the
6 same?

7 A It will be.

8 Q All right. All right. And do you know what the
9 ratings are of the other regulated electric utilities in
10 the state today?

11 A No.

12 Q And if I were to ask you questions going back a
13 year to ten years, would you be able to tell me what their
14 ratings were?

15 A My response would be the same, that I haven't
16 committed any of those to -- to memory.

17 Q That's -- that's okay. Commissioner Clayton
18 asked you about the Michigan rules. I was going to ask
19 you one particular piece of that, if you recall whether or
20 not Michigan has, as a part of its -- of its rules,
21 standards in regard -- in regard to restoration of service
22 during major outages?

23 A Yes.

24 Q And are there requirements for -- for
25 restoration of service within particular periods of time

1 during major outages?

2 A There are.

3 Q And if those requirements are not met, are there
4 repercussions to the company as a result of not meeting
5 those standards? Do you know?

6 A When I'm -- when I was on the Commission --
7 well, repercussions. What --

8 Q If -- were there -- were there any things in the
9 rules that suggested credits or other things to consumers'
10 bills or other things of that sort?

11 A That is -- that's what I thought you were asking
12 and that's why I asked for the clarification. When I was
13 on the Commission, that did not exist. I believe there
14 has been discussion, but I'm not certain if -- if that
15 situation has changed in the three and a half years that
16 I've been gone or not. There's --

17 Q There -- go ahead.

18 A There's been discussion of customer credit, for
19 example if a -- a certain number of hours elapse and those
20 kinds of remedies, but I -- I don't -- I don't honestly
21 know if it's actually happened.

22 Q But you believe there are some prescriptions
23 already in the rules in regard to restoration of service
24 within particular periods of time?

25 A Yes, yes.

1 Q And those were in existence when you were on the
2 Commission?

3 A Yes, they were.

4 Q Okay. Okay. I'm not going to go very far with
5 this, but I just want to ask you, currently, I believe it
6 was pointed out that you are not -- that you are
7 consulting with MISO?

8 A That's correct.

9 Q And are you providing any testimony in this case
10 regarding Ameren and MISO as an -- as a group of issues,
11 Ameren and its relationship with MISO or its performance
12 with MISO since MISO's Day 2 market began?

13 A None whatsoever. That -- that was a specific
14 carve-out.

15 Q And why was that?

16 A An act of prudence on my part to -- to stay
17 separate in my work.

18 Q Was it an effort for you to protect your
19 responsibility to two clients who might potentially have
20 conflicting interest -- issues?

21 A Well, in -- in that instance, I felt a need, in
22 fact, to go to MISO and -- and ask virtually if -- if I
23 would be conflicted out of performing in this role.

24 Q Yes.

25 A And -- and so --

1 Q And so the -- the answer was we don't have a
2 problem -- just paraphrasing, We don't have a problem or
3 you suggested to them, I will not get into testimony that
4 relates to MISO and its performance and how that impacts
5 Ameren? I'm paraphrasing. You use your own words.

6 A Right. No. You -- you basically have your
7 finger on it.

8 Q Okay.

9 A That -- that was basically the discussion that I
10 -- I have the prospect of doing some consulting work for
11 Ameren, and, Mr. MISO, Mrs. MISO, do you mind -- is that a
12 conflict as long as it's agreed right up front that I -- I
13 will not address those issues whatsoever?

14 Q And I'm not going to push you on that issue,
15 knowing that to be the case. But what my question is --
16 is whether or not you thought that was the prudent thing
17 to do. I think you've already answered that.

18 A Yes.

19 COMMISSIONER GAW: That's all I have. Thank
20 you.

21 JUDGE WOODRUFF: All right. We'll take a break
22 before we come back for recross. We'll come back at 8:15.

23 (Break in proceedings.)

24 JUDGE WOODRUFF: All right. Well, let's come to
25 order again. All right. Welcome back from break. And we

1 -- before break, we finished with the questions from the
2 Bench. I'll ask does anyone wish to recross based on
3 those questions? Mr. Mills, it looks like you're the man
4 up.

