

# EXHIBIT 40

Late Filed Exhibit No. 40  
Date 9-24-99 Case No. EO-96-14  
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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

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In the Matter of the Monitoring	)	
of the Experimental Alternative	)	Case No. EO-96-14
Regulation Plan of Union	)	
Electric Company.	)	
In the Matter of the Application	)	
of Union Electric Company for an	)	
Order Authorizing: (1) Certain	)	
Merger Transactions Involving	)	Case No. EM-96-149
Union Electric Company; (2) The	)	
Transfer of Certain Assets, Real	)	
Estate, Leased Property, Easements	)	
and Contractual Agreements to	)	
Central Illinois Public Service	)	
Company; and (3) In Connection	)	
Therewith, Certain Other Related	)	June 9, 1999
Transactions.	)	Jefferson City, Mo.

DEPOSITION OF KENNETH J. RADEMAN,

a witness, produced, sworn and examined on the 9th day of June, 1999, between the hours of 7:00 p.m. and 12:00 a.m. of that day at the offices of the Public Service Commission, 301 West High, in the City of Jefferson, County of Cole, State of Missouri, before

KELLENE FEDDERSEN, CSR, RPR  
ASSOCIATED COURT REPORTERS, INC.  
714 West High Street  
P.O. Box 1308  
JEFFERSON CITY, MO 65109  
(573) 636-7551

and Notary Public within and for the State of Missouri, commissioned in Cole County, in the above-entitled cause, on the part of the Commission, taken pursuant to agreement.

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(EXHIBIT NO. 39 WAS MARKED FOR  
IDENTIFICATION.)  
KENNETH J. RADEMAN, being sworn, testified as follows:  
CROSS-EXAMINATION BY MR. DOTTHEIM:

Q. Would you please state your full name for the record.

A. Kenneth J. Rademan, R-a-d-e-m-a-n.

Q. And you are the same Kenneth J. Rademan that caused a statement to be filed with the Commission on May 25, 1999?

A. Yes, I am.

Q. Mr. Rademan, have you ever been deposed before?

A. Yes, sir, I have.

Q. And I know you've testified before.

A. Yes.

Q. If during the course of the deposition any of the questions that I ask you are unclear, please make that known. Ask me to restate the question or indicate that it is unclear, and I will try to rectify that for you.

I know you understand that you're under oath, you have an obligation to testify truthfully; is that correct?

A. Yes.

1 Q. I expect we'll be taking some breaks this  
2 evening. If at any time you would like to take a  
3 break, please just so indicate that and we'll break  
4 for a while.

5 A. Okay.

6 Q. And please, it's not my intention to talk  
7 over you. If I do that, I apologize, and please just  
8 indicate that and I'll try to make sure that that  
9 doesn't happen again.

10 Is there anything, a medical condition or  
11 medication that would cause you to not be able to  
12 testify truthfully this evening?

13 A. There are not.

14 Q. Well, with those preliminary matters, let me  
15 just state that I do have a fair number of questions.  
16 It's not my intent to turn this into an endurance  
17 contest. I'll try to get through the materials as  
18 quickly as possible. If there's any delay, it's not  
19 intentional. It's just purely because of my  
20 disorganization. So I apologize for that.

21 A. I understand.

22 Q. Mr. Rademan, could you give the approximate  
23 dates as best you can of your employment at the Public  
24 Service Commission?

25 MR. CYNKAR: Steve, I hate to interrupt you,

1 but I just wanted to remind you, he did have a few  
2 little edits to his statement. So before you --

3 MR. DOTTHEIM: I'm sorry.

4 MR. CYNKAR: Don't want you to get into  
5 the --

6 BY MR. DOTTHEIM:

7 Q. Mr. Cynkar had previously indicated this  
8 afternoon that you had some changes to your statement,  
9 and I apologize, I completely forgot. Would you like  
10 to go through those?

11 A. Do you want to do those now?

12 Q. Yes.

13 A. On page 2 of my statement, line 17, the  
14 sentence -- that line starts out "The model in the  
15 minds of the," and we need to scratch "parties" and  
16 insert "staff and UE when".

17 The next change is on page 7, line 9.  
18 There's a sentence that starts "As we said." "We"  
19 needs to be stricken and changed to "I."

20 On page 8, line 14, the sentence starts  
21 "Equally clear our use." Need to strike the word  
22 "our" and insert "the."

23 The last change is on page 9, line 4. The  
24 sentence reads, "Finally, I must underscore that we  
25 mention." "We" needs to be stricken, and "I" needs to

1 be inserted.

2 Q. Okay. Thank you, Mr. Rademan.

3 A. Uh-huh.

4 MR. DOTTHEIM: Maybe we should have the  
5 record reflect that, in addition to counsel, I don't  
6 know that the court reporter has the names of the  
7 other individuals who have joined us, but other than  
8 counsel for the Company, Office of the Public Counsel  
9 and the Staff, we have counsel for the Missouri  
10 Industrial Energy Consumers, Ms. Diana Schmidt,  
11 S-c-h-m-i-d-t, and Mr. Russell Trippensee of the  
12 Office of the Public Counsel.

13 BY MR. DOTTHEIM:

14 Q. Mr. Rademan, before I was reminded about you  
15 wanting to make some changes to your testimony, I had  
16 asked if you could give us as best you could the  
17 dates, times of your former employment with the  
18 Missouri Public Service Commission?

19 A. My employment with the Commission started in  
20 1972 and spanned to 1981. During that period of time  
21 I held various positions of engineer, Assistant  
22 Manager, Manager and Director of Utilities, with the  
23 Director of Utilities being the last three years, from  
24 1978 to 1981.

25 I joined the Commission for a second term in

1 November of 1991 as an Assistant Manager, and left the  
2 Commission in May of 1997, and I was in the position  
3 of Director of Utility Services at the time of my  
4 departure.

5 Q. Do you recall when you assumed the  
6 responsibilities of Director of Utility Services?

7 A. As best I can recall, it was early to mid  
8 part of '94.

9 Q. Does June 1, '93 sound correct? The reason  
10 I mention June 1, '93, I don't have it in here, but  
11 the Commission in its Missouri PSC Reports that it  
12 publishes has the last 10, 15 years indicated when key  
13 individuals on the staff either assume new positions  
14 or resign.

15 And if I read it correctly, I thought there  
16 was an indication in one of the more current volumes  
17 that you were appointed to the position of Director of  
18 Utility Services Division on June 1, 1993.

19 A. That is entirely possible. Brent Stewart  
20 was the Secretary to the Commission at the time, and  
21 shortly after I took the appointment Mr. Stewart left  
22 and David Rauch assumed those responsibilities.

23 Q. Okay. And I seem to recall that Mr. Stewart  
24 left approximately in mid August of 1993, so --

25 A. That sounds correct.

1 Q. Okay. Mr. Rademan, have you read all or  
2 part of the Staff testimony that's been filed in this  
3 case?

4 A. I have not read all of the testimony.

5 Q. Could you indicate which Staff witnesses'  
6 testimony you've read?

7 A. Mr. Schallenberg's rebuttal testimony is the  
8 only Staff testimony that I have reviewed.

9 Q. Have you read all of the Company's, Union  
10 Electric Company's testimony that's been filed in this  
11 proceeding?

12 A. No, I have not.

13 Q. Could you indicate, have you read any of the  
14 testimony that Union Electric Company has filed in  
15 this proceeding?

16 A. I've read Mr. Brandt's testimony.

17 Q. Any other testimony of Union Electric  
18 Company witnesses?

19 A. No.

20 Q. Do you recall who was the attorney in the  
21 General Counsel's office who was the lead attorney in  
22 the matters that resulted in the first experimental  
23 alternative regulation plan?

24 A. That would be Mr. Dottheim.

25 Q. Okay. Do you recall which members of the

1 staff were responsible for negotiating with Union  
2 Electric Company in respect to the first, and I'll use  
3 the abbreviations that many people are using, EARP?

4 A. I'm not sure I understand your question. If  
5 you are looking for who actually sat around the table  
6 and did the negotiations, I would have to say it was  
7 myself, usually always represented by counsel,  
8 Mr. Dottheim, Jay Moore, Doyle Gibbs, to a certain  
9 extent Steve Rackers, although Steve sometimes because  
10 of other matters was not -- may not be available for  
11 all those meetings.

12 I think Mr. Mark Oligschlaeger may have been  
13 involved. I don't know if he was involved in actual  
14 negotiations, but I know he was available for some of  
15 the discussions and some of the meetings. Obviously  
16 some of the other division directors and the Secretary  
17 to the Commission may have been involved, too.

18 Q. When you said the Secretary to the  
19 Commission, did you mean the Executive Secretary or --

20 A. David Rauch.

21 Q. Do you recall who on the part of the Staff  
22 was responsible for drafting language for the Staff  
23 regarding the first EARP?

24 A. To my recollection, that would have been  
25 you, Mr. Dottheim.

1 Q. Do you have with you, I believe you do, a  
2 copy of your -- of your statement which is going to be  
3 Exhibit No. 39, or that's the number that's been  
4 reserved for it?

5 A. Yes, I have a copy.

6 Q. I'd like to direct you to the first page,  
7 lines 6 to 8, where you state, The agreement in this  
8 case is nearly identical to the one establishing the  
9 second EARP which is set out in the Report and Order  
10 in Case No. EM-96-149 (March 4, 1997).

11 We had a question from the Bench last week  
12 which I thought we might attempt to address  
13 regarding -- it was a question from the Vice Chair,  
14 Commissioner Drainer, where Mr. Brandt was asked what  
15 was the origin of the second EARP which occurred in  
16 the context of the Union Electric Company/CIPSCO  
17 merger.

18 Mr. Rademan, do you recall what was the  
19 origin of the second EARP?

20 A. I'm not sure I understand your question.

21 Q. Okay. Do you recall how a second EARP, an  
22 additional three years starting July 1, 1998, going to  
23 June 30, 2001, how that came about?

24 A. If my memory serves me correctly, it came  
25 about in the merger case between UE and CIPSCO, and as

1 part of the settlement for that merger that the second  
2 EARP was included in that.

3 Q. Do you recall which party first proposed a  
4 possible second EARP, if there was a party that made  
5 that proposal?

6 A. I don't recall who did that.

7 Q. Okay. I'd like to hand to you a copy of  
8 Mr. Brandt's, Mr. Donald E. Brandt's, B-r-a-n-d-t,  
9 surrebuttal testimony. The copy I have, the cover  
10 page says supplemental testimony, but all the other  
11 pages, I believe, say surrebuttal, and what I have is  
12 a highly confidential version of it.

13 I don't know whether frankly anything in  
14 there is still highly confidential, but I'm going to  
15 refer you to a page which doesn't have any highly  
16 confidential information and ask you about a paragraph  
17 that appears in there. I'll first hand it to your  
18 counsel.

19 The page I was going to refer you to is  
20 page 4, the very first paragraph on that page that  
21 goes from lines 1 to 9. And if there's no objection  
22 from your counsel, I was going to read that paragraph  
23 into the record.

24 Starting on line 1 on page 4 of Mr. Brandt's  
25 surrebuttal testimony, he states: Reimbursement of a

1 small portion of merger related costs and potentially  
2 sharing merger savings only through June 30, 1998 does  
3 not provide sufficient assurance that shareholders  
4 will ultimately be treated fairly. Before completing  
5 the merger, we need greater assurance that  
6 shareholders will be treated more fairly than Staff's  
7 proposal provides. UE, therefore, proposes that after  
8 Staff has had the opportunity to evaluate the first  
9 full year of the ARP, which ends on June 30, 1996, and  
10 provided that no major obstacles are uncovered, the  
11 ARP be extended for an additional five-year period.  
12 Absent this extension of the ARP, the Company  
13 continues to support its original proposal.

14 Mr. Rademan, did I read that paragraph  
15 accurately?

16 A. That's what the paragraph states.

17 Q. Is your recollection as to how a second EARP  
18 came to be discussed refreshed in any manner by that  
19 paragraph? And if you don't recall, all you need --

20 A. I'm sorry. I don't recall.

21 Q. Okay. Fine. Thank you. And I might note,  
22 I think, something that your counsel has noted, that  
23 on the cover page there appears a date -- that is the  
24 cover page to Mr. Brandt's surrebuttal testimony  
25 appears the date June 3, 1996; is that correct?

1           A.     Yes.

2           Q.     Thank you.  Again, I'd like to refer you to  
3 the first page of Exhibit 39, in particular lines 11  
4 and 12, and in particular starting with the word in  
5 that line "constituted."  You state therein, do you  
6 not, that the first EARP, open quote, constituted a  
7 forward-looking mechanism that could smooth the  
8 transition to a competitive electricity market.  Did I  
9 read that correctly?

10          A.     Competitive electric utility market, yes.

11          Q.     Excuse me.  I did read that incorrectly, and  
12 you have just corrected me.  It says "to a competitive  
13 electric utility market."  Thank you.

14                 You address this item again, do you not, on  
15 page 3 of your testimony, lines 18 to 22?

16          A.     Yes.  They both address the issue of  
17 transition towards a competitive market.

18          Q.     Do you recall whether this rationale was  
19 offered to the Commission as a reason for the Staff  
20 proposing to the Commission the adoption of the first  
21 EARP?

22          A.     I can't answer that question without going  
23 back and reviewing the record.

24          Q.     Do you recall or know whether that is the  
25 Staff's view or is that your view?

1           A.       That is my view. I'm sure it is probably  
2 shared by some of the Staff, and it probably is  
3 rejected by some of the Staff.

4           Q.       Are you able to identify any members of the  
5 Staff by name who might share that view --

6           A.       I would --

7           Q.       -- that you know?

8           A.       I would think that Mr. Jay Moore would have  
9 shared that view.

10          Q.       Do you know that for a fact?

11          A.       No, I don't know specific fact.

12          Q.       I'd like to refer you again to Exhibit 39.  
13 In particular I'd like to refer you to page 4,  
14 paragraph 7, lines 19 to 28.

15                   MR. DOTTHEIM: I might ask if the record  
16 could reflect we've been joined by Mr. Douglas  
17 Micheel, M-i-c-h-e-e-l, of the Office of the Public  
18 Counsel.

19 BY MR. DOTTHEIM:

20          Q.       On lines 19 to 28 of Exhibit 39, you excerpt  
21 from the testimony of Mark Oligschlaeger on  
22 performance-based regulation and regulatory asset  
23 amortization in Case No. ER-97-394, do you not?

24          A.       Yes, I do.

25          Q.       Are you familiar with that case in which

1 that testimony was filed, ER-97-394?

2 A. No, sir, I am not.

3 Q. How is it that you are familiar with  
4 Mr. Oligschlaeger's statement that you've excerpted in  
5 Exhibit 39?

6 A. In discussion with members of AmerenUE, they  
7 asked me if I agreed with that statement, and I do  
8 agree with it.

