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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

June 2, 1999
Jefferson City, Missouri
Volume 5

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)
Transactions.)

SHELLY A. REGISTER, Presiding,
REGULATORY LAW JUDGE.

SHEILA LUMPE, Chair,
HAROLD CRUMPTON,
CONNIE MURRAY,
M. DIANNE DRAINER, Vice-Chair
COMMISSIONERS.

REPORTED BY:

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ASSOCIATED COURT REPORTERS, INC.

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P R O C E E D I N G S

JUDGE REGISTER: Go on the record.

We are reconvening the hearing in Case No.
EO-96-14 and EM-96-149. Good morning, Mr. Brandt.

THE WITNESS: Good morning.

JUDGE REGISTER: I already mentioned that
you are sworn in. You continue to be sworn in.

THE WITNESS: I understand that.

JUDGE REGISTER: Thank you. Mr. Coffman,
please proceed.

MR. COFFMAN: Thank you, your Honor.

DONALD E. BRANDT testified as follows:

CROSS-EXAMINATION BY MR. COFFMAN:

Q. Good morning, Mr. Brandt.

A. Good morning.

Q. I think Mr. Dottheim was pretty thorough in
covering several matters related to the stipulation
issue. I was a little bit confused as I was trying to
review my notes as to the Company's position regarding
its interpretation of what issues you believe are
proper to bring before this Commission regarding the
earnings report.

If I recall, you gave three different --
three categories of things that you thought were
proper; is that correct?

1 A. I don't recall three, but --

2 Q. Okay. Well, could you please restate, I
3 guess, the types of controversies that you believe are
4 appropriate or areas of disagreement that may be
5 brought to the Commission for resolution under the
6 Stip?

7 A. Well, I think there's -- I guess there
8 probably are three. I just haven't counted them in my
9 head yet.

10 There's just plain errors. I think that was
11 one I mentioned, just simple errors. We made a
12 mistake in the calculation.

13 Second category is, quote, new category of
14 costs, and that would be new category of cost that
15 hasn't occurred before and hasn't been included in a
16 rate proceeding before this Commission, and that could
17 be reviewed.

18 And the third area is if there was a
19 manipulation of earnings. And relative to that
20 manipulation area, that could come about as a result
21 of some party, Office of the Public Counsel, Staff or
22 others, asking us for a reasonable explanation of a
23 cost variation, and it's our obligation to provide a
24 reasonable explanation as to a variation in costs.

25 And if we couldn't provide that reasonable

1 explanation, that party would have the ability under
2 the terms of the agreement to allege a manipulation of
3 results under the plan and bring that allegation of
4 manipulation before the Commission for determination.

5 Now, I'd stress in that definition, in the
6 words are -- it could be -- let me reference exactly
7 where rather than try to recall from memory.

8 Q. Manipulation is actually mentioned in two
9 subparagraphs, is it not?

10 A. Yes, but in subparagraph vii, or v two small
11 i's, an allegation of manipulation could include
12 significant variations in level of expenses associated
13 with any category cost where no reasonable explanation
14 has been provided.

15 Now, I think it's important to understand in
16 our interpretation of no reasonable explanation for
17 what caused that variation in expense, that doesn't
18 mean it has to be the explanation that the Staff or
19 Public Counsel's opinion is perfect.

20 We're not, I don't think, held to a standard
21 of perfection or if we took a course of action that
22 would not be the course of action that the Public
23 Counsel or Staff would have taken or if the Commission
24 were in the position of running Union Electric Company
25 they would have elected as the most -- in their mind

1 the most preferable course of action. It only has to
2 be a reasonable --

3 Q. Okay. And by reasonable --

4 A. -- explanation.

5 Q. -- you mean from the Company's perspective
6 only?

7 A. No, not necessarily. I just mean a
8 reasonable explanation.

9 Q. And --

10 A. I think for a lot of actions there could
11 be -- well, take we have a chosen course of action.
12 There could be several alternatives that we could
13 take. With 20/20 hindsight, that would be great.
14 We'd pick the perfect one every time.

15 But we don't have that luxury. Did we have
16 a reasonable basis for doing what we did and can we
17 explain it from a reasonable business man's
18 perspective?

19 Q. Well, Mr. Brandt, would you agree with me
20 that individuals often disagree about what is
21 reasonable?

22 A. Not necessarily, no.

23 Q. Okay. Is it possible that Staff or Public
24 Counsel might disagree that an explanation was
25 reasonable and that would be a subject of controversy?

1 A. If they determined -- if it was in the Staff
2 or Public Counsel's or some other party's opinion that
3 it wasn't reasonable, then they'd have to bring a
4 cause -- or not a cause, but before the Commission to
5 determine whether there, in fact, was manipulation.

6 Q. So ultimately it's up to the Commission to
7 determine what's a reasonable business explanation,
8 isn't that right, under the stipulation?

9 A. It's up to them to determine whether there
10 was manipulation or not. The level of that reasonable
11 explanation, if they don't believe it's reasonable,
12 then they have to come to a finding that there was
13 manipulation.

14 Q. But essentially you're saying that any
15 explanation the Company puts together and claims as
16 reasonable should satisfy that part of the question
17 about manipulation?

18 MR. CYNKAR: Objection. I don't think
19 that's what the witness testified.

20 MR. COFFMAN: I'm just trying to clarify
21 whether this is a subjective standard or not.

22 THE WITNESS: I don't think so. I think to
23 make it very clear --

24 JUDGE REGISTER: Wait a minute, Mr. Brandt.
25 We have an objection to rule on here.

1 I'm going to overrule the objection and
2 allow him to explain what his testimony was.

3 THE WITNESS: I think the key words, if you
4 look here, an allegation of manipulation could include
5 significant variations in the level of expenses
6 associated with any category of cost where no
7 reasonable explanation has been provided.

8 And I think the Commission could come to a
9 determination there's been manipulation if they could
10 determine that Union Electric has provided no
11 reasonable explanation. That doesn't mean their
12 choice of reasonable. There's probably various
13 courses of action we could proceed with on any given
14 subject matter.

15 And, again, it may not be perfect, it may
16 not be the avenue of action of their choice, but can
17 we provide a reasonable business explanation for that.

18 BY MR. COFFMAN:

19 Q. Okay. I still come back to my question. Is
20 that provision in the stipulation referring to
21 reasonable explanation, are those words intended to
22 refer to what's reasonable in the minds of the Company
23 or what's reasonable in the mind of the Commission
24 ultimately?

25 A. Well, it would be up to the Commission to

1 determine if we provided --

2 Q. Okay.

3 A. -- any reasonable explanation. And if we
4 had not, then they could get to the point it was
5 manipulation. But it would be the duty of the Staff
6 or Public Counsel or other party to allege that there
7 was a manipulation because for some reason your client
8 thought there was no reasonable explanation provided,
9 and then you bring it before the Commission to, let's
10 see, go up to section vi.

11 Q. Okay. You're referring to another
12 section --

13 A. Yes.

14 Q. -- than the one we're referring to, Roman
15 Numeral vi?

16 A. Correct.

17 Q. Let me ask you about the first area that you
18 mentioned was a proper area or proper type of
19 challenge to the Company's earnings report, and that
20 was plain error. Is that error in the mind of the
21 Company or error in the mind of the Commission
22 ultimately?

23 A. I'm talking about simply where some clerk, A
24 times B equals D, and you guys point out A times B
25 equals C. I mean, it's either right or wrong, I mean,

1 just simple mathematical error or error in the
2 application of an accounting principle.

3 Q. Did you hear your counsel in opening
4 statements refer to lobbying expense adjustment as an
5 error yesterday?

6 A. I don't specifically recall that, but that
7 was an error.

8 Q. Is that the type of adjustment you would
9 consider plain error?

10 A. Yes.

11 Q. Okay. So there were several issues, I
12 guess, raised in the -- in this case that were
13 ultimately settled that in the mind of the Company now
14 those are considered errors?

15 A. Yes.

16 Q. Is the question of whether the Company erred
17 in the manner it put together its earnings report, is
18 that ultimately something the Commission has a right
19 to determine under the Stipulation?

20 A. If it was simple error, yes. We'd like to
21 think on simple error, as the case of the issues we've
22 settled, lobbying expenses, that was a new, basically,
23 time accounting system that got put in place, and that
24 area got overlooked, and there was no malfeasance.
25 It's just we screwed up, and we stand corrected and

1 fixed it.

2 Q. But as to the matters that were settled, the
3 Company now considers those to be errors, but that
4 wasn't the understanding earlier in this case, was it?

5 A. Well, at first blush, no, but it was -- we
6 both sat down, or the parties sat down and talked
7 about what was involved, and we learned a lot from
8 each other, not just lobbying, but the case of
9 weather, I think there was probably some error on both
10 sides there, and came up with a better solution.

11 Q. I guess the question I'm getting at is, in
12 your mind, in the Company's interpretation of the
13 Stipulation, is error an issue for the Company or for
14 the Commission? Can it be error if the Company
15 doesn't think it's error? Does the Commission have
16 the right to make that determination about error?

17 A. Well, paragraph 7, UE, Staff, OPC and the
18 other signatories reserve the right to bring the
19 issues which cannot be resolved by them and which are
20 related to the operation or implementation of the
21 plan --

22 JUDGE REGISTER: I'm going to stop you,
23 Mr. Brandt. I think this is a question that probably
24 calls for a yes or no, and you need to respond to
25 Mr. Coffman's question. If you want to point to a

1 paragraph, that's fine, but I think you need to
2 respond to Mr. Coffman's questions.

3 BY MR. COFFMAN:

4 Q. Perhaps I can restate it more simply. Is
5 plain error an issue for the Company or for the
6 Commission?

7 A. I guess I can't answer that question yes or
8 no. I don't think in the context you're asking there
9 it's a simple yes or no.

10 Q. You're not sure?

11 A. No, I didn't say I wasn't sure. I can't
12 answer that question.

13 Q. Under the Stipulation, under the terms of
14 the Stipulation and Agreement that came out of Case
15 No. ER-95-411, are errors -- is a question of whether
16 the Company's earnings report contains an error, is
17 that an issue for the Commission to consider or is it
18 a matter of the Company's own subjective judgment?

19 A. Again, I can't answer that yes or no. I'll
20 try to answer it if you'd like me to try.

21 MR. COFFMAN: That's all the questions I
22 have. Thanks.

23 JUDGE REGISTER: I believe that it's time to
24 go to questions from the Bench. Chair Lumpe?

25 QUESTIONS BY CHAIR LUMPE:

1 Q. Mr. Brandt, on page 2 of your rebuttal
2 testimony, you talk about entering into the second
3 alternative plan. In 1997, who made the request for
4 the continuation of this plan which would then go from
5 '99 to, I guess, 2009?

6 A. That was -- I don't recall who first brought
7 it up, but we had proposed -- we had asked the
8 Commission for approval of the merger transaction, the
9 Union Electric/Central Illinois Public Service Company
10 merger application, and as part of that application
11 process we had asked for recovery of the merger
12 premium and then split the savings that the merger
13 would generate, the synergies as a result of the
14 merger, which were almost \$800 million, over a ten-
15 year period to be split 50/50 between shareholders and
16 ratepayers.

17 That was our initial proposal, and as a
18 result of negotiations we gave up that plan,
19 collection of the merger premium and half of the
20 savings in exchange for extending the EARP plan, the
21 experimental regulation plan for an additional three
22 years.

23 Q. So the continuation prior to the ending of
24 the first experiment, the continuation of that
25 experiment was part of the negotiations in the merger?

1 A. That's correct.

2 Q. All right. And was it -- was it suggested
3 by the Company, was it suggested by Staff, was it
4 suggested by anybody else that that would be an
5 acceptable solution in the merger?

6 A. I frankly don't recall who first floated the
7 idea. I know the Staff had come back and said they
8 rejected the idea of the merger premium collection and
9 the sharing of the savings for a variety of reasons,
10 and we sat down, and I remember it was the first week
11 of July 1996, and we were ready to go to trial and
12 started talking about alternatives and that came out.

13 Q. So it got included or involved in the merger
14 discussions?

15 A. Yes.

16 Q. Okay. Because in hindsight I'm thinking
17 would it not have been better to evaluate the
18 experiment before renewing it and have had a look at
19 the various issues that have come up as one does in an
20 experiment, you view the experiment and then you
21 evaluate it before you keep going on with it, you try
22 to find some -- has it benefited, has it not, and then
23 maybe you say yes, this is good and you continue it.

24 I'm just wondering in hindsight would it not
25 maybe have been better to do that instead of

1 continuing an experiment whose results you didn't
2 know?

3 A. Well, I think at that point we had a year's
4 experience under our belt, so to speak, and we hadn't
5 gone to the actual point of having made a credit
6 payment to customers. But at that point in time, July
7 of 1996, actually May or June of 1996, we, being Union
8 Electric, had a pretty good idea, a ballpark estimate
9 of what the amount of the refund would be for the
10 first year.

11 And I know I said in our negotiations that
12 we were talking about a number that was, you know, on
13 the upside of \$30 million, and subject to the results
14 of June, but when you've got 11 out of 12 months tied
15 down, even though June's a pretty important summer
16 month, we were looking at the results of 30-plus
17 million dollars. And it turned out to be, I believe,
18 42 or \$44 million was the first year refund.

19 Q. So in your estimation, we could have done
20 maybe a one-year experiment and that would have been
21 adequate?

22 A. Well, I think over a period of time you get
23 a better flavor for how something like this would
24 work. In that regard, I think all the parties thought
25 three years was a pretty good shot at it.

1 Q. And that's why I'm just curious why one
2 would have continued something -- if one needed three
3 years to look at it thoroughly, why one would continue
4 it after the first year, and I'll let that go.

5 I have one other question, and I guess at
6 the risk of my question being considered silly or
7 dumb, I'd like to talk to you a little bit about the
8 territorial agreement. Did anyone in testimony
9 anywhere suggest that those deals should not have been
10 done? Is there any testimony in this case that says
11 those deals should not have been done?

12 A. Not that I'm aware of.

13 Q. All right. And did you read the territorial
14 agreement orders?

15 A. Yes, I have.

16 Q. And do they suggest in there that those --
17 that those revenues might be considered in the sharing
18 agreement?

19 A. The one does, the Macon.

20 Q. The Macon does?

21 A. Yes.

22 Q. All right. So that it indeed could be
23 considered here. It's not something that was in a
24 previous rate case; is that correct?

25 A. That's correct.

1 CHAIR LUMPE: All right. I think that's all
2 my questions.

3 JUDGE REGISTER: Vice Chair Drainer?

4 QUESTIONS BY COMMISSIONER DRAINER:

5 Q. Can you tell me where the word contract is
6 used within the Stipulation and Agreement?

7 A. I don't believe that term is utilized in the
8 Stipulation and Agreement.

9 Q. Is it used anywhere by Staff and the Company
10 and the Office of the Public Counsel when they had the
11 original agreement or this experimental plan?

12 A. I don't know about Staff or Public Counsel,
13 where they might have used it or if they did use it.

14 Q. With you. It would be with you so you would
15 know. I said with the Company, with the Staff and
16 with the Office of the Public Counsel I have before me
17 a Stipulation and Agreement. I do not have before me
18 a contract. You keep mentioning a contract. I want
19 you to tell me where you, the Company, and Staff and
20 the Office of the Public Counsel have signed a
21 contract and it says contract?

22 A. I don't think you'll find a place where
23 something's been signed that says contract.

24 Q. All right. Thank you. We have a
25 Stipulation and Agreement, correct?

1 A. We do.

2 Q. And that is what was signed by the parties?

3 A. It was signed, yes.

4 Q. Thank you. Now, explain to me with respect
5 to the Stipulation and Agreement and the merger,
6 refresh my memory on the time line. Was the
7 experimental plan put in place months before there was
8 the merger, years before there was a merger?

9 A. About one year.

10 Q. About one year?

11 A. Correct.

12 Q. When you were working with the Staff and the
13 Office of the Public Counsel in putting together this
14 Stipulation and Agreement, were you at the time
15 involved in any discussions for a merger?

16 A. No.

17 Q. So there had been not a single discussion
18 with respect to merger before the Stipulation and
19 Agreement was put in place?

20 A. I'm not sure about what -- you lost me.

21 Excuse me.

22 Q. Did you have in your company -- I mean, you
23 are -- would have been somebody that would have been
24 involved in discussions?

25 A. Yes, I would. I definitely would.

1 Q. You're far up on the chain of command?

2 A. Right.

3 Q. Did you not have any discussions before the
4 Stipulation and Agreement was signed?

5 A. We did not.

6 Q. No discussions about merging with any other
7 company?

8 A. No, we did not.

9 Q. And that was not until after?

10 A. We -- I'd be happy to --

11 Q. There's nothing? There would be nothing
12 that would show that there was any discussions, any
13 letters, communications with any party on merging --

14 A. That's correct.

15 Q. -- before June 12th, 1995?

16 A. That's correct.

17 Q. Okay. I need you to explain a couple things
18 to me. In your testimony on page 5, the sentence on
19 line 20 to 21, you start off, we will not stand by and
20 allow the Staff to undermine the achievement of this
21 agreement.

22 Would you explain to me how you will not
23 allow the Staff, what powers you have that you will
24 not allow? It seems rather strong words. I want to
25 know what you mean by that.

1 A. We'll exercise our legal rights to enforce
2 the provisions of the Stipulation and Agreement.

3 Q. All right. Now, also, Mr. Coffman asked you
4 with respect to reasonableness if two parties, both
5 believe themselves to be reasonable, come before this
6 Commission to resolve disputes, do you believe this
7 Commission has the power to decide the reasonableness
8 of the issue, to resolve the dispute?

9 A. I don't believe that's the avenue that it
10 would take to get before the Commission.

11 Q. I asked once you're before the Commission
12 with the dispute and you both believe you have a
13 reasonable position, do you believe that this
14 Commission is in a position to make a determination?

15 A. This Commission would be in the position to
16 make a determination as to --

17 Q. Thank you very much.

18 A. -- whether there is manipulation.

19 Q. I wasn't going there. I was just asking, if
20 there was a dispute that two parties believed they
21 were both being reasonable, is this Commission in a
22 position to make a decision?

23 A. I don't think so.

24 Q. You do not believe that we can make a
25 decision on reasonableness. So if two parties come

1 before this Commission in a rate case and they have a
2 dispute and they both think they have a reasonable
3 position, we can't decide that?

4 A. Oh, in a rate case absolutely.

5 Q. Okay. Thank you. I asked you a generic
6 question.

7 A. I thought it was specific to this.

8 Q. So in a generic question, you do believe
9 that we --

10 A. Absolutely.

11 Q. -- have some ability?

12 A. Absolutely.

13 Q. I also was confused with respect to your
14 counsel's opening statement about that the Company, if
15 it found errors that were pointed out to it, would fix
16 them and used the example lobbying.

17 If that's true, my confusion is why I was
18 given the list and schedule of issues to be heard on
19 May 21st and that was one of the issues, if it was a
20 true error why throughout this whole case has it taken
21 this long for the Company to accept that it had an
22 error in lobbying?

23 A. It was not just a simple obvious error. It
24 took a while for us to get an understanding of the
25 Staff and Public Counsel's positions and the

1 information they had and through the interchange of
2 data requests and getting people together, and there
3 were a series of conference calls between the parties
4 to explore the issue.

5 Q. So on one hand you believe the experimental
6 plan should make it be easier to implement and it
7 should not have all the red tape of a rate case,
8 correct?

9 A. Correct.

10 Q. On the other hand, when we're dealing with
11 just one issue, such as lobbying, the Company with its
12 resources was not able to resolve that issue through
13 discussions with the parties and it took months?

14 A. Well, actually, I believe that the -- it did
15 go over a period of months. If that were the only
16 issue we were dealing with and we got all the parties
17 together, I think it could have been resolved a lot
18 faster than it was.

19 Q. Because you have only a limited number of
20 staff members delegated to look at these issues?

21 A. No, that's not the reason. It's just --

22 Q. Why did it take months?

23 A. We had a lot of other issues involved. It
24 wasn't that we didn't have the resources to focus on
25 that one, but when you've got all the other issues

1 that most of them are significantly larger, and it's
2 not what I'd called a critical path item.

3 Q. What is a critical path item?

4 A. Well, the majority of the case. It's just
5 if that were the only issue we had to deal with and
6 everybody would have got together just for that,
7 probably could have knocked it out in a matter of
8 days, but there were --

9 Q. Please, I ask you to tell me what are the
10 critical path items. So please list them for me,
11 please, in order of importance.

12 A. The issues relative to computer related
13 costs and weather was a big factor.

14 Q. And weather's been resolved?

15 A. Yes.

16 Q. Okay. Can you tell me, since 1994 and since
17 this plan has gone into effect, the financial position
18 of the Company? Has it been worse off or is it the
19 same, similar situations to 1994 or is it better
20 overall based on the drafts I saw in the sharing?

21 A. I think financial position is relatively the
22 same. I think we're a much more efficient company
23 since 1994.

24 Q. Then I'm confused again. If it's relatively
25 the same and you had efficiencies, you would have been

1 working towards them, correct? You have long-term
2 plans and five-year plans?

3 A. Yes.

4 Q. Why is it that in Exhibit 21, your letter to
5 Mr. Rademan where you were initiating your savings
6 plan and justifying why it was a good thing, that you
7 basically said that it would be unlikely to have good
8 years after 1994, that you believed that you are at
9 greater downside risk than an upside risk? Why was
10 the picture that you painted in this letter so
11 significantly more pessimistic?

12 A. Well, I think I refer to in the letter
13 relative to the situation we had in 1994, it was kind
14 of a year where nothing that could go wrong went
15 wrong. It was almost perfect. An example I know
16 they've got in there is Callaway. There was no
17 refueling. It ran virtually at a hundred percent.
18 There's nowhere to go but down from that standpoint.

19 Interest rates were at 20, 25-year lows. We
20 had recently switched from midwestern coal, Illinois
21 coal to Powder River Basin coal. Coal prices had
22 bottomed out, just record lows. We were looking
23 forward to interest rates going up.

24 I would say, if in 1994 I had predicted
25 employment of the economy of 3 percent and the Dow

1 hitting 12,000, I think people would have looked at me
2 with a little bit of skepticism.

3 Q. Well, but it was painted much more negative
4 than what you're telling me. Although maybe -- I
5 don't know if it is confidential, so without going
6 into the numbers, there's Attachment A. Okay.
7 Attachment A which gives your, I guess, projections?

8 A. That's correct, our budget.

9 Q. But tell me, in reality, from 1995 to 1998,
10 how accurate was this budget?

11 A. I think it was reasonable at the time. The
12 results have differed substantially from the results
13 here.

14 Q. Okay. So are they higher or lower?

15 A. They're higher than these, but actually
16 earnings --

17 Q. Okay. How much higher? If you look at the
18 1995 to 1998 and you look at your budget and if you
19 were to place in here the numbers, the actual numbers,
20 how different is it going to be?

21 A. I've got actual numbers.

22 Q. Why don't you file a late-filed exhibit that
23 gives us that information? Give us the actuals.
24 Reproduce this Attachment A with the actuals for 1995
25 through 1998.

1 A. All right.

2 Q. And with it then any changes, and you have
3 those numbers, so could you have those tomorrow?

4 A. If we can get it typed up.

5 Q. I would appreciate having it by tomorrow.
6 Therefore, if -- tomorrow morning so it can be given
7 to all parties, so if there are any questions they
8 could be asked and you'd be able to cross or respond.

9 A. Okay.

10 Q. Would that be all right? Because that way
11 you can explain to me or you can come back up and
12 present them.

13 JUDGE REGISTER: Is that something you can
14 do, Mr. Cook?

15 MR. COOK: I don't know. We'll certainly
16 try. We are -- I mean, we have the information, but
17 getting it in this form, getting it typed, getting it
18 up here in proper form, I will do my best.

19 COMMISSIONER DRAINER: All the gentlemen
20 sitting behind are shaking their heads yes.

21 MR. COOK: And not one of them types, but --

22 (Laughter.)

23 THE WITNESS: They'll learn.

24 MR. COOK: The hard work is the other type.

25 JUDGE REGISTER: Give you Mr. Dottheim's

1 e-mail address.

2 COMMISSIONER DRAINER: And you spend all
3 that money on computers and nobody types.

4 THE WITNESS: I would point out, and the
5 numbers tomorrow that we'll produce will bear out that
6 in 1994 that I referenced in the letter back then
7 earnings were \$3.01 per share.

8 In this, the projection on Attachment A show
9 earning per share under \$3.01 per share, and we've
10 never gotten through -- since that point in time, we
11 have never had earnings as high as they were in 1994.

12 BY COMMISSIONER DRAINER:

13 Q. Because that was an exceptional year?

14 A. Yes.

15 Q. So what you're telling me is what you --
16 outside of the projections of the crystal ball, which
17 none of us are good at, you did not expect it to be as
18 good as '94 and you also in your letter wanted to be
19 very clear that '94 was exceptional?

20 A. That was my point.

21 JUDGE REGISTER: Mr. Brandt, let me make
22 sure I understood. I'm not sure. Initially you said
23 that earnings have not been as high as \$3.01 since
24 1994?

25 THE WITNESS: Correct.

1 JUDGE REGISTER: Thank you.

2 BY COMMISSIONER DRAINER:

3 Q. That was earnings per share, but is this
4 also, because of the merger, will you be able to break
5 UE out separate or did that impact? Would that not
6 have had an impact on these statements?

7 A. That would have an impact for 1998, but we
8 can still break Union Electric out, not on a per-share
9 basis, but down to net income we can.

10 COMMISSIONER DRAINER: All right. Thank
11 you. I have no other questions for right now.

12 JUDGE REGISTER: Thank you, Vice Chair
13 Drainer. Commissioner Crumpton?

14 COMMISSIONER CRUMPTON: I would like to
15 defer to Commissioner Murray since I just walked in.

16 JUDGE REGISTER: Thank you. Commissioner
17 Murray?

18 COMMISSIONER MURRAY: Thank you.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good morning, Mr. Brandt.

21 A. Good morning.

22 Q. Is it your understanding that the
23 Stipulation and Agreement is legally binding on all of
24 the parties to that agreement?

25 A. That's my understanding.

1 Q. And when the parties entered into that
2 agreement, did each party, in consideration for
3 getting something, give up something?

4 A. I believe so, yes.

5 Q. Okay. Now, if you understood, this
6 Commission didn't consider Stipulation and Agreements
7 to be legally binding, would there be any reason for
8 the Company to enter into a Stipulation and Agreement?

9 A. Not that I can think of, and that's -- I
10 mean, we've used the word contract, and again I'm not
11 a lawyer, but if you call it a business deal, a
12 contract, a handshake, a bargain, a transaction, it's
13 all give and take and it's legally binding.

14 And I'm not trying to get into semantics,
15 but it's kind of a deal's a deal. And we gave up a
16 lot in expectation of certain benefits under the
17 agreement, and we can't -- it's difficult to get those
18 issues we gave up, the money we gave up back again.

19 Q. So if you enter into a Stipulation and
20 Agreement, you think that the parties are required to
21 abide by the terms of that agreement; is that correct?

22 A. Yes.

23 Q. Okay. And there were questions that you
24 were asked earlier about the Southwestern Bell
25 agreement for an alternative regulation plan, an

1 incentive plan, and whether you knew about that
2 agreement. And I think the questions were designed to
3 discover whether that agreement was actually -- the
4 terms of that agreement were somehow incorporated into
5 the terms of your Stipulation and Agreement. Do you
6 recall those questions?

7 A. Yes, I do.

8 Q. Is it your understanding that the
9 Stipulation and Agreement constitutes the full terms
10 of the agreement between the parties as written and
11 that anything that is not included in that in writing
12 is not a part of the agreement?

13 A. That's my understanding, yes.

14 Q. So that if the Southwestern Bell Stipulation
15 and Agreement were to have been incorporated, any
16 parts of it that were not actually copied or included
17 somehow, if they were to have been incorporated, is it
18 your understanding that they would have had to have
19 been referenced somehow in your agreement?

20 A. That would be my understanding. Like
21 yesterday I mentioned, the only part I had ever seen
22 was a sharing grid, and I don't know if it was a
23 preliminary or what sharing grid because the numbers
24 aren't the same that was in the document I was shown
25 yesterday, but it's the same. I mean, the sharing

1 grid's just not rocket science. It's pretty simple.

2 I had incorporated that. I had virtually,
3 not dictated, but typed on my own laptop the initial
4 draft, and then General Counsel helped me and looked
5 at it. Our controller looked at it and gave input.
6 But that was the substance of the agreement.

7 And the fact that our controller and lawyers
8 used some of the language from the Southwestern Bell
9 monitoring provisions and used those words, I can't
10 fault them for that. For instance, lawyers when they
11 draft contracts, I don't think there's a lawyer who
12 starts from scratch, all the whereas and wherefores.
13 With word processors I think they just kind of hope
14 they change all the company names to get it through
15 there.

16 Q. But you would assume that those parts that
17 were copied or where the language was lifted at least
18 very closely, that those parts were incorporated into
19 your agreement because they were actually specifically
20 set out in the agreement; is that correct?

21 A. Correct.

22 Q. And that anything that was intended to be
23 incorporated in your agreement was set out there or
24 referenced somehow?

25 A. Yes.

1 Q. You mentioned -- I think somehow something
2 came up about imprudently incurred costs in some of
3 the questioning and whether you thought that this was
4 a situation in which the Commission would consider
5 whether costs were prudently or imprudently incurred,
6 and I believe your answer was that you did not think
7 that this was the forum in which to consider prudence?

8 A. That's correct. Prudence in the strictest
9 sense, and I guess we can get in a legal debate about
10 what prudence means, but as close as we get to a
11 prudence-like determination is if we can't present --
12 if Union Electric cannot present a reasonable
13 explanation, then the Staff is free to go to the
14 Commission and present a case that there's
15 manipulation.

16 Q. And the term prudence, where the examination
17 of prudence is generally done in a traditional rate
18 case; is that correct? I mean --

19 A. Absolutely.

20 Q. -- that's one of the elements that's
21 generally included?

22 A. Any party in a traditional rate case is
23 capable of raising the prudence issue, and it's
24 certainly something for the Commission's determination
25 in a traditional ratemaking case.

1 Q. Okay. I want to have you look at page 31 of
2 your rebuttal testimony, and there you reference
3 territorial agreements, and you say that before the
4 EARP Union Electric entered into ot her territorial
5 agreements. This is hardly the sort of unforeseeable
6 category of cost that Section 3.f.viii was intended to
7 cover.