5 MR. MILLS: Okay.

6 RECROSS EXAMINATION

7 BY MR. MILLS:

8 Q And I -- I really just have a couple of
9 questions. I think in response to a -- a request from
10 Commissioner Davis you said that you can think of cases in
11 which the rating agencies blamed the utility rather than
12 the -- than a Commission for messing up a rate case; is
13 that correct?

14 A Not messing up a rate case, necessarily. But I
15 -- I think rating agencies, if they see a bad operation in
16 a utility, will call that out.

17 Q Okay. So when you answered his question, you
18 weren't saying that as a result of an outcome of a rate
19 case that you have ever seen a rating agency blame the
20 utility rather than the Commission?

21 A No. I was saying that if a utility is messed up
22 in its operations or if its management is, you know,
23 acting in erratic ways or whatever, they will -- they will
24 point that out as part of their evaluation of the -- of
25 the company.

1 Q Okay. And I think in response, it may have been
2 Commissioner Clayton, you talked about the -- the -- the
3 view on Wall Street of the Missouri Commission saw an
4 improvement five to six years ago; is that correct?

5 A Roughly that time frame.

6 Q And what happened five to six years ago that
7 spurred that? Do you know?

8 A I don't know.

9 Q Well, let me give you a couple of examples.
10 Commissioner Gaw was appointed. Do you think that was it?

11 A That would -- that would make a huge difference.
12 Yes.

13 Q Okay. The Staff filed a -- a significant
14 over-earnings complaint against AmerenUE. Do you think
15 that was it?

16 A Maybe so.

17 Q You really don't know?

18 A I -- I don't know -- I don't.

19 Q Suddenly people were saying, Wow, that Missouri,
20 that's a great place for a utility to do business?

21 A I don't know.

22 Q Okay. But you're sure that it happened five to
23 six years ago?

24 A That's a relative time frame that would stick in
25 my head, yes.

1 MR. MILLS: Okay. Thank you.

2 JUDGE WOODRUFF: All right. Anything from
3 Staff? Redirect?

4 MR. CYNKAR: No, your Honor.

5 JUDGE WOODRUFF: All right. Then you can step
6 down.

7 MR. SVANDA: Thank you.

8 MR. CYNKAR: Since Mr. Svanda will be here
9 later, I won't ask his --

10 JUDGE WOODRUFF: Right.

11 MR. CYNKAR: But I will make sure I don't lose
12 them.

13 JUDGE WOODRUFF: Okay. And I believe the next
14 witness then is Mr. Naslund. All right. Raise your right
15 hand.

16 NASLUND,
17 being first duly sworn to testify the truth, the whole
18 truth, and nothing but the truth, testified as follows:

19 MR. CYNKAR: Your Honor, we tender the witness
20 for cross-examination.

21 JUDGE WOODRUFF: Actually, I assume we'll
22 probably do this the same way we did with Mr. Rainwater.
23 Is that acceptable?

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

1 JUDGE WOODRUFF: Okay. Which means that Staff
2 would actually be asking direct.

3 MR. CYNKAR: Yes, your Honor.

4 JUDGE WOODRUFF: Okay. And we will stop for the
5 night before nine, so I don't expect you'll get to Finch
6 tonight. But we can hope.

7 COMMISSIONER MURRAY: Hope Mr. Dottheim can
8 speak very quickly.

9 DIRECT EXAMINATION

10 BY MR. DOTTHEIM:

11 Q Good evening, Mr. Naslund.

12 A Good evening.

13 Q Okay. And we've established that you have
14 direct testimony. You have testimony filed in this case,
15 do you not?