9 Q. Okay.

10 A. So I chose to include it.

11 Q. Do you have a copy of Mr. Oligschlaeger's  
12 rebuttal testimony from Case No. ER-97-394?

13 A. No, sir, I do not.

14 Q. You were not in the employ of the Commission  
15 at any time during the course of Case No. ER-97-394,  
16 were you?

17 A. I don't know the exact dates of the case, so  
18 I cannot answer your question specifically.

19 Q. Have you read Mr. Oligschlaeger's rebuttal  
20 testimony in entirety?

21 A. No, I have not.

22 Q. Have you read any of Mr. Oligschlaeger's  
23 testimony other than that excerpt that you've placed  
24 in your Exhibit 39?

25 A. From Case No. ER-97-394?

1 Q. Yes.

2 A. Is that your question?

3 Q. Yes, sir.

4 A. If that's your question, I have not read it.

5 Q. Do you know whether there's any part of

6 Mr. Oligschlaeger's rebuttal testimony that is

7 contrary to your -- to your view of return on common

8 equity sharing grid regulation smoothing the

9 transition to a competitive electric utility market?

10 A. I can't recall any.

11 Q. Okay. And when you say I can't recall, what

12 are you referencing? What are you recalling?

13 A. Well, during my employ as Director of

14 Utilities, Mr. Oligschlaeger as an Auditor 5 did a lot

15 of policy work, and especially in the electric area,

16 and in addition to his other duties in the other areas

17 that he worked in, and he filed policy testimony. To

18 that extent, I don't know of any.

19 Q. And --

20 A. I can't recall any.

21 Q. Thank you. And my question in particular

22 was relating to Mr. Oligschlaeger's other testimony in

23 Case No. ER-97-394.

24 A. No, I don't recall.

25 Q. If you would bear with me a moment.

1           A.     Uh-huh.

2           Q.     Mr. Rademan, I'm going to hand to you a copy  
3 of Mr. Mark L. Oligschlaeger's rebuttal testimony on  
4 performance-based regulation and regulatory asset  
5 amortization which you have excerpted from, which was  
6 filed in Case No. ER-97-394, and I've handed you a  
7 copy of the nonproprietary testimony of  
8 Mr. Oligschlaeger. What I'm going to refer you to I  
9 don't believe contained any highly confidential  
10 information.

11                   I'm going to ask you first to take a look at  
12 page 1, lines 21 to 24, just for definitional  
13 purposes, where there's a question, a partial answer.

14                   Question: What is performance-based  
15 regulation (PBR)?

16                   Answer: PBR is a term that appears to be  
17 generally synonymous with "incentive regulation", or  
18 "alternative regulation". I will be using all three  
19 terms interchangeably in this testimony.

20                   I would then like to direct you to page 18  
21 of Mr. Oligschlaeger's rebuttal testimony starting at  
22 line 14, and ask you to read to page 19, line 11. I'm  
23 going to read that portion of Mr. Oligschlaeger's  
24 testimony starting on page 18, line 14.

25                   Question: MPS' direct testimony ties its

1 perceived need for PBR to the new competitive  
2 environment electric utilities are likely to face. Is  
3 impending competition a compelling reason to implement  
4 incentive regulation for MPS and other electric  
5 utilities in this state?

6 Answer: No. In fact, if anything, the  
7 notion of impending competition makes use of explicit  
8 incentive plans less compelling, not more.

9 Question: Please explain.

10 Answer: Theoretically competition is the  
11 most effective incentive for efficient behavior on the  
12 part of goods and services providers in that failure  
13 to produce the highest quality and least cost product  
14 or service in the competitive marketplace will mean  
15 reduced profits in the short run and possible exit  
16 from the market in the long run.

17 If a utility such as UtiliCorp truly  
18 believes that competition is around the corner in the  
19 electric industry, then any failure now to become as  
20 efficient and productive as possible will carry  
21 tangible and negative consequences in the future  
22 electric marketplace.

23 Under this scenario, it would be superfluous  
24 for the Commission to offer incentives to MPS and  
25 other electric utilities for greater efficiency as

1 such incentives are already in place in the form of  
2 impending competition.

3 Question: Are you suggesting that the  
4 Commission should no longer give any consideration to  
5 incentive forms of regulation for electric utilities?

6 Answer: No. There may be other factors  
7 that argue for use of incentive regulation in a  
8 particular case. I am merely stating that MPS'  
9 premise that impending competition is a strong  
10 argument for incentive regulation in and of itself is  
11 not logical.

12 Now, Mr. Rademan, do you view that testimony  
13 of Mr. Oligschlaeger that I just read as being  
14 contrary to your view of return on common equity,  
15 common equity sharing grid regulation smoothing the  
16 transition to a competitive electric utility market?

17 A. Mr. Dottheim, I don't think I can answer  
18 your question because I really don't -- I really  
19 haven't had an opportunity to review the entire  
20 context of this testimony or the case, and I don't  
21 know what MPS' actual claims were that  
22 Mr. Oligschlaeger was responding to. I simply can't  
23 answer your question.

24 Q. Okay. Fine. Thank you.

25 Mr. Rademan, I'd like to refer you back to

1 Exhibit 39, and what in particular I'd like to refer  
2 you to are lines 1 and 2 on page -- on page 2.

3 A. Page 2?

4 Q. Yes, I'm sorry, of your Exhibit 39. The  
5 sentence continues on into line 3. You state therein:  
6 "In understanding the terms of the agreement and what  
7 the Commission hoped to achieve by committing itself  
8 to it."

9 Are you testifying on behalf of the  
10 Commission in that part of your testimony,  
11 Mr. Rademan?

12 A. No, Mr. Dottheim. I learned a long time ago  
13 you don't speak for the Commission. It's not my  
14 intention to testify for them there.

15 Q. And what I was referring to in particular is  
16 that part of the sentence that states what the  
17 Commission hoped to achieve by committing itself to  
18 it.

19 A. By committing itself to it meant the  
20 approval of the Stipulation and Agreement.

21 Q. Do you know what the Commission hoped to  
22 achieve by approving the Stipulation and Agreement?

23 A. Well, I think the Report and Order speaks  
24 for itself in there. Obviously you can't speak for  
25 the Commission, as I stated earlier.

1           The Report and Order contains language in  
2 it, as I recall, which states the Commission's reasons  
3 for approving the Stipulation and Agreement. Without  
4 going back and reviewing that, I cannot give you exact  
5 words or exact language.

6           Q.     Are you attempting to state anything in that  
7 sentence there other than what appears in the  
8 Commission's Report and Order?

9           A.     No. I think the words speak for themselves.

10          Q.     Okay. Mr. Rademan, if I could just refer  
11 you in general to paragraph 2 on page 2 of Exhibit 39,  
12 which extends from lines 1 to 11. Did the situation  
13 that you described in that paragraph apply to Union  
14 Electric Company?

15          A.     Union Electric was not on my mind when I  
16 wrote those words.

17          Q.     Okay. Do you recall the -- were you at the  
18 Commission at the time of the Union Electric Company  
19 Callaway rate case where they sought to place in rates  
20 the Callaway nuclear generating unit?

21          A.     No, I was not.

22          Q.     Do you recall how many rate increase cases  
23 Union Electric Company has filed since the Callaway  
24 case?

25          A.     As best I can recall, there were none.

1 Q. Do you recall how many excess earnings  
2 complaint cases that the Staff has filed against Union  
3 Electric Company since the Callaway case?

4 A. Complaint cases actually filed?

5 Q. Yes, sir.

6 A. I don't recall. I'd have to go back and do  
7 some research to answer your question.

8 Q. Do you recall whether the Staff filed any  
9 excess earnings complaint cases against Union Electric  
10 Company after the Callaway case?

11 A. As I recall, there were some cases, but  
12 whether or not they were complaint cases I do not  
13 know, if they were actually filed complaint cases. I  
14 can't answer your question.

15 Q. Do you know how many times Union Electric  
16 Company has reduced its rates since the Callaway rate  
17 case?

18 A. I have a clarifying question. Am I allowed  
19 to refer to documents --

20 Q. Yes.

21 A. -- to answer your questions?

22 Q. Yes.

23 A. According to the testimony contained in  
24 Mr. Donald Brandt's rebuttal testimony in this case,  
25 he gives a citing on page 8 of the case history with

1 Union Electric since the Callaway case in early '87.

2 Q. And he mentions therein a Staff and OPC rate  
3 complaint cases in 1987, does he not?

4 A. Excuse me. Would you repeat the question?

5 Q. Yes. If I understood you correctly, you  
6 were referring to page 8 of Mr. Brandt's rebuttal  
7 testimony, which I believe is Exhibit 12, as far as a  
8 history of cases, rate cases, whether they be of  
9 whatever nature, since the Callaway case.

10 And I was asking you if he indicates therein  
11 that there were Staff and Office of the Public Counsel  
12 rate complaint cases in 1987?

13 A. As I understand it, the Callaway case was in  
14 1987, and then there were two complaint cases after  
15 it, one in 1990 and one in 1993.

16 Q. I really don't mean to go into this in  
17 certain parts of the history in any great detail, but  
18 would you be willing to accept, subject to check, that  
19 the Callaway case was in 1985? The Commission's  
20 Order, I believe, was issued in 1985.

21 A. I would accept that. I was misreading the  
22 testimony.

23 Q. And that what is indicated there is that  
24 there was a Staff and Office of Public Counsel  
25 complaint case against Union Electric Company?

1           A.     In early 1987.

2           Q.     Okay. Thank you.

3           A.     That is correct.

4           Q.     Thank you. And as you indicated, Mr. Brandt

5 indicates in his testimony that there were subsequent

6 cases in 1990 and 1993?

7           A.     That is correct.

8           Q.     The case that occurred in 1993, assuming

9 that date in Mr. Brandt's rebuttal testimony is

10 correct, that would have occurred while you were an

11 employee of the Missouri Public Service Commission,

12 would it have not?

13          A.     Yes, it would have.

14          Q.     Do you recall anything regarding that 1993

15 case?

16          A.     Not without refreshing my memory, going to

17 some documents, I don't recall because I don't know --

18 I don't recall what time frame, if it was early 1993,

19 late 1993 that this case was all going on.

20          Q.     I'm going to hand you a copy of the

21 Commission's Report and Order in Case No. ER-93-52,

22 and it's not my intent to get into any great detail

23 respecting that Report and Order. But might that

24 refresh your recollection about that case? Let me

25 give you an opportunity to take a look at that.

1 MR. DOTTHEIM: I might mention for purposes  
2 of the record that we've been joined by another member  
3 of the Staff, Mr. Robert E. Schallenberg,  
4 S-c-h-a-l-l-e-n-b-e-r-g.

5 THE WITNESS: This Report and Order  
6 indicates that it was issued on the 3rd day of  
7 December, 1992. Is that the Report and Order you want  
8 me to look at?

9 BY MR. DOTTHEIM:

10 Q. Yes. And again, I'm not asking you to study  
11 that in any great detail. I was just wondering if a  
12 perusal of that might bring that case back to mind?

13 A. Well, as I recall, the case was wrapping up,  
14 if that's the correct terminology, while I was still  
15 an assistant manager in the Utility Operations  
16 Division, and I had no direct involvement in this  
17 complaint case, as I recall.

18 Q. Okay. Thank you. Mr. Rademan, I'd like to  
19 direct you in particular at this time to page 4 of  
20 Exhibit 39, what was originally filed as your  
21 statement, and I'd like to refer you to paragraph 6  
22 wherein I believe you address what you believe are  
23 benefits of the sharing grid approach.

24 And I think one of those benefits that you  
25 identify as a result of the sharing grid approach is

1 the utility and its employees knowing that they will  
2 share in their increased productivity, and I think you  
3 are basically comparing in that paragraph the sharing  
4 grid approach to traditional regulation, and you do  
5 mention in there, in addition to productivity, the  
6 incentive that is offered by the sharing grid  
7 approach.

8                   Would that be a fair summary of that  
9 paragraph or a portion of it?

10           A.     Yes, I think it would.

11           Q.     I'd like to hand you a copy of the  
12 on-the-record presentation in Case No. ER-93-52, and  
13 I'd like to direct you to several pages that are  
14 contained therein. In particular, I'd like to refer  
15 you starting at page 17, and I'd like to refer you to  
16 line 24 on page 17 and continuing to page 19, line 9.

17           A.     Excuse me. Page and line numbers again?

18           Q.     I'm sorry. Page 17.

19           A.     Okay.

20           Q.     Line 24.

21           A.     All right.

22           Q.     To page 19, line 9.

23           A.     Okay.

24           Q.     And I'd like to give you two other citations  
25 to look at which I think are relevant to your

1 paragraph 6 on page 4 of Exhibit 39. If you would  
2 also take a look at page 21, line 23, to page 23,  
3 line 7, and finally page 25. I'm going to give you  
4 time, Mr. Rademan, or if you would just --

5 A. I was going to say, I might want to write  
6 these down.

7 Q. I thought I'd just give you the references  
8 and give you time to take a look at it.

9 A. All right.

10 Q. Would you like me to go -- would you like to  
11 jot those down?

12 A. Yes, I would, please.

13 Q. I'm sorry. I don't mean to rush you into  
14 reading it. Okay. Page 17, line 24 to line -- excuse  
15 me -- to page 19, line 9; next, page 21, line 23 to  
16 page 23, line 7; and finally page 25, line 25 to page  
17 27, line 6.

18 I thought I'd read those into the record. I  
19 hadn't intended to mark the transcript as an exhibit.

20 MR. CYNKAR: It's a transcript. The marking  
21 may take less time than reading it. We certainly  
22 don't have any problem marking it as an exhibit, which  
23 will save time.

24 MR. DOTTHEIM: Let me try reading it.

25 MR. CYNKAR: Okay. Steve, if you're going

1 to read it, you might want to go ahead while Ken's  
2 reading.

3 MR. DOTTHEIM: Okay. That's fine. I'm  
4 sorry.

5 BY MR. DOTTHEIM:

6 Q. Okay. I will start. On line -- excuse me.  
7 On page 17, line 24 to page 19, line 9 first.

8 Commissioner Rauch speaking: Okay. I'd like to go on  
9 to the \$40 million reduction specifically, and I guess  
10 this is a concern that I've had as to how that's been  
11 interpreted. Mr. Dottheim, you said this morning  
12 that -- or you mentioned that factor in this rate  
13 reduction has to do with the ending or the conclusion  
14 of amortization of the phase-in of Callaway, the  
15 Callaway deferral.

16 Mr. Dottheim speaking: That is correct.  
17 That is from the Staff's perspective.

18 Commissioner Rauch speaking: The Staff's  
19 perspective. Okay. Can you tell me how much that  
20 that deferral represents as far as rates are concerned  
21 if we were to quantify that?