8 I'm wondering why the Company would not have
9 had language included in the contract to call -- that
10 those categories of costs that could be looked at, why
11 they would not have included the word unforeseeable in
12 the Stipulation and Agreement?

13 A. Well, we used the word new category. I
14 should check that before I jump to that conclusion.
15 We don't use the word new, but it's -- use the words,
16 has not been included previously in any ratemaking
17 proceeding in paragraph v three small i's,
18 subparagraph 8.

19 Staff, OPC and other signatories have the
20 right to present to the Commission concerns over any
21 category of cost that has been included in UE's
22 monitoring results and has not been included
23 previously in any ratemaking proceeding. So I'd
24 interpret that to be a new category of cost.

25 Q. But are you saying that you think in order

1 to consider any of those, any new category of costs,
2 that that category had to be unforeseeable at the time
3 the Stipulation and Agreement was written?

4 A. Not necessarily unforeseeable. I can't
5 attest to another party's clairvoyance or anticipation
6 of the future. We kind of looked at it as if it was
7 sort of a catch-all, what you can't foresee, new, what
8 will happen in the next year or next month that we --
9 it hadn't dawned on us today.

10 Q. Okay. Just in terms of the way the
11 Stipulation and Agreement -- I won't call it a
12 contract if that bothers some people, but the
13 Stipulation and Agreement was written, if it was truly
14 to mean that the only category of costs that could be
15 considered were those that were unforeseeable at the
16 time, would you agree that the word unforeseeable
17 should have been included in the contract?

18 A. That would have helped to clarify matters.

19 Q. The year Y2K computer costs that are at
20 issue, I believe the Company's position is that this
21 is not a new category of cost, that computer changes
22 are a part of an ordinary cost of doing business and
23 that --

24 A. That's correct.

25 Q. -- the Y2K costs are not a new category of

1 cost; is that correct?

2 A. That's correct.

3 Q. But would it be logical to say that a new
4 category would be extraordinary expenses whether it
5 related to computer, out of the ordinary computer
6 costs or out of the ordinary something else, that a
7 category might include extraordinary expenses?

8 A. No, I don't think so. I think there's a
9 substantial difference between extraordinary and new
10 category or unforeseeable category of costs. We could
11 have had fuel costs. Say the cost of uranium for the
12 world markets and the Chinese and the Russians and
13 maybe there was a conflict that broke out and the
14 price of uranium went from, I believe it's somewhere
15 in the 12 to \$14 a pound, went as high as 60 and \$70.

16 If a cost like that had quintupled, we'd
17 been buying uranium since the 1970s, and just because
18 it went up five times, uranium is uranium. Fuel is
19 fuel.

20 Q. So under the terms of this contract, you're
21 saying that any extraordinary expense would be -- fall
22 into that part of the reconciliation agreement which
23 provides for significant variations in the level of
24 expenses associated with any category of cost where no
25 reasonable explanation has been provided?

1 A. Yes. The example I used, the uranium, if
2 the price went up five times and some parties have
3 said why did it go up five times, and introduce them
4 to our fuel buyers and present some information to
5 them that this is the world price and we're not the
6 only people in the world that are paying these kind of
7 prices and this is why it went up and we had no
8 alternatives.

9 Q. So if you look at the Y2K costs, there was a
10 significant variation in the level of expenses
11 associated with the computer category of costs; is
12 that correct?

13 A. That's correct.

14 Q. But there was a -- in your explanation,
15 there was a reasonable explanation because the year
16 2000 required a significant variation in what had to
17 be spent on computers during that time period?

18 A. Yes. And relative to the Y2K costs, the
19 dollars that are at issue in this case are just about
20 a million dollars in that third sharing. So given the
21 millions we spend every year on computer systems, a
22 million dollars is just not that big of a deal.

23 That shouldn't be an issue anyway, but
24 that's just not that extraordinary. And I think with
25 the Y2K, a lot of it is media hype around it, they

1 sensationalized it. And for some companies, banks,
2 financial institutions, it is a big deal. It's just
3 not turned out to be that big of a deal for Union
4 Electric.

5 Q. And the computer costs that are at issue,
6 refresh my memory if you would what those other
7 computer costs are.

8 A. Different software systems, if I can find
9 that testimony. On page 35 of my testimony, line 17,
10 I mention that the three systems that the costs are
11 primarily related to, the CSS, AMRAPs and the EMPRV
12 system. They're acronyms.

13 Q. What is the dollar amount that we're talking
14 about disputing there, are you aware?

15 A. I don't have that handy, and I don't recall.
16 Mr. Baxter would have that exact number.

17 Q. Okay. And what is the reasonable
18 explanation for there being a significant variation on
19 the level of expenses in those categories?

20 A. We believed we need these systems to conduct
21 our business, and the costs are justified by the
22 improved operations and improved information those
23 systems will provide.

24 Q. And why did they need to be done during that
25 time period versus spread over a longer time period?

1 A. Well, I think the issue that's relative to
2 those systems is whether they're expensed in the year
3 that the dollars were spent or if we capitalized
4 those. In our --

5 Q. My question is, why did they have to be
6 expensed or why did the money have to be spent during
7 that year versus being done more gradually over a
8 period of time?

9 A. Well, with particularly computer systems,
10 it's been our experience the quicker you can get it
11 done, the better off you are because a computer
12 system, an application system typically doesn't have
13 that long of a life anymore, and three to five years
14 and systems tend to be obsolete. We can't even use
15 them. That's been our recent experience.

16 So if you try to stretch a system out over
17 three, four, five years, first the manpower effort
18 that it requires is immense. And it's not just our
19 information technology type folks, but you'll get --
20 we call it the user groups.

21 For instance, the computer system, the
22 computer information technology group is putting in a
23 new general ledger system for our controller, Mr.
24 Baxter's department. He's got -- and that's not one
25 of the issues here, but it's an example. I knew we

1 did that a few years ago. We put that in place.

2 We have a lot of the people, the accountants
3 who will be using the system working pretty fast
4 paced, and it's consuming a lot of their time. We
5 want to get it done. It's just there's not a lot to
6 be gained by dragging one of these systems out. They
7 tend to take a lot longer than you originally
8 anticipated to begin with.

9 Q. And the merger and acquisition costs, is
10 that another area in which you're claiming that the
11 costs were not a new category but that -- well,
12 refresh my memory, if you would, on the Company's
13 position on merger and acquisition costs and why they
14 should not be considered here.

15 A. It goes back to the agreement in the second
16 plan, the extension, the three-year, and on reference
17 page 37 of my testimony I've got exact wording out of
18 the agreement. It's on lines 6 through 10 on line --
19 on page 37, that the amount of the annual amortization
20 will be, one, the Missouri jurisdictional portion of
21 the total amount of 7.2 million or, two, the Missouri
22 jurisdictional portion of the total Ameren unamortized
23 amount of the actual merger transaction and
24 transaction costs incurred to date. It just is either
25 one or two. It's not some three.

1 Q. And this was in the second agreement?

2 A. Yes, it was.

3 Q. Or the agreement covering the second EARP.

4 And Staff's position is that the amount to be
5 considered here is -- do you recall that?

6 A. It's to be less than it has been calculated
7 over here, and they want to amortize the total cost
8 over a ten-year period.

9 Q. Okay. And the decommissioning fund
10 deposits, the issue there is that the Company has held
11 some money for a period of time and whether the
12 Company should owe interest on that money that it's
13 had the use of during that period of time; is that
14 correct?

15 A. That's correct.

16 Q. And where would we find something in the
17 agreement that was -- that would have addressed
18 something like decommissioning fund deposits?

19 A. It's easier for me to find it on here than
20 it is in the book. The reconciliation procedure --
21 bear with me for just a second.

22 JUDGE REGISTER: Let the record reflect that
23 the witness is looking at Attachment C to the
24 Stipulation and Agreement.

25 THE WITNESS: Here under paragraph 2F of the

1 reconciliation procedure, the cash working capital
2 rate base offset of \$24 million. Now, at this point
3 in time, for the third period, we have no idea what
4 the cash working capital offset provision would be.
5 In a typical traditional rate case calculation or
6 traditional rate case, working capital allowance is
7 debated and potentially would be an issue. In this
8 particular instance, we said it's \$24 million.

9 Now, the decommissioning issue for a variety
10 of reasons gave us access to an additional \$20 million
11 or thereabouts for a short period of time. Now, we
12 don't know if the working capital balance is more or
13 less than \$24 million, and that's actually a negative
14 working capital of \$24 million that's provided for in
15 that paragraph in the agreement. Whereas, this
16 additional 20 that was made available to us, it looks
17 like a windfall, but net, net we still could be worse
18 off than the \$24 million that's laid out in the
19 agreement.

20 So people just said, well, a variety of
21 things will happen, and there are literally hundreds
22 of ins and outs into a lead lag study that you conduct
23 to come up with the working capital balance. That was
24 part of the reason to streamline this whole process,
25 so no matter what happens the working capital offset

1 is \$24 million, period.

2 Q. Okay. So that's the Company's position that
3 that was stated in the agreement, and that there is no
4 justification under the agreement to go back and
5 revisit that number?

6 A. That's correct.

7 Q. Okay. And then injuries and damages, the
8 issue there?

9 A. Basically, those costs went up.

10 Q. Okay. So is that another area in which
11 there was a significant variation in the level of
12 expenses associated with a category of cost?

13 A. Yes. There was a significant variation.

14 Q. And what is the Company's reasonable
15 explanation for that variation?

16 A. We had more cases against us and the
17 settlements were higher than previous volumes.

18 Q. Is that under the control of the Company,
19 how many cases are presented during a period of time?

20 A. Not really, no.

21 Q. And then you said that the weather
22 normalization issue is settled; is that correct?

23 A. That's correct.

24 Q. Was that resolved in the way that -- well,
25 tell me how that was resolved, if you would.

1 A. I am far from an expert on the weather. I'm
2 not sure I --

3 Q. Just tell me in terms of the Company's
4 position and Staff and OPC's positions as to where it
5 fell within that.

6 A. Well, from my perspective, which is a pretty
7 high level perspective, but with that said, is Staff
8 wanted to go back and basically recalculate weather
9 over some thirty-year period and have an expert that
10 will allege that they could do that. We had an expert
11 that said you couldn't.

12 And putting aside the experts, it's sort of
13 like my understanding of weather when we wrote this
14 deal is it was kind of a cookbook formula to come up
15 with what the weather normalization factor was.

16 And I think Staff realized, and there were
17 some short-comings in their methodology and the
18 difference was about \$8 million, and we saw about a
19 million dollars' worth of, you can call it error, but
20 movement on our side.

21 Q. Okay. So there was a compromise, and you
22 didn't go back and recalculate over a long period of
23 time?

24 A. That's correct.

25 COMMISSIONER MURRAY: I believe that's all

1 my questions. Thank you.

2 COMMISSIONER DRAINER: Thank you,
3 Commissioner Murray. Commissioner Crumpton, did you
4 want to examine at this time?

5 COMMISSIONER CRUMPTON: Yes. Thank you.

6 QUESTIONS BY COMMISSIONER CRUMPTON:

7 Q. Good morning, Mr. Brandt.

8 A. Good morning.

9 Q. First I'd like to thank your counsel for
10 remembering my statements in the other record, and
11 just in case the reviewing court reads this record, I
12 want to try to explore some areas with you.

13 A. Certainly.

14 Q. From a business point of view, isn't the
15 real dispute explained like this: Under the
16 agreement, when should the parties recognize certain
17 expenses are expenditures that were prudently
18 incurred?

19 A. I guess that's a question that some parties
20 have put forth.

21 Q. But isn't that the issue with you, your
22 company?

23 A. We think the agreement spells out, if I
24 recall clearly, how one does that.

25 Q. How one recognizes -- how and when one

1 recognizes expenditures prudently incurred?

2 A. Yes.

3 Q. Now, if that's the case -- let's say, just
4 for purposes of discussion, that UE loses all the
5 issues. What effect will that have on UE if the
6 expenses that are not immediately recognized are put
7 in an account, go into rate base, and the Company
8 earns a reasonable return on that money? Did you
9 understand the question?

10 A. Yes.

11 Q. Okay.

12 A. It'll have a negative effect on our cash
13 flow.

14 Q. Okay. This is speaking as a businessman?

15 A. Okay.

16 Q. All right. For the negative effect, though,
17 aren't you given the opportunity to earn on that money
18 so that time failure of the money, if we do it right,
19 you should be just as well off under either outcome?

20 A. Well, there's a couple factors. One
21 specific factor unique here in the third year is
22 there's a permanent rate reduction that will be
23 associated with that. So to the extent that costs are
24 pushed from year three to year four, the amount of the
25 permanent rate reduction goes up, and that's money

1 that's lost forever.

2 Q. I just want to talk about the money in
3 dispute. If you are able to expense, let's say,
4 one-fifth of it this year and then expense the other
5 portions in equal amounts the next four years -- this
6 is just an as example -- at your allowable rate of
7 return, wouldn't this theoretically bring you back to
8 a position where you really are just as well off?

9 A. Well, putting aside that permanent rate
10 reduction.

11 Q. Yes.

12 A. Putting that aside and what you're
13 describing then would be sort of a traditional
14 ratemaking type of a case.

15 Q. Excuse me. That has nothing to do with
16 ratemaking. That's the way businessmen value assets
17 and cash flows, isn't it?

18 A. Yes.

19 Q. So we're not into ratemaking. We're into
20 business, the way a business manages its cash flows
21 and et cetera. So are you not just as well off under
22 either of the outcomes as long as we do not include
23 this rate reduction?

24 A. To answer your question, yes mathematically,
25 but by stretching out that revenue stream over five

1 year as opposed to one year, that introduced the
2 additional risks in that particular example.

3 Q. Okay.

4 A. Sort of like the first rule of finance is
5 get the money today all else being equal. In your
6 example, you're correct. All else would be equal, but
7 I'll take the money today, and I believe the terms of
8 the agreement provide that we get it today.

9 Q. And that's the issue, is you want to have
10 yours up front as quickly as possible, and Staff and
11 Office of the Public Counsel, because of their
12 perceived effects on ratepayers, would like to stretch
13 it out; is that not correct?

14 A. That could be their motivation.

15 Q. But you've lived in this industry for a
16 number of years. You know how they think, do you not?

17 A. Yes.

18 Q. And is it in their testimony also that
19 they're trying to reduce the effect of this early
20 recognition on your customers?

21 A. I think that's -- as our counsel pointed out
22 yesterday, I think that's sort of the old, not
23 necessarily old, but the paradigm shift from
24 traditional regulation to this new incentive plan.

25 Q. All right. Now, in reading the agreement,

1 when there is a dispute, if when there's a difference
2 in interpretation such as you and I just discussed,
3 isn't Staff obligated to bring that dispute to the
4 Commission under the agreement?

5 A. There's provisions for that.

6 Q. Okay. And now I'm going to the issue of the
7 amount of time that we have spent, all the parties and
8 the Commission, arguing whether or not Staff has a
9 right or an obligation to bring issues in dispute
10 here.

11 It seems to me there was a lot of time spent
12 on it when just the ordinary reading of the agreement
13 indicates that Staff has an obligation to come when
14 there is a disagreement, and that's just my statement.
15 This is not a question.

16 At this point, what is the total value in
17 dispute? Do you have any idea?

18 A. I think relative to the refund for 1998,
19 we're from, I think, the Company's perspective at
20 about \$26 million, and I believe the other parties put
21 it closer to \$40 million. Mr. Baxter could give you
22 pretty detailed accounts of the pluses and minuses to
23 that.

24 Q. Okay. Then I'll expect him to provide me
25 with that information. I'd like to have a table that

1 shows each issue and the amount in dispute, because
2 I'm coming up with different numbers, and if possible
3 the effect one way or the other that the issues will
4 have on ratepayers.

5 JUDGE REGISTER: Okay. In terms of the
6 refund that they will receive?

7 COMMISSIONER CRUMPTON: Yes.

8 JUDGE REGISTER: Could the parties prepare a
9 table that will compare those various effects from the
10 positions?

11 MR. BAXTER: I believe we can provide that
12 by this afternoon or first thing tomorrow morning.

13 JUDGE REGISTER: Did you want that before
14 the hearing was finished or did you just want it --

15 COMMISSIONER CRUMPTON: I would like it --
16 it doesn't have to be before the hearing is finished.

17 JUDGE REGISTER: Before we make our
18 decision?

19 COMMISSIONER CRUMPTON: Yes. This record is
20 fairly clear.

21 MR. COOK: We'll provide that as soon as
22 possible.

23 JUDGE REGISTER: That would be fine.

24 MR. DOTTHEIM: The Staff is not certain that
25 it can be provided overnight, but agreement could be

1 reached so if it is adequate to provide it soon as
2 possible over the next couple of days while we're in
3 the hearing room, Staff thinks that could be
4 accomplished.

5 MR. BAXTER: And we'd be happy to work with
6 the Staff and the parties to make sure we're in
7 agreement as to what the numbers and the disagreements
8 are.

9 JUDGE REGISTER: Do you want that by the
10 issue as well, by the various issues?

11 COMMISSIONER CRUMPTON: Yes, by the issues.
12 And the reason for that is because of the earlier
13 discussion that this witness and I have had that this
14 is probably a timing issue and so it's going to affect
15 ratepayers and the company's stockholders in certain
16 ways, especially if you take into consideration the
17 time value of money. We're looking at the net present
18 value of the effect of this decision, of the effect
19 the two outcomes will have on this decision.

20 JUDGE REGISTER: Are there any other
21 questions that you-all have now for Commissioner
22 Crumpton about what he'd like to see on that format?
23 If you don't have them now you can always bring them
24 up later if you have a question.

25 MR. BAXTER: I believe we have a fairly

1 clear understanding of what's required.

2 COMMISSIONER CRUMPTON: All right. I'd like
3 to proceed on.

4 JUDGE REGISTER: That's fine, Commissioner
5 Crumpton.

6 BY COMMISSIONER CRUMPTON:

7 Q. Now, during the opening statements your
8 counsel I thought said that I was a party to this
9 agreement, and my question to you is, did I sign the
10 agreement?

11 A. No, you didn't sign it.

12 Q. And how am I a party?

13 A. Well, I don't specifically recall him saying
14 that. I have no doubt. I just don't recall that. He
15 may very well may have. But I think the Commission by
16 its order approving the Stipulation and Agreement
17 becomes part of it.

18 Q. So if the Supreme Court -- this goes to the
19 Supreme Court and they agree with me, are they a
20 party, too?

21 A. I'd leave that to the lawyers.

22 Q. All right. I want to talk about the uniform
23 system of accounts. You're familiar with that?

24 A. Yes.

25 Q. How does UE account for computer software

1 assets in its uniform system of accounts?

2 A. We expense them.

3 Q. You expense all of them. Now, in the
4 uniform system of accounts, is there an account for
5 computer software that is carried as an asset on the
6 company's books? Is there such an account?

7 A. I don't recall specifically.

8 Q. You don't know. Okay. Now, who's the
9 accountant in your company that's familiar with this?

10 A. Mr. Baxter.

11 Q. Mr. Baxter. Well, I would expect Mr. Baxter
12 to answer that question and be prepared to tell me
13 what's in the account right now for your company. So
14 if you have expensed all of this, it should be empty,
15 should it not?

16 A. I would think so.

17 Q. Unless there's something that was entered
18 this year and you're going to expense it at the end of
19 the year?

20 A. Yes.

21 Q. My last question is, will UE be Y2K
22 compliant?

23 A. Yes, we will be.

24 Q. And when is your next test?

25 A. I believe there is a test scheduled for

1 July. We just had one in the March/April time frame
2 of major significance. There are probably weekly
3 tests going on from a departmental basis.

4 Q. Are your --

5 A. Different subsystems.

6 Q. Are you also making sure that your suppliers
7 are compliant?

8 A. Yes, sir.

9 Q. And will they be compliant?

10 A. We are confident that the significant ones
11 will be.

12 Q. And the railroad, will it be compliant?

13 A. We understand they will be.

14 Q. And you spent money on all of these issues,
15 right?

16 A. Yes, we did.

17 Q. And this is the money that's in dispute on
18 Y2K issues?

19 A. That's my understanding, correct.

20 Q. And you said that that was only about a
21 million dollars?

22 A. Just about a million dollars for the
23 particular sharing period.

24 COMMISSIONER CRUMPTON: Thank you. That's
25 all the questions I have.

1 JUDGE REGISTER: Thank you. Chair Lumpe,
2 did you have another question?

3 CHAIR LUMPE: Yes.

4 FURTHER QUESTIONS BY CHAIR LUMPE:

5 Q. Let me just follow up a little bit on the
6 Y2K. It is your contention that it is not an
7 extraordinary expense, is that right, or an
8 extraordinary event?

9 A. It's not a new category of cost, and I don't
10 believe for us it's an extraordinary expense.

11 Q. And some companies are asking for AAOs to
12 deal with it because they say it is an extraordinary
13 event, a one-time event, but that is not UE's
14 position?

15 A. That is not.

16 Q. When did you start working on Y2K issues?
17 1995?

18 A. Working, thinking about it, planning as
19 early as that, I'm certain. Spending money on
20 modifications, not significant until basically this
21 third period, which was for the year ended June 30,
22 1998. So during '97 and '98 start to spend meaningful
23 amount of dollars.

24 Q. So there would have been -- you expensed
25 some in the 1997 sharing period as well as in the 1998

1 sharing period?

2 A. Yes.

3 Q. On the merger issue, did I hear you
4 correctly that those items are in the second agreement
5 or not?

6 A. Yes. That provision that I recited, the one
7 or two, that is part of the second Stipulation and
8 Agreement.

9 Q. Why are we dealing with it in this agreement
10 then?

11 A. I believe we're sort of doing it.

12 Q. Are you getting prepared for the second
13 agreement?

14 A. It's -- both the cases are being heard at
15 the same time.

16 Q. All right. So the issues of the first
17 agreement and the second agreement are both in this?

18 A. Yes. That's -- I looked at the lawyers for
19 help, but we had two of those -- two case numbers on
20 this.

21 Q. All right. So it's two?

22 A. Yes.

23 Q. All right. On the issue of the injuries and
24 damages, is there a difference in the way you're
25 recording them? Is that part of the issue?

1 A. No, there's not.

2 Q. Have you always recorded them this way?

3 A. Yes, we have.

4 Q. There's no difference?

5 A. There's absolutely no change whatsoever.

6 Q. And then one last thing here. As I recall,
7 a question was asked as to whether you would consider
8 in the interim going ahead with the sharing amount
9 before this was settled subject to the final decision,
10 and I think the answer was no.

11 Is there -- if the Company believes there's
12 \$26 million there, why would you not go ahead with the
13 sharing of that amount and then depending upon what
14 other amounts may come out add that?

15 A. Well, Madam Chairperson, I regret having
16 come out with just a no, but I was trying to stick to
17 the yes/no if I possibly could.

18 The way I look at this is, we gave up
19 substantial monetary amounts, the up front rate
20 credit, the up front \$30 million rate reduction, the
21 refunds for the first two years. We gave up
22 collecting a merger premium of 232 million. We gave
23 up collecting half of the merger savings for ten
24 years.

25 And I don't mean to be the big bad guy from

1 St. Louis, but I'm sitting here going, we've got this
2 agreement. I gave all this money up. I took on
3 substantial risk.

4 And I didn't recall Commissioner Crumpton's
5 statement until actually I saw it from our counsel at
6 breakfast yesterday morning where he said something I
7 don't want you four years from now screaming and
8 hollering.

9 And if we were back here and inflation
10 turned a double digit and the cost of money was 16
11 percent and mathematically I could not earn more than
12 about 13 and a half on equity, and I'm sitting here
13 saying, woe is me, the shareholders are really
14 screaming. They want to lynch me. And believe me,
15 I'm the guy who called the shots on this one and took
16 the risk. I'd heard it long before we got to 16
17 percent.

18 But to try to make a brief explanation, I
19 guess I'm sitting here, the agreement's the agreement.
20 We gave up an awful lot, and I don't mean to be the
21 bad guy, but I just don't see why I need -- should be
22 expected to walk into town and be gracious enough to
23 cut a check for 20-something million dollars when we
24 want to live up to our terms of the agreement. We
25 just expect other parties to.

1 Q. But the 26 is really not in dispute. It's
2 something that both shareholders and ratepayers could
3 be benefiting from.

4 And when you entered the agreement, I know
5 you focus on what you gave up, but what you gave up
6 you didn't do it because you're nice guys. You did it
7 because you saw benefits at the end of the road, did
8 you not?

9 A. Yes, we did.

10 Q. So it wasn't like you were going to walk in
11 here and give away the company because you're really
12 neat people; it's because you saw a lot of benefits
13 down the road?

14 A. It's potential benefits. We also saw some
15 potential risk. So I wouldn't say we rolled the dice,
16 but there's a lot of --

17 Q. You're still under a rate of return
18 paradigm --

19 A. Yes.

20 Q. -- whether we like it or not, and if you
21 had -- if your risks had not worked out properly, you
22 could have been back here, could you not?

23 A. Not under the terms of the agreement.

24 Q. In the three-year period, if you hadn't
25 extended it on for three more years you could have,

1 couldn't you?

2 A. Yes, but we could have signed the deal in
3 June of --

4 Q. But you thought it looked so good you were
5 willing to add three more years to the current three
6 years, is that not right? You saw benefits?

7 A. Yes, we did.

8 Q. Saw some really good benefits here?

9 A. But we gave up some really serious money to
10 get those benefits.

11 Q. You really didn't give up. The ratepayers
12 or the stockholders gave them up maybe.

13 A. The people we work for gave them up.

14 CHAIR LUMPE: Thank you.

15 JUDGE REGISTER: Nothing further?

16 CHAIR LUMPE: No.

17 JUDGE REGISTER: Vice Chair Drainer, did you
18 have any other questions?

19 COMMISSIONER DRAINER: I do.

20 FURTHER QUESTIONS BY COMMISSIONER DRAINER:

21 Q. I'd really like to touch on that last point,
22 but I think I'll not go there.

23 Let me ask you one kind of general question.
24 You kept referring to cooking the books. At any time
25 did any staff member or other party use those words in

1 discussing with you their concerns with some of the
2 issues?

3 A. No, they did not.

4 Q. Now, I want you to help me with the
5 Stipulation and Agreement, because my impression is
6 that you believe that the issues brought here to be
7 reviewed really -- that they're brought here is then a
8 violation of the Stipulation and Agreement, that you
9 shouldn't have to be here right now at all?

10 A. That's correct. I wouldn't characterize it
11 as a violation. I just --

12 Q. Okay. Well, please help me with that. So
13 you don't --

14 A. I just don't think the agreement provides
15 for the things that Staff and Public Counsel would
16 like it to provide for.

17 Q. Okay. So then bringing it to the
18 Commission, you don't feel that they have violated the
19 trust and agreement by bringing that forward?

20 A. No. Certainly I think I said yesterday
21 you're free to sue anybody in court. You don't
22 necessarily have to have a basis for the suit.

23 Q. Then on the chart that's behind you that has
24 item No. 7, I want to read you the first point. UE,
25 Staff, OPC and other signatories reserve the right to

1 bring issues which cannot be resolved by them and
2 which are related to the operation or implementation
3 of the plan to the Commission for resolution.

4 A. Yes.

5 Q. Now, that in and of itself seems to have a
6 lot of latitude for if they have any concern a party
7 can bring it to the Commission. I mean, that in
8 itself does, correct, what I just read, that part, if
9 we stop there?

10 A. Pardon?

11 Q. If we stop there, stop at that sentence.
12 Don't go on to the next sentence.

13 A. Right.

14 Q. Tell me what that tells you.

15 A. I think the key words are related to the
16 operation or implementation of the plan.

17 Q. Okay.

18 A. And, for instance, if the cash working
19 capital offset of \$24 million is spelled out, if Union
20 Electric had put it together and used a \$20 million
21 offset instead of \$24 million and just said we don't
22 have as much cash offset as we used to, we think it
23 ought to be 20, that would be a dispute. We'd be
24 wrong, I think, but the Staff could bring that to you.

25 Q. How do the issues that are before us not get

1 into the operation or implementation of the plan?

2 A. Well, I think the plan spells out how those
3 should be treated. For instance, computer expenses,
4 Commissioner Crumpton asked me about regarding whether
5 we expense them in the third year or amortize them
6 over five years, and basically our established
7 accounting principles is we've always expensed
8 computer software expenses. We expensed them in '95,
9 '6, '7 and '8.

10 We didn't change them, and the agreement
11 doesn't say anything about changing them to capitalize
12 them. We did that for the first two years and for I
13 don't know how many years, beginning of time prior to
14 that, and all of a sudden Staff wants to make that
15 change. That's not the implement--

16 Q. So you're saying that they want to make a
17 change in the accounting method and the operation or
18 implementation of the plan at the get-go, the way the
19 accounting methods were in place, that should be good
20 enough?

21 A. Yes.

22 Q. And that shouldn't change because it was
23 accepted --

24 A. Correct.

25 Q. -- at the start?

1 A. That's correct.

2 Q. Because then to finish up with just this
3 particular Roman Numeral vii, when I initially read
4 it, and I was one of the Commissioners that approved
5 this plan, when it talks about examples include
6 disagreements, et cetera, et cetera, the rest of that
7 paragraph to me is not all-inclusive.

8 So you discuss that what could be brought to
9 the Commission was if there were errors and new
10 categories of costs, manipulation, but in reality,
11 doesn't the rest of this paragraph just say for
12 example, if we disagree on the mechanics of
13 calculating the report, if we think there's a
14 manipulation, but it's not all-inclusive?

15 There could be other things that weren't in
16 the example that could therefore have a party bring?

17 A. That's entirely possible. It does specify
18 example, but that's the entirety. It goes on to
19 specifically address an allocation of manipulation and
20 the language that I used before where no reasonable
21 explanation has been provided.

22 Q. But you see your example talks about
23 disagreement as the mechanics of calculating the plan.
24 That's one. Allegations of violations of the Stip,
25 that's two. Alleged manipulation of earnings results,

1 that's three. And request for information not
2 provided, that's four. There's four examples.

3 A. Yes.

4 Q. And then it seems to me that it goes on with
5 the second example, the allegations of manipulation --
6 I'm sorry. The third example, manipulation, and it
7 just tells you more about if it was example three, an
8 allegation of manipulation could, and then it goes on,
9 et cetera, et cetera.