16 A That -- that is correct. Associated with
17 Callaway nuclear cost.

18 Q Yes. And that testimony sets out your
19 educational background and employment experience, does it
20 not?

21 A Yes, it does.

22 Q Okay. Mr. Naslund, you presently serve on the
23 EEInc. Board of Directors, do you not?

24 A Yes, I do.

25 Q And when were you first appointed to the EEInc.

1 Board of Directors?

2 A In the last half of 1999.

3 Q And how were you appointed to the EEInc. Board
4 of Directors?

5 A I was elected by that Board to be a Director.

6 Q How were you advised that you were being named
7 or you're a -- you're -- you're being elected or your name
8 was in -- being offered for election to the EEInc. Board
9 of Directors?

10 A Mr. Chuck Mueller, who was a member of the Board
11 at that time notified me that I was going to be a
12 candidate for the election. And then after the Board
13 meeting, that I was elected a Board director. Then he let
14 me know that I was a member of that Board.

15 Q And could you identify who Chuck Mueller was at
16 that time? And could you spell his last name, please?

17 A Mr. Mueller was the President and CEO of Ameren.

18 Q And it is his last name spelled M-u-e-l-l-e-r

19 A That is correct.

20 Q And did he indicate to you that you were to be
21 the AmerenUE or Union Electric company representative on
22 the EEInc. Board of Directors?

23 A After my election by the Board, I then became a
24 Director of -- of the EEI Board of Directors.

25 Q Excuse me. I -- I'm sorry. I don't know if you

1 answered my question. Was it indicated that -- that you
2 were the -- the AmerenUE or Union Electric company
3 representative?

4 A Well, I'm not -- I'm not sure what you mean by
5 the term representative.

6 Q Okay.

7 A I -- I am a AmerenUE employee. And as such, I
8 -- I came from that company. But I also then became a
9 Board member and, you know, have some responsibilities for
10 EEI as a member of that Board.

11 Q Do each of the shareholders of EEInc. have
12 representatives on the Board of Directors?

13 A Each -- each of those shareholders have an
14 allocation of number of individuals that can be elected to
15 the Board.

16 Q And are you one of those allocations?

17 A I -- I am one of AmerenUE's allocations to the
18 Board.

19 Q Okay. And could you identify, are there other
20 AmerenUE allocations to the Board?

21 A Our other AmerenUE individual that was elected
22 to the Board, you know, to serve as a director is Mr. Dan
23 Cole.

24 Q David Whiteley is not one of the other AmerenUE
25 allocations to the EEInc. Board of Directors?

1 A No, he is not.

2 Q Okay. Does the EEInc. Board of Directors have a
3 General Counsel?

4 A Yes. Yes, they do.

5 Q Okay. Can you identify who that individual is
6 or who that firm might be?

7 A We -- we actually use several firms. For
8 general litigation support, we use Feirich, Mager, Green &
9 Ryan.

10 Q Could you -- could you spell the names, please,
11 if you would?

12 A Feirich, F-e-i-r-i-c-h, Mager, M-a-g-e-r, Green,
13 G-r-e-e-n, and Ryan, R-y-a-n. And they are located in
14 Carbondale, Illinois, and they basically take care of the
15 general legal support for -- for our plant.

16 We also have four other firms we engage in
17 specialty areas, Thelen, Ried, Brown, Raysman and Steiner,
18 which is a Washington D.C. based firm that handles FERC
19 matters. Do you want me to spell those?

20 Q Yes. Would you, please, for the court reporter?

21 A Thelen, T-h-e-l-e-n, Reid, R-e-i-d, Brown,
22 B-r-o-w-n, Raysman, R-a-y-s-m-a-n, Steiner, S-t-e-i-n-e-r.
23 We also use a firm in Kansas City for a labor relations,
24 Spencer, S-p-e-n-c-e-r, Fane, F-a-n-e, Britt, B-r-i-t-t,
25 and Browne, B-r-o-w-n-e.

1 For employee benefits, we use a firm named Utz,
2 U-t-z, Miller, M-i-l-l-e-r, and Kuhn, K-u-h-n located in
3 Overland Park, Kansas.