22 Mr. Dottheim speaking: The Staff believes  
23 that that number is \$40 million.

24 Commissioner Rauch speaking: Okay. Does  
25 the Company have a response to that? Would the

1 Company agree with that, that the ending of the  
2 deferral reflects a \$40 million --

3 Mr. Agathen speaking: I think we agree that  
4 that's at least approximately correct.

5 Commissioner Rauch speaking: So you  
6 basically would agree with that?

7 Mr. Agathen speaking: Yes.

8 Commissioner Rauch speaking: As I  
9 understand that, if an adjustment is not made for  
10 that, that factor, that whatever that ROE is currently  
11 for the company, it would increase at the end of the  
12 conclusion of that deferral, reflect whatever the  
13 calculation would be. So, in fact, it appears to me  
14 that this rate adjustment basically holds the line on  
15 the company's ROE. It will not effectively reduce the  
16 current ROE of the company but will instead assure  
17 that the ROE does not increase with the end of the  
18 deferral.

19 End of excerpt.

20 Next excerpt, starting on page 21, line 23,  
21 going to page 23, line 7.

22 Commissioner Rauch speaking: Now, let me  
23 just say that I guess I've got -- and you may not  
24 recognize it, but there's a reason to my madness here,  
25 and that is, I'm sensitive to a couple of things.

1           First of all, as I read in the news release  
2 issued by the company at the time of the announcement  
3 of the stipulation, at least it's implied that some of  
4 this, this reduction is due to efficiencies in the  
5 company, and I don't want to make a big argument about  
6 that.

7           But the other concern that I have is the  
8 implication that when a company is efficient and the  
9 result of that efficiency is a higher return, that  
10 this Commission or other commissions are prone to go  
11 in and take the benefits of that efficiency away from  
12 the company.

13           And I guess you know incentive regulation is  
14 something we talk about. We've implemented a proposal  
15 as far as the telecommunications industry is  
16 concerned.

17           I'm not making a judgment as to whether or  
18 not it's appropriate in the case of this particular  
19 company, but it appears to me that this settlement is,  
20 in fact, not eliminating the benefits of efficiency  
21 from Union Electric, and also it appears to me that  
22 the primary reason for this reduction is not because  
23 the company has been more efficient but because of the  
24 conclusion of the amortization of those deferrals.

25           And I think I'd like to make that

1 connection, first of all, to say that I don't think  
2 that this Stipulation, it's not my interpretation at  
3 this point -- I haven't finally decided what I'm going  
4 to do on this.

5 It's not my interpretation that this came  
6 about primarily because of efficiencies, nor would  
7 approval of this Stipulation in any way suggest that  
8 the Commission is taking away a benefit of this  
9 company's efforts at efficiency. Let me just -- let  
10 me just make that statement. If you'd like to respond  
11 to that, I would welcome your comments.

12 End of excerpt.

13 And the third excerpt is from page 25,  
14 line 25 to page 27, line 6.

15 Commissioner Rauch speaking: Did you have  
16 other comments, Mr. Agathen?

17 Mr. Agathen speaking: No. Just one other  
18 point, and it doesn't directly address your questions,  
19 but there is a benefit, of course, of the Stipulation  
20 taking effect January 1st as opposed to approximately  
21 eight months later, which would be roughly a very  
22 gross calculation, three-fourths of that \$40 million  
23 we'd be seeing in 1993.

24 Commissioner Rauch: I appreciate that, and  
25 let me say that I understand that's one reason why a

1 stipulation like this could be agreed to. Even if  
2 somebody thought that the ROE were excessive,  
3 nonetheless, the fact that the reduction takes place  
4 today rather than a year from now does play a role,  
5 and I assume that's one of the reasons that the other  
6 parties who might take exception with the ROE would  
7 agree to it.

8 Mr. Agathen speaking: It's always worked in  
9 a flip when we're asking for rate increases.

10 Commissioner Rauch speaking: Yes, I  
11 understand. I guess, again, a point in all of this is  
12 to identify at least for myself where this \$40 million  
13 is coming from. What happens if we don't approve the  
14 stipulation or what if we don't approve this  
15 \$40 million rate reduction? In fact, the ROE of the  
16 company will go beyond what it is now.

17 And again, surveillance suggests that it's  
18 above what some people would argue would be an  
19 appropriate rate of return. And again, to summarize  
20 another factor, I think that this company is not being  
21 penalized for efficiencies based on this decision  
22 whatsoever, and I guess I have a need to say that and  
23 to have that heard.

24 Mr. Rademan, did I read those excerpts  
25 correctly?

1 A. Yes, I think you did.

2 Q. Mr. Rademan, do you consider those excerpts  
3 at odds with paragraph 6 in Exhibit 39?

4 A. No, I don't. Maybe you could point me in  
5 the direction that you feel they are. I'd be happy to  
6 try to work through it, but I don't see where they're  
7 at odds.

8 Q. There are a couple other excerpts I'd like  
9 to go through in that -- in that transcript which also  
10 deal with the rate reduction in that case, which is  
11 a -- which is a Union Electric case.

12 MR. CYNKAR: Off the record.

13 (Discussion off the record.)

14 BY MR. DOTTHEIM:

15 Q. Mr. Agathen speaking, page 23, line 8: You  
16 covered a lot of ground, and let me start with the  
17 last comment you made. As you recall, we had a  
18 \$30 million decrease in 1990. So with the two  
19 combined, we have a \$70 million decrease. And  
20 assuming that the \$40 million of that \$70 million  
21 reflects the end of the phase-in, there's still an  
22 additional \$30 million decrease which would contribute  
23 in large part to efficiencies of the company's  
24 operations.

25 It's not the Commission coming in and taking

1 that away. It's the company agreeing in the  
2 Stipulation in effect to reflect some of those cost  
3 reductions which we attribute to efficiency.

4 Mr. Rademan, I'd like to refer you to page  
5 14, line 14.

6 A. Of the transcript of the Stipulation and  
7 Agreement?

8 Q. Yes, sir. And continue to page 15, line 1,  
9 and page 20 -- I will read these into the record. So  
10 hopefully I can save some time in that manner by just  
11 doing that. But the other excerpt dealing with ROE is  
12 on page 20, line 10, going to page 21, line 22.

13 And starting on page 14, line 14, Chairman  
14 McClure is speaking: My last question, what is the --  
15 for the benefit of those of us fairly new on the  
16 Commission, the last authorized ROE for the company  
17 was what -- was when and what is that amount?

18 Mr. Agathen speaking: That was  
19 12.01 percent in a complaint case based on a -- it was  
20 a 1987 Order, I believe.

21 Mr. Moore speaking: A Report and Order  
22 dated December 21 of 1987.

23 Chairman McClure: And that was ROE?

24 Mr. Moore speaking: ROE 12.01, overall rate  
25 of return 9.94.

1 Chairman McClure: Thank you.

2 End of excerpt.

3 And the other excerpt being on page 20,  
4 starting on line 10, going to page 21 on line 22.  
5 Commissioner Rauch speaking: So you would suggest  
6 that if the Staff was involved in a complaint case, I  
7 suppose, or if there was a rate case before this  
8 Commission at this point, your best estimate of what  
9 the Staff would argue an appropriate ROE would be  
10 would be about 11 percent?

11 Mr. Moore speaking: That would be for  
12 comparable companies. Another approach, if you'd look  
13 at the yield on Moodys public utility bond for  
14 December '87, they were approximately 11 percent, and  
15 to date they're approximately 8.35 percent. So that's  
16 about a 2.65 percent difference. So if you took the  
17 difference of the 12.01, then that would be a lot  
18 lower than the 11 percent. But 11 percent is for  
19 comparable companies DCF analysis at this time.

20 Commissioner Rauch speaking: Now, I have to  
21 conclude from what you've told me that what the Staff  
22 is suggesting here is they are willing to agree in  
23 this Stipulation to an ROE that you and I understand  
24 it's not part of the case. It's not been determined  
25 exactly what that is, but your projection speaking to

1 the Staff would be that the ROE that is, in fact,  
2 implied in this Stipulation exceeds what you would be  
3 asking for or what you would be probably be  
4 recommending in a complaint case or if a rate increase  
5 was proposed before this Commission?

6 Mr. Moore: That is correct. In my opinion,  
7 Union Electric is earning above its cost of capital.

8 Commissioner Rauch: Let me note --

9 Mr. Moore speaking: Its current cost of  
10 capital.

11 Commissioner Rauch speaking: Okay. I  
12 understand that there is a lot of reasoning that goes  
13 into why parties settle when it comes to a  
14 stipulation. I understand what it would mean to go  
15 through a complaint case situation and how delays as  
16 far as rate reductions are concerned.

17 But I am interested in getting, at least for  
18 my own understanding, a better grasp of what the  
19 probable ROE is based on surveillance as well as the  
20 calculations and to compare that to what will be or  
21 what could be argued would be an appropriate rate of  
22 return.

23 Mr. Rademan, did I read that accurately,  
24 those excerpts?

25 A. Yes, sir.

1 Q. And the indication is that the Staff was not  
2 seeking to lower Union Electric Company's ROE to what  
3 the Staff would propose in an earnings complaint case  
4 or a company rate increase case?

5 A. That's the inference.

6 Q. Okay. And finally on this, I'd like to  
7 refer you back to page 2.

8 A. Of which document, sir?

9 Q. I'm sorry. Of your statement, of  
10 Exhibit 39.

11 A. Page 2?

12 Q. Yes, sir. And it's paragraph 2.

13 A. Paragraph 2?

14 Q. Yes.

15 A. Okay.

16 Q. Where you relate in there -- it's the  
17 sentence that begins on line 3, that sentence and the  
18 sentence that begins on line 7 and concludes on 10  
19 where you've indicated a scenario where the Commission  
20 orders a rate reduction and a utility after the rate  
21 reduction files with the Commission a rate increase  
22 case and the Commission grants a rate increase.

23 The final excerpt in the transcript of the  
24 on-the-record presentation in ER-93-52 that I'd like  
25 to refer you to is on page 28, line 9. Page 28,

1 line 9 to page 29 line 7, and I'll read that except  
2 into the record.

3 Mr. Dottheim speaking: Yes, that could be  
4 argued. The one thing I guess I maybe should state is  
5 that it is not the Staff's policy, either with Union  
6 Electric Company or other companies where earnings  
7 investigations occur, where audits are performed and  
8 in instances where the Staff makes a determination  
9 that a company may be in an excess earnings situation.

10 It is not the Staff's policy to be -- some  
11 would argue it could be so precise as to eliminate  
12 through a complaint case all purported excess  
13 earnings. The Staff, if it could, would not likely  
14 endeavor to do that for fear of adverse events  
15 occurring immediately after the complaint case which  
16 might force the company to immediately thereafter file  
17 a rate increase case. So that is another factor that  
18 goes into the Staff's consideration in negotiating  
19 settlements involving matters such as this.

20 Commissioner Rauch speaking: So you're  
21 almost building a buffer?

22 Mr. Dottheim speaking: Yes.

23 Commissioner Rauch speaking: In case of  
24 adverse situations?

25 Mr. Dottheim speaking: That's not to say

1 that we can pinpoint precisely the size of that  
2 buffer, but that is part of the thought process on  
3 behalf of the Staff.

4 Mr. Rademan, did I read that excerpt  
5 correctly?

6 A. Yes, you did.

7 Q. Would that explanation that was provided in  
8 the on-the-record presentation in ER-93-52 address the  
9 situation which you cite on page 2 of your Exhibit 39?

10 A. It states what happened in the case of Union  
11 Electric as far as rate reductions and ROE, and I  
12 understand the Staff's position as far as the  
13 discussion of the buffer that is discussed there.  
14 Would you now repeat your question?

15 Q. Yes. The excerpt that I read into the  
16 record from the on-the-record presentation in  
17 ER-93-52, in your opinion, does that address the  
18 situation that you address on page 2 of your  
19 testimony, paragraph 2, in Exhibit 39?

20 A. Not entirely, no, it does not.

21 Q. If I recall correctly the excerpt that  
22 Mr. Cynkar asked me to read in the record on page 23,  
23 which I can show him I was going to get to eventually  
24 and read it in myself, lines 8 to 19, where there's a  
25 reference to a \$30 million decrease in 1990, do you

1 know what that \$30 million decrease was in relation  
2 to?

3 A. Precisely, it had something to do again, as  
4 I understand it, the deferrals of Callaway, but the  
5 exact details, I don't recall.

6 Q. But it's your understanding it related to  
7 the deferrals respecting Callaway?

8 A. Whether that was the only item in there I do  
9 not know.

10 Q. Okay. Do you know whether the Staff in the  
11 context of UE's application to purchase the Missouri  
12 properties of Arkansas Power and Light performed an  
13 earnings audit?

14 A. Well, we're going back a long ways,  
15 Mr. Dottheim. I'm not sure what the details were. I  
16 vaguely remember the purchases. I don't know how many  
17 years ago that has been.

18 Q. Okay. Well, I won't take you through this.  
19 I would suggest to you that a \$30 million rate  
20 reduction -- and the Commission's Orders will reflect  
21 this -- relate to the combination of factors, a rate  
22 design proceeding.

23 MR. CYNKAR: Steve, I object. You're  
24 testifying now.

25 MR. DOTTHEIM: Okay. I'll let the

1 Commission's Orders speak for themselves. Thank you,  
2 Mr. Cynkar. We've been going for an hour and a half.  
3 Would you like to take a break?

4 THE WITNESS: I'm fine.

5 BY MR. DOTTHEIM:

6 Q. Mr. Rademan, I'm going to ask you to look at  
7 a number of documents which I previously asked  
8 Mr. Brandt to take a look at, but I'm going to try to  
9 speed this up. If your -- I'll let your counsel  
10 address this.

11 What I've done is I've flagged the pages of  
12 the documents, and I put numbers and letters alongside  
13 various sentences to assist in the process of asking  
14 you to compare portions of two different documents.  
15 And if he doesn't object, I think that may speed  
16 things along, but I'll leave that up to him.

17 MR. CYNKAR: Sounds reasonable.

18 MR. DOTTHEIM: If we could go off the  
19 record.

20 (Discussion off the record.)

21 BY MR. DOTTHEIM:

22 Q. Mr. Rademan, you've had an opportunity to  
23 look at two documents. One of those documents has  
24 been marked as Exhibit 21. I think that's the one  
25 that you are looking at right now, and it is -- it is

1 referred to in Mr. Brandt's rebuttal testimony where  
2 he indicates that the Company made a first proposal to  
3 the Staff in early 1995, which at the moment I'm not  
4 finding in my copy of his testimony.

5 MR. CYNKAR: Page 3, is that what you're  
6 talking about, or of his testimony or --

7 BY MR. DOTTHEIM:

8 Q. Of Mr. Brandt's testimony. But why don't I  
9 refer you to the -- in fact, if I refer you to  
10 Exhibit 21, the cover page, which is a Data Request,  
11 and the Data Request asks on page 8, line 22 to 23 of  
12 Donald E. Brandt's rebuttal testimony, Mr. Brandt  
13 states that in January 1995 the Company submitted a  
14 proposal to the Staff. Please provide a copy of the  
15 document referred to by Mr. Brandt on page 8, lines 22  
16 to 23 of his rebuttal testimony.