10 A. Yes, it does.

11 Q. That's all -- the rest of that paragraph is
12 just talking about example three. It isn't saying
13 that is the main driver for the Staff, for Public
14 Counsel to come before the Commission?

15 A. We believe it defines manipulation.

16 Q. Which is one example?

17 A. One example, yes.

18 Q. Okay. So there could be others. And then
19 as we go on to No. 8, is that on that chart below you?

20 A. Yes, it is.

21 Q. Okay. When Mr. Commissioner Murray was
22 asking you some questions about one of the areas in
23 cost and extraordinary cost or unforeseen cost, eight
24 tells me that Staff, Public Counsel, other signatories
25 have a right to present to the Commission concerns

1 over any category of cost that has been included in
2 your results, and has not been included previously in
3 any ratemaking proceeding.

4 Now, tell me why that isn't open-ended,
5 because it seems to me it's not saying new cost, it's
6 not saying your unforeseen cost. It's just saying any
7 cost that there's a concern over.

8 A. Well, it goes on as you quoted, that has
9 first -- has to be included in the monitoring results,
10 that's kind of obvious, and has not been included
11 previously in any ratemaking proceeding.

12 Q. And so if there's a cost, an additional cost
13 to a particular item, you would say that it had been
14 included but it's just increased, so increases would
15 or would not be something that we could look at?

16 A. Increases would not be something, because
17 it's not a new category of cost. For example, with
18 Commissioner Murray --

19 Q. Can I stop you one second. I don't mean to
20 interrupt you.

21 A. No. I understand.

22 Q. But it doesn't say any new category. It
23 does say any category of costs that haven't been
24 included. I guess what I'm wondering, why can't that
25 be interpreted that it wasn't any cost that had not

1 been included in a previous rate case and increases
2 would not have been included in a rate case?

3 I mean, you have buildings. You have
4 another building. You can say, well, it's just added
5 increases to our building and facilities. Help me
6 here, because it doesn't say new category. It says
7 any category of cost that wasn't included.

8 A. It says a category of cost that has not been
9 included previously in any ratemaking proceeding.
10 Buildings have been included.

11 Q. So you're saying that there have to be a
12 line item that would have, like, buildings and
13 facilities. See, that's been included before. But if
14 it was something brand-new like, I don't know,
15 something that's been added that you've never owned
16 before?

17 A. You can't -- at least I can't predict
18 something we've never done before, but --

19 Q. But it would have to be that it wasn't
20 already a line item, I guess it wasn't already found
21 in some item?

22 A. I wouldn't necessarily limit it, but a
23 category of cost, because when you get into line
24 items, you've got --

25 Q. Tell me, define a category for me. What

1 would be a category?

2 A. An example -- would you like an example?

3 Q. Sure.

4 A. Like fuel costs.

5 Q. Okay.

6 A. Would be a category of costs or labor would
7 be or pension expense or consultants or lawyers. Bad
8 example, but --

9 Q. There's nothing new there, huh?

10 A. No.

11 Q. Okay. And then finally --

12 A. We've got agreement on something.

13 Q. And then --

14 A. We've got to be careful in this room,
15 though. I should be careful.

16 Q. In G, where on that Attachment C, the final
17 area in G says UE, Staff, Office of the Public Counsel
18 reserve the right to petition the Commission for
19 resolution of disputed issues relating to the
20 operation or implementation of this plan.

21 Again, that seems like an open door, and
22 tell me how you narrow the opening with that type of a
23 statement.

24 A. I narrow it down to the operation and
25 implementation of the plan. In other words, what does

1 the Stipulation and Agreement provide for, not what
2 the parties wish it provided for or with foresight
3 would have put in there or with hindsight wish they
4 had.

5 It's just -- a good example of that, cash
6 working capital offset of 24 million. It's 24
7 million. The fact on decommissioning we got the
8 benefit of the 20 million, there might be offsets, but
9 I don't believe it's our obligation to show there's
10 offsets.

11 It's just that was a throw of the dice that
12 that number was going to be good, bad or indifferent,
13 because if we were short an additional \$20 million,
14 one, I don't think we'd be here trying to collect on
15 it, and I don't think we'd get much leeway in that
16 regard.

17 Q. Have you been involved in the past in
18 earnings investigations for UE with this Commission?

19 A. Yes, I have.

20 Q. And your comparison of the time, the
21 resources used by your company to the earnings
22 investigations and with respect to this proceeding, is
23 this more or less?

24 A. On average, I think this is less than those
25 earnings investigations.

1 Q. Are the issues narrower?

2 A. Certainly, yes. Yes.

3 Q. So although this procedure may not be
4 pleasant, because I don't think that these type of
5 procedures are pleasant because they are contentious,
6 it is not at the level of a full-blown rate case?

7 A. That's correct. And I really think
8 Mr. Dottheim in his opening remarks presented that. I
9 reiterate the position. The fact that we're here, I
10 wouldn't call that bad or for slightly different
11 reasons than Mr. Dottheim, but this isn't the end of
12 the world.

13 I still think it's a great idea. I think
14 it's a great idea for shareholders of Union Electric
15 and for customers in the efficiencies we've gained and
16 the incentive that it's provided our company. I think
17 it far overshadows the cost and trials and
18 tribulations of going through a procedure like this.

19 Q. And then finally, because I can't let it go,
20 when Commissioner Lumpe was asking you about the
21 24 million that is not a dispute to be shared, is that
22 correct, that was the amount?

23 A. The cash working capital offset \$24 million.
24 Oh, excuse me.

25 Q. The sharing?

1 A. The sharing.

2 Q. Yes.

3 A. Correct.

4 Q. You had originally -- what I heard you say
5 is you had originally said no, that you wouldn't do
6 that now, but then when you were talking to her you
7 said that was kind of like your first answer.

8 A. It's still no, but I would have liked to at
9 the time offered an explanation why it's no. I'm not
10 doing it just to be obnoxious or mean.

11 Q. I don't think anyone has told you you were.

12 A. No. And it's not to be cavalier. I just
13 think it's part of the --

14 Q. It's still no, and you did explain to her.
15 But part of what you said to her, this is what I want
16 to get clear, is you expect everyone to uphold the
17 agreement that was done in 1995, correct?

18 A. Correct.

19 Q. And if this was part of your agreement, then
20 why -- the problem I'm having is, you're asking
21 everyone to follow the agreement. You know there is
22 part of the sharing that should go back, and why would
23 you not rise to a higher level than just say no matter
24 what we honored that piece of our agreement and we
25 know that that sharing needs to happen so we'll do it?

1 I really don't understand that, and you need
2 to tell me how you can stand on both feet and ask for
3 that level of agreement from everyone and yet when you
4 admit that you have it that needs to go back and don't
5 give it?

6 A. Well, from two perspectives, and I won't
7 repeat what I said to the Chairperson, but we're in
8 the litigation environment. As you pointed out, this
9 isn't one of the more pleasant things I have to do.
10 There are worse, but --

11 Q. Should I ask? No.

12 A. I have to deal with your own lawyers, too.
13 I'm free to insult them at will.

14 I understand where you're coming from, but
15 again, we gave up a lot. The agreement has no
16 provisions for these interim refunds. Now, that
17 would, I'm sure, appear generous or reasonable of me,
18 but we're also in a litigation environment. And very
19 frankly, that's one of the levers I've got.

20 And the parties know, if we were disputing
21 \$10,000 and \$10,000 came up back last September,
22 October, whenever we filed the report, what would
23 prevent a party, and this is an extreme, of saying we
24 want another \$10,000 and they have no basis, and I'm
25 not going to litigate \$10,000. I can't afford --

1 these guys can't do a whole lot for \$10,000 with the
2 filings and all that.

3 So I'm kind of -- if I had to cut the check
4 for \$24 million, then I'm stuck with \$10,000 and I
5 can't afford to litigate it. And so where do you
6 stop? Is it 10 or is it 20 or is it 200 or \$3
7 million?

8 And from the other side of the coin, I look
9 at some of these issues, and some of them, quite
10 frankly, I use the word silly and dumb. I believe
11 some of them are just simple terms, that's it. I
12 don't understand why we're here, and if people hadn't
13 raised some of these issues, and the computer
14 expenses, from the beginning of time we've been
15 expensing computer software expenses.

16 If rate issues like that hadn't been raised
17 by other parties, the credit would have been in
18 ratepayers' hands already. So it's not just me being
19 the hard-nosed fellow from St. Louis, not wanting to
20 cut the check for 24 million. It's we're here because
21 there's more than one party, not just Union Electric.

22 Q. So who are you -- you say that's a lever.
23 Who is that a lever against?

24 A. Well, I would think the parties would --
25 other parties to the case would take into

1 consideration they've got risk of litigation before
2 this Commission and potential appeals, what their
3 likely outcome is in the cost of litigating it versus
4 the time value of money to get the money back to
5 ratepayers as quickly as possible.

6 And if you're going to propose things that
7 are pretty iffy at best, there's a cost associated
8 with that. And if we don't -- if Union Electric just
9 cuts a check for everything we agree to, then the
10 parties could come up with all kinds of stuff and we
11 could just litigate forever and see how much they
12 could throw against the wall and what would stick.
13 There's just no incentive to be reasonable.

14 Q. All right. Then my final question, truly is
15 my final question, as long as you think about your
16 answer. Is there anything that we have not asked you
17 here that is very important to you and to your company
18 that you feel you need to state?

19 This is called -- I do this, and I think
20 it's important because I think it's very important
21 that if there's something you felt that you needed to
22 say that the right question wasn't asked. I have to
23 make very serious decisions here.

24 A. I understand.

25 Q. And I feel it's important if there's

1 anything else that you felt that I was hoping she'd
2 ask me so and so, and what is it?

3 A. There's a couple items I think are very
4 critical to the issue at hand relative to this
5 agreement. The most important has been the use of
6 this agreement, the two agreements in helping to
7 change the culture of the Company.

8 If you want to get into the detailed
9 numbers, Mr. Baxter is that. I'm the chief financial
10 officer. I've got some high level decisions. But one
11 of my key duties is communicating to employees, and
12 when I was hired 16 years ago, the CEO at the time
13 told me one of my jobs was, he wanted everyone in his
14 company the best they could get a better understanding
15 of how this company makes money, what's good for the
16 company and what's good for the customers.

17 I've been out to work headquarters over the
18 years, power plants, and I've talked to groups of vice
19 presidents, too, and sometimes, believe me, the
20 impressions and the questions are pretty similar.
21 Kind of scary at times.

22 But the thing that kept coming up over the
23 years was, you keep telling us we've got to be better.
24 And it's my job to beat on people about cost, and
25 Mr. Baxter helps me do that job, too. But they said,

1 every time we reduce costs, the Commission comes and
2 takes it away.

3 Now, I know, and you folks know, that's the
4 way the cost of service model rate base regulation
5 works, but to the average working person out there,
6 that's a disincentive.

7 And when we got this plan in place, I made
8 speech after speech to our senior management, to our
9 board of directors, power plants and work
10 headquarters. Here's your opportunity, folks. This
11 is as close to competition I can get you right now,
12 but you make a dollar and we get to keep half of it.
13 It goes to the bottom line.

14 And again, regardless of whether I'm talking
15 to a vice president or a pipefitter in one of our
16 power plants, that's had an effect, and I've seen that
17 effect and we have gone out of our way, the senior
18 officers of the company, our CEO and myself have been
19 at the point there to expound on this is a new deal.
20 It's good for the shareholders and it's good for
21 customers. I know that sounds trite, but that rings a
22 bell when it comes to employees.

23 The other aspect of this deal is, and this
24 sounds self-serving relative to our shareholders, but
25 frankly over the years the impression of regulation in

1 Missouri within the financial markets has not exactly
2 been the best.

3 And this deal, besides the time value of
4 money, there's a lot of our investors, institutional
5 investors and analysts who are interested in the
6 outcome of this proceeding and whether in Missouri is
7 a deal a deal, and they know this is not the ending.
8 Whether we get an additional \$12 million in computer
9 expenses in year one or it gets spread over five
10 years, they're not really interested in that.

11 But there's bigger fish to fry in the future
12 relative to restructuring and this Commission's role
13 in that, and if there -- what degree of uncertainty
14 there is in the outcome. And I think that's a very --
15 from my perspective at the senior level, that's
16 extremely important.

17 Mr. Baxter and Gary Weiss will be happy to
18 tell you about the detail of all the numbers, but I'm
19 looking at the big picture and what kind of message do
20 we convey to employees and to shareholders and
21 financial markets.

22 COMMISSIONER DRAINER: Thank you very much.
23 I appreciate your answers.

24 JUDGE REGISTER: Commissioner Crumpton?

25 COMMISSIONER CRUMPTON: Yes, I have a couple

1 of questions.

2 FURTHER QUESTIONS BY COMMISSIONER CRUMPTON:

3 Q. Mr. Brandt, I want to clear up a matter
4 here. I asked you the total value of the issues in
5 dispute, and you quoted some numbers between 25 and
6 40 million. And my question is, did that include the
7 settled issues?

8 A. I believe so.

9 Q. That would bring it --

10 A. Yes.

11 Q. Okay. So if you remove the settled issues,
12 it would drop quite a bit?

13 A. Oh, I misunderstood you. I think the
14 disputed issues make up the difference between about
15 26 and \$40 million.

16 Q. Okay. And does that -- okay. Just the
17 disputed issues. Okay. That answers that question.

18 I want to explore this area of the new
19 paradigm where we're using incentive regulation versus
20 rate of return regulation, and we're still somewhat in
21 the rate of return regulatory paradigm. This is
22 something that's boxed within this, this incentive
23 plan that your company and the other parties have
24 developed.

25 While the other parties come forth with

1 areas that they think show that you've done something
2 incorrect, you have not come forth to show issues that
3 they're overlooking that were offsets? In other
4 words --

5 A. You're exactly right.

6 Q. In the regulatory environment since I've
7 been here, Staff would go out and they would not just
8 look for areas where the company was making money,
9 they would also look for the areas where the company's
10 expenses had changed, and then they would match those
11 expenses with those areas that had changed and with
12 those revenues and they would say, okay, this is what
13 the company is really earning and we believe they
14 ought to be earning X and there creates the dispute.

15 So in this particular case, this is not
16 there. We only have a one-sided point of view. And
17 I'm mentioning that because, when I first came here, I
18 was aware of what companies do in order to improve
19 efficiency, such as your merger resulted in a number
20 of people being laid off.

21 A. No, it didn't. Excuse me for interrupting,
22 but we didn't lay anyone off.

23 Q. But your efficiency went up?

24 A. Correct.

25 Q. Okay. So that means that had you achieved

1 the same level customer base under normal
2 circumstances, you would expect that your employee
3 count would go up with that, all other things being
4 constant?

5 A. That would be reasonable.

6 Q. And now, in the case of some companies, they
7 achieve efficiencies by laying people off. I know you
8 were able to do it without laying people off, but some
9 companies achieve efficiencies by laying people off.

10 So those companies who are in an environment
11 where we have incentive regulation or regulatory plan,
12 they achieve efficiencies and then they're asked to
13 give them up. Is that the issue that you were
14 alluding to when you made the statement the Commission
15 takes it away?

16 A. Yes.

17 Q. Now, Mr. Brandt, if you can produce records
18 that show how you treated software in the past or how
19 Staff treated it in other rate cases, how you treat it
20 and how Staff permitted you to treat injuries and
21 damages in other rate cases or how the revenues and
22 expenses from territorial agreements were treated,
23 then you would be providing us with information that
24 we would need in order to settle many of these
25 disputes. Do you understand that?

1 A. Yes, I do.

2 Q. Now, is it possible that you can show us how
3 these issues were treated in, say, your last rate
4 case?

5 A. I think -- we think what we've put on as
6 evidence demonstrates that. We'd be happy to
7 supplement that with specific.

8 Q. You think you've already done it?

9 A. In the case of computer expenses, they've
10 just -- software expenses have just always been
11 expensed. I'm trying to think off the top of my head
12 what I can show you to prove that. That capitalized
13 account might go a long way. I'm not sure that's
14 bullet proof, but --

15 Q. If you could show EMS runs from a previous
16 rate case where Staff did not challenge the treatment
17 of software expenses in determining how much you have
18 overearned, that would be an example. And I may be
19 using the wrong terminology, but do you understand
20 what I'm saying?

21 A. Yes. The one question is, it's been a while
22 since I've looked at an EMS run, and I don't know
23 if -- I doubt if software expense is laid out. But I
24 can show you where our accounts coming from our books
25 and records were X amount of money, and that included

1 software expense, and reconcile it into an EMS run.

2 Q. Really the only thing you have to show in my
3 opinion is, No. 1, that you have some expenditures for
4 software and, No. 2, that Staff did not say they were
5 imprudently incurred or Staff did not say you should
6 not have expensed these items, they should have been
7 carried out over time.

8 A. We'll be happy to take a shot at that.
9 After this is over, I'll get with Mr. Baxter and we'll
10 see what we can put together.

11 Q. And also on injuries and damages, I did see
12 now the exhibits that showed how things were going
13 along and then they popped up real high on several of
14 these disputed issues, but you would just have to
15 show, in my opinion, that these happened in the past
16 and Staff did not say it was imprudent to recognize it
17 like that, because we're only talking about a
18 recognition issue, a timing of recognition.

19 A. That's correct.

20 COMMISSIONER CRUMPTON: Okay. And I think
21 that takes care of it. Those are all the questions I
22 have.

23 JUDGE REGISTER: Commissioner Murray, did
24 you have another question?

25 COMMISSIONER MURRAY: I believe mine have

1 been covered. Thank you.

2 JUDGE REGISTER: I think it's 10:30 now.

3 Would anyone -- I think this would be a good time for
4 a break, and why don't we take at least ten minutes.

5 Is that all right?

6 Off the record.

7 (A recess was taken.)

8 JUDGE REGISTER: We have completed all the
9 questions I think from the Commissioners. I just had
10 a few questions myself to make sure that our record is
11 complete, and then I'll turn back to recross and
12 redirect.

13 QUESTIONS BY JUDGE REGISTER:

14 Q. In your rebuttal testimony, Mr. Brandt, on
15 page 32, you're addressing the territorial agreement,
16 and on line 7 there the sentence starts, a unilateral
17 act by one party to a contract does not thereby affect
18 a change in the explicit terms of that contract.

19 If I understood your testimony yesterday,
20 though, you were not aware that there had been
21 recommendations reserving ratemaking treatment for the
22 credit sharing plan for these two territorial
23 agreements and that those ratemaking recommendations
24 had been ordered by the Commission?

25 A. When I wrote this, I was not aware, and to

1 date, as of now, I'm only aware that it was relative
2 that that language was included on the Macon
3 territorial agreement. I'm not aware that --

4 Q. So a unilateral act would not include a
5 Commission Order?

6 A. I think, unless we agreed to that, that
7 would be a unilateral act on the Commission Order to
8 reserve that.

9 Q. And then yesterday in your testimony,
10 looking at page 14 and page 15 of your testimony,
11 beginning on page 14 and line 21 and going through
12 line 2 on 15, the question was put to you, according
13 to my notes, that was UE's position made known to
14 Staff about how you interpreted the reconciliation
15 procedure, and my notes say that your response was you
16 thought the document spoke for itself.

17 Is that no -- would that have meant that,
18 no, you did not specifically discuss or UE did not
19 make known its interpretation of the reconciliation
20 procedure to the Staff and OPC at the time that this
21 agreement was being negotiated?

22 A. That's correct. We didn't explicitly say
23 that. We felt the language was self-evident.

24 Q. That's just what I need to double check.
25 And in talking about the Attachment B of Exhibit 21,

1 you had indicated that the only thing that you were
2 aware of was the sharing grid and that the rest of it
3 had been prepared by someone else under your
4 direction; is that correct?

5 A. The only part of the Bell agreement I was
6 aware of is I saw one page that had a sharing grid.
7 Now, I prepared basically the text. Attachments A and
8 B were prepared by others.

9 Q. Okay. And who prepared Attachment B?

10 A. Best of my recollection, Joseph Pfeiffer,
11 who was our controller at the time. I'm sure he had
12 some input from lawyers and he had the rate department
13 under him, too, the accountants and stuff that are
14 familiar with it.

15 Q. And is Mr. Pfeiffer still in your employ?

16 A. No, he's not. He retired several years ago,
17 about two or three.

18 Q. Are there any other parties or persons in
19 your employ that would have assisted him with that?

20 A. I wouldn't be surprised if Mr. Gary Weiss
21 assisted him with that or Jim Cook, our attorney here,
22 but Mr. Weiss could obviously tell you if he did or
23 not. He worked for Mr. Pfeiffer at the time --

24 Q. Okay.

25 A. -- in the rate area.

1 Q. And who prepared Attachment A?

2 A. That would have been someone under the
3 control of Mr. Pfeiffer at the time. We've got a
4 separate budget department. We've got -- we had a
5 budget at the time. It was just put it in a format.
6 It's a booklet, and it would have been to put it in a
7 format that's one page instead of 30-something pages
8 of detail.

9 Q. Okay. And there was reference, I believe
10 this is again to your testimony, on page 23, line 15
11 to the November 10 meeting. I believe that's a
12 negotiation?

13 A. Page 23?

14 Q. Yes.

15 A. Okay.

16 Q. Line 15 through the end of the page
17 discusses the November 10 meeting that representatives
18 of Staff and Public Counsel, representatives of your
19 company, Staff and counsel had. And I understood your
20 testimony was that you were not present at that
21 meeting. Do you know who that you directed to be
22 there?

23 A. I don't recall specifically the people that
24 were there. I believe Warner Baxter was there, and I
25 believe Gary Weiss was there, and likely Jim Cook was

1 there.

2 Q. What was the last one?

3 A. Jim Cook.

4 Q. Mr. Cook. Okay.

5 A. I'm not absolutely certain whether they took
6 the lawyer. We hardly go any place without a lawyer.

7 Q. You might need them.

8 A. Somebody has to pick up lunch.

9 Q. The other question I had, I think
10 Commissioner Murray had some questions about the
11 weather normalization issues, and I wanted to clarify.

12 Was there an issue on weather normalization
13 about the regional measure that was agreed upon no
14 longer existed and you-all had to choose some other
15 measure of weather normalization?

16 MR. CYNKAR: Your Honor, I may be able to
17 clear this up because Mr. Dottheim and myself and some
18 other folks were really instrumental in making that
19 happen. It gets so complicated.

20 JUDGE REGISTER: I appreciate that.

21 MR. CYNKAR: So if you don't mind. Simply
22 put, one issue that was raised in weather
23 normalization was the question of how you address
24 known biases in historical records. That was one
25 practical question. And our original position was

1 that you take a longer time period, and ultimately
2 both the known and unknown biases shift out. Staff's
3 position was take a shorter period and actually make
4 an adjustment for those biases. That was No. 1.

5 No. 2 was the question of how do you make
6 those adjustments, if you do, for those biases in
7 historical record.

8 The third big issue had to do with the
9 installation of a new measuring device called ASOS in
10 1996, I believe, that introduced its own biases. And
11 originally the Staff had not adjusted for that bias to
12 the extent that we thought was appropriate.

13 The way the parties compromised was this.
14 We agreed to the Staff's adjustment for the past
15 biases, to do it that way, and use the 30-year period
16 and use their figures for the two biases that were
17 introduced in the past. In addition, the Staff agreed
18 that we should make an adjustment for the ASOS change.

19 They didn't just take our number, but what
20 we did is we had our experts get together and then
21 agree on the comparison sites and so forth and the
22 methodology for doing that. And so all of that
23 together produced the agreement on weather
24 normalization.

25 JUDGE REGISTER: Okay. I think that gives

1 us a full picture. Thank you, Mr. Cynkar.

2 Mr. Dottheim, did you have anything to add?

3 MR. DOTTHEIM: Yes. I think the number was
4 between the -- at least the dollar value was between
5 what had been originally proposed by the Company and
6 by the Staff.

7 JUDGE REGISTER: Okay. I don't think I have
8 anything further.

9 COMMISSIONER MURRAY: Can I ask a couple
10 more?

11 JUDGE REGISTER: Commissioner Murray.

12 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Before we get away from questions from the
14 Bench and then we won't have to have another round.
15 The questions that you were asked earlier about the
16 agreement and who were parties to the agreement, do
17 you recall some of those questions?

18 A. Yes, uh-huh.

19 Q. The parties, in your opinion, who are the
20 parties to the agreement? Is it the parties that
21 signed? Is it the people, the entities that signed
22 the agreement?

23 A. The entities that signed the agreement and
24 this Commission.

25 Q. Okay. That's where I have a problem with

1 your interpretation. And follow this with me for a
2 minute, if you could. The parties entered into an
3 agreement and they came to this Commission to ask for
4 approval of the agreement; is that correct?

5 A. That's correct.

6 Q. But by approving the agreement, the
7 Commission itself does not become a party to the
8 agreement, does it? Does it not just become a body to
9 which you bring disputes and the Commission would
10 determine whether the terms of the agreement are being
11 complied with by the parties?

12 A. I think that's a way to look at it. By
13 party -- and again, I'm not a lawyer. So I don't know
14 the nuances. But obviously the Commission wasn't a
15 signatory, but it issued an Order approving the
16 Stipulation and Agreement. So from a layman's
17 perspective, I don't think the Commission is free to
18 go back and change that Stipulation to more to its
19 liking now.

20 Q. Okay. I want to follow up on that. You
21 talked about a unilateral act by one party to the
22 contract in your testimony, but I read that to mean
23 that you're referring to the Staff as to any
24 unilateral act, Staff being a party and then making a
25 change in terms -- in the way the contract was being

1 carried out or interpreted and that the Staff was the
2 unilateral party to the contract that you were
3 referencing at that point.

4 A. Yeah. In this case, that's the issue is the
5 Staff and Public Counsel brought issues before that we
6 think are unilateral. I'm not saying that it couldn't
7 have occurred if the Commission itself initiated we
8 think the working capital offset ought to be
9 30 million instead of 24.

10 Q. Stop there a minute because I want to go
11 into the Commission's role. When the Commission has
12 approved an agreement like that, the Commission has
13 said we agree that this agreement is not detrimental
14 to the ratepayers. We don't see any harm in this
15 agreement going forward. Therefore, we will approve
16 this agreement, which is binding upon the parties.

17 And then at some later date, if the parties
18 determine that they have a dispute, the Commission has
19 the role, does it not, of deciding those disputes and
20 those disputes being whether the agreement is actually
21 being carried out according to its terms, which the
22 Commission approved?

23 A. Yes. In other words, what do these words
24 mean? Yes, the Commission -- I understand the
25 Commission could address what is the meaning of these

1 words.

2 Q. And part of the reason the parties enter
3 into an agreement is that there is certainty for a
4 period of time as to how certain things will be dealt
5 with; is that correct?

6 A. That is certainly a key benefit.

7 Q. And by approving an agreement, the
8 Commission is saying, if the agreement is for three
9 years, the Commission approves the agreement to last
10 for three years. Is that your understanding?

11 A. That's my understanding.

12 Q. But it does not necessarily thereby become a
13 party? Never mind. You've already stated your view.
14 I don't need to try to change it.

15 If one party benefits from an agreement more
16 than was anticipated at the time of the agreement, in
17 your opinion, does that go -- does that give a reason
18 for the other party to come back in and change the
19 agreement?

20 A. No.

21 Q. So it's possible that either party can
22 benefit more than was anticipated at the time that
23 both parties set down the terms and agreed to them; is
24 that correct?

25 A. I think that's true. I think it's almost

1 guaranteed because nobody can predict the future, and
2 it's going to vary and there's random luck involved.

3 COMMISSIONER MURRAY: Okay. Thank you. I
4 think that's all my questions.

5 JUDGE REGISTER: We're ready for recross,
6 then, and our order is parties other than Staff and
7 OPC. Do the Intervenors have any?

8 MR. JOHNSON: I have a few questions.

9 RECROSS-EXAMINATION BY MR. JOHNSON:

10 Q. Mr. Brandt, in the opening statement your
11 counsel indicated that Union Electric perceived the
12 all-direct plan as a step or a partial step toward
13 deregulation, and I take it you agree with that, that
14 statement?

15 A. Yes.

16 Q. Is UE at this time making plans to move
17 toward competition in the generation of electric
18 power?

19 A. Yes, to become more --

20 Q. Can you indicate what some of those steps
21 are?

22 A. I think we've had a very strong focus on
23 performance of our generating units, costs across the
24 board in all areas of the company, but naturally
25 big -- the vast majority of our assets are tied up in

1 our generating plants, and key are the overall costs
2 of those performances. The more they run, the better
3 off we and our customers are.

4 Q. Under the present plan you have partial
5 regulation right now, but you still have the exclusive
6 service territory. Can you indicate to us when you
7 anticipate that competition would be available in the
8 generation of electric power?

9 A. I couldn't predict it. I've heard a variety
10 of things coming out of the Legislature, different
11 representatives of the Legislature, whether a bill
12 would even be seriously considered for two years. In
13 my opinion, I think we're a few years off.

14 Q. How many years?

15 A. I think we're at least a couple of years
16 off.

17 MR. JOHNSON: I have no further questions.

18 JUDGE REGISTER: Mr. Fulton?

19 MR. FULTON: Yes.

20 RE-CROSS-EXAMINATION BY MR. FULTON:

21 Q. Mr. Brandt, going to the UE and the Macon
22 territorial agreements for just a second. Do you know
23 when the UE territorial agreement was approved by this
24 Commission?

25 A. No, I don't.

1 Q. Do you know if it was before or after the
2 implementation of this experimental plan?

3 A. No, I don't.

4 Q. And you say you have not actually reviewed
5 either -- was there a stipulation entered in that
6 case, do you recall, on the Black River one?

7 A. I don't recall. My knowledge of both of
8 them is relatively limited.

9 Q. You weren't actually involved with those
10 cases?

11 A. No, I was not.

12 Q. Would you agree with me that a contract can,
13 in fact -- a contract or a stipulation can be modified
14 by subsequent agreement of the parties?

15 A. Yes, it can.

16 Q. Would you agree with me that it appears that
17 UE modified this experimental program at least in the
18 Macon Stipulation and Agreement that was presented to
19 the Commission?

20 A. Yes.

21 Q. So you would agree with me that the Staff
22 then can, in fact, consider at least that territorial
23 agreement as far as the implication, making
24 adjustments to it; is that correct?

25 A. Yes.

1 Q. Would you also agree with me that if similar
2 language is contained within a Stipulation and
3 Agreement on the Black River case, that, in fact, then
4 the Commission, the Staff is within its rights to
5 argue for some sort of adjustment?