4 And in addition, we have a second firm we use
5 for FERC matters located in Washington D.C., Wright and
6 Talisman. Wright, W-r-i-g-h-t, Talisman, T-a-l-i-s-m-a-n.
7 And pard -- pardon my voice, but I'm fighting a cold and
8 -- and late hours, I've just about lost my voice. I'm
9 sorry.

10 Q Do any of those firms ever provide legal advice
11 to the Board on matters pending before the Board in areas
12 other than what you've just identified? For example, I
13 would -- the area of fiduciary duties.

14 A I don't recall any specific instances where any
15 of these firms provided any input into fiduciary services.

16 Q Okay. Have you received any instruction or
17 materials relating to your fiduciary duty as a member of
18 the EEInc. Board of Directors?

19 A When I first -- first joined the Board and --
20 and the end of 1999, the Chairman of the Board was a
21 gentleman named Mr. Alan Kelly. And Mr. Kelly basically
22 briefed me on EEI's operations, actually covered a -- you
23 know, kind of a presentation of the operations of the
24 plant and then went into a lengthy discussion about my
25 responsibilities as a Board member.

1 Q Mr. Kelly isn't an attorney, is he?

2 A No, he is not. He's the Chairman of the -- of
3 the EEI Board.

4 Q Okay. Do you know if there is any attorney or
5 law -- law firm that provides advice to Mr. Alan Kelly on
6 -- on matters of questions relating to fiduciary duty?

7 A Again, I -- I believe those would fall under
8 this Feirich, Mager, Green and Ryan, General Legal
9 Counsel. That -- that is typically for general questions
10 like that who -- who we would use.

11 Q Okay. And -- and what do you base your answer
12 on? Are -- are you aware of -- of Mr. Kelly seeking
13 answers or directing any questions to that law firm
14 specifically relating to fiduciary duty?

15 A I -- I cannot give you a firsthand example of
16 that, no.

17 Q Okay. Are -- are you aware of that law firm
18 submitting, for example, a memorandum or any written
19 material to Mr. Kelly relating to any issues or questions
20 on fiduciary duty?

21 A I'm not aware of any written documents.

22 Q Okay. Then -- then what -- what do you base
23 your -- your statement that questions relating to
24 fiduciary duty would go to that -- that law firm in
25 Carbondale?

1 A Again, they are kind of our general counsel for
2 the organization, and that would be first stop for us with
3 the organization.

4 Q Is that based on your surmise, then, that --
5 that they handle general legal questions for EEInc.?

6 A Yes. Yes, it is.

7 Q But, again, you're not -- you're not aware of --
8 of that firm having provided any materials, legal
9 memorandum or -- or -- they haven't made a presentation to
10 the EEInc. Board since you've been serving on the Board in
11 late 1999 early 2000, have they?

12 A No, they have not.

13 Q Okay. And, again, Mr. Kelly is the -- is the
14 source of your information regarding what you believe is
15 your fiduciary duty as a member of the Board of Directors
16 of EEInc.?

17 A Yes, sir.

18 Q Mr. Naslund, do you know why you were not asked
19 to submit testimony in AmerenUE's pending rate case on the
20 EEInc. issue?

21 A My -- my background and experience, I'm Chief
22 Nuclear Officer for the Callaway nuclear plant. All --
23 all my expertise, if there is any, I'm not claiming to be
24 an expert, lies with -- with nuclear.

25 Basically, I oversee the operations of -- of the

1 nuclear plant. And so the testimony I filed was in the
2 area that I'm most familiar with. When this rate case
3 began, the issue of EEI appeared to be one -- one more of
4 resource planning.

5 And in accordance with that, our corporate
6 planning group, which does resource planning for Ameren
7 are the ones that handled all of the testimony associated
8 with EEI. And so that's -- that's why I did not provide
9 any testimony.

10 Q Were there any discussions or suggestions that
11 you might provide rebuttal or surrebuttal testimony in
12 this proceeding on EEInc.?

13 A No, sir. My -- again, my -- my role relative to
14 the EEI Board, when -- I guess I kind of look at it from
15 an AmerenUE perspective. When I go to my Board meeting, I
16 take my AmerenUE hat off and I become a Director of EEI,
17 and I have my responsibilities associated with that.