17 And what I've done, for purposes of  
18 hopefully moving us along, is I've given you a copy on  
19 which I've put some 3M post-it flags and attempted to  
20 indicate sentences in that document, Exhibit 21, that  
21 I'd like for you to compare with what has been marked  
22 as Exhibit 22, which is a copy of the Commission's  
23 March 15th, 1991 Order Granting Interventions and  
24 Approving Joint Recommendation in Case No. TO-90-1.

25 Unfortunately, I wanted to include the

1 errata sheet which was copied on top of the document.  
2 So what you see first on Exhibit 21 is the errata  
3 sheet to --

4 MR. CYNKAR: Exhibit 22.

5 MR. DOTTHEIM: I'm sorry. You are correct,  
6 Exhibit 22.

7 BY MR. DOTTHEIM:

8 Q. What you see as a first page on Exhibit 22  
9 is the errata sheet to the Order that I'd like to  
10 direct you to, and it's on the other side of that  
11 cover page where the Order Granting Interventions and  
12 Approving Joint Recommendation, TO-90-1.

13 And I'd like to direct you to, in  
14 Exhibit 22, page 9 of 21 where I have a flag by  
15 paragraph D, the first sentence, which states  
16 Southwestern Bell will comply with the monitoring  
17 procedures set forth in Attachment 3.

18 And I'd like to direct you to the next page,  
19 page 10 of 21, to the next flag which I've attempted  
20 to line up with the portion of a sentence in  
21 paragraph G which refers to the monitoring procedures  
22 stated in Attachment 3.

23 And I've -- the next flag you'll find is on  
24 page 16 of 21, which I've tried to line up with a  
25 portion of a sentence in paragraph 5 on that page

1 which states in part, Southwestern Bell shall adjust  
2 its revenues, expenses and earnings levels reported to  
3 the PSC according to the monitoring and implementation  
4 procedures described in Attachment 3.

5 And finally, we get to Attachment 3, which  
6 is the next flag, and that is page 32 of 75. At the  
7 top of the page it says "Monitoring Procedures  
8 Attachment 3."

9 And in particular I'd like to direct you to  
10 the sentences that I have numbered in that  
11 Southwestern Bell Order, which is Exhibit 22, and the  
12 sentences that I have numbered in Exhibit 21, which is  
13 the document which Mr. Brandt refers to in his  
14 rebuttal testimony, which is Exhibit 12, as having  
15 been submitted to the Staff in January 1995 as Union  
16 Electric Company's proposal to the Staff.

17 I'd like to direct you to a sentence which  
18 I've indicated with a No. 1, an Arabic 1 with a circle  
19 around it, which on Exhibit 22 is on page 32 of 75,  
20 and that indication is at the bottom right-hand corner  
21 of the page. It's the first page of the monitoring  
22 procedures, and in Exhibit 21, it's the first page of  
23 the reconciliation procedure, Attachment B.

24 And the sentence in Exhibit 22 reads --  
25 that's No. 1 -- a final earnings report and proposed

1 sharing report will be submitted to the Commission  
2 within 105 days after the end of the period.

3 And the sentence I'd like for you to compare  
4 it to in Exhibit 21 is numbered Arabic 1 with a circle  
5 around it, and it states: An earnings report will be  
6 submitted to the Commission and to all parties to this  
7 agreement by 105 days after the end of each plan year.

8 The words are not exact, they are not word  
9 for word identical, but would you agree that the two  
10 sentences are very similar in content?

11 A. Yes, I'd agree with that.

12 Q. Okay. I'd next like to refer you to the  
13 sentences that I've marked with an Arabic 2 and a  
14 circle around it in Exhibit 22. It states, that  
15 sentence on page 32 of 75, the monitoring report will  
16 be similar to Schedule 1 in Exhibit 21 on the first  
17 page of the reconciliation procedure.

18 The sentence I'd like for you to compare it  
19 to is also identified with an Arabic 2 with a circle  
20 around it. The earnings report will be similar to  
21 attached Schedule 1.

22 Again, the sentences are not identical, but  
23 would you agree that they are very similar?

24 A. Well, I don't know if monitoring in  
25 Southwestern Bell is the same as earnings in UE. The

1 sentences are structured the same way, but those two  
2 words have very different meanings.

3 Q. Okay. I'd next like to refer you to in  
4 Exhibit 22, page 33 of 75, the next page, and the  
5 sentence in paragraph E on that page that has an  
6 Arabic 3 with a circle around it, and I'd like for you  
7 to compare that to the sentence in Exhibit 21 that has  
8 an Arabic 3 by it with a circle around it, which is on  
9 the first page of the reconciliation procedure. It's  
10 paragraph 2C.

11 And in Exhibit 22 the sentence reads:  
12 Company agrees to exclude from the cost of service  
13 items which have been traditionally excluded in SWBT  
14 ratemaking proceedings, for example lobbying expense,  
15 corporate aircraft expense, contributions to  
16 charitable organizations and institutional advertising  
17 costs.

18 The sentence in Exhibit 21 that I'd like for  
19 you to compare it to reads, Company will omit items  
20 from the cost of service which have been traditionally  
21 excluded in UE rate proceedings, (for example lobbying  
22 expense, charitable contributions, good will  
23 advertising, et cetera).

24 Again, the sentences are not identical word  
25 for word, but would you agree that they are very

1 similar?

2 A. I think their intent is the same.

3 Q. Okay. I'd like to next refer you to the two  
4 sentences in the two documents that I've put Arabic 4  
5 by and put a circle around it in Exhibit 22. It's on  
6 page 33 of 75. It's in paragraph F, the first  
7 sentence, which states: Company earnings then will be  
8 adjusted to normalize the effects of any sharing  
9 credits from the prior year that are embedded in the  
10 earnings.

11 And if you would compare that to the  
12 sentence with the 4, Arabic 4 with a circle around it  
13 that's on the first page of the reconciliation  
14 procedure in Exhibit 21 in paragraph 2D which states:  
15 Net operating income will be normalized for the effect  
16 of any prior year sharing credits.

17 Again, the two sentences, the words are not  
18 identical, but would you agree that the two sentences  
19 in content are very similar?

20 A. Yes, I think they are.

21 Q. Okay. I next like to refer you to the two  
22 sentences that are marked with an Arabic 5 with a  
23 circle around it in Exhibit 22. It's on page 33 of 75  
24 of Attachment A, in paragraph G, and the sentence  
25 reads: The earnings levels upon which sharing is

1 based are those as described in items 2B through 2F.

2 And I'd like to refer you to, in Exhibit 21,  
3 the second page of the reconciliation procedure,  
4 paragraph 2G, where the sentence with the Arabic 5 and  
5 the circle around it is. The earnings level upon  
6 which sharing is based are those described in Item 2A  
7 through 2F above.

8 MR. CYNKAR: Excuse me, Steve. This has  
9 been mislabeled. That's why we had the confusion.

10 THE WITNESS: Yeah.

11 MR. CYNKAR: Five is on the wrong paragraph.

12 THE WITNESS: Need to bump it up one  
13 paragraph.

14 BY MR. DOTTHEIM:

15 Q. Mr. Rademan and Mr. Cynkar, my apologies.  
16 That was my error.

17 If I could refer you to the sentences that  
18 were intended to be marked in Exhibit 21, it's  
19 paragraph 2G, the first sentence of 2G which is marked  
20 with an Arabic 5 with a circle around it. The  
21 earnings level upon which sharing is based are those  
22 described in Item 2A through 2F above.

23 Again, the sentences are not identical, but  
24 they are very similar in content, are they not?

25 A. I think their intent is the same.

1 Q. And the sentence which I've marked in both  
2 documents with a 6 and a circle around it, in  
3 Exhibit 22, it's on page 34 of 75 of Exhibit 22, and  
4 in Exhibit 21 it's on the second page of the  
5 reconciliation procedure. It's the second sentence in  
6 paragraph 2G.

7 In Exhibit 22 the sentence reads:  
8 SWBT/Staff/OPC reserve the right to bring issues which  
9 cannot be resolved by the parties which are related to  
10 the operation or implementation of the incentive plan  
11 to the Commission for resolution.

12 And in Exhibit 21, the sentence that I'd  
13 like for you to compare it to reads: UE/Staff/OPC  
14 reserve the right to petition the Commission for  
15 resolution of disputed issues relating to the  
16 operation or implementation of this shared savings  
17 plan.

18 Again, the wording is not identical, but  
19 would you agree that the content of the two sentences  
20 is very similar?

21 A. Yes, I think they are.

22 Q. Next I'd like to refer you to, for purposes  
23 of comparison, Exhibit 22, which is the Commission's  
24 Order Granting Interventions and Approving Joint  
25 Recommendation in Case No. TO-90-1, the Southwestern

1 Bell incentive plan docket, and the first EARP, which  
2 is the Stipulation and Agreement in Case  
3 No. ER-95-411.

4 I'm going to ask you to, in this instance,  
5 compare the sentences that I've indicated by letter in  
6 the two documents.

7 MR. DOTTHEIM: Let's go off the record.

8 (Discussion off the record.)

9 BY MR. DOTTHEIM:

10 Q. Mr. Rademan, I'd now like to ask you to  
11 compare certain sentences that appear in Exhibit 22,  
12 which is the Commission's Order Granting Interventions  
13 and Approving Joint Recommendation in Case  
14 No. TO-90-1, the Southwestern Bell incentive  
15 regulation experiment case, and the Stipulation and  
16 Agreement in Case No. ER-95-411, which is in  
17 Exhibit 13, which are the appendices or which is the  
18 appendices to the rebuttal testimony of Mr. Brandt.

19 I'd like to first direct you in Exhibit 22  
20 to page 16 -- excuse me -- page 16 of 75 in  
21 Attachment A, and I'm not certain I have it marked,  
22 but I'd like to direct you to the second sentence in  
23 paragraph 5 on page 16 of 75 which states: To  
24 calculate its ROE for the purposes of this  
25 paragraph 5, Southwestern Bell shall adjust its

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1 revenues, expenses and earnings levels reported to the  
2 PSC according to the monitoring and implementation  
3 procedures described in Attachment 3.

4 And I'd like for you to compare that  
5 sentence with the sentence on page 8 of 23,  
6 Attachment A of the Stipulation and Agreement in Case  
7 No. ER-95-411, and that sentence is in small Roman  
8 Numeral i. The sentence reads: The return on common  
9 equity for determination of sharing will be calculated  
10 by using the methodology set out in Attachment C,  
11 reconciliation procedure, appended hereto.

12 The words are not identical. Are the two  
13 sentences similar in content?

14 A. Well, I'm not sure that the monitoring and  
15 implementation procedures in Exhibit 22 have the same  
16 meaning as the reconciliation procedures in  
17 Exhibit 13.

18 Q. That could be determined by a comparison of  
19 the content of the monitoring procedures, that are  
20 Attachment 3 in Exhibit 22, with the reconciliation  
21 procedure that's set out in Exhibit 13?

22 A. I would assume you could go through it line  
23 by line.

24 Q. Let me ask you to compare the next two  
25 sentences, and in Exhibit 22 it's on page 32 of 75,

1 which again is the first page of the monitoring  
2 procedures, and it's denominated by a -- by a B with a  
3 circle around it, and it states, 90 days after the end  
4 of the period, a preliminary earnings report, along  
5 with a proposed sharing report, will be submitted to  
6 the Staff and OPC.

7 And if you would compare that to the  
8 sentence that is denominated with a B which I've  
9 written by it and put a circle around it that's in  
10 Exhibit 13. It's page 8 of 23, Attachment A, and it's  
11 the first sentence in small Roman Numeral iv and  
12 reads: Within 90 days after the conclusion of a  
13 sharing period, a preliminary earnings report, along  
14 with a proposed sharing report, will be submitted by  
15 UE.

16 The words are not identical, but would you  
17 agree that the content is very similar?

18 A. Yes, I would agree with that.

19 Q. I next would like to direct you in  
20 Exhibit 22 to page 33 of 75, which is the second page  
21 of the monitoring procedures, paragraph G, the second  
22 sentence, which reads: The earnings levels upon which  
23 sharing -- upon which sharing is based are those as  
24 described.

25 MR. CYNKAR: Steve, aren't you --

1 MR. DOTTHEIM: Excuse me. Yes. I picked up  
2 the wrong sentence. Pardon me.

3 BY MR. DOTTHEIM:

4 Q. I was reading from the first sentence in  
5 paragraph G. I should be reading from the third  
6 sentence in that paragraph, which states: In  
7 addition, if Staff/OPC finds evidence that operating  
8 results have been manipulated to reduce amounts to be  
9 shared with customers or to misrepresent actual  
10 earnings or expenses, they might file a complaint with  
11 the Commission requesting that a full investigation  
12 and hearing be conducted regarding their complaint.

13 And I'd like to direct you in Exhibit 13, in  
14 the first EARP, to page 9 of 23 in Attachment A, small  
15 Roman Numeral vi, the sentence with a C with a circle  
16 around it, which states: If Staff, OPC or other  
17 signatories find evidence that operating results have  
18 been manipulated to reduce amounts to be shared with  
19 customers or to misrepresent actual earnings or  
20 expenses, Staff, OPC or other signatories may file a  
21 complaint with the Commission requesting that a full  
22 investigation and hearing be conducted regarding said  
23 complaint.

24 Again, the words are not identical, but  
25 would you agree that the content of the two sentences

1 is very similar?

2 A. Yes, I can agree with that.

3 Q. Okay. I next would like to direct you to  
4 what's in Exhibit 22, page 34 of 75, the third page of  
5 the monitoring procedure, and it's in -- it's in  
6 Section H, the fourth full paragraph.

7 (Discussion off the record.)

8 BY MR. DOTTHEIM:

9 Q. I think I was referring to the fourth full  
10 paragraph on page 34 of 75, and it's -- all of the  
11 sentences in that fourth paragraph can be matched with  
12 a paragraph in Exhibit 13, the Stipulation and  
13 Agreement in Case No. ER-95-411. The comparable, I  
14 would suggest, paragraph is on page 9 of 23 of  
15 Attachment A, small Roman Numeral vii, and I'll read  
16 the two paragraphs in entirety.

17 The first sentence says -- the first  
18 sentence of each paragraph has a 6 out by it, and it's  
19 in a circle. The next sentences in order have a D, E  
20 and F by them and circle around them.

21 The paragraph in Exhibit 22 reads:  
22 SWBT/Staff/OPC reserve the right to bring issues which  
23 cannot be resolved by the parties which are related to  
24 the operation or implementation of the incentive plan  
25 to the Commission for resolution.