6 A. If it were essentially the same, yes.

7 Q. Now, we still have various issues that we're
8 hopefully one of these days going to get to talk about
9 in more detail. And I guess my question to you is, do
10 you consider any of those other issues to be
11 appropriate topics for the Staff to bring up other
12 than the territorial agreement?

13 In other words, under the contract or any
14 subsequent contract, like the year 2000, Y2K computer
15 costs, as to how to -- whether to capitalize those or
16 expense them, is that a topic that can be brought up
17 in your interpretation of the Stipulation and
18 Agreement?

19 A. No.

20 Q. How about the other computer costs?

21 A. No.

22 Q. How about the -- well, we had the one for
23 the current tax reduction for allowance of funds used
24 during construction. Is that an appropriate topic to
25 be brought up under the Stipulation and Agreement?

1 A. Mr. Baxter would be able to explain. I'm
2 not familiar with the aspects of that adjustment.

3 Q. How about deferred taxes, was that an
4 appropriate matter to be brought up?

5 A. That's the same. I'd defer to Mr. Baxter on
6 the tax issues.

7 Q. How about the merger and acquisition costs?

8 A. No, I don't believe that was appropriate to
9 have been brought up.

10 Q. How about the lobbying expense?

11 A. That was appropriate. That was an error.

12 Q. The decommissioning fund deposits?

13 A. No, that was not appropriate.

14 Q. And the injuries and damages?

15 A. That's not appropriate.

16 Q. The weather was settled. Was that an
17 appropriate matter to be brought up? Actually, I
18 guess that was under the '98, I mean the subsequent
19 stipulation, wasn't it?

20 A. Under the second one.

21 Q. Let's assume for the moment the Commission
22 says that all these matters are appropriate matters
23 for their resolution under this Stipulation and
24 Agreement, in other words disagrees with your position
25 and your company's position. Let's assume further

1 that you lose on a significant -- that UE's position
2 is not taken on, say, the computer issue, which is, I
3 guess, the biggest cost driven one here we have left
4 before us.

5 Will UE -- if I understand your position
6 correctly, UE will view that as a breach of this
7 agreement?

8 A. What would be a breach?

9 Q. By the Commission saying you have to treat
10 these costs in a different manner than what you
11 interpret the agreement to provide?

12 A. I don't know if I'd use the word breach. I
13 don't believe under the terms of the contract that
14 they could come to that -- under the terms of the
15 Stipulation and Agreement, that contract, would come
16 to that conclusion.

17 Q. Would UE at that point in time want to
18 withdraw from the second three-year plan?

19 A. We'll cross that bridge when we get to it.

20 Q. Would you -- do you believe that these
21 three-year plans provide a significant benefit to UE?

22 A. Yes, to both UE and our customers.

23 Q. Customers have not received any significant
24 benefit to that plan at least for the third three-year
25 sharing period, have they?

1 A. They got a whole bunch of money, looking at
2 that graph.

3 Q. Sitting in your pocket?

4 A. Well, there's 24, 25 million sitting in our
5 pocket, so to speak. There's several hundred million
6 and then some sitting in our ratepayers' pockets.

7 Q. But you can't tell us as we sit here today
8 what the result would have been if a complaint had
9 been filed about excess earnings as to what kind of
10 refund or --

11 A. I can't predict what would have happened if
12 we went another course of action, but I can tell you
13 relative to -- if there was a complaint proceeding,
14 there wouldn't have been an immediate \$30 million rate
15 reduction and there wouldn't have been an up-front
16 \$30 million credit paid with that timing.

17 It might have come in the form of a rate
18 reduction, but it would have been down the road some,
19 and that rate reduction may not have been spread on
20 the basis of kilowatt hours.

21 Q. With regard to the second agreement,
22 Stipulation and Agreement, were any of the intervenors
23 signators to that Stipulation and Agreement?

24 A. Without looking at it, I don't recall. I'd
25 be happy to look for you.

1 Q. Why don't we take a quick look because I
2 haven't found it yet.

3 JUDGE REGISTER: Is that referencing
4 Appendix B to your testimony?

5 THE WITNESS: That's what I'm looking at,
6 yeah, Exhibit 13, page -- I'm on page 39 and 40.
7 We've got Office of the Public Counsel --

8 BY MR. FULTON:

9 Q. Okay.

10 A. -- Union Electric, Robert Johnson for
11 Anheuser Busch, et al, Mr. French for Trigen,
12 Mr. Duffy for Missouri Gas Energy. There's a few
13 others.

14 Q. Basically pages 39 to 41?

15 A. Correct. We've got a few Intervenors on
16 there.

17 MR. FULTON: I have no further questions.

18 JUDGE REGISTER: Are there any other
19 Intervenors?

20 Mr. Dottheim for Staff, do you have any
21 recross questions?

22 MR. DOTTHEIM: Yes, thank you.

23 RECROSS-EXAMINATION BY MR. DOTTHEIM:

24 Q. Mr. Brandt, I think you were asked some
25 questions by Chair Lumpe regarding the second ERP, the

1 extension, so to speak, of the ERP for another three
2 years. Do you recall whether Union Electric Company
3 in its surrebuttal testimony in the merger case with
4 CIPSCO proposed a five-year extension of the plan?

5 A. I don't specifically recall.

6 Q. Would you be willing to accept that that's
7 what occurred, subject to check?

8 A. Yes.

9 Q. Vice Chair Drainer asked you a few
10 questions -- excuse me. I think this goes to Chair
11 Lumpe's questions about timing also, but I may be
12 mistaken. If I could ask you to turn to what's
13 Exhibit 22. Excuse me. I think it's Exhibit 21, your
14 list of -- pardon me.

15 A. The Data Request?

16 Q. No. It's your schedules. It's 13,
17 Exhibit 13, the appendices to your rebuttal testimony.

18 A. Appendix B?

19 Q. Appendix A.

20 A. Oh, Appendix A.

21 Q. Let's start there.

22 A. Okay.

23 Q. And if you would turn to page 4 of the
24 actual Stipulation and Agreement that's attached to
25 the Commission's Order.

1 A. I'm on page 4 of the Stipulation and
2 Agreement. Is that --
3 Q. Yes.
4 A. Okay.
5 Q. And if I could direct you to the paragraph
6 at the bottom of the page which is identified as
7 paragraph C. I'm not looking at the Commission's
8 Order itself. I'm looking at the --
9 A. Excuse me.
10 Q. -- Stipulation and Agreement. Pardon me.
11 A. It's my error. I'm on page 4 with the
12 sharing grid on it.
13 Q. Yes.
14 A. Okay. I'm there.
15 Q. If I could direct you to paragraph C, the
16 third sentence, that indicates that first sharing
17 period was from July 1, 1995 to June 30th, 1996?
18 A. That's correct.
19 Q. And if I could direct you to Appendix B, the
20 attachment to the Commission's Report and Order, page
21 44, which is the signature page. It's the last --
22 A. Okay.
23 Q. It's the last signature page to the
24 Stipulation and Agreement, and it shows on the
25 left-hand side of the page a date.

1 A. Correct.

2 Q. It says dated, and the date is July 12, '96?

3 A. That's correct.

4 Q. So the Stipulation and Agreement itself is
5 dated 12 days approximately after the end of the first
6 sharing period in the first EARP; is that correct?

7 A. That's correct.

8 Q. And if I could direct you again back to your
9 Appendix A --

10 A. Okay.

11 Q. -- to the Stipulation and Agreement, page 8.

12 A. All right.

13 Q. Small Roman Numeral iv, and the first
14 sentence says, within 90 days after the conclusion of
15 the sharing period a preliminary earnings report along
16 with a proposed sharing report will be submitted by
17 UE. Did I read that correctly?

18 A. Yes, you did.

19 Q. Do you know approximately when within that
20 90-day period the documents referred to, the
21 preliminary earnings report along with a proposed
22 sharing report, were submitted by UE?

23 A. No, I don't recall the specific date.

24 Q. Would you accept, subject to check, that it
25 was sometime after July 12, 1996?

1 A. Yes, I would.

2 Q. I think you had indicated in response to a
3 question from the Bench that at the time the
4 Stipulation and Agreement in your merger case was
5 filed with the Commission, UE had not entered into any
6 merger discussions with CIPSCO; is that correct?

7 A. What was the first part? Excuse me.

8 Q. Yeah. The Stipulation and Agreement in the
9 Company's merger case at the Commission, the
10 Stipulation and Agreement was filed on June 12, 1996.
11 I think you indicated in a question from the Bench
12 that Union Electric Company at that time had not
13 engaged in any merger discussions with CIPSCO; is that
14 correct?

15 A. Where you're confusing me, Mr. Dottheim, I
16 believe you said the Stipulation and Agreement in the
17 merger case.

18 Q. Yes. I'm sorry.

19 A. That's what threw me.

20 Q. I'm sorry. What I meant was the first EARP,
21 the Stipulation and Agreement in ER-95-411?

22 A. The first EARP?

23 Q. Yes. So excuse me. If I correct that, I
24 think you indicated to the Bench that at the time the
25 Company entered into the first EARP, it was not in

1 merger discussions with CIPSCO, Inc.?

2 A. Entered into, then you -- earlier I think
3 you asked when it was filed, and I don't recall when
4 it was filed, but I believe it was entered into on the
5 12th of June 1995. And at that point there had been
6 absolutely no merger discussions, talk whatsoever.

7 Q. And if you would actually go to the first
8 page of the Stipulation and Agreement, the ER-95-411,
9 at the bottom of the page in the right-hand corner
10 there is a stamp.

11 A. Says filed June 12, 1995.

12 Q. Do you recall when there was the
13 on-the-record presentation before the Commission of
14 the Stipulation and Agreement in EO-95-411?

15 A. I don't specifically recall, but it was
16 after June 12th, 1995.

17 Q. Would you accept, subject to check, that it
18 was on July 19th, 1996? In fact, could I direct
19 you --

20 A. I believe that date's correct.

21 Q. If I could direct you to page 2 of the
22 Report and Order of the Commission.

23 JUDGE REGISTER: You said 1996. You meant
24 1995?

25 MR. DOTTHEIM: I'm sorry. 1995.

1 THE WITNESS: Okay. I'm on page 2.

2 BY MR. DOTTHEIM:

3 A. I'm looking at the second full paragraph,
4 and there's reference to the date July 19, 1995.

5 A. It appears that was the hearing date,
6 July 19, 1995.

7 Q. At that time, at the time of the
8 on-the-record presentation of the Stipulation and
9 Agreement to the Commission, was Union Electric
10 Company engaged in merger discussions with CIPSCO,
11 Inc.?

12 A. Yes, we were.

13 Q. Did Union Electric Company bring that
14 information to the Commission's knowledge?

15 A. No, we did not.

16 Q. There was another question from the Bench
17 regarding the merger and acquisition costs that are in
18 this case, and it's seemingly a question on the basis
19 if the merger and acquisition costs are addressed in
20 the second EARP, the second Stipulation and Agreement,
21 that being in the Company's merger case, why are
22 merger and acquisition costs in this case?

23 Is the -- are there merger and acquisition
24 costs in that third year sharing period?

25 A. Yes. We are amortizing those costs in that

1 period. Let me refine that. Some of the amortization
2 of those costs falls under that period.

3 Q. In another question from the Bench, you gave
4 an indication of what you believe the Company gave up
5 in entering into the Stipulation and Agreement in the
6 merger case, did you not?

7 A. I think I touched on that.

8 Q. And one of those items was recovery of the
9 merger premium; is that correct?

10 A. That's correct.

11 Q. There is no assurance that the Company would
12 have, if that issue had gone to hearing, had prevailed
13 on that issue, is there?

14 A. I think we put on a pretty good case. I
15 have no idea how it would have come out.

16 Q. You indicated in response to a question from
17 the Bench that the Y2K costs for the third year
18 sharing period are a million dollars; is that correct?

19 A. I believe I said that, and the specifics to
20 fine tune those numbers, I'd defer to Mr. Baxter and
21 Weiss.

22 Q. Do you know what the company's total Y2
23 costs are or are projected to be?

24 A. In total, through the year 2000, a range of
25 10 to \$15 million, total Ameren Corporation.

1 Q. And so that would -- there's an allocation
2 to Missouri because --

3 A. Yes.

4 Q. -- you're saying total Ameren. That
5 includes Illinois?

6 A. Yes.

7 Q. And is the company approximately 85 to
8 90 percent Missouri?

9 A. Union Electric is, but of total Ameren,
10 Missouri Union Electric is probably closer to 70,
11 75 percent. I don't have a figure on the exact
12 allocation. And then you've got electric and gas,
13 too.

14 Q. But there are Y2 -- well, there are Y2K
15 costs for both electric and gas?

16 A. Yes.

17 Q. Was there a Callaway refueling in 1994? Do
18 you recall?

19 A. Let me double check. No, there was not.

20 Q. And there were a number of questions from
21 the Bench which you addressed regarding software costs
22 and historically what company expensed. Did Union
23 Electric Company have a written policy setting forth a
24 required treatment of expensing software costs when
25 the EARP was adopted?

1 A. Not that I'm specifically aware of. Just
2 the fact that we've always done it that way.

3 Q. Has the Company historically had a written
4 policy setting forth the required treatment of
5 software costs?

6 A. No, other than we've always expensed them.

7 Q. So there's no written policy?

8 A. I have not seen it. There very well could
9 be, but I just don't know.

10 Q. But you're not aware of one?

11 A. I'm not aware of one.

12 Q. Another question from the Bench regarding
13 the time value of money of the decommissioning trust
14 fund. Is it your position that if the Commission does
15 not allow any recognition of the time value of money
16 associated with the decommissioning deposits in the
17 third year sharing period, that the Staff is precluded
18 from raising any issue at any subsequent point
19 regarding the time value of money for that third year
20 sharing period?

21 A. I guess I don't understand the question. If
22 they don't allow it, then we've finalized this. I
23 don't understand how it could be raised in the future.

24 MR. DOTTHEIM: One moment, please.

25 That's all the questions I have for

1 Mr. Brandt. I do have something of a housekeeping
2 matter regarding questions from the Bench, but that
3 could be deferred until Mr. Coffman asks any
4 additional recross.

5 JUDGE REGISTER: All right. Thank you,
6 Mr. Dottheim. Mr. Coffman?

7 MR. COFFMAN: I think there's only one other
8 matter I was wanting to clear up.

9 RE-CROSS-EXAMINATION BY MR. COFFMAN:

10 Q. Mr. Brandt, you refer -- in reference to the
11 decommissioning fund issue, I believe in response to
12 Commissioner Murray's questioning you said that you
13 didn't think that this was a proper issue to bring to
14 the Commission because of the reference in the
15 reconciliation procedures to the step that refers to
16 cash working capital, cash working capital adjustment;
17 is that correct?

18 A. Correct.

19 Q. Are you aware of Public Counsel's primary
20 recommendation with regard to that issue?

21 A. I don't specifically recall it.

22 Q. Do you recall the recommendation that the
23 Company be ordered simply to make that fund whole with
24 an additional payment to the fund?

25 A. Now that you mention it, I do recall that.

1 Q. In your opinion, does that recommendation --
2 is that recommendation also prohibited by that
3 reference in the reconciliation procedure?

4 A. I would think so, as part of this
5 proceeding, yes.

6 MR. COFFMAN; Okay. Thank you. I think we
7 can discuss this issue when we get to it later. Thank
8 you.

9 JUDGE REGISTER: Thank you, Mr. Coffman.

10 Mr. Dottheim, did you have an additional
11 issue that needed to be addressed on the recross?

12 MR. DOTTHEIM: Well, I don't know if this is
13 the appropriate time, but whatever the Company is
14 going to submit to the Commission regarding the
15 Staff's treatment of computer software costs in prior
16 periods, when the Staff will have an opportunity to
17 respond to that or comment on that? I don't know
18 whether that's contemplated. I thought I'd raise that
19 matter.

20 THE WITNESS: I don't know if I can help the
21 matter, but after thinking about it, I know what
22 Commissioner Crumpton asks for, and we'd be happy to
23 work towards that goal providing something and work
24 with Staff maybe.

25 But it's my understanding that whether we --

1 no one in this case is disputing that we expensed
2 those costs in prior years. I don't know if that
3 helps anyone on the Bench with the issue, but I think
4 the lawyers want to dispute that, but it's my
5 understanding nobody's debating that we did not
6 expense them in prior years. So I don't think that's
7 an issue of controversy. But with that said, we'd
8 still be happy --

9 JUDGE REGISTER: I think Commissioner
10 Crumpton's question was, what were the expenses?

11 THE WITNESS: My understanding, we can work
12 towards coming up with some kind of an exhibit to
13 demonstrate that they were -- those expenses were, in
14 fact, expensed in prior years. And again, we'd be
15 happy to do that.

16 But with that said, it's my understanding
17 none of the parties dispute that those costs were, in
18 fact. So we'd be happy to prove it over, try to
19 again, but I don't think it's --

20 JUDGE REGISTER: I think that we'll have an
21 opportunity when the issue of the other computer costs
22 come up to -- and I think that's what I understood
23 Commissioner Crumpton was asking -- to make sure that
24 that was part of that testimony. Would that be
25 accurate?

1 COMMISSIONER CRUMPTON: My concern is that,
2 in reading the testimony, that some of the parties
3 think that these things ought to be spread out over up
4 to ten years, and in the agreement I got the
5 impression that we will treat things as we normally
6 treat them.

7 And so, for example, if you're looking at
8 computer expense, then in the past we've always
9 expensed them, then to me that's significant. But if
10 in the past we have actually spread out those costs,
11 capitalized them and spread them out over a period of
12 time, then that also is significant.

13 JUDGE REGISTER: And you're wanting them to
14 present that evidence as part of the issues as we take
15 up other computer costs?

16 COMMISSIONER CRUMPTON: Right.

17 JUDGE REGISTER: So Staff will have an
18 opportunity to address that under the specific issue.
19 If there's some document that UE presents that is
20 not -- they're not able to present during the hearing
21 time and it's filed as a late-filed exhibit, then, of
22 course, Staff and the OPC and the other parties would
23 have an opportunity to address that late-filed exhibit
24 in that normal procedure.

25 COMMISSIONER CRUMPTON: There's the claim,

1 and I just want to see how it was actually treated --

2 JUDGE REGISTER: Right.

3 COMMISSIONER CRUMPTON: -- in the past.

4 JUDGE REGISTER: I thought that's what you
5 were asking for. Does that take care of your
6 question, Mr. Dottheim?

7 MR. DOTTHEIM: Yes.

8 JUDGE REGISTER: Then I believe we're ready
9 for redirect. Mr. Cynkar?

10 MR. CYNKAR: Just a couple things to clear
11 up a few things.

12 REDIRECT EXAMINATION BY MR. CYNKAR:

13 Q. Mr. Brandt, if I could direct your attention
14 on that chart to small Roman vii, which is actually
15 Section 3.f.vii in the first EARP, which is on page 9
16 of Exhibit 13 as Attachment A. And if I could
17 particularly direct your attention to the language in
18 the second sentence related to the operation or
19 implementation of the plan. If you want to refer to
20 it on the big chart, you can.

21 A. No. I -- I've got it in front of me here.
22 The second sentence of vii?

23 Q. Correct. The language related to the
24 operation or implementation of the plan.

25 COMMISSIONER DRAINER: I think you mean just

1 the second line.

2 MR. CYNKAR: The first sentence, I'm sorry,
3 second line.

4 THE WITNESS: This is a trick, huh, from my
5 own lawyer nevertheless.

6 COMMISSIONER DRAINER: Look at the chart.
7 He's confused. Second line.

8 JUDGE REGISTER: Or it's the fourth line in
9 that.

10 BY MR. CYNKAR:

11 Q. Okay. Is that clear?

12 A. I know who's buying lunch. Okay. The
13 operation or implementation of the plan.

14 Q. All right. Now, from your perspective, does
15 that include all the disputes over what the plan
16 means?

17 A. Yes.

18 Q. Now, directing your attention back to the
19 question of the mergers and acquisition dispute, what
20 is involved there?

21 A. In the second Stipulation and Agreement
22 provides how that cost will be handled under the terms
23 of the sharing plan.

24 Q. Okay.

25 A. And it prescribes a formula one or two will

1 be the amount that's included in the plan for
2 determination of credits.

3 Q. And the dispute between the parties is over
4 what the plan means, correct?

5 A. Yes.

6 Q. And so that is a dispute concerning the
7 operation or implementation of the plan?

8 A. Yes, it is.

9 Q. And that's properly before the Commission?

10 A. Yes, it is.

11 Q. Now, is there any language in the first or
12 second EARPs that allows a party to propose an
13 additional adjustment to the earnings calculation
14 beyond what's set out in the reconciliation procedure?

15 A. No, there's not.

16 Q. And if you have reviewed the Southwestern
17 Bell plan, is there any language in that plan that
18 allows the same kind of thing to happen under the
19 Southwestern Bell plan?

20 A. No, there's not.

21 Q. Now, if someone were to propose an
22 adjustment that was not within the reconciliation
23 procedure and claim that that was within the operation
24 or implementation of the plan and you disagreed,
25 that's an issue that the Commission could still

1 decide, isn't it?

2 A. Yes.

3 Q. Directing your attention to the new category
4 question, you were asked questions about what could be
5 a new category now. Let's say you look in the past,
6 since you said you couldn't -- didn't have a crystal
7 ball.

8 But if you put yourself back in, let's say,
9 1960s era and so forth and looking forward from that
10 time, was there any event that happened between then
11 and now that you could consider to possibly be a new
12 category of cost as an example?

13 A. The only one -- literally the only one that
14 even comes close that I can think of, and I haven't
15 done an exhaustive study, but in the early 1990s there
16 was legislation passed by the United States Congress
17 that required nuclear operators to -- basically, it
18 was a tax. I think they called it something else, but
19 in our case it was a million dollars a year for 15
20 years for a total of about 15 million to help fund the
21 cleanup of different Department of Energy facilities,
22 Uranium Enrichment Corporation, which is primarily
23 weapons type sites, but they've stuck the cost on
24 commercial nuclear operators.

25 So that was a cost that's sort of a kind of

1 a tax, if you will, that we had never seen before. It
2 wasn't -- didn't really fit into what I'd call a
3 category of cost that was crystal clear, a category of
4 cost that we had had before. So that very well could
5 have been a new category of cost if one was starting
6 at some sometime before the 1990s, and it was one of
7 the very early years of 1990s that that legislation
8 was passed and that cost imposed on us.

9 MR. CYNKAR: I have nothing else, your
10 Honor.

11 JUDGE REGISTER: Thank you, Mr. Cynkar. I
12 believe that the testimony of this witness is
13 concluded.

14 Off the record.

15 (A recess was taken.)

16 JUDGE REGISTER: Back on the record.

17 We're ready for UE to call their next
18 witness.

19 MR. CYNKAR: Call Warner Baxter.

20 (Witness sworn.)

21 JUDGE REGISTER: Please be seated. Would
22 you spell your name for the court reporter, please.

23 THE WITNESS: My name is Warner L. Baxter,
24 B-a-x-t-e-r.

25 JUDGE REGISTER: Please proceed, Mr. Cynkar.

1 MR. CYNKAR: Thank you, your Honor.

2 WARNER L. BAXTER testified as follows:

3 DIRECT EXAMINATION BY MR. CYNKAR:

4 Q. Mr. Baxter, I direct your attention to what
5 has been marked as Exhibit 14. Do you recognize that
6 document?

7 A. I do.

8 Q. What is it?

9 A. It is my rebuttal testimony.

10 Q. And was that prepared by you or by people
11 under your supervision?

12 A. It was.

13 Q. And do you have any corrections to make?

14 A. I do. I have some corrections. My first
15 correction appears on page 46, line 20. The second
16 reference should be EO-85-160.

17 My next correction appears on page 50,
18 line 13. The number \$31,000 should be \$177,000.

19 JUDGE REGISTER: That's on line 13?

20 THE WITNESS: Yes, on line 13.

21 JUDGE REGISTER: And instead of 31,000 it
22 should be what?

23 THE WITNESS: \$177,000. And similarly, on
24 page 51, on line 20, that \$31,000 number should be
25 \$177,000. And that is all.

1 BY MR. CYNKAR:

2 Q. And with those additions, is this testimony
3 accurate?

4 A. It is.

5 MR. CYNKAR: I offer Exhibit 14 into
6 evidence.

7 JUDGE REGISTER: Are there any objections to
8 Exhibit 14?

9 (No response.)

10 JUDGE REGISTER: Hearing no objections,
11 Exhibit 14 will be admitted into the record.

12 (EXHIBIT NO. 14 WAS RECEIVED INTO EVIDENCE.)

13 JUDGE REGISTER: And you tender Mr. Baxter
14 for cross-examination, Mr. Cynkar?

15 MR. CYNKAR: I do, your Honor.

16 JUDGE REGISTER: And again, we're following
17 the order of cross-examination for UE's witnesses. So
18 parties other than Staff and OPC are first.
19 Ms. Schmidt?

20 MS. SCHMIDT: No questions.

21 JUDGE REGISTER: Mr. Fulton?

22 MR. FULTON: No questions.

23 JUDGE REGISTER: Do you know if Mr. Johnson
24 has any questions?

25 MS. SCHMIDT: I would imagine not.

1 JUDGE REGISTER: Ms. Forrest?

2 MS. FORREST: No, thank you.

3 JUDGE REGISTER: Anybody else left here?

4 Then we'll go to Mr. Dottheim for Staff.

5 MR. DOTTHEIM: Thank you.

6 CROSS-EXAMINATION BY MR. DOTTHEIM:

7 Q. Good afternoon, Mr. Baxter.

8 A. Good afternoon, Mr. Dottheim.

9 Q. I think this will go considerably quicker
10 with Mr. Brandt, who I forgot to thank for his
11 patience the last day.

12 A. I appreciate that. I don't want people to
13 accuse me of being the dead horse in the memo that was
14 referenced a little bit earlier.

15 Q. I'd like to direct you to page 1 of your
16 rebuttal testimony which has been marked as
17 Exhibit 14, and direct you to lines 25 and 26 where
18 you state that from August 1995 to August 1996 you
19 were assistant controller at UE.

20 Will you please identify where you were
21 employed prior to August 1995?

22 A. Yes. I was employed with Price Waterhouse.
23 I believe I state that on lines 26 and 27.

24 Q. And as a consequence, you were not employed
25 at UE at the time that the Stipulation and Agreement

1 in ER-95-411, otherwise referred to as the first EARP,
2 you weren't employed at UE while that agreement was
3 negotiated, were you?

4 A. I was not.

5 Q. Even though you weren't employed at UE at
6 that time, were you involved in any manner in any of
7 the negotiations respecting the Stipulation?

8 A. I'm sorry. Would you repeat the question?

9 Q. Even though you weren't employed at Union
10 Electric company at the time the ER-95-411 Stipulation
11 and Agreement was negotiated, were you involved in any
12 manner in the negotiations respecting the first EARP?

13 A. I was not.

14 Q. Were you employed at Union Electric Company
15 at the time that Stipulation and Agreement was filed
16 with the Commission on June 12, 1995?

17 A. I was not.

18 Q. Were you employed at UE at the time that the
19 ER-95-411 Stipulation and Agreement was presented to
20 the Commission on July 12, 1995?

21 A. I was not.

22 Q. Would you please describe your duties when
23 you were employed as assistant controller?

24 A. My duties as assistant controller included
25 several things. Obviously as assistant controller I

1 worked under the direction of the controller of the
2 company as well as the Senior Vice President of
3 finance, which would be Mr. Brandt.

4 Those duties as assistant controller frankly
5 are fairly similar to the duties which I describe a
6 little bit later in my testimony, although obviously I
7 had still another reporting person above me.

8 Q. Do you recall approximately when you became
9 aware that Union Electric Company had entered into an
10 experimental alternative regulation plan?

11 A. I was aware of that at the time that I was
12 employed with Union Electric Company and, frankly,
13 probably even some time before I actually became
14 officially employed because I knew for some time I was
15 going to be going to Union Electric.

16 Q. Do you recall approximately when you first
17 read the Stipulation and Agreement, the first EARP?

18 A. Oh, I would say that it clearly was within
19 the first month of my employment at Union Electric.

20 Q. I'd like to direct you to page 4 of your
21 rebuttal testimony, and I'd like to direct you to
22 lines 3 through 10.

23 A. Yes.

24 Q. Therein you make various references to the
25 terms of the Stipulation and Agreement as being

1 binding contractual obligations and make reference to
2 proposed adjustments if they are accepted, adopted by
3 the Commission, they would constitute a breach of
4 contract, impaired contractual obligations, affect an
5 uncompensated taking of the Company's property rights
6 and deny the Company due process of law, do you not?

7 A. That's correct.

8 Q. Are those legal determinations?

9 A. Those are representations from a business
10 person in consultation with legal counsel.

11 Q. And am I reading that correctly where you
12 indicate that it would be the Commission that would be
13 breaching the contract, impairing the contractual
14 obligations, affecting an uncompensated taking of the
15 Company's property rights and denying the Company's
16 right to due process of law if it were to adopt the
17 Staff's adjustment in this case?

18 A. That is correct. Again, that was done in
19 consultation with legal counsel.

20 Q. I'd like to direct you to page 5 of your
21 testimony, lines 3 to 5, where you make reference to
22 monitoring by the parties of UE's compliance with the
23 specific terms of the agreement, that being the EARP,
24 correct?

25 A. That is correct.

1 Q. Do you recall whether the word compliance
2 appears anywhere in the Stipulation and Agreement in
3 ER-95-411?

4 A. I don't recall.

5 Q. I'd like to direct you to page 6 of your
6 rebuttal testimony, lines 9 through 11, where you
7 state that the failure to eliminate \$250,000 of good
8 will advertising would be a failure to apply the
9 accounting methodologies under the agreement.

10 Do you know approximately the amount of good
11 will advertising that Union Electric Company engages
12 in on an annual basis?

13 A. Off the top of my head, I do not.

14 Q. Could you provide a definition of good will
15 advertising?

16 A. I believe good will advertising is
17 advertising which is simply done on behalf of the
18 company.

19 Q. Is the \$250,000 that's specified a limit on
20 the amount of good will advertising that is permitted
21 to be eliminated from the final earnings report
22 submitted by the company for the sharing period?

23 A. I'm not sure exactly what you mean by limit.

24 Q. A cap.

25 A. If you're asking me that whether we would

1 not be required to put any more than \$250,000 in our
2 final earnings report as an adjustment, that is
3 correct.