18 And on that -- that issue being a Director of
19 EEI has really no relationship to AmerenUE's case in
20 Missouri on -- on this rate case.

21 Q What -- what do you base that last statement on?

22 A How I -- I base that on the fact that, as a
23 Director of EEI, I have a responsibility, a fiduciary
24 responsibility, too, of EEI. And that role is completely
25 independent from the role I serve as Chief Nuclear Officer

1 for Ameren looking out after AmerenUE's nuclear
2 operations.

3 Q Mr. Naslund, don't you consider yourself as
4 having expertise on EEInc. and the operations and the
5 functions of the EEInc. Board of Directors?

6 A I -- I think, you know, part of the benefit of
7 having an operations individual such as myself on the EEI
8 Board brings a good dimension to their Board since --
9 since my background is operations.

10 I'm an engineer. I'm not a financial guy. But
11 I do bring a -- a good aspect to their Board on how to --
12 how to operate plants safely, how to deal with many
13 situations at the plant and employee benefits. And in
14 many of those areas, I provide valuable advice as a
15 director of Joppa in those areas.

16 Q Mr. Naslund, have you reviewed the testimony of
17 Mr. Moehn on the EEInc. issue?

18 A Yes, I have. Didn't commit it to memory.

19 Q Have you reviewed Mr. Svanda's testimony on the
20 EEInc. issue?

21 A No, I have not.

22 Q Okay. Have you reviewed Mr. Downs' testimony on
23 the EEInc. issue?

24 A I have read his testimony, yes.

25 Q Have you participated in any meetings that have

1 been respecting testimony that Mr. Moehn has submitted in
2 this proceeding on the EEInc. issue?

3 A I -- I don't recall participating in any
4 meetings associated with his testimony.

5 Q Okay. Have you participated in any meetings
6 respecting the testimony Mr. Svanda has submitted in this
7 prodding on EEInc.?

8 A No, I have not.

9 Q Or have you participated in any -- when I say
10 meetings or any telephone calls regarding testimony
11 Mr. Downs, Professor Downs, has submitted in this
12 proceeding?

13 A With -- with Mr. Downs, the only -- the only
14 participation is he listened in on a phone call last
15 Saturday more from a listening perspective. I don't think
16 he provided a whole lot of input on the phone call. But
17 he was on the phone call.

18 Q And what phone call are you referring to? Can
19 you provide -- could you provide some more detail?

20 A Well, it was -- it was a phone -- phone call
21 that I had with -- with my legal counsel, Cynkar.

22 Q And I'm not asking you to -- to disclose any
23 substance of your -- of your discussions with -- with
24 Mr. Cynkar. But it was relating to the EEInc. issue in --
25 in this proceeding?

1 A Yeah. Yes, it was. It was relating to
2 testifying this evening.

3 Q Mr. Naslund, in your recollection, were all
4 votes taken by the Board of Directors of EEInc. unanimous
5 votes?

6 A During what time period? All is a very, very
7 large encompassing time frame.

8 Q Okay. What --

9 A Since 1950 or --

10 Q No, no. I'm sorry. While you were -- excuse
11 me. While you were -- while you have been a member of the
12 Board of Directors, is -- is the time frame I'm -- I was
13 intending to refer you to.

14 A Okay.

15 Q From late 1999, 2000 to the best of your
16 recollection?

17 A The only vote I recall dissenting votes on were
18 most recently on the -- on the power supply agreement and
19 going to market base rates.

20 Q Okay. And could you relate some detail about
21 those dissenting votes, which of the members of the Board
22 of Directors dissented?

23 A Mr. Paul Thompson and -- I always forget the --
24 the other Board member from -- that came from Kentucky
25 Utilities. But they -- they both were opposed to market

1 based rates.