1           Examples include disagreements as to the  
2 mechanics of calculating the monitoring report,  
3 interpretations of the TC-89-14 Order, alleged  
4 violations of this agreement or alleged manipulations  
5 of earnings results.

6           Said allegation of manipulation could  
7 include significant variations in the level of  
8 expenses associated with any category of cost where no  
9 reasonable explanation has been provided. The  
10 Commission will determine in the first instance  
11 whether a question of manipulation exists and should  
12 be heard.

13           The comparable or what I am going to ask you  
14 as far as the comparability of the paragraph that  
15 appears in Exhibit 13, which is small Roman Numeral  
16 vii, reads: UE, Staff, OPC and other signatories  
17 reserve the right to bring issues which cannot be  
18 resolved by them and which are related to the  
19 operation or implementation of the plan to the  
20 Commission for resolution.

21           Examples include disagreements as to the  
22 mechanics of calculating the monitoring report,  
23 alleged violations of the Stipulation and Agreement,  
24 alleged manipulations of earnings results or requests  
25 for information not previously maintained by UE. An

1 allegation of manipulation could include significant  
2 variations in the level of expenses associated with  
3 any category of cost where no reasonable explanation  
4 has been provided.

5 The Commission will determine in the first  
6 instance whether a question of manipulation exists and  
7 whether that question should be heard by it.

8 Again, the sentences are not necessarily  
9 identical, but would you agree that they are very  
10 similar in content?

11 A. Yes, they are similar in content.

12 Q. Two more sentences. The next one in  
13 Exhibit 22 is on page 34 of 75 of Attachment A. It is  
14 also in Section 2H. It is the first sentence of the  
15 last paragraph, and it reads: Finally, Staff/OPC has  
16 the right to present to the Commission concerns over  
17 any category of cost that exceeds \$300,000 that has  
18 been included in company's monitoring results and has  
19 not been included previously in any SWBT ratemaking  
20 proceedings.

21 And that sentence is denoted by a G with a  
22 circle around it. And if you would compare that to  
23 the sentence on page 10 of 23 of Attachment A in  
24 Exhibit 13, the first EARP, the sentence, being the  
25 first sentence in small Roman Numeral viii, which

1 again is denoted with a G with a circle around it,  
2 Staff, OPC and other signatories have the right to  
3 present to the Commission concerns over any category  
4 of cost that has been included in UE's monitoring  
5 results and has not been included previously in any  
6 ratemaking proceeding.

7 Again, the sentences are not identical, but  
8 would you agree they are very similar in content?

9 A. Exhibit 22 contains a threshold, whereas  
10 Exhibit 13 does not. Otherwise, the content is  
11 similar.

12 Q. Thank you. And finally, I'd like to refer  
13 you to page 36 of 75 in Exhibit 22, the second  
14 paragraph under 3E. It's denoted with an H with a  
15 circle around it, and it reads: Differences between  
16 the parties should be brought to the Commission's  
17 attention for guidance as early in the process as  
18 possible.

19 And I'd like to ask you to compare that to  
20 the sentence that appears in Exhibit 13, the  
21 Stipulation and Agreement in Case No. ER-95-411, small  
22 Roman Numeral ix, on page 10 of 23 of Attachment A.  
23 The sentence reads: Differences among UE, Staff, OPC  
24 and other signatories will be brought to the  
25 Commission's attention for guidance as early in the

1 process as possible.

2 Again, the sentences are not identical, but  
3 would you agree, Mr. Rademan, that they are very  
4 similar in content?

5 A. Yes, I would.

6 Q. Thank you.

7 Mr. Rademan, do you recall whether internal  
8 Staff documents at the time of the negotiation of the  
9 Stipulation and Agreement in EM-95-411 reflect  
10 utilization of the Southwestern Bell incentive  
11 regulation experiment by the Staff?

12 A. In the merger case, the EM case? I've got  
13 to get my numbers straight here.

14 Q. I'm sorry. And I stated that incorrectly.  
15 Thank you. You identified I said EM when I meant to  
16 say ER, and I meant to say ER-95-411.

17 So I'm asking whether you recall whether  
18 internal Staff documents, such as memos, relating to  
19 the negotiation of the Stipulation and Agreement of  
20 the first EARP, which is in Case No. ER-95-411,  
21 reflect utilization of a Southwestern Bell incentive  
22 regulation experiment by the Staff?

23 A. Seems like I recall memos which just talked  
24 about the monitoring parts of the Southwestern Bell,  
25 but I don't know about the sharing grid part.

1 I relied a lot on information that was  
2 coming out of other states and other utilities that  
3 had incentive plans more so than Southwestern Bell.  
4 But I do recall the -- some discussions about the  
5 monitoring plans of Southwestern Bell during the  
6 discussions, staffing discussions on the EARP, but I  
7 don't know if I recall anything on the sharing grids.

8 MR. DOTTHEIM: Okay. At this time I'd like  
9 to have several documents marked as exhibits. I think  
10 this will be Exhibit 43, and this is a document that  
11 was provided to the Company in response to the  
12 Company's Data Request No. 1 to the Staff.

13 It's marked as confidential, but the Staff  
14 did not assert any privilege or immunity respecting  
15 the document. It is a February 5, 1995 memo from me,  
16 Steve Dottheim. The subject is counterproposal to UE.

17 (EXHIBIT NO. 43 WAS MARKED FOR  
18 IDENTIFICATION.)

19 MR. DOTTHEIM: I'd like to have marked as  
20 Exhibit 45 -- excuse me -- Exhibit 44 another internal  
21 Staff document which was provided to Union Electric  
22 Company in response to UE's Data Request No. 1 to the  
23 Staff.

24 It is also a document that's marked  
25 confidential which the Staff did not assert any

1 privilege or immunity regarding. It is a February 15,  
2 1995 memo from me, Steve Dottheim, the subject being  
3 Further Revised Counterproposal to UE (Revised as of  
4 2/15/95, 9:30 a.m.).

5 (EXHIBIT NO. 44 WAS MARKED FOR  
6 IDENTIFICATION.)

7 MR. DOTTHEIM: And I'd also like to have  
8 marked at this time another document as an exhibit, in  
9 this instance Exhibit 45. The document is one that  
10 was provided to Union Electric Company in response to  
11 a Data Request No. 1 to the Staff.

12 It's again an internal Staff document, which  
13 the Staff has not chosen to assert any privilege or  
14 immunity respecting. It is a memo from me, Steve  
15 Dottheim, dated February 16, 1995, the subject being  
16 Further Revised Counterproposal to UE (Revised as of  
17 2/16/95.)

18 (EXHIBIT NO. 45 WAS MARKED FOR  
19 IDENTIFICATION.)

20 MR. DOTTHEIM: And one other document I'd  
21 like to have marked as an exhibit, this would be  
22 Exhibit 46.

23 Off the record.

24 (Discussion off the record.)

25 MR. DOTTHEIM: No, no Exhibit 46 at this

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time.

BY MR. DOTTHEIM:

Q. Mr. Rademan, do you have a copy of what has been marked as Exhibit 43, a February 5, 1995 memo from me to a number of other members of the staff?

A. Yes, I have it.

Q. And is there an indication on the to line that you are one of the individuals on the staff who the memo was directed to?

A. Yes, I was one of the recipients.

Q. I'd like to refer you to page 4 of that memo, and I'd like to refer you to the first paragraph of the sentences that's on page 4, and if I could direct you to the third sentence, third sentence which reads: I believe that those staff members who have been involved with monitoring the Southwestern Bell (SWBT) experiment should be consulted before we submit any proposal to UE. They should be able to provide guidance from our own experience on such matters in particular respecting UE's reconciliation procedure which is Attachment B to its proposals.

And have I read that correctly?

A. Yes, sir, you have.

Q. I'd like to direct you to the next page, page 5, paragraph 1B, which states, ROE for sharing

1 determination calculated by using methodology agreed  
2 upon by signatories to the Settlement Agreement (see  
3 monitoring procedures for SWBT experiment as a  
4 starting point for details).

5 Did I read that accurately?

6 A. Yes, you did.

7 Q. And finally in that document, I'd like to  
8 direct you to page 9 where there are two individuals  
9 being shown as being cc'd, one of them being Bob  
10 Schallenberg; is that correct?

11 A. That is correct.

12 Q. Mr. Rademan, would you agree that this  
13 document indicates that the Southwestern Bell  
14 monitoring was being used by the Staff as a reference  
15 point for purposes of negotiating with Union Electric  
16 Company regarding its first EARP?

17 A. I don't know if I would call it a reference  
18 point so much as I would say it was a place to get  
19 started.

20 Q. I'd like to direct you to what's been marked  
21 as Exhibit 44.

22 A. Which memo date is that?

23 Q. I'm sorry. It's the memo dated February 15,  
24 1995.

25 A. All right. I have it.

1 Q. And I'd like to direct you to the -- to the  
2 first page, the second paragraph. There's a --  
3 there's a word missing. I will read it exactly. The  
4 word's missing from the first sentence, I believe, in  
5 that second paragraph.

6 If they have not already done so, Doyle and  
7 Steve need to review the monitoring procedures  
8 utilized the SWBT incentive regulation experiment to  
9 determine if we have forgotten anything that needs to  
10 be added to our counterproposal to UE. For instance,  
11 the SWBT monitoring procedures indicate that in the  
12 last year of the incentive regulation experiment, SWBT  
13 was to provide additional reports and data. Is that  
14 situation applicable to the UE situation? If it is,  
15 what are the additional reports and data that we  
16 should require UE to provide in the last year of an  
17 incentive regulation plan?

18 Did I read that paragraph accurately,  
19 Mr. Rademan?

20 A. Yes, you did.

21 Q. I'd just like to direct you to page 6, the  
22 paragraph that is numbered Arabic 7, which states:  
23 ROE for sharing determination calculated by using  
24 methodology agreed upon by signatories to the  
25 settlement agreement (see monitoring procedures for

1 SWBT experiment as a starting point for detail).

2 Did I read that sentence accurately?

3 A. Yes, you did.

4 Q. Finally in that document, I'd like to refer  
5 you to the last page, page 8, where two individuals  
6 are shown as being copied, one of those individuals  
7 being Bob Schallenberg; isn't that correct?

8 A. That is correct.

9 Q. Mr. Rademan, let me ask you the similar  
10 question that I asked you about the first document.  
11 Would you agree that this February 15th document  
12 indicates that the Staff in its negotiations with  
13 Union Electric Company for purposes of the first EARP  
14 was utilizing the Southwestern Bell incentive  
15 regulation experiment?

16 A. Yes, I think in the memo it referred to it  
17 as a starting point. Yeah, on page 6, No. 7, where  
18 it's talking about ROE for sharing determinations (see  
19 monitoring procedures for Southwestern Bell telephone  
20 experiment as a starting point for details).

21 Q. Okay. I next would like to refer you to  
22 what's been marked as Exhibit 45, which is the memo  
23 from me, Steve Dottheim, dated February 16, 1995, and  
24 I'd like to refer you to the last page, page 8, where  
25 there are two individuals being shown as being copied.

1 One of them is Bob Schallenberg; is that correct?

2 A. That is correct.

3 Q. Mr. Rademan, do you recall whether  
4 Mr. Schallenberg, who's being shown as being copied on  
5 these documents, was utilized in the Staff's  
6 negotiations of the Stipulation and Agreement with  
7 Union Electric Company in EM-95-411?

8 A. I'm still having trouble with the case  
9 numbers. EM or ER?

10 Q. I'm sorry. You are correct again. I  
11 apologize. It is ER, and I can understand why you're  
12 having problems because I'm not telling you the  
13 correct case number.

14 Do you recall whether Mr. Schallenberg was  
15 utilized in the negotiations of the Stipulation and  
16 Agreement in Case No. ER-95-411 by the Staff?

17 A. Utilized by the Staff --

18 Q. Yes.

19 A. -- for the development of the proposals?  
20 Yes. I don't recall Bob ever being in any meetings  
21 where we were negotiating with the utility.

22 Q. Mr. Rademan, do you recall whether you were  
23 in attendance at the July 19, 1995 on-the-record  
24 presentation of the first EARP, which is the  
25 Stipulation and Agreement in ER-95-411?

1 A. Yes, I was present.

2 Q. Do you recall whether you spoke at all  
3 during the presentation?

4 A. To my knowledge, I don't think I did.

5 Q. Do you recall who spoke on behalf of Staff  
6 during the on-the-record presentation?

7 A. I think Mr. Dottheim did as the principal  
8 speaker.

9 MR. DOTTHEIM: At this time I'd like to have  
10 marked as Exhibit 46 the transcript to the  
11 on-the-record presentation on July 19, 1995 in Case  
12 No. ER-95-411.

13 (EXHIBIT NO. 46 WAS MARKED FOR  
14 IDENTIFICATION.)  
15 BY MR. DOTTHEIM:

16 Q. Mr. Rademan, I'd like to refer you to  
17 various pages in the transcript of the on-the-record  
18 presentation.

19 I'd like to first direct you to page 4,  
20 starting at line 17 where I indicate that I'm  
21 appearing on behalf of the Staff of the Commission.  
22 And then I'd like to direct you to page 6, line 3,  
23 where I begin an opening statement which continues to  
24 page 13, line 21.

25 And on page 13, line 21, I state in the

1 opening remarks: Part of the Stipulation and  
2 Agreement set out therein and in Attachment C is a  
3 rigorous monitoring of utilities' financial data  
4 similar to the monitoring of Southwestern Bell that  
5 occurred in the Southwestern Bell experimental  
6 alternative regulation plan.

7 Did I read that accurately?

8 A. Yes, you did.

9 Q. I'd next like to refer you to page 14, line  
10 10. We're still in my opening statement. I state:  
11 Similarly to the credits in the Southwestern Bell  
12 experimental alternative regulation plan, the  
13 one-time -- well, the credits represent money to be  
14 credited to accounts of customers whose accounts are  
15 active as of the date of the rendering of the bill  
16 that is to contain the credits for a particular  
17 premises. The amount of the credit will be based upon  
18 the kilowatt-hour use at the premise over a historical  
19 12-month period, and the credit is to be given to the  
20 current customer at the premises for which the bill is  
21 to be rendered.

22 Did I read that accurately?

23 A. Yes, you did.

24 Q. I next would like to refer you to page 36 --  
25 page 36, line 1, where Chairman Mueller asks the

1 following question: Okay. On page 7 of the  
2 Stipulation, is the Staff confident and the Company  
3 willing to recognize that those nine points that we  
4 have there will be adequate in order to complete the  
5 monitoring?

6 And my response to Chairman Mueller's  
7 question begins on line 5 and continues to line 23 on  
8 that page, but I'd like to direct you in particular to  
9 line 14. Beginning on line 14, the transcript  
10 reflects that I stated: I think there's also a  
11 provision for, if any dispute, disagreement arises,  
12 problems from our perspective, we may bring it to the  
13 Commission for a resolution, and hopefully that  
14 situation will not occur.