4 Q. Thank you. That is what I was asking. Do
5 you know how the amount of \$250,000 was arrived at?

6 A. As you know, Mr. Dottheim, I was not party
7 to all the specific negotiations, so I can't speak
8 specifically. But from reading the document, the
9 parties obviously had the ability to go back and look
10 at prior Commission Orders and potentially past
11 ratemaking actions.

12 So I guess as a person in my position, I
13 would assume that that potentially was one possibility
14 as to why that number was arrived at, but I can't say
15 definitively.

16 Q. You don't actually know how the \$250,000
17 figure was arrived at, do you?

18 A. No, I do not.

19 Q. And if I understand you correctly, the
20 \$250,000 limit is the amount that is to be eliminated
21 from the final earnings report regardless of how many
22 dollars in excess of that number the Company might
23 spend in a sharing period?

24 A. That is the Company's view of the agreement.

25 Q. I'd like to refer you again on page 6, this

1 time again on line 11 where you make reference to
2 accounting methodologies under the agreement.

3 Can you identify where in the Stipulation
4 and Agreement for the first EARP are the accounting
5 methodologies to which you are referring in your
6 rebuttal testimony?

7 A. I think there's one principal place, and
8 that would be in Attachment C, the reconciliation
9 procedure. And in there there are specific
10 adjustments or specific accounting methods which are
11 supposed to be reflected in either the final earnings
12 report or potentially in the calculation of average
13 rate base. That would be one source.

14 And then if you would allow me, instead of
15 paging through this, this is my understanding of
16 the --

17 Q. And when you say "this," what are you
18 referring to?

19 A. This is the reconciliation procedure which
20 has been reflected on this board. And also embodied
21 in the agreement is 2A of the reconciliation procedure
22 which says that the earnings report will start with
23 the company's Missouri electric net operating income
24 based upon the June 30 operating revenues, expenses
25 and average rate base.

1 And embodied in that statement in my view
2 are the accounting methodologies that the Company has
3 to follow in order to come up with this starting
4 point, which is our book earnings as for the 12 months
5 ended June 30. So it's that body of accounting
6 methodologies.

7 Q. Would you refer to those as also accounting
8 principles or practices?

9 A. Yeah, I would say they are accounting
10 practices clearly, and those accounting practices are
11 largely based upon accounting principles which are
12 embodied by either the FERC Uniform System of Account,
13 GAAP, or potentially even accounting principles or
14 methodologies that this Commission has made rulings on
15 which affect our books and records of the Company.

16 Q. Do you know whether the phrase accounting
17 methodologies appears in the Stipulation and Agreement
18 that's the first EARP?

19 A. I would have to go through the specific
20 provisions of the agreement. I'm not sure if it
21 actually is embodied in there. But what I can say
22 without knowing specifically whether it's in there,
23 that this person's reading of the EARP with my
24 experience as a business person certainly suggests
25 that there are accounting methodologies reflected in

1 that agreement, if it's not specifically stated.

2 Q. Do you know whether the term accounting
3 principles appears anywhere in the Stipulation and
4 Agreement?

5 A. Again, Mr. Dottheim, off the top of my head,
6 I can't say for certain.

7 Q. And finally, do you know whether the term
8 accounting practices appears anywhere in the
9 Stipulation and Agreement that's the first EARP?

10 A. Again, in specific terminology, I can't say
11 specifically. But the answer that I just stated
12 earlier with regard to accounting methodologies would
13 apply again to accounting principles.

14 Q. Might those accounting methodologies change
15 at any time?

16 A. Under the agreement, those accounting
17 methodologies could change if all the parties to the
18 agreement would agree to make that change.

19 Q. But they could not change under any other
20 condition other than all the parties agreeing to the
21 change in the accounting methodology or methodologies?

22 A. I believe that to be correct.

23 Q. Would that be the case even if an accounting
24 methodology was no longer appropriate?

25 A. What do you mean by no longer appropriate?

1 Q. Was no longer thought to be the best means
2 of reflecting treatment of certain costs?

3 A. Based upon an agreement by the Company and
4 the parties or some other body, I'm not sure.

5 Q. Or if that occurred through a determination
6 of the Financial Accounting Standards Board, for
7 example?

8 A. Well, for instance, if the Financial
9 Accounting Standards Board would change the accounting
10 treatment for a particular cost, under the terms of
11 the agreement we would still be contractually bound to
12 follow the particular treatment that we agreed to at
13 the inception of the agreement.

14 Certainly, and I believe Mr. Cynkar pointed
15 this out in his opening statement, that to the extent
16 that FASB or other accounting body or whomever we
17 believe would be an appropriate governing body, if
18 some change would be made and all the parties came
19 together and agreed that change would be appropriate
20 and in the best interests of ratepayers, then we
21 certainly have that opportunity to do so.

22 Q. Would only the best interests of the
23 ratepayers be considered? Would there be possibly
24 considerations broader than that?

25 A. I think there could possibly be a number of

1 considerations, sure.

2 Q. For example?

3 A. I think the interest of the ratepayers, I
4 think the interest of certainly our shareholders and
5 certainly other parties to the agreement, whatever
6 interests that they represent.

7 Q. I'd like to refer you to page 7 of your
8 rebuttal testimony, starting at line 9 where you make
9 reference to a new category of cost.

10 From your perspective, can every cost that
11 UE might incur be placed in an existing Uniform System
12 of Account, each -- an account number paragraph?
13 Would the Uniform System of Accounts cover every cost
14 that Union Electric Company might incur?

15 A. You're asking me to speculate what could
16 happen in the future. So I don't know if it could.
17 My sense is that the Uniform System of Accounts has
18 been established to address as many things as
19 possible, but I guess it is possible that some time
20 down the road in the future that some costs may not be
21 appropriately covered under the Uniform System of
22 Accounts. I just can't speak to it.

23 Q. To your knowledge, has that occurred in the
24 past?

25 A. That is -- excuse me. I'm sorry.

1 Q. That there's a new category of cost that is
2 not covered by the USOA?

3 A. A new category of cost under the terms of
4 this agreement?

5 Q. Just in general.

6 A. Well, the Company prepares its books and
7 records and certainly files a report with this
8 Commission that basically complies with the Uniform
9 System of Accounts. And so to the extent that costs
10 have been incurred, we have found provisions, adequate
11 provisions in the Uniform System of Accounts, I
12 assume, to reflect those costs appropriately.

13 Q. And in the context of the first EARP, has
14 the Uniform System of Accounts proven to be adequate
15 for placing costs?

16 A. Well, I think in terms of the EARP, you
17 know, we have the Uniform System of Accounts. We
18 have -- now you're talking about the agreement. Now
19 you've gotten more specific. I think we don't look
20 just to Uniform System of Accounts.

21 We look to obviously GAAP. We look at past
22 accounting practices, which are generally in
23 accordance with both of those, and certainly things
24 which the Commission may require us to do which affect
25 our books and records. So it's really all of those

1 things.

2 Q. Again on page 7, if I can refer you to
3 lines 13 through 15 of your testimony. Do you know
4 when the signatories to the Case No. ER-95-411
5 Stipulation and Agreement --

6 A. I'm sorry, Mr. Dottheim. That's this
7 agreement?

8 Q. Yes. I'm sorry.

9 A. I'm doing my best to keep up.

10 Q. The first EARP.

11 A. Thank you.

12 Q. Do you know when the signatories to the
13 first EARP expected a new category of costs to
14 possibly occur?

15 A. No. I don't think any parties to the
16 agreement knew whether -- or when or if new category
17 of costs would occur. I believe that that provision
18 was put in there as sort of a fail-safe provision, to
19 the extent that a new category of costs would occur
20 sometime in the future, that the parties would have
21 the ability to address that as part of a proceeding in
22 front of this Commission.

23 Q. Can you think of some example of a type of
24 cost that would fall within the new category of cost
25 designation that's covered by the first EARP?

1 A. If your question is whether a new category
2 of cost has occurred during the first EARP, and I
3 assume you mean the first second and third sharing
4 periods?

5 Q. Correct.

6 A. To the best of my knowledge, no, there's not
7 been a new category of cost arise.

8 Q. And can you think of what -- or might be
9 able to provide an example of what might appropriately
10 from the Company's perspective fall within the
11 designation new category of cost?

12 A. Well, I think to do that, first you have to
13 start with a perspective as to when, say, for instance
14 an agreement would be entered into. It's one thing if
15 we entered into an agreement, say, five years ago and
16 we look back five years, not 10, 15, 20 years.

17 If you would go back, say, 20 years, I
18 believe Mr. Brandt cited an example this morning, and
19 frankly it isn't as a result of a lot of study, but we
20 cited an example that, say, if we had entered into
21 this agreement, say, 20 years ago and it was an EARP
22 that went for a significantly long period of time,
23 that the assessment that we received with regard to
24 helping the DOE decommission their enrichment plant,
25 that might be a potential category, something that was

1 sort of, I don't know if you call it government
2 imposed, but something like that.

3 But other than that, Mr. Dottheim, it is
4 rather difficult, which is really why I say what I say
5 in my testimony.

6 Q. Under UE's interpretation of the first EARP,
7 can a party propose to adjust UE's book earnings on
8 the grounds that a particular cost was imprudently
9 incurred?

10 A. I believe Mr. Brandt testified and I believe
11 we responded to in a Data Request that prudence in the
12 context of this agreement, if that is indeed your
13 question.

14 Q. Yes.

15 A. Prudence can be reviewed in the context of
16 manipulation or a new category of costs.

17 Q. And only in the context of manipulation and
18 new category of costs?

19 A. That is correct.

20 Q. So then the definition of imprudence would
21 have to cover manipulation or new category of cost?

22 A. Well, I think what you're saying is
23 accurate. Again, I believe Mr. Brandt pointed out the
24 example from, I guess it's No. 7, where he cited that
25 we have to provide a reasonable explanation.

1 If there's a significant variation level of
2 costs and the Company's unable to provide -- and the
3 Company can provide no reasonable explanation, then
4 it's the parties' ability to go to the Commission and
5 allege manipulation, because I believe that's, in
6 fact, what that language said, an allegation of
7 manipulation can include significant variations in the
8 level of expenses associated with any category of
9 costs where no reasonable explanation has been
10 provided.

11 And then again -- so that obviously can be
12 brought to the Commission, and that's manipulation.

13 Q. Is that imprudence?

14 A. How do you define imprudence?

15 Q. I'm asking you how you define imprudence.

16 A. I'm not sure it -- if we can provide no
17 reasonable explanation for a significant variation of
18 costs and it is done with the intent to reduce
19 earnings, solely with the intent to reduce earnings,
20 that is indeed manipulation. And you can call it what
21 you will, whether that's imprudence or not, that is
22 inappropriate.

23 Q. Some definition of imprudence that might
24 cover a cost, some definition other than manipulation
25 or new category of cost for which there is no

1 reasonable explanation, that cost could not be raised
2 in the context of the EARP; is that correct?

3 A. That is the Company's interpretation of the
4 agreement, that is correct.

5 Q. Could that cost be challenged upon the
6 conclusion of the EARP?

7 A. What do you mean by challenged,
8 Mr. Dottheim?

9 Q. Disallowed.

10 A. By whom?

11 Q. By the Commission. It would be done, for
12 example, through an audit by the Company -- excuse
13 me -- an audit by the Staff of the Company and a, for
14 example, complaint case.

15 A. A complaint case?

16 Q. Pardon me?

17 A. A complaint case under the agreement?

18 Q. After the agreement.

19 A. Oh, no. I'm sorry. I thought we were
20 talking about the terms of the agreement. Are we
21 talking about within the terms of the agreement or are
22 we talking about subsequent?

23 Q. We're talking about subsequent to the
24 agreement --

25 A. Okay. I'm sorry.

1 Q. -- involving the costs that the Company
2 incurred during the course of the agreement.

3 A. You know, Mr. Dottheim, that would probably
4 require a legal conclusion as to whether, for
5 instance, a cost which was incurred during the term of
6 the agreement, whether the agreement, let's say a
7 settlement or whatever the case may be would shut off
8 for imprudence. I don't know if I can answer that.

9 Q. If the cost was incurred during the
10 pendency --

11 A. I'm sorry?

12 Q. If that cost, if that imprudent cost were
13 incurred during the pendency, during the term of the
14 EARP, would it be in a current test year at the
15 conclusion of the EARP?

16 A. I'm sorry, Mr. Dottheim. I'm trying to
17 follow you.

18 Q. I'm sorry. I'm talking or attempting to
19 talk about an audit that comes after the EARP, and the
20 audit would utilize a test year presumably, correct?

21 A. Yes.

22 Q. Is it possible that, or even likely that the
23 test year after the EARP terminates would be a
24 different test year from which the imprudent cost was
25 incurred by the Company?

1 A. Yes. You're assuming that there was an
2 imprudent cost incurred, and if your question is, is
3 it likely, I would not say it's likely.

4 But is it possible that a test year as a
5 result of a ratemaking proceeding subsequent to the
6 EARP could include a period of time which, for
7 instance, would be part of the last sharing period,
8 whether costs that were part of the last sharing
9 period could be included in the test year sometime in
10 the future, if that is your question, it is possible,
11 certainly, that that could happen.

12 Q. Is it likely?

13 A. I don't know if it's likely.

14 Q. If --

15 A. Depends, excuse me, on when the complaint
16 case, depends upon when the filing would result in
17 predicting what the future would hold for us.

18 Q. If the imprudent cost incurred during a
19 period prior to the test year that was being utilized,
20 would it be inappropriate to reflect that cost in the
21 determination of the Company's revenue requirement for
22 that test year that was chosen?

23 A. Well, again, you're probably asking for a
24 regulatory/legal determination which I'm not certain I
25 can respond to. I think in part it depends upon

1 whether you're talking about a capital cost, whether
2 you're talking about a cost that's been expensed
3 already and not on the company's books going forward.

4 Q. Could you give me a regulatory answer for
5 both a cost that was expensed and then a cost that was
6 capitalized?

7 A. You know, Mr. Dottheim, again, what happens
8 after the subsequent sharing period, I know I can give
9 you this answer, that subsequent to the end of this
10 EARP, EARP, this second EARP, that the Commission
11 obviously in a typical ratemaking proceeding has the
12 ability to look at prudence issues.

13 They have that as part of -- my
14 understanding from a regulatory perspective, that is
15 one of their duties, and I don't know if
16 responsibilities, but essentially that is part of
17 their purview.

18 Now, if you're asking me if a test year that
19 we would develop would have imprudent costs embodied
20 in them, and that would assume that we would all agree
21 that they are imprudent, whether the Commission would
22 be precluded in that test year in excluding those
23 costs, that is what I'm saying requires a legal
24 determination and that I can't adequately respond to.
25 I'm sorry.

1 Q. Regardless of whether the cost was expensed
2 or capitalized?

3 A. Yeah, I guess regardless of whether. I'm
4 talking about in total. I can't speak specifically to
5 that.

6 Q. And that -- and you're speaking regarding a
7 cost that was prior to -- or would you speak to a cost
8 that was prior to the test year that is utilized?

9 A. That was utilized, what do you mean by
10 utilized?

11 Q. For that regulatory proceeding, for that
12 ratemaking proceeding for determining the Company's
13 revenue requirement.

14 A. I guess I'm -- I'm really not trying -- I'm
15 trying to answer your question the best I can. I'm
16 saying that I can't respond to how costs which have
17 been incurred during the last year, say the second
18 EARP, I can't respond to what you do subsequent to
19 that with regard to prudence.

20 JUDGE REGISTER: Excuse me, Mr. Baxter.
21 Mr. Dottheim, where is this leading to? I'm not sure
22 I understand how it's relevant to the issue.

23 MR. DOTTHEIM: Well, I'm not clear if
24 there's -- if there's been an indication that, even
25 though the EARP does not contemplate a cost being

1 disallowed or an adjustment being made for that cost,
2 in the context of the EARP, whether that cost which
3 would be called imprudent could be part of a
4 ratemaking determination subsequent to the EARP.

5 JUDGE REGISTER: If it happened that the
6 test year would overlap?

7 MR. DOTTHEIM: Or if it's outside of the
8 test year.

9 JUDGE REGISTER: And that's relevant to the
10 issue on this Stipulation and Agreement? You're just
11 trying to determine whether that's permitted --

12 MR. DOTTHEIM: Yes.

13 JUDGE REGISTER: -- under the agreement?

14 MR. DOTTHEIM: Yes. I'm trying to determine
15 based upon what I thought I heard this morning, which
16 was that the Commission has jurisdiction generally to
17 address imprudent costs.

18 But regardless of that general jurisdiction
19 to address imprudent costs, if the imprudent costs
20 occurred within the context of the time frame of the
21 EARP, would that make it completely out of bounds
22 forever being addressed by the Commission and in
23 particular being addressed by the Commission sometime
24 after the EARP concludes?

25 JUDGE REGISTER: I think some of this may be

1 outside the scope of this witness' ability. It may be
2 a matter of legal argument. But if you could complete
3 that issue fairly quickly, we can move on.

4 BY MR. DOTTHEIM:

5 Q. Mr. Baxter, you heard my further explanation
6 in response to Judge Register.

7 A. Yes, and I think I understand, and again my
8 response, and it will be consistent, is that it
9 requires a legal determination which I'm not able to
10 provide.

11 Q. Okay. Thank you. I'd like for you to
12 assume a hypothetical situation, if you would. If you
13 would assume that a situation occurs in a sharing
14 period for which the Staff could propose an adjustment
15 under the Company's interpretation of the EARP, but
16 for some reason the Staff does not propose an
17 adjustment for that applicable sharing period. If you
18 would assume that.

19 A. Uh-huh.

20 Q. If you would then assume that a like or
21 similar situation, not the same situation, but a like
22 or similar situation occurs in a subsequent sharing
23 period. Is the Staff precluded from proposing an
24 adjustment for the subsequent situation because it had
25 not proposed an adjustment respecting the prior

1 situation?

2 A. No.

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

4 JUDGE REGISTER: Yes.

5 MR. DOTTHEIM: I have additional questions
6 for Mr. Baxter, but I think that they fall within the
7 separate issues that are scheduled to be heard. I've
8 attempted to just ask the particular -- the general
9 questions. So at this time I have no further
10 questions.

11 JUDGE REGISTER: Thank you, Mr. Dottheim.
12 Mr. Coffman?

13 MR. COFFMAN: I have no questions, thank
14 you.

15 JUDGE REGISTER: Then we will go to the
16 Bench for questions. Vice Chair Drainer, do you have
17 any questions for Mr. Baxter?

18 COMMISSIONER DRAINER: I have no questions,
19 thank you.

20 JUDGE REGISTER: And Commissioner Crumpton?

21 COMMISSIONER CRUMPTON: Can you pass me up?

22 JUDGE REGISTER: Commissioner Murray?

23 COMMISSIONER MURRAY: I have a couple.

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good afternoon, Mr. Baxter.

1 A. Good afternoon.

2 Q. I was just sitting here thinking about new
3 categories of costs as referenced in, I believe it's
4 F8 --

5 A. That's correct.

6 Q. -- of the agreement. If the Company were to
7 buy a corporate aircraft, would that be a new category
8 of cost?

9 A. Not necessarily, because the reason why we'd
10 purchase that aircraft would be to offset other
11 transportation costs, for instance, that company
12 employees would be utilizing to fly wherever they
13 would need to fly. So there would be transportation
14 costs to move employees from point A to point B.

15 Q. Okay. So there's already a transportation
16 category cost?

17 A. Uh-huh.

18 Q. I didn't expect to get called this quickly
19 either. Let see if I can find any questions here.

20 On the FY -- or the Y2K computer maintenance
21 expenses, what was the increase in the expenses for
22 computer maintenance between the years, say the second
23 and third year?

24 A. Are you referring to between 1994 and 1995
25 or, excuse me, between 1995 and '96, the difference

1 between the 18 million and the \$13 million number on
2 page 14 of my testimony?

3 Q. Okay. So that's where you're showing the
4 differences as they occurred year by year?

5 A. That's correct.

6 COMMISSIONER MURRAY: I believe that's all.
7 Thank you, Judge.

8 JUDGE REGISTER: Commissioner Crumpton?

9 COMMISSIONER CRUMPTON: Yes. I'm ready.

10 QUESTIONS BY COMMISSIONER CRUMPTON:

11 Q. Good afternoon.

12 A. Good afternoon, Commissioner.

13 Q. How are you?

14 A. Doing well. How are you?

15 Q. As the comptroller, what do you do?

16 A. I am responsible for the financial
17 reporting, both regulatory and to the external world.
18 Primarily responsible for the books and records of the
19 company, the accounting practices that we follow.
20 Also embodied in my particular role is the budget
21 function, and I also serve as one of our primary
22 contacts from the investor relations standpoint with
23 the investment community that Mr. Brandt referred to a
24 little bit earlier.

25 Q. So would you be considered an expert on the

1 Uniform System of Accounts used by FERC or --

2 A. Yes.

3 Q. -- your industry?

4 Then you would be familiar with the account
5 that contains assets related to computer software,
6 would you not?

7 A. Yes, I would.

8 Q. Do you have any value in that account now?

9 A. The value that we have in that account, for
10 companies -- utility companies that do capitalize
11 computer software, the appropriate account under the
12 FERC Uniform System of Accounts is called account 311
13 or intangible plant.

14 Q. Okay.

15 A. That's the appropriate account. We do not
16 capitalize computer software costs. So we do not have
17 anything in there related to computer software costs.

18 Q. So you may have something in there, but it's
19 not related to computer software?

20 A. That's correct. The only -- well, the
21 only -- let me correct that. In one instance we do --
22 our policy is to capitalize hardware but not software.
23 So we do have hardware reflected, but no computer
24 software.

25 Q. Okay. So if our staff did an audit, they

1 would see an entry for, like, mainframes and things of
2 that nature?

3 A. That is correct.

4 Q. Okay. But they would not see anything in
5 there related to software?

6 A. On Union Electric's books, that is correct.

7 Q. And how long have you been with the Company?

8 A. I've been with the Company since August of
9 1995.

10 Q. And how long have you been in this office,
11 in this particular position?

12 A. I was assistant controller for a year. Then
13 I was promoted to controller of Union Electric. Then
14 when we became Ameren, I became thereafter vice
15 president/controller. So as controller for Union
16 Electric/Ameren, approximately two and a half, almost
17 three years now.

18 Q. Now, could you as an expert testify to the
19 fact that in prior rate cases your company had shown
20 that it expensed its software costs?

21 A. Yes.

22 Q. And if someone was to dispute your
23 statement, they would have to go to your records and
24 pull out something that says Windows '95, 2,000
25 copies, whatever?

1 A. They would have to --

2 Q. \$20,000.

3 A. They would have to go to our records and
4 find software systems where we had capitalized those
5 costs.

6 Q. So that takes care of that. All right.
7 Now, on the issue of injuries and damages, where is
8 that kept in the Uniform System of Accounts?

9 A. Off the top of my head, I believe it's in
10 Account 923, which is an expense account. There's
11 several accounts, but I believe it's that account.

12 Q. And we would see -- our auditors would see
13 that you had expensed known liabilities as you went
14 along?

15 A. Absolutely. They would -- assuming they had
16 the account right, what they would see would be, to
17 the extent that we would have increased our reserve
18 for injuries and damages, they would see an
19 appropriate entry in our books and records that would
20 expense those, absolutely.

21 Q. And in order to prove that you were
22 incorrect, they would have to go to that account and
23 find something other than what you just --

24 A. That's correct.

25 Q. All right. This takes care of injuries and

1 damages.

2 Now, on territorial exchanges, were you
3 around when the Company was doing some of that?

4 A. For some territorial agreements, no. On
5 some of the recent territorial agreements, I was in
6 the employ of Union Electric.

7 Q. Okay. In your opinion, how has the Company
8 handled gains and losses on those kind of
9 transactions?

10 A. Well, the Company has required under
11 accounting principles, whether it be GAAP or any
12 accounting records, that to the extent that we would
13 exchange properties or customers, that what we are
14 required to do is then record the appropriate revenues
15 and expenses for those customers that we actually have
16 in our possession after the fact.

17 And so we couldn't keep track of the old
18 customers. They're no longer ours. So what we do is
19 the net revenues, if you will, associated with these
20 territory agreements reflect the Commission's order
21 saying you've given that and you take that and go with
22 it, and that's what we do.

23 Q. Now, does the Commission reserve ratemaking
24 issues related to territorial transfers for rate
25 cases?

1 A. As a general statement, whether the
2 Commission in every territory agreement, whether they
3 always reserve some further right to examine that in a
4 rate case, I don't know if I can state that as a
5 general rule.

6 Q. Okay. Do you know the value, the total
7 value of the issues in dispute in this case?

8 A. Commissioner Crumpton, I know you asked,
9 requested Mr. Brandt to respond to that, and we are
10 going to prepare a schedule for you.

11 Q. So I will have that soon?

12 A. Yes, absolutely. I've spoken with
13 Mr. Dottheim this morning and Mr. Coffman, and
14 together we believe that we can put together a
15 schedule that would faithfully represent where the
16 issues are right now.

17 Q. Okay. Do you recall my discussion with
18 Mr. Brandt about the time value of the decisions that
19 the Commission has to make in this case?

20 A. Yes. I was present certainly when you had
21 those discussions, and I recall certainly some of
22 those discussions.

23 Q. You recognize that in the relationship
24 between the Company and the Commission Staff and the
25 Office of the Public Counsel, there may be conflicts

1 based on the need to serve the different
2 constituencies? For instance, your constituency would
3 be your stockholders. Their constituency in the case
4 of Office of the Public Counsel would be the
5 ratepayers. You recognize --

6 A. Yes.

7 Q. -- you have conflicts?

8 A. I understand we have different
9 constituencies.

10 Q. And you understand that they have a strong
11 feeling that they need to, while not necessarily
12 taking your assets, reduce the financial impact on the
13 people they represent?

14 A. I guess my view on that, Commissioner
15 Crumpton, is that when we entered into the agreement,
16 we took all of our constituencies into consideration.
17 And when we entered into the agreement, we all
18 agreed -- well, I can speak certainly for the Company.

19 I would assume the other parties would not
20 have entered into the agreement if they didn't believe
21 it to be true, that this was really a good deal for
22 all their constituents. And we, as a company,
23 certainly believed that to be the case, and I believe
24 Mr. Brandt pointed out some of those issues earlier.

25 What we believe, then, based upon that, that

1 what is appropriate is for us to abide by the terms of
2 the agreement faithfully going forward, because we
3 believe, and I believe Mr. Cynkar pointed out in his
4 opening statement, that the constituents are clearly
5 being served.

6 You know, obviously some people may believe
7 that they should do better under the agreement and
8 wish they could do better. Others wish they -- you
9 know, it's just part of that in the agreement.

10 And so to respond to your question, I do
11 understand that they do serve different
12 constituencies, but that's why we entered into the
13 agreement. We think that the faithful following of
14 that agreement is what's appropriate in this
15 particular situation.

16 Q. I think it's in your testimony you discuss
17 some generally accepted accounting procedures for
18 capitalizing various assets. Do I have you --

19 A. Well, I certainly respond to
20 Ms. Westerfield's statements, and yes, whether
21 directly or indirectly, I clearly do talk about that.

22 Q. You mentioned that on occasion in your
23 industry they will use a three to five year period for
24 recovering the costs of certain kinds of projects?

25 A. Yes. That is what we -- we see that.

1 That's been reflected in a survey that was performed
2 by PriceWaterhouseCoopers, and I supplied that as
3 evidence, so to speak.

4 Q. And it's still your position that your
5 company is unwilling to give at all on these issues?

6 A. Well, I think our view on that particular
7 situation is, as I believe Mr. Cynkar pointed out
8 earlier, was that, as with any agreement, all the
9 parties to an agreement can choose to amend that
10 agreement, and --

11 Q. You mean going forward?

12 A. Yes. That's correct. In this particular
13 situation, we'd be willing to -- if we believe it's in
14 the best interests of ratepayers and all the
15 constituents, that we could consider amending the
16 agreement for whether it be an accounting change or
17 some other type of event.

18 Q. So basically, then, what we have between you
19 and I as an understanding of these issues that Staff
20 is bringing up, while they may not apply to this old
21 agreement which was signed several years ago, could be
22 addressed in preparations for a new?

23 A. Certainly. If all the parties get together
24 and we would all come to agreement as to how to, for
25 instance, apply a different accounting methodology

1 that's appropriate, I think that is possible.

2 Q. Because you do recognize that there is a
3 conflict between GAAP and Missouri Public Service
4 Commission on occasion?

5 A. Absolutely.

6 Q. Okay. Now, I discussed the general problem
7 that a rate base regulated company has with an
8 incentive program. I discussed that with Mr. Brandt.
9 Do you recall that?

10 A. I do recall some of those discussions, yes.

11 Q. And one of the things that we talked about
12 was the possibility that there were some expense
13 offsets that your company was willing to, in quotation
14 marks, eat in order to live up to your part of the
15 agreement. Is it possible that there are some of
16 those that you-all could talk about if you wanted to?

17 A. I guess in the context of the discussion, if
18 I recall, and we'll say expense offsets, clearly upon
19 entering into the agreement the Company believes it
20 has given up some things, and that was in the form of
21 a \$30 million one-time credit, permanent rate
22 decrease, to forego the merger premium.

23 So in some respects those are expense
24 offsets, I guess, if you will. Others are just some
25 sort of give back. It's sort of what -- I know it's

1 based upon our reliance on this agreement as we set
2 our expectations. So yes, we believe that we've put
3 some real money up for this particular agreement.

4 If your question, though, is not getting to
5 that but whether there are some other expense offsets
6 that we have sort of buried within our books and
7 records, I wouldn't say that we have those because, as
8 we've said, we believe that this agreement is in many
9 respects almost a mechanical type thing.

10 You start with an appropriate method for
11 your company. You faithfully follow the accounting
12 methodologies under the agreement, and it just sort of
13 flows. And certainly you reflect the adjustments that
14 are set forth in Attachment C.

15 Q. I think you've answered the question
16 properly because if you had another set of records I'm
17 sure Staff would want to know about it.

18 A. I'm fairly certain if I presented to Staff
19 at the end of June 30, I had my books and records and
20 said, you know, that's the one I show the public, but
21 by the way, here's this other one that I think you-all
22 should view and I decided to make a few changes to our
23 accounting policies, I'm fairly certain Staff and OPC
24 would --

25 Q. But the point of the discussion was that

1 there are -- your company was willing when it signed
2 the agreement to accept the risk that you were not
3 going to be able to reach the goals that you have
4 promised to your constituency?