2 Q Is that Mr. Voyles?

3 A That would be correct.

4 Q V-yo-y-l-e-s?

5 A Yes, sir.

6 Q And they dissented on the vote as far as going
7 to market based rates?

8 A Yes. Yes, they did.

9 Q Okay. And could you identify in particular
10 which -- which vote that was in particular? When you say
11 market -- market based ate, I can think of the application
12 that EEInc. made to the FERC for authority to go to -- to
13 market based rates, or I -- I can think of the -- the vote
14 that was -- that was taken respecting the -- the end of
15 the 1987 power supply agreement with the -- the sponsoring
16 companies and what -- what would follow there --
17 thereafter, whether there would be a contract subsequently
18 at market base rates ultimately with Ameren Energy
19 Marketing.

20 A The dissenting vote that I'm referencing, I
21 believe, was the May 13th, 2005, Board meeting. It was on
22 a power supply agreement. And, basically, it was a
23 dissenting set on -- on -- on going to a market based
24 contract structure.

25 MR. DOTTHEIM: Excuse me one moment, please.

1 Thank you, Mr. Naslund.

2 MR. NASLUND: Thank you.

3 JUDGE WOODRUFF: All right. Thank you. And
4 we'll go ahead and begin with, for cross-examination,
5 Public Counsel.

6 MR. MILLS: Okay.

7 JUDGE WOODRUFF: I'll stop you after about ten
8 minutes if you haven't gotten done sooner.

9 MR. MILLS: Okay. That would be fine.

10 CROSS-EXAMINATION

11 BY MR. MILLS:

12 Q Good evening, Mr. Naslund.

13 A Good evening.

14 Q Mr. Naslund, did -- did you vote to allow the --
15 the power supply agreement to expire?

16 A The power supply agreement expired on its own.
17 What -- what I voted for was to proceed with a filing at
18 FERC to go to market base rates. But the contract itself
19 had an expiration date of December 31st, 2005. So I
20 didn't have to vote on the contract expiring. It expired.

21 Q There wasn't a vote taken by the Board to allow
22 it to expire? It simply expired its own terms?

23 A Not to my knowledge. No.

24 Q Now, how did it -- was there a vote taken that
25 enabled AEM to market the power from the Joppa plant?

1 A The marketing of power by AEM, our -- our team
2 of officers at the Joppa plant basically came to the Board
3 with a resolution. They -- they had -- had -- had
4 selected AEM as their marketer and basically came to the
5 Board for an endorsement of AEM as -- ass their marketer.

6 Q And was that the team that -- that was -- that
7 Mr. Powers talked about appointing? We talked about that
8 in your deposition.

9 A No. The time I'm referring to is actually the
10 officers of -- of the Joppa plant, EEI.

11 Q Okay.

12 A So that would be the President, the Vice
13 President, the Treasurer, Secretary.

14 Q And who are those individuals?

15 A The President is Mr. Robert Powers. The Vice
16 President is Mr. William Shepard. And the
17 Secretary/Treasurer is Mr. Jim Helm, H-e-l-m.

18 Q And these three came forward with a proposal of
19 AEM marketing their power?

20 A That is correct.

21 Q Okay. And do you know whether there was an RFP
22 issued for marketers?

23 A No, I do not.

24 Q Okay. But would you have known if there was an
25 -- going to be an RFP issued?

1 A Normally, those would be handled, you know, by
2 the plant itself. Typically, the Board wouldn't be
3 involved with -- with the mechanics of an RFP.

4 Q Did you vote in favor of AEM marketing the power
5 from the Joppa plant?

6 A Yes. I -- I did vote on that resolution to
7 endorse AEM being the marketer of their power.

8 Q Okay. Now, do you recall in -- in your
9 deposition talking about a time that was to be formed to
10 investigate what to do as the power supply agreement was
11 -- was being -- was expiring?

12 A Yes, I do.

13 Q Okay. And I believe at that time you stated you
14 didn't know who the members of that team were; is that
15 correct?