15 The language for much of this phase or  
16 portion of the Stipulation and Agreement tracks the  
17 language in the Southwestern Bell settlement agreement  
18 that was effectuated in 1989, if my memory serves me  
19 correctly, which led to the establishment of the  
20 alternative regulation plan for Southwestern Bell and  
21 a monitoring by the Staff.

22 Did I read that accurately, Mr. Rademan?

23 A. Yes, you did.

24 Q. You did not tell me at the on-the-record  
25 presentation that I had misspoke or stated anything

1           incorrectly at the on-the-record presentation, did  
2           you?

3           A.       No, I did not.

4           Q.       You did not tell me at any time after the  
5           on-the-record presentation that I had misspoke or  
6           stated anything incorrectly at the on-the-record  
7           presentation, did you?

8           A.       No, I did not.

9           Q.       I'd like to refer you to page 4 of your  
10          testimony, paragraph 6, lines 1 to 14.

11          A.       Excuse me. Lines what?

12          Q.       1 to 14. And I've previously referred you  
13          to this paragraph. Again, you state therein that a  
14          benefit of the sharing grid approach is that it  
15          functions as an incentive for utility employees to  
16          increase their productivity, do you not?

17          A.       Yes, I do.

18          Q.       Do you recall whether the Staff in the first  
19          EARP negotiations removed --

20                   (Discussion off the record.)

21          BY MR. DOTTHEIM:

22          Q.       Let me start again. Do you recall whether  
23          the Staff in the first EARP negotiations removed the  
24          word incentive from the Stipulation and Agreement?

25          A.       I'm sorry. I don't recall.

1 Q. Mr. Rademan, I'm going to hand you a copy of  
2 a March 22, 1995 letter and attachment, the attachment  
3 being a draft Stipulation and Agreement. The letter  
4 is to Mr. Donald E. Brandt.

5 And I'd like to refer you to the second page  
6 in the paragraph that is approximately in the middle  
7 of the page. It's numbered Arabic 2, and it states --  
8 and I should preface that with the sentence that  
9 begins, these items that are set off by Arabic numbers  
10 which states: I know that you and others at the  
11 company will give the enclosed a close reading, but I  
12 would note a few items in passing which you did not  
13 see in the Staff's counterproposal.

14 Mr. Rademan, then Arabic No. 2 states: I  
15 have replaced the word incentive with the word  
16 alternative because of the argument that the  
17 Commission should not engage in incenting utilities to  
18 do what they are otherwise statutorily required to do.  
19 And in that sentence the words incentive, alternative  
20 and incenting are in quotation marks.

21 Did I read that sentence correctly?

22 A. Yes, you did.

23 Q. Do you recall the Staff rejecting certain  
24 language in the negotiations that were proposed by UE  
25 that the Staff thought was too restrictive regarding

1 monitoring?

2 A. I don't recall, Mr. Dottheim. Maybe they  
3 did. I simply don't recall. There were several staff  
4 members working on this thing with several  
5 representatives of Union Electric, and I -- I don't  
6 know what was all discussed.

7 Q. Okay. I'm going to hand you a copy of an  
8 April 4 letter to Mr. James J. Cook to which is  
9 attached a draft Stipulation and Agreement. Again,  
10 the letter is dated April 4, 1995.

11 And I'd like to direct you in that April 4  
12 letter to the second page, the last paragraph on the  
13 page, which is No. 5. The paragraph reads:  
14 Section 3E, page 5, Staff is strongly opposed to the  
15 language substituted by UE in Section 3E because of  
16 concern on the part of the Staff that UE places or  
17 will place on Staff's activities an unacceptably  
18 restrictive interpretation of monitoring.

19 Staff suggests that the word "reasonably" in  
20 the third line of Section 3E be dropped, not because  
21 Staff intends to be unreasonable, but because of  
22 concern that from the start UE views Staff and OPC  
23 monitoring procedures as likely constituting  
24 "unreasonable" activity.

25 Staff notes that UE has added language to

1 Section 3F small Roman Numeral viii, page 8,  
2 ("requests for information not previously maintained  
3 by UE") which should afford UE protection from  
4 "unreasonable" activity.

5 Did I read that accurately?

6 A. Yes, you did.

7 Q. Okay. I'd like to refer you to page 6 of  
8 your testimony, which is Exhibit 39. It's in  
9 paragraph 10, lines 7 and 8 where you state, "This  
10 agreed on accounting for UE's earnings was designed to  
11 be a simple mechanical process".

12 You then on page 6, line 10, refer to, "This  
13 simplicity intended by the parties". And I was just  
14 quoting directly from your line 10. Which parties are  
15 you referring to?

16 A. I'm referring to all the parties in the  
17 proceeding that signed on to the Stipulation because  
18 the Stipulation and Agreement had been filed already.

19 Q. Okay. Are you then testifying on behalf of  
20 all the parties that signed the Stipulation and  
21 Agreement?

22 A. No, sir, I'm not. I'm merely stating what  
23 was the result of those signatures in the Stipulation  
24 and Agreement.

25 Q. Are you not also testifying to what the

1 intention of those parties were?

2 A. I think the Stipulation and Agreement states  
3 those intentions.

4 Q. Haven't you provided an explanation of what  
5 you believe those intentions are?

6 MR. CYNKAR: I think that question has been  
7 answered. I'm not sure you want something different  
8 than what he said already, Steve.

9 BY MR. DOTTHEIM:

10 Q. Mr. Rademan, could you take me to the  
11 Stipulation and Agreement and show me what the  
12 intention of the parties are relating to this item as  
13 specifically stated in the Stipulation and Agreement?

14 A. Would you repeat your question, please?

15 Q. Could you take me to the Stipulation and  
16 Agreement and show me what the intention of the  
17 parties was regarding this item?

18 A. Regarding the what? Excuse me.

19 Q. Regarding this item?

20 MR. CYNKAR: Are you referring to the  
21 reconciliation procedure here?

22 MR. DOTTHEIM: Anywhere in the Stipulation  
23 and Agreement.

24 MR. CYNKAR: I didn't understand the  
25 question that you were asking him. Their intention

1 with respect to this item, and that item is the  
2 reconciliation?

3 MR. DOTTHEIM: Yes. Excuse me. The item is  
4 the reconciliation procedure, that it be a simple  
5 mechanical process, almost like filling out a simple  
6 one-page tax return.

7 THE WITNESS: I'm referring to Attachment C  
8 of the reconciliation procedure, which is attached to  
9 the Stipulation and Agreement.

10 Under No. 2, the earnings report will  
11 reflect the following, there are a series of  
12 statements there identified as A, B, C and so forth.  
13 All of those items are straightforward items that are  
14 provided -- the biggest part of them are provided in  
15 the Company's Annual Report, the FERC Form 1.

16 It starts out with the Missouri electric net  
17 operating income, common equity returns, Missouri  
18 electric allocation factors as shown in Schedule 1.  
19 It's all cookbook. It's straight mechanical  
20 calculation.

21 BY MR. DOTTHEIM:

22 Q. And you're testifying on this on behalf of  
23 all the signatories to the Stipulation and Agreement  
24 as to what the intention of the parties were?

25 A. By signing this Stipulation and Agreement

1 and agreeing to it, I -- yes, I think that is their  
2 intention.

3 Q. Can you show me anywhere in the Stipulation  
4 and Agreement the words "simple mechanical process"?

5 A. No, I cannot show you that, Mr. Dottheim.

6 Q. Can you show me in the Stipulation and  
7 Agreement the words "almost like filling out a simple  
8 one-page tax return"?

9 A. No, I cannot.

10 Q. If I could refer you on the same page,  
11 page 6.

12 A. Of my --

13 Q. Yes.

14 A. -- statement?

15 Q. I'm sorry.

16 A. Okay.

17 Q. Yes. Exhibit 39, your testimony, this time  
18 paragraph 11, line 16, and there you state "the  
19 parties intended." My question to you is similar  
20 to --

21 A. Is that on line 16?

22 Q. Yes. I'm sorry. And my question to you is  
23 similar to the question -- questions I asked you just  
24 a short while ago. Are you testifying here on behalf  
25 of the signatories to the Stipulation and Agreement?

1 MR. CYNKAR: I think that's been asked and  
2 answered.

3 BY MR. DOTTHEIM:

4 Q. My question previously related to the  
5 statement on line 10. This time I'm asking in regards  
6 to the statement on line 16, the sentence that begins  
7 on line 16 and ends on line 19.

8 A. I don't know how to answer your question,  
9 Mr. Dottheim. The Stipulation and Agreement was  
10 signed by all the parties. I think the intent of  
11 those parties is exactly as I stated it there.

12 Q. Mr. Rademan, let me ask you, I --

13 A. That's my opinion, and you may disagree with  
14 it, but that's my opinion.

15 Q. I wouldn't normally ask this question,  
16 Mr. Rademan, but I think your answers on page 6  
17 require me to do so, and that is, I have a question  
18 about the change that you made on page 2 of your  
19 testimony, and by that I'm referring to line 17.

20 And the change you made, originally the line  
21 read, on line 17, "the model in the minds of the  
22 parties negotiating the UE EARP," and you changed that  
23 from the word "parties" to the words "the Staff and UE  
24 when"?

25 A. That is correct.

1 Q. And my question to you is, would the basis  
2 for your changing your testimony on page 2, line 17,  
3 also be possibly a similar basis for addressing on  
4 page 6, on lines 10 and 16, your testimony as to what  
5 the parties intended?

6 It seems to me on page 2, line 17, you were  
7 originally testifying as to the intention of the  
8 parties, the model in the minds of the parties. And  
9 I'm inquiring as to whether the basis for making the  
10 change on page 2, line 17, might also be a basis for  
11 reviewing and possibly changing your testimony on  
12 page 6, lines 10 and 16, where you testify as to what  
13 was the intention of the parties?

14 A. May I have a couple minutes to look at it?

15 Q. Certainly.

16 A. Let me try to answer your question, and if I  
17 don't, please follow up.

18 Q. Certainly.

19 A. With regards to page 2, paragraph 3, my  
20 thinking deals there with the sharing grid mechanism,  
21 and I personally had a lot of discussions with Union  
22 Electric as to how that sharing grid should look, what  
23 it should contain. I got input from Mr. Jay Moore and  
24 the other staff people who were working for me at that  
25 time.

1                   And that's the reason why I changed it from  
2 parties, because the parties at that point of the  
3 negotiation were not there. The parties at that time  
4 were Staff and UE, and that's why I made that change.  
5 That was before any proposals and counter proposals  
6 were made. That was before any monitoring procedures  
7 or documentation was ever memorialized.

8                   This was the -- this was a lot of  
9 discussions that went on between the Staff and UE  
10 regarding the sharing grid primarily before anything  
11 was put to paper, and I didn't feel that I could speak  
12 for the parties before the document was signed.

13                   Now, when we get back to page 6, my thinking  
14 there is that the document is signed. Everybody's  
15 signed on the same page. I would hope they were on  
16 the same page. And I tried to state what the  
17 intentions of the parties were.

18                   I did not contact each one of them and ask  
19 them if I could make that statement, if I could  
20 testify on their part. I tried to state what I  
21 thought the intentions were of the parties after the  
22 document had been signed.

23                   Did I answer your question?

24                   Q.     Let me follow up.

25                   A.     All right.

1 Q. The document is signed now, correct?

2 A. That is correct, and approved by the  
3 Commission.

4 Q. What prevents you -- based on the rationale  
5 you just provided, what prevents you from testifying,  
6 now that the document is signed, what was in the minds  
7 of the parties negotiating the UE EARP as it relates  
8 to the sharing grid?

9 MR. CYNKAR: Steve, I'd have to object. I  
10 think what Ken said was that that time period when he  
11 was negotiating was a discrete time period. I'm not  
12 sure your question makes sense, because he said when  
13 he was negotiating it was him and UE, and so I'm not  
14 following the track of your question.

15 MR. DOTTHEIM: Well, now the document, the  
16 Stipulation and Agreement has been signed, as I think  
17 is his rationale as to why he believes he can testify  
18 to the intention of the parties, as he is doing on  
19 page 6.

20 Now that -- regardless of what prior  
21 discussions may have occurred between the Staff and  
22 UE, the document is now signed by the various  
23 signatories, and as a consequence, wouldn't that be a  
24 similar situation as exists now respecting the items  
25 on page 6 which he believes permits him to testify as

1 to the intention of the parties regarding those items  
2 on page 6?

3 MR. CYNKAR: I don't think so. What I'm  
4 confused about is, as I understand what he just  
5 testified to was that he was talking about in the --  
6 in his correction on page 2, an understanding of his  
7 and UE's intentions when they were negotiating.

8 This latter part is saying that the -- which  
9 is not, I don't think, a very controversial  
10 proposition. The basic intent of the parties with  
11 respect to an agreement is evident from the agreement,  
12 and so I think they're two different situations as I  
13 understand his testimony. That's why I'm not sure  
14 your question makes sense in that context.

15 MR. DOTTHEIM; Well, let me ask another  
16 question.

17 MR. CYNKAR: Okay. He can answer it if he  
18 wants to, but I just don't understand it myself. But  
19 we're all tired, too.

20 MR. DOTTHEIM: For which I apologize.

21 BY MR. DOTTHEIM:

22 Q. The fact that there are other signatories to  
23 the Stipulation and Agreement, would that indicate --  
24 and I'm referring to page 2 of your testimony. Would  
25 the fact that there are other signatories to the

1 Stipulation and Agreement be an indication that they  
2 have affirmed what was in the minds of the Staff and  
3 UE when the Staff and UE were negotiating the UE EARP?

4 A. I'm sorry. I'm confused. I'm not following  
5 you. Let me try again.

6 Q. Okay.

7 A. On page 2, paragraph 3, I was talking about  
8 negotiations that I had with Union Electric prior to  
9 anything being put in writing.

10 When we go to page 6, I'm talking about the  
11 Stipulation and Agreement after it's signed by all the  
12 parties, approved by the Commission, and my  
13 interpretation of what the intentions of the parties  
14 were.

15 Q. Okay. I won't belabor it.

16 A. Okay.

17 Q. We'll move on. I'm going to ask you to  
18 refer back to the copy of the transcript of the  
19 on-the-record presentation to the Commission on  
20 July 19, 1995, and I'd like to refer you to page 12,  
21 line 3, and I would refer you back to page 6 where my  
22 name appears on line 3. And the section I'm referring  
23 you to on page 12 at line 3 is part of my opening  
24 statement.

25 A. Oh, all right. I follow you.

1 Q. Okay. And I'd like to refer you to lines 3  
2 through 12 where I state: The Staff wants to  
3 emphasize that it views the instant experimental  
4 alternative regulation plan as an experiment. It is  
5 important to identify from the Staff's perspective the  
6 instant alternative regulation plan as an experiment  
7 for two reasons.