5 A. Absolutely. We believe that we entered --
6 there's clearly risk associated with that. Not only
7 did we believe there was risk, but we backed it up
8 with some real money.

9 Q. I think you've answered all of my questions.
10 Let me check. On page 14, I think Commissioner Murray
11 took you to that. It does look a little strange, the
12 growth in computer maintenance expense from 1994 to
13 '97.

14 A. Uh-huh.

15 Q. Just have to point that out to you. And
16 likewise, on page 25, these new applications --

17 A. I'm sorry. On page?

18 Q. 25.

19 A. Okay. Thank you.

20 Q. Your rebuttal.

21 A. Uh-huh.

22 Q. I want to talk about that just briefly.

23 A. Certainly.

24 Q. It's my understanding that a company does
25 not just create applications of this magnitude in a

1 30-day period.

2 In other words, there must be some
3 long-range planning. Somebody's got to be complaining
4 about the lack of quality or getting out of the
5 existing system and projects are put together within
6 companies to do benefit analysis and contracts are let
7 and consultants are hired and all of those things
8 before you spend this kind of money on these types of
9 applications.

10 A. Absolutely. Our company's no different
11 than -- well, I can't speak for other companies. I
12 know how it is at our company. We take these expenses
13 very seriously. And as you said, there's quite a bit
14 of study. It oftentimes results from either people
15 inside the company, sometimes our customers.

16 In many cases what we end up doing is at the
17 end of the day is ensuring that at the end of the day
18 is it pertinent, is it a prudent business expenditure,
19 and we don't take into consideration how we're going
20 to flow this through a sharing grid. Is it a prudent
21 business expenditure?

22 Q. And you do that because the benefit analysis
23 indicates that you're going to enjoy a great benefit
24 from these expenditures?

25 A. We do hope to enjoy great benefits, that's

1 right.

2 Q. But you would not spend the money if you
3 couldn't prove to someone in your company that you're
4 going to benefit from it?

5 A. Well, as you know, there's no certainty when
6 you do a business plan or even --

7 Q. Right.

8 A. But clearly when we make those decisions,
9 they're based upon sound business judgment, which
10 includes cost/benefit analysis.

11 Q. Now, when your company measures projects,
12 I'm assuming, as your counsel indicated in opening
13 statements, that there were benefit, other benefits
14 that you could have put your money in, that you're
15 looking at a series of projects and somebody's making
16 decisions based on some kind of standard, either
17 return on equity, payback period or something like
18 that.

19 Is it true that your company used one of
20 those standards before it entered into contracts on
21 these software packages we're talking about?

22 A. Yes, we do. It's a combination of return on
23 essentially your investment, assuming that there has
24 to be appropriate payback period, because as you know,
25 we do not have unlimited funds, and so we have to make

1 sure that we allocate our financial resources in the
2 most appropriate manner.

3 Q. Now, according to this sharing grid, the
4 more you earn, the more the citizens, your customers
5 benefit?

6 A. That is correct.

7 Q. And so there is a sharing of the benefits
8 received from these projects with your customers under
9 the sharing program?

10 A. That is correct.

11 COMMISSIONER CRUMPTON: I think you've
12 answered all my questions. Thank you.

13 JUDGE REGISTER: If there are no other
14 questions from the Bench, then we will go to recross,
15 and I'll go back to the Intervenors. Ms. Schmidt?

16 MS. SCHMIDT: No questions.

17 JUDGE REGISTER: Mr. Fulton?

18 MR. FULTON: No questions, your Honor.

19 JUDGE REGISTER: Mr. Johnson?

20 MR. JOHNSON: No questions.

21 JUDGE REGISTER: Ms. Forrest?

22 MS. FORREST: No, thank you.

23 JUDGE REGISTER: Mr. Dottheim?

24 MR. DOTTHEIM: Yes. I have a few questions.

25 REXCROSS-EXAMINATION BY MR. DOTTHEIM:

1 Q. Mr. Baxter, if I could refer you to page 14
2 of your rebuttal testimony. Commissioner Crumpton
3 commented respecting the table that appears starting
4 at line 12.

5 A. Yes.

6 Q. Could you provide what the numbers for
7 computer maintenance expenses is for fiscal year 1998?

8 A. I believe, Mr. Dottheim, that was requested
9 in a Data Request. I may have it here with me. Do
10 you know the answer already? I'm asking you a
11 question.

12 (Laughter.)

13 MR. CYNKAR: Teacher, I know the answer. I
14 can just give you the number.

15 JUDGE REGISTER: What document are you
16 looking at?

17 MR. CYNKAR: Well, I'm looking at
18 Mr. Baxter's testimony which I've handwritten that
19 number from, Data Request 94, and for 1998 the number
20 is 24,439,000.

21 MR. DOTTHEIM: That's the number I have
22 also.

23 JUDGE REGISTER: Would you repeat that,
24 please?

25 MR. CYNKAR: 24,439,000, and it originates

1 in Data Request 94.

2 THE WITNESS: 24,439,000?

3 MR. CYNKAR: Yes, sir.

4 THE WITNESS: Thank you.

5 BY MR. DOTTHEIM:

6 Q. For fiscal year, that is through June the
7 30th --

8 A. That is correct.

9 Q. -- for each of those years; is that correct?

10 A. That is correct. That is fiscal year
11 June 30.

12 Q. In response to a question from Commissioner
13 Crumpton, I think you mentioned the merger premium as
14 being a potential expense offset; is that correct?

15 A. I was -- I'm sorry. I'll let you finish
16 your statement.

17 Q. What amount of merger premium amortization
18 on the Company's books in the third sharing period did
19 the Company not recover per the second EARP?

20 A. I guess that would -- well, Mr. Dottheim, as
21 you know, we did not recover any of the merger
22 premium. It would depend upon your view as to how
23 that merger premium, if it was actually -- if, for
24 instance, in the second EARP that merger premium was
25 approved to be recovered in rates, then it would have

1 been the responsibility of the parties and the
2 Commission to come to a conclusion as to an
3 appropriate amortization period. So it's impossible
4 for me to answer as to what we did not recover.

5 Q. Is there any merger premium amortization on
6 the Company's books?

7 A. Is there any merger premium amortization?
8 No. The effects of the merger premium now are being
9 felt by the Company, but there is no merger premium
10 amortization whereby we have an asset on our books
11 that we're amortizing to expense.

12 Q. Is any part of the CIPSCO merger premium in
13 UE's rate base?

14 A. None.

15 Q. Mr. Baxter, did the Staff accept any
16 adjustment in the third sharing period that reduced
17 the sharing credits amounts?

18 A. I'm not sure I understand your question.
19 Did they accept -- did the Staff accept adjustments
20 from whom?

21 Q. For example, respecting income taxes in the
22 third sharing period that reduced the credit amount?

23 A. Well, I'm not sure if the Staff accepted the
24 adjustment or not. What we did in connection with
25 that, as you know, Mr. Dottheim, we settled the income

1 tax issue.

2 And with regard to the income tax matter,
3 what the Company did was follow the Staff's
4 traditional calculation of income taxes for the third
5 sharing period, and then other issues we settled,
6 including one which the Staff proposed, which we
7 agreed with was an error in how we prepared that
8 calculation that is going to be reflected as part of
9 our settlement.

10 Q. Did correction of that error have the impact
11 of reducing credits?

12 A. Did correction of the error? Are you
13 referring to the AFUDC?

14 Q. Yes.

15 A. I believe it had the impact of increasing
16 the credit. I believe it was over a million dollars,
17 if I'm not mistaken.

18 Q. Did the Company perform any cost/benefit
19 analysis to justify its implementation of the AMRAPs
20 computer program?

21 A. That project commenced several years ago. I
22 believe that the Staff in Data Requests asked for
23 information. I believe the Company provided that
24 information to the extent that it had it available.

25 So off the top of my head, my assumption is

1 that there was an analysis performed, but I'm not sure
2 what the status of the documentation is. I do believe
3 in speaking with the Staff as part of this sharing
4 credit that there was a Data Request and we provided
5 whatever documentation we had available.

6 Q. But you're not familiar with what that
7 documentation was --

8 A. No, I do not.

9 Q. -- that was provided?

10 A. No, I do not.

11 MR. DOTTHEIM: Thank you, Mr. Baxter.

12 JUDGE REGISTER: You have no further
13 questions?

14 MR. DOTTHEIM: No further questions.

15 JUDGE REGISTER: Thank you. Mr. Coffman?

16 MR. COFFMAN: No questions.

17 JUDGE REGISTER: And then on to redirect,
18 Mr. Cynkar?

19 MR. CYNKAR: Just a couple items.

20 REDIRECT EXAMINATION BY MR. CYNKAR:

21 Q. Mr. Baxter, Commissioner Murray raised the
22 hypothetical of UE purchasing an airplane, and she
23 asked the question in the context of the new cost
24 category aspect of the agreement.

25 Is it possible -- and you answered, if I

1 recall, that that would be within the category of
2 transportation costs. If UE, I assume, does not now
3 own an airplane and purchased an airplane, could that
4 create a significant variation in the level of
5 expenses for that category?

6 A. Certainly.

7 Q. And as a result, could that be examined and
8 parties asked questions about whether it was
9 reasonable as a business matter to buy that plane?

10 A. Absolutely.

11 Q. And if they disagreed with you and felt that
12 there was no reasonable explanation, could that
13 dispute be taken to the Commission?

14 A. Certainly.

15 Q. Do you believe that there are any
16 constituencies that UE represents in addition to
17 shareholders?

18 A. Absolutely. I think our constituencies
19 consist of shareholders, ratepayers, our employees.
20 Those three come to mind.

21 Q. Okay. Did UE make any pro forma adjustments
22 for costs that might have been unusually low during
23 the third sharing period?

24 A. No.

25 MR. CYNKAR: Your Honor, I actually have two

1 more housekeeping questions just to make it simple for
2 the record. I believe you testified that the USOA
3 account for injuries and damages was 923. It's
4 actually 925, just for the record to be clear.

5 THE WITNESS: Thank you. I didn't know most
6 of these things.

7 MR. CYNKAR: And finally, Mr. Weiss actually
8 advises that there is one other numerical correction
9 to the testimony that Mr. Baxter forgot to mention at
10 the beginning.

11 JUDGE REGISTER: Wait a minute. Before you
12 go on, Mr. Cynkar, Mr. Cynkar's statement was that he
13 believed that that account is 925. Could that be
14 accurate in your testimony, Mr. Baxter?

15 THE WITNESS: I'll accept that, yes.

16 JUDGE REGISTER: Just wanted to make sure
17 that the testimony was coming from Mr. Baxter.

18 MR. CYNKAR: That's fine. I was going to
19 show him the book and all that, but I thought I'd be
20 more direct.

21 JUDGE REGISTER: That's fine.

22 MR. CYNKAR: And the other correction in the
23 testimony, if I could direct everyone to page 44 of
24 Mr. Baxter's testimony, line 6. You'll see the number
25 217,000 there. That should be changed to 197,000. So

1 page 44, line 6, the number \$217,000 should be changed
2 to \$197,000.

3 JUDGE REGISTER: Mr. Baxter, if your
4 testimony is changed to 197 from 217 on page 6, that
5 would be accurate?

6 THE WITNESS: That would be accurate.

7 MR. CYNKAR: And that's all I have, your
8 Honor.

9 COMMISSIONER MURRAY: That was page 44?

10 JUDGE REGISTER: Page 44, line 6.

11 THE WITNESS: Thank you.

12 MR. CYNKAR: That was all I have.

13 JUDGE REGISTER: Then the examination of
14 Mr. Baxter on the issue of Stipulation and Agreement
15 is complete, and you may step down, Mr. Baxter.

16 THE WITNESS: Thank you.

17 JUDGE REGISTER: Of course, you'll be
18 recalled for other testimony probably.

19 We can move on to the testimony of
20 Mr. McKnight. Would you like to call him?

21 MR. CYNKAR: Union Electric calls Benjamin
22 McKnight.

23 JUDGE REGISTER: Okay.

24 (Witness sworn.)

25 JUDGE REGISTER: Thank you, Mr. McKnight.

1 Please be seated, and spell your name for the court
2 reporter, please.

3 THE WITNESS: My name is Benjamin A.
4 McKnight, M-c capital K-n-i-g-h-t.

5 JUDGE REGISTER: And please proceed,
6 Mr. Cynkar.

7 BENJAMIN A. MCKNIGHT testified as follows:

8 DIRECT EXAMINATION BY MR. CYNKAR:

9 Q. Mr. McKnight, let me direct your attention
10 to what has been marked as Exhibit 15. Do you
11 recognize that document?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's rebuttal testimony of Benjamin A.
15 McKnight.

16 Q. And was it prepared by you or by persons
17 under your direction?

18 A. Yes, it was.

19 Q. And is it accurate and true?

20 A. Yes, it is.

21 MR. CYNKAR: Your Honor, I offer Exhibit 15
22 into evidence.

23 JUDGE REGISTER: Are there any objections to
24 Mr. McKnight's testimony?

25 (No response.)

1 JUDGE REGISTER: Hearing no objections,
2 Exhibit No. 15 is admitted into evidence.
3 (EXHIBIT NO. 15 WAS RECEIVED INTO EVIDENCE.)
4 JUDGE REGISTER: And do you also tender
5 Mr. McKnight for cross-examination?
6 MR. CYNKAR: I do, your Honor.
7 JUDGE REGISTER: Thank you.
8 Cross-examination begins with the parties other than
9 Staff and OPC. Ms. Schmidt, do you have any
10 questions?
11 MS. SCHMIDT: No questions.
12 JUDGE REGISTER: Mr. Fulton stepped out, but
13 he indicated he had no questions of this witness.
14 Mr. Johnson have any questions? No questions. And
15 Ms. Forrest?
16 MS. FORREST: No questions, thank you.
17 JUDGE REGISTER: Thank you, Ms. Forrest.
18 Then on to Staff, Mr. Dottheim?
19 MR. DOTTHEIM: Thank you.
20 CROSS-EXAMINATION BY MR. DOTTHEIM:
21 Q. Good afternoon, Mr. McKnight.
22 A. Good afternoon.
23 Q. Mr. McKnight, you're employed by Arthur
24 Anderson, are you not?
25 A. Yes, sir. That's correct.

1 Q. Is Arthur Anderson Ameren's external
2 auditor?

3 A. No, sir, it's not.

4 Q. Has Arthur Anderson performed any work for,
5 other than your appearance here today, for AmerenUE
6 this decade?

7 A. AmerenUE? There might have been some minor
8 consultation work. I couldn't answer in a
9 comprehensive way. But if it -- to the extent that it
10 is, it's very minor.

11 Q. And when I said AmerenUE, I meant to say
12 Ameren or UE.

13 A. I'm sorry. Different answer. For a number
14 of years we were the auditors of CIPS, Central
15 Illinois Public Service Company and its holding
16 company, CIPSCO, Inc. And I believe we still, in
17 connection with registration statements, still include
18 our audited reports in the Ameren's registration
19 statements with the Securities and Exchange
20 Commission.

21 Q. And would you identify a little bit more
22 specifically, if you can, the number of years that
23 you've been auditors of CIPS, CIPSCO, Inc.?

24 A. Well, that would be were. We no longer are
25 since the merger. But prior to that time, it could be

1 up to -- could be up to 70 years.

2 JUDGE REGISTER: Was that 70?

3 THE WITNESS: 70. I wasn't around for all
4 of them.

5 (Laughter.)

6 BY MR. DOTTHEIM:

7 Q. I'd like to direct you to your rebuttal
8 testimony that's been marked as Exhibit 15. I'd like
9 to refer you to page 5 and particularly lines 23 to
10 25. You state there, do you not, that you will
11 comment upon the primary objective of entering into an
12 extended based regulatory arrangement, do you not?

13 A. Yes, that's correct.

14 Q. And from whose perspective are your comments
15 based?

16 A. I think generally my experience with
17 situations where these arrangements have been and
18 these types of plans have been entered into.

19 Q. Are you commenting from the perspective of
20 Arthur Anderson, external auditor to regulated
21 utilities, from what perspective?

22 A. Based on my experience on why these
23 arrangements are typically entered into, what the
24 objectives are and have been.

25 Q. And again, that's your perspective?

1 A. That's --

2 Q. You're not commenting on the perspective of
3 state commissions or offices of public advocate?

4 A. I think at the end of the day there has to
5 be some mutuality of interest in order for these plans
6 to actually be agreed to and put into place.

7 JUDGE REGISTER: The question, Mr. McKnight,
8 is, you're testifying from your own perspective and
9 your experience?

10 THE WITNESS: That's correct.

11 JUDGE REGISTER: Thank you.

12 BY MR. DOTTHEIM:

13 Q. I'd like to refer you to page 10 of your
14 rebuttal testimony, starting on line 5 and then going
15 to page 11, line 3.

16 You had expressed -- you express an opinion
17 therein, do you not, that the Staff and Office of the
18 Public Counsel have violated the June 12, 1995
19 Stipulation and Agreement, which has also been
20 referred to as the first EARP, by proposing
21 inappropriate judgment -- excuse me -- inappropriate
22 adjustments, do you not?

23 A. Yes, that's correct.

24 Q. And on what do you base your understanding
25 of how the June 12, 1995 Stipulation and Agreement is

1 intended to operate?

2 A. Well, I think the starting point with
3 respect to the monitoring process or the, if you will,
4 the earnings report, as has been pointed out several
5 times today, is the Missouri net operating income,
6 jurisdictional operating income for the Company.

7 And I think embodied in that starting spot
8 is certain accounting practices, principles,
9 methodologies that were in place when the agreement
10 was entered into, and during the course of this
11 agreement those -- the adjustments proposed by the
12 Staff have departed from those practices and
13 methodologies.

14 Q. Were you involved in the negotiations that
15 led to the execution of the June 12, 1995 Stipulation
16 and Agreement?

17 A. No, I was not.

18 Q. Could you provide an approximate date as to
19 when you first read the June 12, 1995 Stipulation and
20 Agreement that's the first EARP?

21 A. In its entirety? I would say sometime in
22 the first part of the year, this year.

23 Q. And is your interpretation of the June 12,
24 1995 Stipulation and Agreement based in part on
25 discussions that you've had with Union Electric

1 Company?

2 A. Based on -- based on discussions, but
3 generally when you have a performance measurement, you
4 know, it basically should be something pretty specific
5 and objective, be able to determine an objective way.
6 And I think based on my experience, the logical
7 starting spot is exactly what -- for an agreement of
8 this type is exactly what was in place in paragraph 2A
9 of Attachment C.

10 Q. Have you had any discussions with the Staff
11 regarding the June 12, 1995 Stipulation and Agreement?

12 A. Not directly, no.

13 Q. And when you say not directly, have you had
14 discussions indirectly?

15 A. That's a poor choice of words. I've read
16 testimony and what have you, but I haven't directly
17 communicated with the Staff.

18 Q. Have you had any discussions with the Office
19 of the Public Counsel regarding the June 12, 1995
20 Stipulation and Agreement?

21 A. No, sir.

22 Q. Again, on page 10, I'd like to refer you to
23 lines 6 and 7 of your rebuttal -- of your rebuttal
24 testimony. You indicate therein that the third
25 sharing period has not been a simple process because

1 the Staff and the Office of the Public Counsel are
2 attempting to breach the process. You indicate that,
3 do you not?

4 A. That's correct.

5 Q. And you also indicate that on lines 8 and 9
6 of that same page?

7 A. That's the basis. That gets into the basis
8 for my conclusion.

9 Q. Are you familiar with any of the events that
10 occurred regarding the processing of either the second
11 or the first years of the EARP?

12 A. Just generally that there was some
13 discussions and perhaps some minor adjustments or
14 minor settlements that didn't elevate themselves to
15 the magnitude of what's being discussed during the
16 third sharing period.

17 Q. Have you reviewed any documents respecting
18 either the first or second year of the EARP?

19 A. It seems like there was some correspondence.
20 Some of the earlier filings made reference to some of
21 the issues.

22 Q. Were you aware of any issues that have been
23 settled regarding the second year sharing period
24 issues between the Company and Union Electric Company?

25 A. As I recall, there may have been some, but

1 as I indicated, certainly I'm not aware that they're
2 of the magnitude of what's being discussed here.

3 Q. And when you say on the magnitude of, what
4 do you mean by magnitude?

5 A. Well, you know, I think the range that was
6 being tossed out is the difference between the Staff
7 and the Company's position is something in the
8 neighborhood of 14, \$14 million at this point, and I
9 don't have any recollection that it was in that order
10 of magnitude during the second and first sharing
11 period.

12 Q. Did you have any role in any of the
13 proceedings regarding the merger applications of
14 CIPSCO, Inc. and Union Electric Company either before
15 the Illinois Commerce Commission or in any proceeding?

16 A. Our role was limited to our responsibilities
17 with respect to CIPS and CIPSCO financial statements.
18 I might add, during the course of the merger,
19 obviously there were a number of issues, primarily
20 finance reporting related issues, accounting related
21 issues and tax issues, and there was some regulatory
22 matters because of what was going on in Illinois that
23 were of mutual interest to both CIPS and Ameren that
24 we were engaged in discussions with.

25 Q. You've been in the hearing -- in the hearing

1 room for the better part of the last day and a half,
2 have you not?

3 A. That's all it's been? Yes, I have.

4 Q. And you've indicated that you've read
5 testimony that's been filed in this proceeding, have
6 you not?

7 A. That's correct.

8 Q. So you are aware of the various references
9 that have been made to an incentive regulation
10 experiment in Missouri involving Southwestern Bell
11 Telephone Company, are you not?

12 A. Yes, that's correct.

13 Q. Did you have any role in that incentive
14 regulation plan either as Arthur Anderson in the
15 employ of any of the parties to that incentive
16 regulation plan?

17 A. Not to my knowledge. I don't believe so.

18 MR. DOTTHEIM: If I could have a moment,
19 please.

20 I have some additional questions, but they
21 just as easily could be asked respecting the
22 individual adjustments that are scheduled to be heard
23 in the next day and a half. So I would defer until
24 Mr. McKnight takes the stand again.

25 JUDGE REGISTER: Thank you, Mr. Dottheim.

1 Mr. Coffman?

2 MR. COFFMAN: No questions on this issue,
3 thank you.

4 JUDGE REGISTER: Thank you, Mr. Coffman.

5 Then we will go to questions from the Bench.

6 Commissioner Crumpton, do you have any questions for
7 Mr. McKnight?

8 COMMISSIONER CRUMPTON: No questions.

9 JUDGE REGISTER: And Commissioner Murray?

10 COMMISSIONER MURRAY: No questions, thank
11 you.

12 JUDGE REGISTER: I have just a couple.

13 QUESTIONS BY JUDGE REGISTER:

14 Q. Mr. McKnight, I think you said earlier that
15 your statements are made based on your experiences
16 with other incentive-based regulation plans; is that
17 right?

18 A. Yes, ma'am.

19 Q. What other incentive-based regulation plans
20 have you been involved with?

21 A. I've been involved with a number of them
22 related to telecommunications companies, basically
23 price cap proposals that came out of the FCC rules and
24 regulations in the early '90s.

25 As far as electric companies go, I really

1 first started getting involved with them with the City
2 Gas and Electric with the Diablo King settlement back
3 in the late '80s and have worked with a number of our
4 clients, such as Ohio Edison and some of the other
5 Ohio utilities as well as of the clients that have
6 been dealing with incentive plans that have come out
7 of the restructuring in the industry.

8 Right now a primary example would be one
9 that's going on in Illinois primarily with
10 Commonwealth Edison and Central Illinois Public
11 Service Company.

12 And there's -- you know, again, out of the
13 restructuring that's taken place in the industry,
14 there's a number of incentive plans that are being
15 considered now that we're working with our clients
16 with, primarily almost literally as we speak in Texas
17 and Ohio.

18 Q. Are any of those incentive-based plans
19 similar to the EARP that's been at issue in this case?

20 A. Well, from my perspective, in the
21 environment that we're dealing with now, and I know
22 there's been some limited discussion or references of
23 transition going from a cost-based form of regulation
24 to a market-based form of regulation.

25 The transition plans that are coming out of

1 that change in regulation have some significant
2 incentive elements in them that have some of the
3 features of the EARP, such as the equity scale, the
4 determined equity scale and what have you.

5 But relatives to those plans, this one is
6 somewhat mild. Those plans are much more robust in
7 objectives with focusing primarily on accelerated
8 capital recovery. And, in fact, it's somewhat ironic
9 that the plan that we're dealing with here and the
10 issues that we're dealing with here to a large extent
11 are going in the opposite direction.

12 The focus here issues-wise seems to be on
13 deferring costs for future recovery as opposed to
14 accelerating cost recovery, which really is --
15 whenever there's restructuring going on, that's the
16 primary issue.

17 JUDGE REGISTER: I don't have any other
18 questions. Any other questions from the Bench?

19 Then we're back to recross. Do the
20 Intervenors have any questions? Ms. Schmidt?

21 MS. SCHMIDT: Yes.

22 RECROSS-EXAMINATION BY MS. SCHMIDT:

23 Q. I just have one question, Mr. McKnight. You
24 talked about some plans being more robust and
25 accelerating cost recovery in states that are

1 transitioning to competition. Could you name the
2 states where that's happening?

3 A. The primary one at this point would be --
4 primary ones, of course, would be California, which is
5 well along. In fact, my understanding is that one of
6 the companies there, the old San Diego Gas and
7 Electric -- I have a hard time with all the new
8 names -- is completed. Pennsylvania was the second.
9 Illinois was the third. There's been various activity
10 in this regard in some of the New England states.

11 There's been a -- without going through the
12 restructuring, there was a plan involving Ohio Edison
13 that in effect involved a ten-year moratorium, rate
14 moratorium. The Commission's dealing with issues here
15 over a three-year time frame. The one there, which
16 was much more extensive, it was ten years.

17 But one of the components or objectives of
18 the plan was to accelerate the recovery of two and a
19 half billion dollars during that ten-year moratorium
20 period. Part of the agreement was that that amount
21 would be excluded from rate base at the end of that
22 period.

23 There's been various forms of that that
24 have -- accelerated capital recovery that have also
25 taken place in Florida, involving Florida Power and

1 Light, and in Texas with Houston Power and Light.

2 Both of those last two -- or both of Ohio
3 and Texas now are having kind of generic
4 jurisdictional-wide restructuring plans that I haven't
5 seen all the details, but from talking with my
6 partners and what have you, they include forms of
7 accelerated capital recovery also.

8 Q. Based on what you know about the situation
9 in Missouri, would you agree with me that there's been
10 very little progress as far as regulatory change
11 toward competition in this state compared particularly
12 to the other states that you're talking about?

13 A. Well, you know, I'd have to go back and look
14 at all the states to see exactly -- exactly where they
15 fall, but certainly relative to where some of these
16 other states are, there hasn't been as much done in
17 regard to accelerated capital recovery, but that is
18 generally based on -- based on need.

19 I think there's a little better situation
20 here with respect to high costs and what have you than
21 some of the other jurisdictions that I mentioned.

22 Q. Just to clarify, then, you would agree that
23 there's been very little progress toward competition
24 in Missouri?

25 A. Well, I think the first step that, at least

1 in the electric industry that I'm aware of would
2 involve this, the EARP that we've been dealing with
3 here.

4 MS. SCHMIDT: Thank you.

5 JUDGE REGISTER: Thank you, Ms. Schmidt.
6 Mr. Fulton, any questions?

7 MR. FULTON: No, your Honor.

8 JUDGE REGISTER: Mr. Johnson doesn't have
9 any questions. Ms. Forrest?

10 MS. FORREST: No, your Honor.

11 JUDGE REGISTER: Recross, Mr. Dottheim?

12 RE-CROSS-EXAMINATION BY MR. DOTTHEIM:

13 Q. The various states you had mentioned in
14 response to Ms. Schmidt, California, Illinois,
15 Pennsylvania, those are states where the legislature
16 has dealt with electric restructuring, is it not?

17 A. It's a combination. For example, Illinois
18 was basically all the legislature. Other states, you
19 generally have a legislative kind of framework, and
20 then it sort of goes through the Commission for all
21 the dot the i's and cross the t's and come up with an
22 ultimate plan and process. So it's been a combination
23 of the two.

24 Q. And when you mentioned the length of the
25 plan here, three years, there is a second plan, and I

1 don't know if you're referring to the first EARP.
2 There is a second EARP which is an additional three
3 years?

4 A. Right. That's correct.

5 MR. DOTTHEIM: Thank you.

6 JUDGE REGISTER: Thank you, Mr. Dottheim.

7 Mr. Coffman?

8 MR. COFFMAN: No recross.

9 JUDGE REGISTER: Redirect from UE?

10 MR. CYNKAR: No redirect, your Honor.

11 JUDGE REGISTER: Mr. McKnight, your
12 testimony at this time on this issue is complete. You
13 may step down. You are subject to recall, of course.

14 (Witness excused.)

15 JUDGE REGISTER: Mr. Dottheim, I believe
16 your witness is next.

17 MR. DOTTHEIM: Yes. Staff would call as its
18 first witness Steve Rackers.

19 (Witness sworn.)

20 JUDGE REGISTER: You may be seated. Please
21 spell your name for the court reporter.

22 THE WITNESS: Stephen M. Rackers,
23 R-a-c-k-e-r-s.

24 JUDGE REGISTER: Is it Stephen with a p-h?

25 THE WITNESS: With a p-h, yes.

1 JUDGE REGISTER: Mr. Dottheim, whenever
2 you're ready.

3 MR. DOTTHEIM: Pardon me a moment, please.

4 JUDGE REGISTER: That's quite all right.
5 Off the record.

6 (A recess was taken.)

7 JUDGE REGISTER: On the record. Please
8 proceed, Mr. Dottheim.

9 STEPHEN M. RACKERS testified as follows:

10 DIRECT EXAMINATION BY MR. DOTTHEIM:

11 Q. Would you please state your name and address
12 for the record.

13 A. Stephen M. Rackers, 815 Charter Commons
14 Drive, Suite 100B, Chesterfield, Missouri.

15 Q. And would you please identify your employer.

16 A. Missouri Public Service Commission.

17 Q. Are you the same Stephen M. Rackers who
18 caused to be filed what's been marked as Exhibit
19 No. 1, your direct testimony in this proceeding?

20 A. Yes.

21 Q. And are you the same Stephen M. Rackers who
22 caused to be filed what has been marked Exhibit 2,
23 your surrebuttal testimony in this proceeding?