16 A That is correct.

17 Q Do you know now?

18 A No. I still do not know who -- who the team
19 was.

20 MR. DOTTHEIM: Okay. I'd like have an exhibit
21 marked.

22 JUDGE WOODRUFF: Sure. You're up to 433.

23 Q (By Mr. Dottheim) Mr. Naslund, I've handed you
24 what's been marked as Exhibit 433. And I'll tell you that
25 those are OPC Data Requests 2170 and a response thereto,

1 2171 and a response in the supplemental response there,
2 too. And although the data requests are marked highly
3 confidential because at that time the pieces of the
4 minutes of EEInc. that we had were marked highly
5 confidential, but they're no longer afforded confidential
6 treatment. So all of this is public information. Okay?

7 A Okay.

8 Q I guess, as an initial question, do you know how
9 different individuals within the Ameren group of families
10 come to be assigned responses to data requests in this
11 case?

12 A I believe our Legal Department is the
13 clearinghouse for all data requests.

14 Q Do you know why you were not chosen to answer
15 questions about actions of the EEInc. Board?

16 A Specifically, a question like this, they would
17 send it to the group that is most knowledgeable of what
18 went on to provide the answer.

19 Q Okay. And I -- take it that in this case, that
20 would have been Andy Serri; is that correct?

21 Q And Andy Serri is the President of Ameren
22 Marketing --

23 A Yes, he is.

24 Q -- is that correct? And Ameren Energy Marketing
25 is the entity that is marketing the power from the Joplin

1 plant; isn't that right?

2 A Yes, he is. They are.

3 Q This DR refers to a team that was going to be
4 put together to advise the EEInc. Board about what actions
5 to take as the power supply agreement was coming up fairly
6 rapidly at that point; is that correct?

7 A That's correct.

8 Q Okay. Now, if I can get you to turn to the
9 third page of that document, which is the supplemental
10 response, and ask you if that refreshes your recollection
11 about who was on that team. Does that DR indicate that
12 Andy Serri from AEM, Dave Henson from AMS, Don Gully from
13 AEM, Jim Helm from EEInc., Mike Follick from EEInc, and
14 Shelly Frieber from KU were the members of that team?

15 A Again, I have -- until seeing this document, I
16 had no idea who was on the team.

17 Q Did you ever get a report from the team?

18 A No. Again, the Staff at EEI basically worked --
19 worked with that team and brought forward a PSA. You
20 know, who was on that team, it was not a -- not an issue
21 discussed.

22 Q Okay. So as far as you know, in your experience
23 attending Board meetings, this team was appointed and then
24 never did anything?

25 A No. There was a draft PSA brought -- brought to

1 the Board by Mr. Powers, the President of the company.

2 Q Okay. Was Mr. Powers on this team?

3 A That -- I mean, according to this, it doesn't --
4 doesn't look like it.

5 Q Okay.

6 A But I would assume he participated. But I don't
7 know by this response.

8 Q Okay. All right. So you -- so you really don't
9 know what actions, if any, this team took in response to
10 its charge to investigate what to do after the power
11 supply agreement expired?

12 A No, I do not.

13 Q Okay.

14 JUDGE WOODRUFF: Mr. Mills, if this is a good
15 place to stop, we'll stop for the night.

16 MR. MILLS: That's fine. I'm all in favor of
17 stopping.

18 JUDGE WOODRUFF: Okay. Thank you. All right.
19 you can step down then. Is there anything we need to take
20 up, any housekeeping we need to take care of tonight
21 before tomorrow morning?

22 MR. DOTTHEIM: The -- well, the corrections --
23 the correction sheets to the deposition. Or do you want
24 to just wait until tomorrow morning?

25 JUDGE WOODRUFF: We can wait till tomorrow

1 morning for that.

2 MS. VUYLSTEKE: Your Honor, are we going to go
3 forward with the EEI witnesses tomorrow morning and
4 continue with return on equity?

5 JUDGE WOODRUFF: Let me ask the other parties.
6 The question is, can we continue with the EEI issue, or do
7 we need to take anybody else out of order to deal with
8 travel schedules and so forth?