8 One, it is the Staff's belief that the  
9 Commission has the authority to enter into experiments  
10 and experiments such as that which is contained in the  
11 Stipulation and Agreement; and two, the Commission has  
12 the authority to not enter into similar experiments  
13 with other electric utilities.

14 Do you know whether my representation to the  
15 Commission at the on-the-record presentation on  
16 July 19, 1995 that the first EARP was lawful was based  
17 on the assertion that the only item that was borrowed  
18 from the Southwestern Bell incentive regulation  
19 experiment was the concept of the sharing grid?

20 MR. CYNKAR: I would object if you're trying  
21 to characterize what his testimony was because I don't  
22 think his testimony was that that was anything that  
23 was part of.

24 BY MR. DOTTHEIM:

25 Q. What is your testimony as to what was

1 borrowed from the Southwestern Bell incentive  
2 regulation experiment?

3 A. The concept of the sharing grid was borrowed  
4 from Southwestern Bell, along with other places. As I  
5 stated earlier, there were incentive plans going on in  
6 other states on other utilities.

7 So in my -- in my reviews and in my  
8 negotiations, I relied on not only Southwestern Bell  
9 but primarily on the other ones that were tailored to  
10 fit and working with electric utilities.

11 Q. Okay. Let me ask you a different question.

12 A. All right.

13 Q. Do you know whether my representation to the  
14 Commission at the on-the-record presentation on  
15 July 19, 1985 -- 1995 that the first EARP was lawful  
16 was based on my representation to the Commission that  
17 the Southwestern Bell monitoring procedures were  
18 applicable?

19 A. I don't know how to answer that question,  
20 Mr. Dottheim. I'm not an attorney, and for me to say  
21 something is lawful, I don't think it's quite proper.

22 Q. I don't think that that is what I'm asking  
23 you. Let me ask the question once more, and if it's  
24 not any clearer, then we'll move on.

25 A. All right.

1 Q. I'm not asking for you to make some sort of  
2 legal conclusion as to whether the first EARP was  
3 lawful or not.

4 I'm asking, do you know -- we've been  
5 through the portion of the transcript where I made a  
6 representation to the Commission that the first EARP  
7 is based on the Southwestern Bell monitoring  
8 procedures; isn't that correct?

9 A. That's the representation you made, yes.

10 Q. Do you know whether my representation to the  
11 Commission that the first EARP was lawful was based on  
12 my representation to the Commission that the first  
13 EARP was based on the Southwestern Bell monitoring  
14 procedures?

15 A. I'm sorry. I'm still not understanding the  
16 question.

17 Q. Okay. We'll move on.

18 Let's return to your testimony, Exhibit 39.  
19 Let's go to page 5, in paragraph 9 of your statement,  
20 and I'd like to refer you to line 21. You state  
21 therein that the USOA in large measure follows GAAP,  
22 do you not, GAAP being G-A-A-P?

23 A. Yes. Now I probably should qualify that  
24 because I don't know what it's done in the last two  
25 years. But at the time of signing of the Stipulation

1 and Agreement, that was my understanding.

2 Q. Can you provide any examples, based upon  
3 your knowledge of two years ago, where the USOA does  
4 not follow GAAP?

5 A. I can't think of any off the top of my head,  
6 no.

7 Q. Do you recall whether the Missouri  
8 Commission has adopted the USOA for ratemaking  
9 purposes?

10 A. My understanding, it's in the Commission's  
11 rules.

12 Q. I'm not sure I understand your answer. What  
13 is in the Commission's rules?

14 A. The adoption of the Uniform System of  
15 Accounts.

16 Q. And that's --

17 A. For the utilities.

18 Q. And that's for -- that's for ratemaking  
19 purposes?

20 A. That's my understanding, yes.

21 Q. Mr. Rademan, could you provide for me a  
22 definition of GAAP?

23 A. It's been so long since I reviewed that,  
24 Mr. Dottheim. I don't know how thorough it could be.

25 MR. CYNKAR: I take it you want a lay

1 person's definition because I'm not sure what I'd say.

2 MR. DOTTHEIM: Yes.

3 MR. CYNKAR: He's not an accountant.

4 MR. DOTTHEIM: No.

5 BY MR. DOTTHEIM:

6 Q. You're not an accountant, are you,  
7 Mr. Rademan?

8 A. No. I am an engineer by profession, yes.

9 Q. Can you provide me a definition of GAAP as a  
10 non-accountant based upon your experience at the  
11 Commission?

12 A. I can try.

13 Q. Please do.

14 A. I don't know where they are documented at,  
15 but it's my understanding that there are certain  
16 accounting principles that are to be utilized when  
17 doing accounting work. You do your accounting, either  
18 the utility or any -- not necessarily any. Not only  
19 utilities, but anyone who does accounting is to follow  
20 certain principles. It's like a code of ethics, if  
21 you will. That's my understanding of it.

22 Q. Who is it, if you recall, that determines  
23 what is GAAP?

24 A. I don't recall who makes that determination.

25 Q. Do the words generally accepted accounting

1 principles or the acronym GAAP appear anywhere in the  
2 first EARP, the Stipulation and Agreement in  
3 ER-95-411?

4 A. To my knowledge, no.

5 Q. I'd like to refer you again to your  
6 testimony, paragraph 9 on page 5, lines 16 to 20. You  
7 state therein, do you not, that the accounting  
8 methodologies embodied in UE's books and records "are  
9 long-established accounting -- long-established  
10 accounting practices that have been shaped" by the  
11 requirements of this Commission, among other things?

12 A. Basically, yes.

13 Q. To which requirements of this Commission are  
14 you referring?

15 A. The Commission's rules that govern the  
16 Uniform System of Accounts.

17 Q. What is your definition of long-established  
18 accounting practice?

19 A. A practice that has traditionally been done  
20 the same way for a period of years.

21 Q. I'm going to ask you a series of questions,  
22 and the question in each instance is, is the following  
23 situation a possible definition of long-established  
24 accounting practice?

25 Is an accounting practice that was in effect

1 for UE at the time the ER-95-411 Stipulation and  
2 Agreement was adopted a definition of a  
3 long-established accounting practice?

4 A. I don't know.

5 Q. Is an accounting practice that was in effect  
6 for UE for some period of time prior to the adoption  
7 of the ER-95-411 Stipulation and Agreement a possible  
8 definition of a long-established accounting practice?

9 A. I don't know.

10 Q. Is an accounting practice that was based on  
11 a prior Commission ratemaking decision in a litigated  
12 UE rate proceeding a possible definition of  
13 long-established accounting practice?

14 A. I don't know, Mr. Dottheim.

15 Q. Okay. Is an accounting practice that was  
16 based on a prior Commission ratemaking decision in a  
17 non-UE litigated rate proceeding a possible definition  
18 of a long-established accounting practice?

19 A. I don't know, Mr. Dottheim. I'm not averse  
20 in the -- that versed in the accounting area.

21 Q. One more question.

22 A. All right.

23 Q. Is an accounting practice that was never  
24 challenged by the Staff or other parties in past UE  
25 rate proceedings a possible definition of a

1 long-established accounting practice?

2 A. I can't say with any degree of certainty.

3 Q. Do the words long-established accounting  
4 practice appear anywhere in the first EARP, the  
5 Stipulation and Agreement in ER-95-411?

6 A. To my knowledge, no.

7 Q. Do the words established accounting practice  
8 appear anywhere in the first EARP, which is the  
9 Stipulation and Agreement in ER-95-411?

10 A. Subject to check, no, I don't think they do,  
11 but it's been a long time since I've gone through the  
12 documents in that kind of a detail, sir.

13 Q. Does the first EARP contemplate that changes  
14 in GAAP will be followed in the calculation of  
15 credits?

16 A. It's my opinion that they would be.

17 Q. Does the Stipulation and Agreement  
18 contemplate that changes by UE in its accounting  
19 methodologies or its established accounting practices  
20 will be reflected in the calculation of credits?

21 A. As long as those changes don't violate any  
22 of the Commission's rules, I think they should be  
23 reflected.

24 Q. Under the terms of the first EARP, can the  
25 Staff propose to adjust UE's booked earnings on the

1 grounds that a particular cost was imprudently  
2 incurred?

3 A. The word imprudently is giving me -- you're  
4 asking me to draw a conclusion as to what's prudent  
5 and imprudent, and I don't know that I can do that  
6 without a little more clarification.

7 Q. By imprudent, let's say that negligence was  
8 involved in an act.

9 A. Can you give me an example? That might  
10 help.

11 Q. What does imprudence mean to you? How would  
12 you define it?

13 A. Unlawful.

14 Q. In your years at the Commission, did the  
15 staff under your supervision ever make adjustments  
16 based upon imprudent acts by the utilities that the  
17 Commission regulates?

18 A. Oh, I see where -- okay. Yes, we have made  
19 those adjustments, and in that context unlawful is too  
20 strong a word. Improper might be a better word.

21 Q. Inappropriate?

22 A. Inappropriate.

23 Q. An insufficient level of care?

24 A. Possible.

25 Q. In the context of the definition of

1        imprudence that, in your experience, the Staff has  
2        utilized to make adjustments to a company's booked  
3        results, under the terms of the first EARP, can the  
4        Staff propose to adjust UE's booked earnings on the  
5        grounds that a particular cost was imprudently  
6        incurred?

7            A.        Yes, I think they could.

8            Q.        I'd like to refer you to page 9 of your  
9        testimony, Exhibit 39, and I'd like to refer you to  
10       line 4, and I'd like to refer you to the words "the  
11       Staff's positions." Can you identify the Staff's  
12       positions to which you are referring to in that  
13       sentence?

14           A.        The Staff's position that I'm referring to  
15       there deals with the concept of trying to add things  
16       to the adjustment list that should not be there.

17           Q.        Can you identify any of the Staff's  
18       positions that the Staff has filed in this proceeding  
19       that would fall under that characterization?

20           A.        I don't -- I haven't done enough of a review  
21       of all the testimonies filed. That has not been  
22       afforded me. I'm not here to testify as to particular  
23       issues in the case that are being raised. It's -- I'm  
24       here to tell the Commission that the methodology has  
25       been set, and the Staff should not be changing that

1 methodology.

2 Q. Can you at this point identify any of the  
3 Staff's positions on particular issues in this case?

4 A. Well, as I understand from discussions with  
5 UE, that there's an adjustment for Y2K expense, for  
6 example, and I'm not satisfied in my own mind that  
7 that's a proper adjustment to be made.

8 Q. Do you provide your rationale which causes  
9 you not to be satisfied in your mind that that's not a  
10 proper adjustment to be made?

11 A. The concept behind the Stipulation and  
12 Agreement and the reconciliation deals with the  
13 operational and implementational aspects of the  
14 Stipulation and Agreement and the EARP.

15 I don't see where an adjustment for one  
16 particular expense, whatever that expense might be,  
17 goes to the implementation or the operation of it.

18 Q. Under your definition, is there any  
19 adjustment that would be proper?

20 A. Only unless it goes to the manipulation  
21 aspects of it that are discussed.

22 Q. And how do you define manipulation?

23 A. I think the document does that job. The  
24 Stipulation and Agreement defines manipulation,  
25 adjusting the books to give you results that you want

1 rather than the actual numbers that are there. That  
2 would be an example.

3 Q. How would the Staff make that determination?

4 A. I would assume they would do that through  
5 their review and their discovery process.

6 Q. And what would they have to discover in that  
7 situation?

8 A. I don't know. I guess it would depend on  
9 the nature of the supposed manipulation, would be my  
10 understanding.

11 Q. Nothing comes to mind?

12 A. Nothing comes to mind right now.

13 Q. Can you identify any other of the Staff's  
14 adjustments other than Y2K?

15 A. No, I cannot. I have not reviewed the case.

16 Q. Let's return to your statement in paragraph  
17 15 where you say that the Staff's positions in this  
18 case profoundly threatens the integrity of the  
19 regulatory process. What do you mean by the word  
20 profoundly?

21 A. I think it has some very serious effects on  
22 alternative regulation in Missouri. In my opinion, it  
23 in essence dooms the alternative regulation plan to  
24 failure.

25 Q. On what do you base that evaluation?

1           A.       The plan as an experiment, as we've read and  
2 discussed before, needs to go through the whole course  
3 of time without making adjustments to it. If a  
4 chemist sets out to do an experiment to test a certain  
5 formula, he doesn't go halfway through the experiment  
6 and then decide, oh, I'm going to change the formula  
7 and then complete the experiment.

8           Part of the experiment is to determine what  
9 works and what doesn't, and you can't go halfway  
10 through it and change the components of it and hope to  
11 make an analysis at the end of it that has any  
12 meaning.

13          Q.       Mr. Rademan, isn't the first experiment  
14 over? Isn't the first EARP at an end as of June 30th,  
15 1998?

16          A.       In my opinion, it is extended in the merger  
17 case. I think the experiment was six years on.

18          Q.       How many EARPs is there -- are there? Is  
19 there one EARP or is there two EARPs?

20          A.       In my opinion, there's one. There may be  
21 some good legal arguments there, but in my opinion  
22 there's only one.

23          Q.       Are the issues in this case properly before  
24 the Commission for determination or should they not  
25 have been brought to the Commission for determination

1 because they're outside the bounds of the EARP?

2 A. In my opinion, they should not have been  
3 brought because they don't deal with the operational  
4 or implementational aspects of the EARP.

5 Q. If the Commission were to adopt the Staff's  
6 positions, would the Commission violate the integrity  
7 of the regulatory process?

8 A. I can't answer that question unless I knew  
9 what they were going to do in place of it, if  
10 anything, and that might be a rate case or traditional  
11 ratemaking.

12 Q. Well, I'm --

13 A. I think -- in my mind, I think they'd  
14 seriously damage it, yes.

15 Q. Mr. Rademan, I'm not asking you to make any  
16 legal conclusions, and if you can't answer my  
17 question, just state so, but there have been any  
18 number of witnesses in this proceeding who have sought  
19 to address this question.

20 If the Commission were to adopt the Staff's  
21 positions, would the Commission violate a contract  
22 that it has entered into with Union Electric Company?

23 A. I don't feel comfortable answering that  
24 question. That asks for a legal conclusion, and I  
25 don't feel qualified to do that.

1 Q. Do you have -- I think you do -- a copy of  
2 Mr. Brandt's testimony which has been marked as  
3 Exhibit 12?

4 A. I have it somewhere.

5 Q. And I think you've indicated that you've  
6 read Mr. Brandt's testimony?

7 A. Yes, I have.

8 Q. I'd like to refer you to page 9, lines 1 to  
9 6.

10 A. 1 to 6?

11 Q. Yes, wherein Mr. Brandt states that by March  
12 1995 the two parties had effectively hammered out a  
13 deal. The agreement that was the result of their  
14 collective labors was shared with interested parties,  
15 including the Office of the Public Counsel and large  
16 industrial consumers. In the next -- in the course of  
17 the next three months, some minor changes were made,  
18 and in June the Staff, OPC, the Company and three  
19 other parties submitted an agreement to the Commission  
20 for its consideration.