24 A. Yes.

25 Q. At this time, do you have any changes or

1 corrections to make to either Exhibit 1 or 2?

2 A. Yes. Let's start with the direct testimony,
3 Exhibit 1. Page 3, line 22, the amount listed there
4 should be changed to 18,320,000. Page 10, line 23,
5 the year should be changed to 1991.

6 JUDGE REGISTER: That was page 10, line?

7 THE WITNESS: 23.

8 JUDGE REGISTER: Thank you. And the year
9 should be 1990?

10 THE WITNESS: 1991.

11 BY MR. DOTTHEIM:

12 Q. Mr. Rackers, for purposes of clarity, the
13 change you made on page 3, line 22 --

14 A. Yes.

15 Q. -- that number that you've asked be inserted
16 reflects the agreement that's been reached between the
17 Staff and Union Electric Company on the weather
18 normalization issue?

19 A. That's correct.

20 Q. Please proceed.

21 A. Schedule 2, the amounts that appear in the
22 column weather normalized credits, the first amount,
23 it's labeled first year, should be 11,989,000. The
24 second year should be 22,882,000. Third year should
25 be 20,089,000, and the average permanent rate

1 reduction should be 18,320,000.

2 Q. Again, Mr. Rackers, these changes reflect
3 the agreement that's been reached between the Staff
4 and Union Electric Company on the weather
5 normalization issue?

6 A. That's correct. And just for clarity, all
7 those amounts on Schedule 2 have been rounded to the
8 nearest thousand.

9 In Exhibit 2, the surrebuttal, page 6,
10 line 21, the sentence that begins "based upon", the
11 words "my own and other" should be inserted between
12 upon and Staff. That's all the corrections I have.

13 Q. Thank you, Mr. Rackers. If I were to ask
14 you the same questions that are contained in
15 Exhibit 1, would your answers as corrected be those as
16 are shown in Exhibit 1?

17 A. Yes.

18 Q. If I were to ask you today the same
19 questions that are contained in Exhibit 2, would your
20 answers today as you've just corrected them be the
21 same as they appear in Exhibit 2?

22 A. Yes.

23 Q. Is the information contained in Exhibit 1
24 true and correct to the best of your knowledge and
25 belief?

1 A. Yes, it is.

2 Q. Is the information contained in Exhibit 2
3 true and correct to the best of your knowledge and
4 belief?

5 A. Yes, it is.

6 MR. DOTTHEIM: I would tender Mr. Rackers
7 for cross-examination.

8 JUDGE REGISTER: Do you want to offer
9 Exhibits 1 and 2 at this time?

10 MR. DOTTHEIM: Yes. I would offer
11 Exhibits 1 and 2 at this time.

12 JUDGE REGISTER: And Exhibit No. 2 was the
13 only one, I believe, that you didn't offer in Case
14 EM-96-149. Would you also offer it for both cases?

15 MR. DOTTHEIM: Exactly.

16 JUDGE REGISTER: Are there any objections to
17 Exhibit No. 1 or No. 2?

18 MR. CYNKAR: I object to Exhibit No. 2.

19 JUDGE REGISTER: Can you explain your
20 objection?

21 MR. CYNKAR: Your Honor, I suggest, if I
22 might, because some of the bases for my objection for
23 parts of it will be illuminated in my
24 cross-examination and indeed will answer some
25 questions I have about the basis of some things in

1 here. So is it possible to reserve ruling on
2 admitting those parts of the surrebuttal testimony
3 until after my cross-examination?

4 JUDGE REGISTER: What portions are you
5 referring to?

6 MR. CYNKAR: The portions with respect to
7 Mr. Rackers' testimony concerning the Southwestern
8 Bell Telephone incentive regulation experiment, which
9 is essentially on pages 6 and 7.

10 JUDGE REGISTER: Are there no objections
11 relating to Exhibit No. 1, then?

12 MR. CYNKAR: No, your Honor.

13 JUDGE REGISTER: All right. Hearing no
14 objections in relation to Exhibit No. 1, Exhibit No. 1
15 will be admitted into the evidence at this time.

16 We will reserve ruling on Exhibit No. 2 for
17 both cases until after the testimony, and we'll rule
18 on that at the end of the testimony.

19 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

20 JUDGE REGISTER: Mr. Dottheim has tendered
21 his witness, and so I believe the first
22 cross-examination party is Public Counsel.
23 Mr. Coffman?

24 MR. COFFMAN: I have no questions of
25 Mr. Rackers.

1 JUDGE REGISTER: And Intervenors,
2 Ms. Schmidt?

3 MS. SCHMIDT: No questions.

4 JUDGE REGISTER: Mr. Fulton?

5 MR. FULTON: Briefly. It's more appropriate
6 for the next issue. So I'll withdraw.

7 JUDGE REGISTER: Thank you.

8 MR. JOHNSON: No questions.

9 MS. FORREST: No questions.

10 JUDGE REGISTER: And none of the Intervenors
11 have questions at this time. UE, Mr. Cynkar, are you
12 going to be examining?

13 MR. CYNKAR: Yes, your Honor. Thank you.

14 CROSS-EXAMINATION BY MR. CYNKAR:

15 Q. Hello, Mr. Rackers.

16 A. Hi.

17 Q. It's been a long day. Hopefully I won't
18 take too long. I'd like to start out with a
19 hypothetical question. Let's say we have a large
20 farmer and a food store owner, and they have a
21 contract that the food store owner is going to buy all
22 of the produce from the large farmer. And in the
23 context of that arrangement, that agreement, would it
24 be fair to say that the farmer has given up his right
25 to sell his produce to someone else?

1 A. The specific produce that the store owner
2 has agreed to buy.

3 Q. The deal is the store owner buys all of his
4 produce for the whole year, and so my question is,
5 isn't it true that it's fair to say that the farmer
6 has given up his right to sell that produce to someone
7 else; isn't that true?

8 A. Yes.

9 Q. Now, if the farmer tries to break the deal
10 and sell his produce to someone else, that would be a
11 breach of that agreement; isn't that fair to say?

12 A. Well, I'm not an attorney.

13 Q. Well, they had an agreement, right? I'm not
14 using it in any legal sense. And he's going against
15 that agreement; isn't that fair?

16 A. Yes.

17 Q. Okay. And if he decides to enforce that
18 agreement, go to court to get the court to order the
19 farmer to perform the agreement, that's not anything
20 that's particularly unusual; isn't that true?

21 A. I don't know how unusual it is.

22 Q. But in that context, what we would have is
23 the food store owner would be trying to enforce his
24 rights under that agreement, correct?

25 A. Correct.

1 Q. And in that context, don't you think it
2 would be sort of odd to say that the farmer is trying
3 to exercise a unilateral -- or the food store owner is
4 trying to exercise a unilateral veto right over where
5 the farmer sells his produce?

6 A. Why don't you ask me that question again?

7 Q. Okay. In the context of this agreement
8 where the farmer has agreed to sell all his produce to
9 a food store owner and now the farmer wants to sell to
10 someone else, the food store owner goes to court and
11 tries to enforce the deal they had.

12 In that context, don't you think it would be
13 sort of odd to say that the food store owner is trying
14 to exercise some unilateral veto right over where the
15 farmer sells his vegetables?

16 A. Yes.

17 Q. Now, in the context of this case, obviously
18 the parties have two different understandings of what
19 the EARP does, correct?

20 A. Correct.

21 Q. Okay. And you understand that the Company's
22 perspective is that this is an agreement that all the
23 parties agreed to, correct?

24 A. Yes.

25 Q. And we understand that you disagree with

1 that, correct?

2 A. I don't disagree that all the parties agree
3 to it.

4 Q. I'm losing track of our agreements and
5 disagreements. But the point is, you don't believe
6 that this is an agreement that is legally binding on
7 all the parties; is that fair?

8 A. Again, I'm not an attorney. I think that
9 all the parties that signed it agreed to the terms.

10 Q. Then you understand the terms differently
11 than we do?

12 A. I believe that's correct.

13 Q. Okay. Now, and so in a sense we're now
14 before the Commission presenting those different
15 perspectives on what our agreement means, correct?

16 A. Yes.

17 Q. And it wouldn't be fair, would it, to say
18 that Union Electric is trying to exercise some
19 unilateral veto right over anyone; isn't that true?

20 A. I think in this case it would be. I think
21 UE is attempting to veto individual signatory's rights
22 to even bring adjustments to the Commission.

23 Q. You understand, don't you, that UE's
24 position is that we had an agreement that set out all
25 the adjustments that were to be made, correct?

1 A. I believe that's their position.

2 Q. Right. And you disagree with that?

3 A. Correct.

4 Q. But I'm not asking you to accept our
5 position, but that's not an irrational position from
6 your perspective, is it?

7 A. I don't think it's irrational.

8 Q. And so we -- our position here in a sense is
9 trying to enforce the agreement as we understand it;
10 is that fair?

11 A. Yes.

12 Q. Okay. And that being the case, aren't we in
13 the position of the food store owner? We're just
14 trying to get everyone to abide by the agreement we
15 believe everyone entered into; isn't that fair?

16 A. I think we're here to settle various
17 disputes, and I think that's one of them.

18 Q. Right. But we're -- from our perspective,
19 we're not trying to exercise any unilateral veto right
20 over anyone's rights; we're trying to exercise our
21 right to get everyone to live by the agreement that we
22 thought we had; isn't that fair?

23 A. Well, I think UE has made various attempts
24 in this case and motions before the Commission to try
25 to stop various parties from even bringing adjustments

1 before the Commission.

2 Q. Well, is it fair to say that UE understands
3 that adjustments outside those listed in the
4 reconciliation agreement are not part of our
5 agreement, correct?

6 A. I think that's their position.

7 Q. Right. And we are here in front of the
8 Commission arguing about what the agreement means,
9 correct?

10 A. Yes.

11 Q. So, I mean, UE hasn't tried to stop that, we
12 just say you don't have the right to make those
13 adjustments because that's not part of the agreement?

14 A. In my opinion, at various times during this
15 proceeding the Company has tried to prevent Staff from
16 both making the adjustments and bringing them forward
17 to the Commission.

18 Q. With respect to -- let me ask you this. Are
19 you referring to the earlier issues with respect to
20 manipulation where we contended that there was a
21 procedure in the agreement for bringing issues of
22 manipulation forward? Is that what you're referring
23 to when you say --

24 A. That's part of it.

25 Q. But as far as I know, there is no other

1 avenue to prevent the Staff procedurally under the
2 agreement from bringing issues in front of the
3 Commission; isn't that true?

4 A. I'm sorry. I think you lost me.

5 Q. Well, outside of the question of
6 manipulation, there's nothing else in the agreement
7 that addresses a procedure of getting before the
8 Commission per se, does it?

9 A. I don't think so, but I'm not sure I would
10 characterize the Company's position in that respect.

11 Q. I can, and I can say that that's true.

12 MR. FULTON: Objection. It's testimony
13 by -- attempted testimony by an attorney.
14 Furthermore, this entire line of questioning is unduly
15 argumentative. He's attempting to set forth the
16 position of UE through his spokesman and counsel.
17 This witness is not being asked about any of his
18 testimony. So I'd object to this line of questioning.

19 MR. CYNKAR: Can I respond, your Honor?

20 JUDGE REGISTER: Please.

21 MR. CYNKAR: Briefly. First of all, I can
22 move on. I've done what I need to do. But I'm just
23 asking leading questions, I think, in a fairly normal
24 cross-examination.

25 JUDGE REGISTER: Your leading questions are

1 permitted, but you might want to refrain from
2 testifying. You have stated the Company's position in
3 your opening statements, and so let's go ahead and
4 move on.

5 MR. CYNKAR: Fine.

6 BY MR. CYNKAR:

7 Q. Now, it's your position that in these
8 proceedings the Staff's role is to -- or its goals are
9 in line with the full goals of the Commission as
10 opposed to the individual parties in this proceeding;
11 isn't that true?

12 A. Are you referring to a specific part of my
13 testimony?

14 Q. Well, I can direct you to your deposition on
15 page 65. You were explaining the Staff's goals as
16 opposed to the goals of OPC or UE, and you testified
17 on page 65 that, from your perspective, the Staff's
18 goals were more in line with the Commission and the
19 Commission's broad range of interests as opposed to
20 the interests of any particular party.

21 A. That's correct.

22 Q. Okay. And is it fair to say that by that
23 you meant the full responsibilities of the Commission
24 to look at the interests of consumers and the
25 utilities and the public at large?

1 A. Yes.

2 Q. Now, is it fair to say that if a utility is
3 operating more efficiently, that's a good thing?

4 A. I believe it is to the extent that it
5 results in the utility being able to offer service at
6 a fair and reasonable price, safe and adequate service
7 at a fair and reasonable price.

8 Q. Now, would it also be fair to say that if a
9 utility does its job at a lower cost, that it is being
10 more efficient?

11 A. I think that would be one measure of
12 efficiency.

13 Q. And would you also say it's fair to say that
14 another measure of efficiency is that if the utility
15 produces more power or does a better job at the same
16 cost, that's also an increase in efficiency?

17 A. Well, it produces more power. You could be
18 operating one of your power plants more efficiently in
19 that respect.

20 Q. So is the answer to my question yes?

21 A. Yes, with regard to perhaps one power plant.

22 Q. The Company could be doing a safer, more
23 reliable job just generally at the same cost, and that
24 would be an improvement in efficiency, wouldn't it?

25 A. Generally, I think I could agree with you.

1 Q. Now, would you also agree that having a more
2 efficient utility is good for economic development in
3 Missouri?

4 MR. DOTTHEIM: I object on the grounds of
5 relevance of this cross-examination.

6 JUDGE REGISTER: Mr. Cynkar, how is this
7 relevant?

8 MR. CYNKAR: It's relevant in several
9 different ways, your Honor, which I will show in my
10 following questions, and I think it goes to the issues
11 concerning what the purpose of the EARP is and what
12 the Staff's position is on it. So if I could ask a
13 few more questions, I think it will become clearer if
14 that's possible.

15 JUDGE REGISTER: Okay. I'll overrule the
16 objection at this time. If you could move it along,
17 I'd appreciate it.

18 MR. CYNKAR: Thank you.

19 THE WITNESS: Can I hear the question again?

20 BY MR. CYNKAR:

21 Q. Absolutely. My question was, that having
22 more efficient utilities in the state of Missouri is
23 good for economic development in the state of
24 Missouri, isn't it?

25 A. I have to say I don't know.

1 Q. Would it be fair to say that other
2 businesses would find getting power more cheaply as an
3 attractive thing?

4 A. Generally, I would agree with that.

5 Q. And as I'm sure you know this better than I,
6 in the mission statement for the Commission, one of
7 the missions of the Commission is, as you said, to
8 ensure that Missourians would receive safe and
9 reliable utility service at just, reasonable and
10 affordable rates, correct?

11 A. Correct.

12 Q. And another mission is to support economic
13 development through either traditional rate of return
14 regulation or competition; is that fair?

15 A. I don't have a copy of the mission
16 statement.

17 Q. I'd be happy to just hand mine to you, and
18 maybe if you could just --

19 MR. CYNKAR: If I may approach the witness,
20 your Honor, I just need to read it.

21 JUDGE REGISTER: Have him read it.

22 MR. CYNKAR: I just wanted to make sure that
23 he sees it. I didn't want to have him read the whole
24 thing. It's too long.

25 JUDGE REGISTER: Okay.

1 MR. CYNKAR: As you can see, that's from the
2 Commission's web page.

3 BY MR. CYNKAR:

4 Q. And so the -- I had just read the second
5 bullet point concerning economic development. So
6 you'd agree that that's obviously part of the
7 Commission's mission?

8 A. Yes.

9 Q. And then finally, it also has the Commission
10 has one of its missions to establish standards so that
11 competition will maintain or improve the quality of
12 services provided to Missourians, correct?

13 A. That's what it says.

14 Q. Great. It not only says that, but you agree
15 that that's one of the missions of the Commission?

16 A. Yes.

17 Q. And apropos of what you said about the
18 Staff's goals being in line with the Commission, the
19 Staff's goals are in line within that mission
20 statement; isn't that true?

21 A. Well, I don't really think that was my
22 testimony. I think that what my testimony was in my
23 deposition is that Staff has concerns of all the
24 parties, not just any specific constituency that we're
25 looking out for.

1 Q. Right. But in -- is it fair to say that
2 when you come before the Commission, that you try to
3 make your positions congruent with the full mission of
4 the Commission?

5 A. I would have to say that I didn't consider
6 that mission statement when I wrote my testimony.

7 Q. That wasn't really my question.

8 JUDGE REGISTER: I'm sorry. I didn't hear
9 his response.

10 THE WITNESS: I said I didn't consult that
11 document when I wrote my testimony.

12 JUDGE REGISTER: You need to answer his
13 question. He may be laying foundation for his
14 ultimate question, but you need to answer the question
15 he asked. Can you restate that, Mr. Cynkar?

16 MR. CYNKAR: Yes.

17 BY MR. CYNKAR:

18 Q. My question is, when Staff then comes before
19 the Commission and advances any particular position,
20 it does so with the idea that that position is
21 congruent with the full mission of the Commission?

22 A. When I advance the statements or, excuse me,
23 the positions that I have in my testimony, I did not
24 consider the full mission as it's labeled -- excuse
25 me -- as it's discussed there.

1 Q. Okay. And, therefore, and my next question
2 was, and that then explains the statement in your
3 surrebuttal, which is on page 7, lines 12 to 16, in
4 which -- do you see that in which you say it was not
5 the goal of the Staff --

6 JUDGE REGISTER: What line were you on on
7 page 12?

8 MR. CYNKAR: Page 7, lines 12 through 16.

9 JUDGE REGISTER: Page 7?

10 MR. CYNKAR: Yes, ma'am.

11 BY MR. CYNKAR:

12 Q. The question was, quote, was it the Staff's
13 goal to put in place an incentive mechanism to
14 encourage the Company to operate more efficiently as
15 Mr. Brandt states on page 10 of his rebuttal
16 testimony? And your answer was no.

17 A. That's correct.

18 Q. And so that reflects what you just said a
19 moment ago, that in recommending the position that you
20 have in this proceeding, you haven't taken the sort of
21 full mission of the Commission into account; is that
22 fair?

23 A. Well, I'm not sure that mission existed when
24 this agreement was negotiated, and I think what I'm
25 saying in that question and answer is that it wasn't

1 Staff's goal when it negotiated the first EARP to put
2 in place an incentive mechanism to encourage the
3 Company to be more efficient.

4 Q. Do you think that this mission statement is
5 a new statement of the Commission's mission that adds
6 new missions to what the Commission is about?

7 A. I'd have to say I don't know.

8 Q. So you don't know if the Commission, even
9 before you put this testimony together, one of its
10 missions was to support economic development?

11 A. No.

12 Q. No, you don't know?

13 A. I'm sorry.

14 Q. You do not know whether one of the missions
15 of the Commission before you prepared this testimony
16 was to support economic development?

17 A. That's correct.

18 Q. Okay. And similarly, you do not know
19 whether one of the missions of the Commission before
20 you put together your testimony was to establish
21 standards so that competition will improve the quality
22 of services?

23 A. That's correct.

24 Q. Okay. On page 7, lines 15 and 16, after you
25 say no to that question that I read, you note that,

1 quote, In fact, it should be noted that the word
2 incentive does not appear in the title of EARP, close
3 quote. Did I read that accurately?

4 A. Yes.

5 Q. Okay. Now, wouldn't it be fair to say that
6 the EARP could create incentives for efficient
7 operation even if the word incentive never appeared in
8 it?

9 A. It could.

10 Q. And do you understand that the sharing grid
11 can encourage efficiencies?

12 A. I think it could.

13 Q. And it is a fact that the Commission has
14 considered the UE EARP to be an incentive plan; isn't
15 that true?

16 A. Are you referring to something in particular
17 that says that or --

18 Q. Yes, I can, but do you -- I'd just like to
19 know if you know that on your own first.

20 A. Let me check something real quick.

21 Q. Please do. Actually, Mr. Rackers, I didn't
22 mean to put you through the game of got you here. So
23 let me just direct you to something here. We'll talk
24 about it further.

25 If I direct your attention to Exhibit 13,

1 Tab A in the Commission Order, page 5, the second full
2 paragraph, the first sentence, I'll read it, quote,
3 the 12.61 percent trigger for sharing should allow UE
4 sufficient incentive to manage its operations in an
5 efficient manner, close quote.

6 So there would it be fair to say that the
7 Commission considered this an incentive plan?

8 A. It appears the Commission viewed that at
9 least parts of the agreement, the 12.61 percent
10 trigger, would allow UE sufficient incentive to manage
11 its operations in an efficient manner.

12 I don't know that that really speaks to the
13 fact that the Commission viewed the entire plan as an
14 incentive plan.

15 Q. Okay. Let me just cite something to you,
16 and I can certainly give you a copy because we have
17 copies, but it was actually a case that was cited in
18 some of the Staff testimony, which is in the Matter of
19 Missouri Public Service, Case No. ER-97-394, and in
20 the Report and Order dated March 6th, 1998 at page 97,
21 the Commission said this: Quote, the sliding scale
22 mechanism is the only type of incentive plan that has
23 been approved by this Commission. It is currently
24 being used on an experimental basis by UE as a result
25 of Case No. ER-95-411, close quote.

1 So would it be fair to say that the
2 Commission does consider this to be an incentive plan?

3 A. Based on your quote, I would say yes.

4 Q. Okay. And the issue of efficiency was
5 discussed with the Commission when the EARP was
6 presented in July of 1995; isn't that true?

7 A. I believe it was. I don't have that in
8 front of me.

9 Q. Okay. Well, let me just give you a copy of
10 it so you can have it in front of you.

11 MR. CYNKAR: Just for the record, I'm not
12 going to introduce this, your Honor.

13 JUDGE REGISTER: What is it?

14 MR. CYNKAR: It is a copy of the transcript
15 of the proceedings before the Commission dated
16 July 19, 1995 in Case No. ER-95-411.

17 THE WITNESS: Do you have the specific cite?

18 BY MR. CYNKAR:

19 Q. Well, yes. You're correct that the
20 Commission did consider it, and on pages 62 to 63
21 there is a discussion between Commissioner Kencheloe
22 and Mr. Brandt, among other things, asking about the
23 financial community's expectations and Mr. Brandt
24 discussing the fact that UE would be telling the
25 financial community that the effect of this agreement

1 would be to maximize the efficiency of their
2 operations.

3 I don't need to read that in the record. I
4 just want to give you comfort that you're correct that
5 this issue was discussed in front of the Commission at
6 the time. Is that fair?

7 JUDGE REGISTER: I'm sorry. Did you have a
8 question there?

9 BY MR. CYNKAR:

10 Q. I said is that fair? It was a leading
11 question. I said, isn't it fair that the goal of
12 efficiency was discussed?

13 A. What line are you on?

14 Q. It's actually several lines, page 62 from
15 the bottom, line 23, all the way through page 63,
16 line 16.

17 JUDGE REGISTER: You said his earlier
18 response was that efficiency was discussed; is that
19 right?

20 MR. CYNKAR: Right. And he expressed some
21 hesitancy, and I just wanted to show him at least one
22 place in the record where there was, in fact, the
23 discussion.

24 JUDGE REGISTER: Does that discussion appear
25 there, Mr. Rackers?

1 THE WITNESS: On lines 11 and through 13,
2 Mr. Brandt makes a statement, but we would be making
3 comments that we would continue to try and maximize
4 the efficiency of our operations. That's at least one
5 comment I see.

6 BY MR. CYNKAR:

7 Q. I don't need to belabor the point. If I ask
8 you to turn the page to go over to page 65, there you
9 have -- again, this is a continuing discussion between
10 Commissioner Kencheloe and Mr. Brandt. And on
11 page 65, lines 5 through 15 is the quote from
12 Standard & Poors that I read during my opening. I
13 don't know if you recall that. Do you recognize that?

14 A. Yes.

15 Q. Okay. And in the context of this Standard &
16 Poors is commenting, and it's obviously being related
17 to the Commission, that, quote, this, meaning the
18 first EARP, is a positive development since under the
19 sharing plan UE will be rewarded for efficient
20 operations, close quote. It goes from there.

21 MR. FULTON: Object to the form of the
22 question. Move to strike. There was no question
23 asked.

24 BY MR. CYNKAR:

25 Q. Isn't that correct?

1 MR. FULTON: Same objection. He's
2 attempting to testify by his questions.

3 JUDGE REGISTER: Mr. Cynkar, it does seem
4 that you're reading testimony in from a different
5 proceeding and just asking Mr. Rackers to agree with
6 you that that is the reference there.

7 I have no objection to you asking the
8 Commission to take that document and notice if you
9 want those things noticed, and maybe you should admit
10 this document into the record if it's relevant. But I
11 think that I'm going to overrule the objection and ask
12 you to move on.

13 MR. CYNKAR: That will be fine. Thank you,
14 your Honor.

15 BY MR. CYNKAR:

16 Q. Now, the first time you became aware that
17 other states had experimented with a sharing grid was
18 in reading Mr. McKnight's testimony in this
19 proceeding; isn't that true?

20 A. Yes.

21 Q. Okay. And so you're not familiar with the
22 experience in other states?

23 A. No, I'm not.

24 Q. Okay. And your recommended adjustments that
25 you're proposing are not being offered here with any

1 advice or counsel with respect to the impact on
2 ultimately the utility's efficiency; isn't that true?

3 A. Would you ask me that question again?

4 Q. Sure. The adjustments that you're proposing
5 to the Commission here are not being offered with any
6 advice or perspective on whether those adjustments
7 will have any impact on the utility's efficiency;
8 isn't that true?

9 A. Yes.

10 Q. Now, in the context of the first EARP,
11 Mr. Rademan was the lead Staff negotiator; isn't that
12 correct?

13 A. Yes. I think I stated that in my
14 deposition.

15 Q. You did. And you were at some of the
16 meetings; isn't that true?

17 A. Well, when you say at some of the meetings,
18 do you mean Staff meetings, Company meetings?

19 Q. Meetings with representatives of the
20 Company?

21 A. Yes, I was present at some of those. I
22 actually don't believe there were very many. I think
23 in my deposition I said I was present at four.

24 Q. Is it fair to say that Mr. Rademan was the
25 main liaison with UE?

1 A. I would agree with that, as assisted by
2 Mr. Dottheim.

3 Q. Okay. And you reviewed drafts of the first
4 EARP; isn't that true?

5 A. That's one of the things I did.

6 Q. Correct. Now, during the context of any
7 meetings you were at, no one represented to UE that
8 this agreement was supposed to work just like
9 Southwestern Bell; isn't that true?

10 A. I don't recall that statement being
11 specifically made.

12 Q. Okay. Now, you did not participate in the
13 negotiations for the Southwestern Bell experimental
14 plan?

15 A. I think that's true. It depends on how you
16 characterize negotiations. I think I probably did
17 read draft language from that agreement.

18 MR. CYNKAR: If I could have one second,
19 your Honor.

20 JUDGE REGISTER: Sure.

21 BY MR. CYNKAR:

22 Q. If I could direct your attention, if there
23 is available, a copy of Exhibit 21. I have actually
24 some extras.

25 A. Is that Mr. Brandt's --

1 Q. That's Mr. Brandt's January letter.

2 A. I've got one here.

3 Q. Great. If I could direct your attention to
4 page 8 of that draft. And, in fact, if you have
5 Exhibit 13, which is the two EARPs, you might as well
6 get those out. And for simplicity's sake I'll refer
7 to Exhibit 21 as the UE proposal, and we'll be looking
8 at the first EARP in Exhibit 13.

9 Okay. On page 8 of Mr. Brandt's proposal,
10 right there in the middle of the document is a
11 provision which is headed monitoring program, correct?

12 A. Yes.

13 Q. And in the context of this proposal, that
14 was UE's proposal for monitoring procedures for the UE
15 EARP; isn't that true?

16 JUDGE REGISTER: What page are you looking
17 at, Mr. Cynkar?

18 MR. CYNKAR: Page 8 of Exhibit 21, your
19 Honor.

20 JUDGE REGISTER: Thank you.

21 THE WITNESS: This was UE's original
22 proposal. They didn't refer to it as EARP, but --
23 BY MR. CYNKAR:

24 Q. Fine. In UE's original proposal for what
25 became the first EARP, this paragraph here is the

1 total proposal initially for the monitoring
2 procedures; isn't that true?

3 A. Yes.

4 Q. Okay. And to flip back where you might have
5 been a second ago to Attachment B, the heading of
6 Attachment B is Reconciliation Procedure; isn't that
7 true?

8 A. Yes.

9 Q. And that sets out the calculation for the
10 earnings report; isn't that true?

11 A. That's one of the things it does, yes.

12 Q. But it doesn't set out monitoring
13 procedures, does it?

14 A. Well, I would consider monitoring procedures
15 to include the actual calculation of the earnings
16 report, checking the earnings report, asking various
17 data requests, having meetings.

18 Q. I understand that. Indeed you've testified
19 to that effect in your deposition. But with respect
20 to what Mr. Brandt intended, there's no indication in
21 this reconciliation procedure that there's anything in
22 there that he would call monitoring, is there?

23 MR. FULTON: Objection. Calls for
24 speculation as to state of mind of Mr. Brandt who is
25 not currently testifying.

1 MR. CYNKAR: Your Honor, I think it's a
2 perfectly fair question. I'm asking about what this
3 document shows. It was written by someone else, and
4 in response to my question Mr. Rackers answered by
5 what he considers, and I'm focusing on what this
6 document evidences.

7 JUDGE REGISTER: I think that may have been
8 your intention, but I think what you asked him was,
9 what may have gotten out there is what Mr. Brandt
10 intended it to say. And so I'm going to sustain the
11 objection and ask you to restate the question --

12 MR. CYNKAR: That's fine, your Honor. Thank
13 you.

14 JUDGE REGISTER: -- in the way you intended
15 it.

16 MR. CYNKAR: Thank you.

17 BY MR. CYNKAR:

18 Q. This reconciliation procedure does not
19 include -- does not include any provisions concerning
20 information provisions, does it?

21 A. I'm thinking about something in one of the
22 provisions here. Bear with me. I would agree that
23 the exact same language that's on page 8 does not
24 appear in Attachment B. Now --

25 Q. Would -- I'm sorry.

1 A. The monitoring procedures here do talk about
2 providing information, and I think there's -- in my
3 mind, certainly Section G, 2G that would allow people
4 to bring -- excuse me -- parties to bring issues to
5 the Commission, I mean, that would be based on
6 information that they would gain from the Company.