9 MR. CYNKAR: We're -- we're fine, your Honor.

10 MR. MILLS: It's my understanding that
11 Mr. Higgins for the Commercial Group who testifies on
12 EEInc. may have some travel problems.

13 JUDGE WOODRUFF: We talked about that earlier.

14 MR. MILLS: And I think -- and I -- I have to
15 confess, I don't know my witnesses' exact travel schedule.

16 MR. KIND: He is coming in tonight.

17 MR. MILLS: How long is he staying?

18 MR. KIND: I don't know that.

19 MR. MILLS: I mean, most of the cost of capital
20 witnesses are from out of town.

21 JUDGE WOODRUFF: That's what I mean.

22 MR. MILLS: And, you know, we may have -- we may
23 have problems if we start running a day or two behind with
24 them in terms of travel.

25 JUDGE WOODRUFF: Yes. I assume everybody was

1 planning on being here either Tuesday or Wednesday, or
2 Wednesday or Thursday so --

3 MR. DOTTHEIM: For rate of return.

4 MR. BYRNE: It would be nice to finish
5 Mr. Naslund as he has a nuclear plant to run.

6 JUDGE WOODRUFF: Yes. We want to keep the
7 nuclear plant in good condition. Ms. Vuylsteke, does your
8 witness have a problem?

9 MS. VUYLSTEKE: No. We're just curious. He's
10 actually here in Jefferson City, but we're just trying to
11 plan for tomorrow is all.

12 JUDGE WOODRUFF: Well, I'll ask the -- how long
13 do you anticipate going with Mr. Naslund?

14 MR. MILLS: I -- I doubt that I have more than
15 half an hour.

16 JUDGE WOODRUFF: Mr. Micheel, do you have cross
17 also?

18 MR. MICHEEL: Not unless I do it tonight, and I
19 don't think I'll be doing very much tonight. No.

20 JUDGE WOODRUFF: Okay. Well, we'll just --
21 we'll start with Mr. Naslund tomorrow morning. And after
22 we're done with him, we'll see where we want to go.

23 All right. We'll see you all at 8:30 tomorrow.
24 We're adjourned.

25

1 I N D E X

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11	(CONTINUED IN VOLUME 26, pages 2309 through 2317.)	
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1	E X H I B I T S			
2	EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
3	4	Direct Testimony of David Svanda	*	*
4	5	Rebuttal Testimony of David Svanda	*	*
5				
6	6	Surrebuttal Testimony Of David Svanda	*	*
7				
8	35-NP	Direct Testimony of Michael Moehn	*	*
9	35-HC	Direct Testimony of Michael Moehn	*	*
10				
11	36	Rebuttal Testimony of Michael Moehn	*	*
12	37-NP	Surrebuttal Testimony of Michael Moehn	*	*
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14	37-HC	Surrebuttal Testimony of Michael Moehn	*	*
15	44	Direct Testimony of Robert Downs	*	*
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17	45	Rebuttal Testimony of Robert Downs	*	*
18	46	Surrebuttal Testimony of Robert Downs	*	*
19				
20	111	11/09/06 Letter	2342	2342
21	260	Deposition of Michael Moehn	*	*
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23	261	Deposition of David Svanda	*	*
24	262	Deposition of Mr. Naslund	*	*
25				

1	E X H I B I T S (CONTINUED)			
2	EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
3	265	Errata Sheet for Michael Moehn	2178	2178
4	266	Errata Sheet for Robert Downs	2369	2369
5	267	Errata Sheet for David Svanda	2494	2494
6	432	Data Requests 2172 and 2255	2357	2357
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8	515	Response to AG/UTI 332	2205	2205
9	516	Response to AG/UTI 333	2206	2206
10	517	Data Request AG/UTI-028	2474	2474
11	970	Application	*	*
12	971	Report and Order	*	*
13	972	Report and Order	*	*

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19 (Original exhibits were retained by the Public
20 Service Commission.)

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