21 Do you agree with Mr. Brandt's  
22 characterization of the situation regarding the first  
23 EARP as he set it out on lines 1 through 6 on page 9?

24 A. Well, I don't know if I would go so far as  
25 to say we had hammered out a deal. I think we had

1 some agreements in principle, but the -- I wouldn't  
2 call it a deal until all parties had said okay.

3 And the reason -- one of the main reasons I  
4 state that, for example, is, if my memory serves me  
5 correct, there was no discussion of rate design, of a  
6 rate design study before March of '95. That part came  
7 in as a result of discussions with the other parties.

8 Q. What rate design study are you referring to?

9 A. As I recall, Mr. Johnson, who represented  
10 the industrial intervenors, wanted to do some cost of  
11 service study work, as I recall. We had to set some  
12 dates certain by which we would start such a study and  
13 establish a test year. I don't recall what the dates  
14 were of any of that, but if my memory serves me  
15 correctly.

16 And I'm not sure as of March of '95 if we  
17 had worked out the details as to how the moneys would  
18 be refunded, how the credits would be handled. Not  
19 necessarily moneys refunded, but how the credits would  
20 be handled, who would get credits.

21 MR. CYNKAR: Steve, if I could just ask,  
22 it's now 11 o'clock. John hasn't had a chance to go  
23 yet. How much more time do you need?

24 MR. DOTTHEIM: Half an hour max.

25 MR. CYNKAR: John, do you have a sense of

1 how long you're going to go?

2 MR. COFFMAN: Half an hour max for me.

3 MR. DOTTHEIM: In fact, if we take a break,  
4 I may be able to even cut that down.

5 MR. CYNKAR: That's an offer I can't refuse.  
6 Let's take a break.

7 (A break was taken.)

8 BY MR. DOTTHEIM:

9 Q. Mr. Rademan, was he monitoring the first  
10 year of UE's first EARP done under your general  
11 supervision and direction?

12 If I could direct you, it may help, to, in  
13 Exhibit 13, the Attachment A, page 4 of 23. I'm  
14 looking at the bottom right-hand corner. In  
15 paragraph C at the bottom of the page it lists, the  
16 first sharing period shall be from July 1, 1995  
17 through June 30, 1996, and the second sharing period  
18 from July 1, 1996 through June 30, 1997.

19 A. Yeah. I couldn't remember the months is why  
20 I was hesitating, but the first sharing -- the first  
21 period was under my supervision.

22 Q. Okay. Do you recall who worked on the first  
23 year of the UE sharing credits for the Staff?

24 A. I don't recall all the -- all the players.  
25 Jay Moore was involved on the finance side, ROE side.

1 I think Doyle Gibbs was involved in it, but I don't  
2 recall who else was. I'm sure there was some other  
3 accountant, but I don't recall who they are.

4 Q. Do you recall getting any specific  
5 instructions to the auditors as to how the monitoring  
6 process should be conducted?

7 A. No, I don't recall giving them any specific  
8 instructions.

9 Q. In reference to the parties agreeing on a  
10 reconciliation procedure under the first EARP, would  
11 you agree that it was impossible for the parties to  
12 anticipate all costs that would be incurred and all  
13 situations that would be experienced by UE during the  
14 duration of the sharing plan?

15 A. Yes, I would agree with that.

16 Q. If UE incurs new costs or incurs costs in a  
17 situation that is significantly different than that  
18 which it previously experienced, under the EARP, did  
19 the parties have the right to bring concerns to the  
20 Commission about how UE has chosen to account for the  
21 new costs or the costs relating to the new  
22 circumstances?

23 A. In my opinion, unless it violates the  
24 operational aspects of the plan or is some type of  
25 manipulation, no.

1 Q. Would you define new cost category?

2 A. Well, I guess it's the opposite of an old  
3 cost category. Something that has not been  
4 experienced before.

5 Q. Under that definition, what kinds of costs  
6 would you envision that would fall into that category?

7 A. I don't -- I can't think of one. All costs  
8 that I can ever think of find a place in some account  
9 within the Uniform System of Accounts. So it's put in  
10 a category.

11 Q. Under that definition, is it possible for  
12 there to be a new cost category?

13 A. I assume it's possible.

14 Q. But you can't think of a situation?

15 A. But I can't think of any.

16 Q. Bear with me a moment.

17 When the first EARP was being negotiated,  
18 did you assign anyone from the staff specifically to  
19 work on developing Attachment C, the reconciliation  
20 procedure?

21 A. There were two primary staff people, as I  
22 recall. That would have been Jay Moore and Doyle  
23 Gibbs, and I would -- as I recall, they were -- did a  
24 lot of consulting with Bob Schallenberg and Mark  
25 Oligschlaeger. I don't know who else they may have

1 consulted with, but I know that they did consult with  
2 those.

3 Q. Was Steve Rackers involved in the process  
4 any?

5 A. Yes, he was. I don't recall to what extent.  
6 Steve was Doyle Gibbs' immediate supervisor. So I'm  
7 sure he was reviewing what was going on.

8 Q. Do you recall informing any of those  
9 individuals of your view that the Staff would be  
10 prohibited in the future from proposing any  
11 adjustments in the sharing credit years beyond those  
12 specifically listed in the reconciliation procedure?

13 A. I don't recall that. I'm not sure it's an  
14 issue that we discussed.

15 Q. Is it your -- is it your recollection that  
16 in developing the reconciliation procedure the parties  
17 literally devoted months to a very detailed  
18 consideration of the reconciliation procedure?

19 A. I don't know if I can literally say months.  
20 I know that there was a lot of time put into it.

21 Q. How many pages comprise the reconciliation  
22 procedure?

23 A. I'd have to count them up. I don't know  
24 offhand.

25 Q. Mr. Rademan, are you aware of Union Electric

1 having taken any positions in this proceeding with  
2 which you disagree?

3 A. I can't answer that question because I  
4 haven't reviewed all of the positions. I have not  
5 read all of the testimony.

6 Q. There's one last document that I'd like to  
7 refer you to. I'm not going to have it marked as an  
8 exhibit. It's another document that was provided to  
9 Union Electric Company in response to the Company's  
10 first Data Request to the Staff.

11 It's a memo from me. It's dated February  
12 17, 1995, and the subject is Further Revised  
13 Counterproposal to UE (Revised as of 2/17/95 10 a.m.).  
14 I'd like to hand you a copy of that document.

15 MR. COFFMAN: This is not one of the  
16 exhibits you marked earlier?

17 MR. DOTTHEIM: No. This is an additional  
18 document.

19 BY MR. DOTTHEIM:

20 Q. And regarding this document, I'd like to  
21 refer you to the last page, which is page 8. It's not  
22 literally -- excuse me. It's not literally the last  
23 page. It's not literally the last page in the packet  
24 of materials. It's page 8 of the cover memo.

25 And I'd like to refer you to two individuals

1 are being shown as being copied, being cc'd. One of  
2 those individuals is Bob Schallenberg, is it not?

3 A. Yes, it is.

4 Q. And if you give me a couple minutes, I may  
5 be done.

6 Mr. Rademan, while you were director of the  
7 Utility Services Division, do you recall getting  
8 involved any at all in the monitoring of Southwestern  
9 Bell Telephone Company under the Southwestern Bell  
10 incentive regulation experiment?

11 A. No, I do not.

12 MR. DOTTHEIM: Thank you for your patience,  
13 Mr. Rademan. I don't have any further questions.

14 CROSS-EXAMINATION BY MR. COFFMAN:

15 Q. Okay. I'm going to just ask a few  
16 questions, Mr. Rademan. Good evening.

17 A. Good evening.

18 Q. Am I correct in understanding, Mr. Rademan,  
19 that you are testifying in your prepared statement on  
20 behalf of Union Electric in this matter, Case No.  
21 EO-96-14?

22 A. I am here at the request of Union Electric.

23 Q. Okay. Can you tell me when you were first  
24 requested by Union Electric to prepare a statement in  
25 this case?

1           A.     I can't give you an exact date. I'm going  
2 to say it was approximately two weeks after  
3 surrebuttal testimony was due.

4           Q.     Okay. What employee of Union Electric  
5 contacted you?

6           A.     Mr. Brandt.

7           Q.     Mr. Brandt. Okay. Can you tell me just in  
8 general what was discussed when Mr. Brandt called you?

9           A.     Mr. Brandt just indicated that there was a  
10 case pending before the Missouri Commission regarding  
11 the alternative regulation plan and that they had some  
12 questions of me and wanted to know if I would meet  
13 with them to discuss some of those questions.

14          Q.     How many meetings did you have with  
15 representatives from Union Electric before you filed  
16 your statement?

17          A.     I had one sit-down meeting and several  
18 conference calls.

19          Q.     Did Union Electric suggest that you  
20 include -- did they suggest specific language that you  
21 might include in your prepared statement?

22          A.     They assisted in the drafting of the  
23 statement.

24          Q.     I believe you testified earlier that it was  
25 suggested that you include the excerpt from

1 Mr. Oligschlaeger's testimony in another case?

2 A. Yes. I was asked if I agreed with that  
3 statement, and I thought the statement was well  
4 written.

5 Q. Were there any other phrases or sections of  
6 your prepared statement that were suggested by Union  
7 Electric as possible provisions that you could include  
8 in your prepared statement, that you can recall?

9 A. None that I can specifically recall. I'll  
10 try -- the reason I answer that way is, try to set  
11 some perspective for you, this time of the year is a  
12 very busy time for me, and I didn't have a whole lot  
13 of time to sit down and draft documents and work  
14 through all the research that needed to go with it.  
15 So I asked Union Electric to do that drafting for me  
16 and I would review those drafts.

17 Q. So employees of AmerenUE did the first draft  
18 of your prepared statement for you?

19 A. Yes, based on our discussions that we had.

20 Q. Okay. Are there any particular sections of  
21 your prepared statement that you can refer to that you  
22 included on your own?

23 A. Most of the wording in paragraph 1 except  
24 for the case numbers was worked up on my part.  
25 Paragraph No. 2 was mine. Paragraph No. 3 was mine.

1 No. 4 was written from my notes. No. 5 was mine.

2 No. 6 was primarily all mine. Had a little  
3 assistance with some of the wording on the sliding  
4 scale incentive because I was not intimately familiar  
5 with Mr. Oligschlaeger's entire testimony. And No. 7  
6 we've already discussed how that was arrived at.

7 No. 8 is mine.

8 No. 9 was my initial thoughts and expanded  
9 on. I didn't remember all the dates and everything in  
10 the -- in this EARP. I just didn't take time to dig  
11 it all out. No. 10, the biggest part of that is mine.  
12 No. 11, most of it is off of my notes. There's --  
13 let's see. No. 11 was mine, but it is kind of  
14 prefaced on some of the discussions I had with Union  
15 Electric.

16 No. 12 is mine. I didn't have the exact  
17 section number. I got information on that. 13 was  
18 drafted in big part on -- from me. No. 14, I knew the  
19 gist of what I wanted to say there, but I did ask  
20 Union Electric to help put it in words, look up some  
21 of the section numbers, things of that nature. And 15  
22 is mine.

23 Q. Okay. While we're looking at the document,  
24 I think you corrected a lot of the pronouns to which I  
25 was confused about, but there is, I think, one more.

1 I believe paragraph -- the pages have changed  
2 slightly. Page 7 on line 9, end of the line, the  
3 sentence begins with "as we said above."

4 A. Supposed to be "as I."

5 Q. "As I"?

6 A. Did I miss that one?

7 Q. Yeah. You made a change -- you made a  
8 change on the line above, but you didn't change the --

9 A. Oh, okay.

10 Q. -- the "we" on line 9. Should that also be  
11 an "I"?

12 A. Yes, that should also be an "I".

13 Q. Thank you.

14 A. That's what happens when you have a lawyer  
15 do the typing for you, you know.

16 Q. Okay. If I could refer you back to page 6,  
17 paragraph 10, if I could ask you a question there on  
18 lines 4 through 7. Are you referring there to the --  
19 perhaps I should read the sentence before that to put  
20 it in context. This is paragraph 10 from your  
21 statement.

22 The parties did not stop with those figures  
23 from UE's books and records. Sections 2C through 2F  
24 of the reconciliation procedure set out no fewer than  
25 19 specific adjustments to be made to those base

1 sit down once every quarter with the Commission and  
2 discuss various operations within our division, our  
3 workload, what we were doing. We had to be very, very  
4 cautious not to discuss specific cases that were being  
5 litigated.

6 During the course of one of those division  
7 directors' meetings, I informed the Commission that we  
8 were looking at a number of utilities for possible  
9 overearnings, and I was informed by the Commission in  
10 no uncertain terms that they did not want to have  
11 proceedings like those that had occurred in St. Joe  
12 where there was a complaint case and an immediate rate  
13 case and rates went down and rates went up. And the  
14 Commission simply did not feel that that was  
15 appropriate ratemaking.

16 In order to alleviate their concerns, I took  
17 the approach of not only looking at historical  
18 information but budgeted information, showing them not  
19 only one year of operations but three or four years of  
20 operations. So if there was a concern that there was  
21 overearnings, there was a broader spectrum of it to  
22 see.

23 MR. CYNKAR: That's all I have.

24 (PRESENTMENT WAIVED; SIGNATURE REQUESTED.)

25 (SIGNATURE ON FOLLOWING PAGE.)



C E R T I F I C A T E

STATE OF MISSOURI )  
                          ) ss.  
COUNTY OF COLE     )

I, Kellene Feddersen, Certified Shorthand Reporter with the firm of Associated Court Reporters, Inc., do hereby certify that pursuant to agreement there came before me,

KENNETH J. RADEMAN,

at the offices of the Missouri Public Service Commission, 301 West High, in the City of Jefferson, County of Cole, State of Missouri, on the 9th day of June, 1999, who was first duly sworn to testify to the whole truth of his knowledge concerning the matter in controversy aforesaid; that he was examined and his examination was then and there written in machine shorthand by me and afterwards typed under my supervision, and is fully and correctly set forth in the foregoing pages; and the witness and counsel waived presentment of this deposition to the witness, by me, and that the signature may be acknowledged by another notary public, and the deposition is now herewith returned.

I further certify that I am neither attorney or counsel for, nor related to, nor employed by, any of the parties to this action in which this deposition is taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action.

Given at my office in the City of Jefferson, County of Cole, State of Missouri, this 21st day of June, 1999. My commission expires March 28, 2001.

KELLENE FEDDERSEN, CSR, RPR  
Notary Public, State of Missouri  
(Commissioned in Cole County)