7 Q. The word monitoring or monitor does not
8 appear anywhere in the reconciliation procedure in
9 Attachment B, does it?

10 A. I don't believe it does.

11 Q. Okay. Now, if we go from there to
12 Exhibit 13, and if I could direct your attention to
13 page 6 of the first EARP, and it begins at -- indeed,
14 it's all of Section 3F(E), starting on page 6 and
15 continuing over on to page 7.

16 A. Yes.

17 Q. And is it fair to say that this provision
18 sets out the information provision requirements of the
19 first EARP?

20 A. This section specifically labels nine
21 reports. It also speaks to signatory's ability to
22 gather data, have meetings, conduct interviews.

23 Q. Is that yes?

24 A. I'm sorry. Ask me your question.

25 Q. My question was, does that provision,

1 Section 3E, set out the requirements of the first EARP
2 with respect to the provision of information and, as
3 you point out, access to personnel at UE and so forth?
4 Is that a fair reading of that?

5 A. Yes.

6 Q. Now, if you turn over to Attachment C, you
7 see again the reconciliation procedure, and again, is
8 it fair to say that the word monitor or monitoring
9 does not appear anywhere in that provision?

10 A. I believe you're correct. It's not -- that
11 word's not listed there.

12 Q. Do you have Exhibit 22, which is the
13 Southwestern Bell plan?

14 A. Yes.

15 Q. Okay. Now, if you turn to Attachment 3,
16 that's the monitoring procedures.

17 JUDGE REGISTER: On this attachment they
18 have marked on the bottom of Attachment A26
19 through --

20 MR. CYNKAR: Page 66 of 75. I'm sorry.

21 JUDGE REGISTER: Thank you. That's the
22 easier way to follow.

23 THE WITNESS: Attachment 3, monitoring
24 procedures?

25 BY MR. CYNKAR:

1 Q. Yes, sir.

2 A. Yes.

3 MR. DOTTHEIM: Excuse me, Mr. Cynkar. When
4 you're looking at page 66, that document, the
5 monitoring procedures appears more than once in the
6 document. It's also on page 32 of 75, and those were
7 the pages that I referred to yesterday in my
8 cross-examination.

9 MR. CYNKAR: Right.

10 BY MR. CYNKAR:

11 Q. The monitoring procedures are in the
12 document in two places. Anyway, Attachment 3 is
13 labeled monitoring procedures, correct?

14 A. Correct.

15 Q. And as Mr. Dottheim helpfully points out,
16 that this was the beginning of this monitoring
17 procedures, which goes on from the first page of the
18 attachment on for several pages, near the end of page
19 3 involves provisions for calculating the earnings
20 report for the Southwestern Bell Company in the
21 context of this agreement, correct?

22 A. Okay. Ask me your question again, please.

23 Q. I said that the first pages from 1 through
24 most of page 3 set out the provisions for calculating
25 the earnings report for the Southwestern Bell

1 Telephone Company in the context of this agreement;
2 isn't that true?

3 A. Yes.

4 Q. And after that part, still within monitoring
5 procedure, beginning at the bottom of page 3 all the
6 way through page 5, you have provisions governing the
7 production of information and data and the like; isn't
8 that fair?

9 A. Yes.

10 Q. So in the Southwestern plan under monitoring
11 procedures, you both have the earnings calculations
12 and the information provision functions; is that true?

13 A. Yes.

14 Q. Okay. Let me direct your attention back to
15 Exhibit 13, and let's go to the first EARP again. If
16 I could direct your attention to page 8 of
17 Attachment A, which also says in the lower right-hand
18 corner page 8 of 23 pages.

19 A. Yes.

20 Q. Okay. And if I could direct your attention
21 to the two paragraphs, small Roman i and ii. Now, the
22 sharing grid in the first EARP is based on a
23 calculation of the return on equity; is that true?

24 A. Yes.

25 Q. And in this provision, the parties say that

1 that return on equity are going to be calculated by
2 using the methodology set out in the reconciliation
3 procedure, true?

4 A. That's what Item 1 says.

5 Q. Okay. And the paragraph 2 little i also
6 articulates the fact that Staff, OPC and UE have
7 conferred and determined what items based on prior
8 Commission Orders should be excluded from that
9 calculation; isn't that fair?

10 A. That's what Item 2 says.

11 Q. Okay. And there's no indication from this
12 text that any methodology or accounting manipulation
13 other than that set out in the reconciliation
14 procedure is to be used in calculating return on
15 common equity; isn't that true?

16 A. There's nothing in i and ii.

17 Q. Right.

18 A. I think that's what it says, yes.

19 Q. Okay. Now, before we get to the
20 reconciliation procedure itself, there is nothing else
21 in the text of the EARP before the reconciliation
22 agreement that suggests that some other methodology or
23 accounting practice beyond what is set out in
24 Attachment C, the reconciliation procedure, should be
25 used to calculate the return on common equity; isn't

1 that fair?

2 A. Now, you're saying before we get to
3 Attachment C?

4 Q. Yes, sir.

5 A. I wouldn't agree with that.

6 Q. Could you point me to language that shows
7 the parties agreed to some other methodology or
8 accounting practice other than that set out in the
9 reconciliation procedure?

10 A. Well, it's not that the parties specifically
11 agreed to another accounting practice or methodology,
12 but certainly on page 9 it discusses the ability of
13 parties to bring issues before the Commission, and
14 those -- those issues could relate to adjustments
15 Staff made based on criteria or specific calculations
16 that are not actually in Attachment C.

17 Q. Okay. Well, let's look at that language.
18 This is 3.f.vii?

19 A. Yes. I'm sorry. I said 9. I meant 10.

20 Q. You're on page 10, correct?

21 A. Yes.

22 Q. And the language you're referring to is in
23 paragraph 3 of 7, correct?

24 A. And 8, but on page 9, yes.

25 Q. Okay. And the language specifically as you

1 just mentioned involves the signatories' reserving,
2 quote, the right to bring issues which cannot be
3 resolved by them and which are related to the
4 operation or implementation of the plan, close quote.
5 Is that the language you're referring to?

6 A. Well, that and down at the bottom of 7 it
7 also speaks to variations in the level of expenses
8 where no reasonable explanation has been provided.

9 Q. Well, let's take them one at a time. So
10 start with the first. Now, it's your view, then, that
11 by virtue of this language, a party like the Staff
12 could propose an additional adjustment or accounting
13 methodology beyond what is in the reconciliation
14 procedure; is that fair?

15 A. Well, you talk about accounting
16 methodologies, and the agreement does state that. I
17 don't look at it as though I'm -- excuse me -- or
18 Staff or some party would be suggesting a new
19 accounting methodology. They would be proposing an
20 additional adjustment to address a concern.

21 Q. An additional adjustment meaning in addition
22 to the adjustments that are set out in the
23 reconciliation procedure?

24 A. Correct.

25 Q. Okay. And so is it fair to say that your

1 understanding of this language on paragraph 9 means
2 that --

3 A. Excuse me. Paragraph 7.

4 Q. Sure. Go ahead.

5 A. You said paragraph 9.

6 Q. I'm sorry. Page 9. Thank you for catching
7 me. Getting late in the day. But this language on
8 page 9 that we are talking about concerning the
9 operation or implementation of the plan means that you
10 can propose an adjustment that is not set out in the
11 methodology in the reconciliation procedure?

12 A. That's correct.

13 Q. Okay. Now, in looking at those, this
14 language of the right to bring issues, that whole
15 phrase we've been looking at, in there it doesn't
16 specifically advert to adjustments in the earnings
17 calculation, correct?

18 A. Well, it says the signatories can bring
19 concerns to the Commission. Now, we've brought our
20 concerns forward in the form of adjustments.

21 Q. I'm sorry. If you could direct your
22 attention to 7, it says the right to bring issues.
23 Are we both reading from the same place?

24 A. Yes.

25 Q. Okay. So that it says that they reserve the

1 right to bring issues which cannot be resolved by them
2 and which are related to the operation or
3 implementation of the plan, right?

4 A. That's correct.

5 Q. And that does not -- that reference to
6 issues doesn't specifically refer to adjustments to
7 the earnings calculation in the reconciliation
8 procedure, correct?

9 A. I don't know that it makes a specific
10 reference to the earnings calculation, but it says the
11 right to bring issues for resolution. So the form
12 that we have chosen to bring those issues forward are
13 adjustments.

14 Q. So if I understand your perspective, then,
15 the language right to bring issues is broader than the
16 right to propose adjustments to the earnings
17 calculation, correct?

18 A. I'm sorry. I'm not following you.

19 Q. If I understood what you just said, you say
20 that the right to bring issues includes the right to
21 propose an adjustment to the earnings calculation,
22 correct?

23 A. Correct.

24 Q. Now, since that language does not focus on
25 earnings calculations, your understanding of issues is

1 broader than just earnings calculations? You feel
2 that that concept is included in there but not limited
3 to it, correct?

4 A. That's correct.

5 Q. So then under that understanding of the
6 language of issues, you could propose a change to any
7 provision in this EARP; isn't that true?

8 A. No, I wouldn't agree with that. I think if
9 the signatories got together and discussed a change
10 and they all accepted it, I think you could change the
11 plan. I don't think one party alone could propose an
12 amendment, changes to the plan.

13 Q. It is your view that under this language you
14 can unilaterally propose an adjustment that isn't
15 included in the reconciliation methodology and have
16 the Commission order it on the rest of the parties;
17 isn't that true?

18 A. I probably wouldn't characterize it that
19 way. I would characterize it as this portion of the
20 agreement allows any party, even the Company, to bring
21 issues forward, and the form that we have brought our
22 issues forward is adjustments to the earnings report.

23 Q. That's true, but what -- the proceeding that
24 we're in now in which one of those parties, the Staff,
25 has proposed adjustments is different than your answer

1 to my earlier question when you said all the parties
2 could get together and agree on a change, correct?

3 A. Well, that would be a change, not an
4 adjustment.

5 Q. Right. And we're not agreeing to your
6 proposed adjustment, correct?

7 A. That's correct.

8 Q. And so my question was, given that the
9 language that you're relying on talks about issues and
10 does not limit issues, it's your view that you have
11 the ability to propose changes to any part of this
12 agreement and come before the Commission and have the
13 Commission order those changes; isn't that fair?

14 A. No.

15 MR. DOTTHEIM: I object. I don't believe
16 that is what Mr. Rackers' testimony is. I think
17 you're testifying on behalf of Mr. Rackers.

18 MR. CYNKAR: Your Honor, I'm just asking
19 questions about the logic of his understanding of this
20 language. Let me ask a slightly different way.

21 JUDGE REGISTER: I'm going to overrule the
22 objection, and let Mr. Rackers explain what he does
23 understand.

24 MR. CYNKAR: Well, if I could ask a specific
25 question, your Honor, it might be helpful in focusing.

1 JUDGE REGISTER: So you're going to withdraw
2 your question and ask a different one?

3 MR. CYNKAR: I don't want to withdraw it. I
4 just want to ask an additional question, if I might.

5 JUDGE REGISTER: That would be a compound
6 question.

7 MR. CYNKAR: You're right. You're
8 absolutely right. Let me withdraw that one and I'll
9 ask another one.

10 JUDGE REGISTER: All right. Thank you.

11 MR. CYNKAR: Thank you. I appreciate it.

12 BY MR. CYNKAR:

13 Q. What in your view, in this language that
14 we're looking at here -- let me back up. Let's follow
15 the logic that you and I have been talking about.

16 It's your testimony that this language
17 concerning the right to bring issues allows you to
18 propose adjustments that are not -- that is not in the
19 methodology set out in the reconciliation procedure,
20 correct?

21 A. Adjustments in addition to those set out in
22 the reconciliation procedure.

23 Q. Okay. And earlier we discussed paragraph
24 3FI on page 8 which says that the return on common
25 equity for the sharing grid is supposed to be

1 calculated by using the methodology in the
2 reconciliation procedure; is that correct?

3 A. That's what it says.

4 Q. And so your understanding of 3.f.vii is that
5 you can add to that methodology, correct?

6 A. My understanding of 7 is that you can bring
7 issues that can't be resolved forward. We have done
8 that in the form of adjustments.

9 Q. And it's an adjustment what is, as you've
10 already testified, is not set out in the methodology
11 in the reconciliation?

12 A. It doesn't appear -- our adjustments don't
13 specifically appear in the reconciliation procedure,
14 but Section 2G of the reconciliation procedure has
15 almost exactly the same language.

16 Q. Right. So we're still talking about the
17 same thing. And my question to you then is, in terms
18 of where our discussion has gone, what in this
19 language limits you in terms of the issues you can
20 bring to propose changes to the EARP to just the kind
21 of accounting adjustments you're proposing here?

22 MR. DOTTHEIM: I object. I don't believe
23 that Mr. Rackers has testified that he can bring
24 changes to the Commission or propose changes to the
25 Commission.

1 MR. CYNKAR: Your Honor, I think that the
2 body of the testimony that's in the record right now
3 is that the agreement sets out methodology, and
4 Mr. Rackers' view is that this provision here can
5 allow the Staff to add additional accounting
6 adjustments to the methodology that's set out in the
7 reconciliation plan.

8 I'm just asking him further about his
9 understanding of that, of whether you call it
10 additions or changes or what have you, what limits the
11 Staff or any parties' powers under his view of this
12 agreement to adjust those accounting changes and why
13 not add things or do whatever, make changes to
14 anything else.

15 JUDGE REGISTER: I'm going to overrule the
16 objection because I believe that I recall that
17 Mr. Rackers did say that these were additions to the
18 reconciliation plan. Please proceed.

19 BY MR. CYNKAR:

20 Q. So I presume you're going to want me to
21 restate my question?

22 A. Yes.

23 Q. Okay. My question then is, what in this
24 language, in your view, limits you to proposing
25 additions to the agreement that only deal with

1 accounting adjustments to the earnings report as
2 opposed to making any other additions to the
3 agreement?

4 A. Well, I don't view the word issues to mean
5 amendment, changes to the plan. Other than additional
6 adjustments, I can't envision exactly what another
7 issue might be. And the only issue Staff has brought
8 forward are additional adjustments, and I don't view
9 the word issues as allowing parties to make amendments
10 or changes to the plan.

11 Q. The adjustments that you have proposed are
12 in addition to the adjustments set out in the
13 reconciliation procedure, correct?

14 A. Those that are specifically set out, yes.

15 Q. Correct. Are there adjustments that are not
16 specifically set out?

17 A. I think there's a provision in the
18 reconciliation procedure that allows parties to bring
19 forward additional adjustments.

20 Q. And that is essentially, as you mentioned a
21 minute ago, the provision 2G from the reconciliation
22 procedure that is essentially the same language?

23 A. Yes.

24 Q. Okay. So is it your position that because
25 2G is in the reconciliation procedure, the language of

1 2G is limited to the reconciliation procedure?

2 A. No. It's the same language as in No. 7.

3 Q. Right. So if I understand your testimony
4 correctly, it is something inherent in the word issues
5 in your view that limits you to additional accounting
6 adjustments; is that fair?

7 A. Over changes or amendments to the plan, yes.
8 As I said, I can't specifically envision any right now
9 of issues that this would deal with, but certainly
10 if -- well, here's an example. If some of the reports
11 that are listed under the monitoring section, if the
12 Company discontinued some of those reports, that would
13 be an issue that you could bring forward.

14 Q. That's quite true, but what you've -- isn't
15 it fair to say that the monitoring reports that you're
16 talking about are requirements that are currently in
17 the agreement, correct?

18 A. That's true.

19 Q. So that's not an issue in which you're
20 adding anything to the agreement, true?

21 A. Well, if one of those reports was
22 discontinued, as I believe it has been, then you might
23 propose an additional item to replace it, but it would
24 be an issue regarding potentially another report that
25 you would need to replace.

1 Q. And the parties could agree to that?

2 A. The parties could agree to that, yes.

3 MR. CYNKAR: Your Honor, if I could just
4 have a minute.

5 JUDGE REGISTER: Certainly.

6 BY MR. CYNKAR:

7 Q. Mr. Rackers, would it be fair to say,
8 looking at this word issues, that it wouldn't be
9 unreasonable for another person to not agree that
10 issues is somehow inherently limited the way you
11 suggest?

12 A. Do I think it would be unreasonable for
13 somebody else to agree?

14 Q. To say issues is not limited, it's a broad
15 word?

16 A. I don't think it would be unreasonable. I
17 don't believe that it would be appropriate under the
18 plan.

19 Q. But there's no other language limiting the
20 word issues to support your notion that it wouldn't be
21 appropriate under the plan; isn't that true?

22 A. Well, when we talked earlier when we were
23 looking at page 8, we talked about that the earnings
24 report is designed to be put together based on the
25 reconciliation procedure.

1 Now, I believe that the reconciliation
2 procedure itself in 2G envisions that you could bring
3 additional issues forward, and it's also covered under
4 7 and 8.

5 Q. But you said before that 2G isn't limited to
6 the reconciliation procedure, correct?

7 A. Because it's the very same language as 7.

8 Q. Correct. So there still is no other
9 language that limits the scope of the issues covered
10 by either 7 or 2G just to additional accounting
11 adjustments; isn't that true?

12 MR. DOTTHEIM: I object. The question's
13 been asked and answered.

14 MR. CYNKAR: I'm not sure what the answer
15 was, your Honor. It's a simple yes or no question as
16 your Honor has pointed out to some of our witnesses.

17 JUDGE REGISTER: I'm not sure I recall
18 hearing that answered either yes or no. Can you
19 answer that yes or no?

20 THE WITNESS: I'm not sure I can. Ask the
21 question one more time.

22 BY MR. CYNKAR:

23 Q. There is no other language in this agreement
24 that limits the scope of the word issues in 3.f.vii
25 and 2G just to accounting adjustments in the earnings

1 calculation, true?

2 A. When you say there's no other language,
3 there's no other language that limits it except my
4 interpretation, is that what you said?

5 Q. I said there's no other language in this
6 agreement that limits the scope of the word issues in
7 3.f.vii and 2G to only accounting adjustments to the
8 earning calculation, true?

9 A. There's no other language other than what?

10 Q. Any language?

11 A. Okay. So you're asking me --

12 JUDGE REGISTER: Let me -- is there any
13 language in the agreement; is that correct?

14 MR. CYNKAR: Correct.

15 JUDGE REGISTER: The Stipulation and
16 Agreement that limits the term issues as it's used in
17 either of those two locations? Do you know of any
18 language?

19 THE WITNESS: No.

20 BY MR. CYNKAR:

21 Q. So then if this provision allows you to
22 propose additions to the performance of this
23 agreement, it would allow a party to propose an
24 addition to the sharing grid, for example; isn't that
25 true?

1 A. I don't agree that it does.

2 Q. I realize that you don't agree that it does,
3 but is there any language in this agreement that would
4 prevent the word from having that meaning?

5 A. I think the language on page 4, 3B.

6 Q. I'm sorry. Which page are you on?

7 A. Page 4, 3B where it specifically talks about
8 using the sharing grid.

9 Q. Okay. So that provision says the following
10 sharing grid is to be utilized as part of the plan,
11 correct?

12 A. Yes.

13 Q. If we turn back to page 8, and we go to
14 paragraph small Roman i, it says that the return on
15 common equity for determining sharing will be
16 calculated by using the methodology set out in the
17 reconciliation procedure; isn't that true?

18 A. That's what it says.

19 Q. And so with respect to calculating sharing,
20 it has the same style of language as the sharing grid
21 provision does you just talked about, true?

22 A. One says the sharing grid will be utilized.
23 On page 8, small i, it says will be calculated by
24 using the methodology in Attachment C. I'm not sure I
25 can agree to the same style.

1 Q. So you think that the way paragraph 3B on
2 page 4 is written makes it immune from the scope of
3 the issues language in paragraph 3.f.vii that we've
4 been discussing?

5 A. Well, not -- I don't know that there's
6 something in the way it's written that makes it
7 immune, no. I view that the word issues as discussed
8 in 7 doesn't mean that you can make changes to the
9 sharing grid.

10 Q. But that's not based on any language in the
11 agreement; that's your opinion, correct?

12 A. Well, it's my opinion, but on page 4 it says
13 utilize the sharing grid. This is the only sharing
14 grid that's in the agreement.

15 Q. And is it fair to say that the
16 reconciliation procedure set out in Attachment C is
17 the only reconciliation procedure in this agreement,
18 too?

19 A. Yes, it is.

20 Q. And yet you believe that you can add
21 accounting adjustments to that reconciliation
22 procedure by virtue of the language in 3.f.vii,
23 correct?

24 A. And 2G.

25 Q. Which is the same, right, so the answer is

1 yes?

2 A. Yes.

3 Q. Is it fair to say that none of the Staff's
4 proposed adjustments here are based on a claim that
5 the involved expenses were imprudent?

6 A. That's correct.

7 Q. Okay. And also, the Staff is not claiming
8 that operating results have been manipulated?

9 A. That's correct.

10 Q. Okay. And except for the issue of mergers
11 and acquisitions, that one issue, the remaining issues
12 don't involve a Staff claim that UE has made an
13 erroneous calculation under the terms of the
14 agreement, correct?

15 JUDGE REGISTER: Would it be fair to say
16 none of the remaining issues at issue are --

17 MR. CYNKAR: Except for mergers and
18 acquisitions.

19 JUDGE REGISTER: Except for mergers and
20 acquisitions. Thank you.

21 THE WITNESS: I'm trying to think if we've
22 used the term erroneous calculation with regard to the
23 mergers and acquisition adjustment.

24 I think that we believe that you should use
25 the most recent estimates and the actual cost to make

1 that adjustment. I don't know that we've accused the
2 Company of putting forward an erroneous adjustment.

3 BY MR. CYNKAR:

4 Q. Is it fair to say that the issue with
5 respect to mergers and acquisition has to do with the
6 construction of the language of the agreement and how
7 that should be applied?

8 A. I think it's the interpretation of the
9 language.

10 Q. Fine. That's what I mean by erroneous. So
11 putting that aside, there's no other issue before the
12 Commission in which the Staff is making a claim that
13 UE has done something incorrectly under the terms of
14 the agreement, correct?

15 A. Correct.

16 Q. And it is your view that any adjustment can
17 be proposed by the Staff even if it hasn't involved a
18 significant variation in costs; isn't that true?

19 A. Yes.

20 Q. And is it fair to say that your position is
21 based on the idea that you have discretion to propose
22 an adjustment wherever you feel an expense is not
23 appropriate?

24 A. I believe the terms of the agreement would
25 allow that.

1 Q. Okay. Let me direct your attention to pages
2 160 and 161 of your deposition, and we're going to be
3 talking about, starting on page 160, lines 14 through
4 line 9 on page 169. And for the benefit of the
5 record, this is a discussion concerning an increase in
6 injuries and damages expenses, and --

7 A. I'm sorry. You're on 160 or 69?

8 Q. 160 going over to 161. I'm sorry.

9 A. Okay.

10 Q. And begin on line 14, and the question that
11 Mr. Lerner posed to you was, quote, surely it would be
12 a reasonable explanation that the reason they had a
13 significant variation in expenses was there was a jury
14 verdict against them in a case which they had only set
15 aside a half a million dollars when the verdict was
16 \$5 million. Wouldn't that be a reasonable
17 explanation? So that was the question. They've only
18 reserved five -- or half a million dollars, and the
19 verdict comes in for that claim of being five.

20 And your answer, directing your attention to
21 lines 5 to 9, was, quote, we don't believe that it's a
22 reasonable explanation as to why those additional
23 dollars should be included in the third sharing period
24 in the calculation of credits, close quote. Correct?

25 A. Correct.

1 Q. And you still agree with that answer?

2 A. Yes.

3 Q. And so your position is that it's not
4 reasonable, if a jury awarded a greater verdict than
5 they anticipated, that's not a reasonable explanation
6 under the meaning of the agreement to justify those
7 expenses, correct?

8 A. Correct.

9 Q. Okay. Is it fair to say that the judgment
10 that you're making when you say that's not a
11 reasonable explanation is very much like the
12 normalization of expenses in a ratemaking context?

13 A. I would have to say no to that.

14 Q. Why?

15 A. I think the adjustment that we're proposing
16 would be quite different if we were going to propose a
17 normalization adjustment in a rate case than what
18 we've done here.

19 Q. Is it fair to say that in rejecting a notion
20 that a jury happened to award more damages than the
21 Company anticipated as a reasonable explanation, in
22 rejecting that as a reasonable explanation, that
23 you're saying it's just simply not appropriate for the
24 credit to be affected by an expense that large?

25 A. Right. The adjustment has more to do with

1 than the expenses or the item as large.

2 Q. Could you explain that?

3 A. Well, yes. I think what Staff's -- I don't
4 have Mr. Gruner's testimony in front --

5 Q. Just so we don't get off track, I'm really
6 not asking about the actual proposal you're making.
7 I'm asking about this exchange here in which you're
8 explaining your understanding of reasonable
9 explanation in the context of the injuries and damages
10 expense. So it's a simpler question.

11 But as I understand your answer here, that
12 your rejection of that reasonable explanation is based
13 on a judgment that it's simply not appropriate for the
14 credit calculation to be affected by an expense that
15 large in that period; is that fair?

16 A. Well, it has more to do with the fact that
17 it's a large expense.

18 Q. Okay. Now, directing your attention to the
19 Southwestern Bell plan, I'm not going to go to the
20 document quite yet. Have you reviewed
21 Mr. Schallenberg's testimony in this case?

22 A. Yes, I have.

23 Q. And so you know that at the end of the
24 Southwestern Bell agreement there apparently was a
25 dispute over a number of issues among the parties; is

1 that fair?

2 A. Well, you said the end of the agreement.
3 I'm not entirely sure which sharing period that
4 occurred in.

5 Q. But in the context of his testimony, he
6 attached some documents from that dispute whenever it
7 occurred; is that fair?

8 A. That's correct.

9 Q. You don't happen to have his testimony
10 handy?

11 A. Yes, I do.

12 JUDGE REGISTER: I have to ask you this,
13 Mr. Cynkar, but are you cross-examining Mr. Rackers on
14 Mr. Schallenberg's testimony?

15 MR. CYNKAR: Yes, because Mr. Rackers --
16 well, not quite. But Mr. Rackers does make some
17 characterizations of what was going on in the
18 Southwestern Bell situation, and this is quite
19 relevant to that, your Honor.

20 JUDGE REGISTER: Okay. You're referencing
21 his testimony where he's talking about Southwestern
22 Bell?

23 MR. CYNKAR: I will be, but at one point
24 there's some documents that come from that.

25 JUDGE REGISTER: Okay. That clears that for

1 me. Thank you.

2 BY MR. CYNKAR:

3 Q. And briefly, all I want to refer to is those
4 documents, not Mr. Schallenberg's testimony per se.
5 But if I direct your attention to Schedule 2-3 in
6 Mr. Schallenberg's testimony, which is Exhibit 3.

7 A. Yes.

8 Q. Okay. And this is, it's fair to say, is a
9 proposal to identify -- identifying issues and
10 proposing a procedural schedule that was prepared by
11 the Staff and Public Counsel, correct?

12 A. Correct.

13 Q. And in it Staff and Public Counsel set out a
14 whole list of issues that are the genesis of this
15 agreement between the parties, true?

16 A. Yes.

17 Q. Okay. And in this document it does not set
18 out either the Staff and Public Counsel's position or
19 Southwestern Bell's position on these issues, correct?

20 A. I'm not sure what you mean by position. You
21 mean it doesn't describe each one of the adjustments,
22 is that what you're asking me?

23 Q. It doesn't include from the perspective of
24 Southwestern Bell why these adjustment are not
25 appropriate, true?

1 A. Well, Southwestern Bell filed something in
2 response to this, and they didn't raise that as a
3 concern.

4 Q. Well, isn't it fair that these are all areas
5 of disagreement, correct?

6 A. Yes.

7 Q. Okay. And there is nothing written in the
8 record that explains the basis of Southwestern Bell's
9 disagreement, correct?

10 A. What I understand you to be asking me is
11 that there's no specific discussion on each one of
12 these adjustments where Southwestern Bell says they
13 disagree with 1993 flight costs because. Is that what
14 you're asking me?

15 Q. In any of these documents, correct?

16 A. That's correct.

17 Q. Now --

18 A. Hold on just a second.

19 Q. Sure.

20 A. Okay.

21 JUDGE REGISTER: You saw nothing in your
22 testimony that changed your last answer?

23 THE WITNESS: Correct.

24 JUDGE REGISTER: In the documents.

25 BY MR. CYNKAR:

1 Q. Now, ultimately this proceeding that
2 Schedule 2-3 refers to never happened because the
3 parties settled their disagreement, correct?

4 A. They never took these issues forward to the
5 Commission.

6 Q. Right. They settled the matter, correct?

7 A. That's correct.

8 Q. And there were no other documents that you
9 know of in which Southwestern Bell explained its
10 position with respect to its disagreements with the
11 Staff on each of these issues, correct?

12 A. Correct.

13 Q. Okay. Now, on page 7 of your surrebuttal,
14 lines 7 to 10, you say, quote, over the duration of
15 the SBIRE, that's the Southwestern Bell plan,
16 Southwestern Bell Telephone, SWBT, never raised
17 objections to the Commission or interpreted the
18 provisions of the plan as UE has in this proceeding.
19 This experience with the operation of SBIRE guided the
20 Staff's understanding of the language in EARP, close
21 quote, correct?

22 A. Correct.

23 Q. The basis, then, of this testimony does not
24 come from documents, correct?

25 A. It comes from my review of the documents

1 attached to Mr. Schallenberg's testimony.

2 Q. But as you just testified, nothing in those
3 documents explains the basis of Southwestern Bell's
4 disagreement over those issues with the Staff and
5 Public Counsel, correct?

6 A. Correct. But part of that statement talks
7 about over the duration of the plan -- excuse me. It
8 talks about the parties being able to resolve
9 disputes, which I think is evident from those
10 documents.

11 Q. True. That is a fact. They did resolve the
12 dispute, correct, but with respect to the statement in
13 the sentence on lines 7 through 9 to the effect that
14 Southwestern Bell Telephone never raised objections to
15 the Commission or interpreted the provisions of the
16 plan as UE has in this proceeding, that testimony
17 cannot be based on any written documents as we've
18 discussed, correct?

19 A. Well, I think it can because Southwestern
20 Bell's response, at least the only response that they
21 filed that I'm aware of, they didn't raise that. The
22 only item they raised was, I think, a timing of what
23 day to hold a certain proceeding on.

24 Q. So you're assuming that somehow they had a
25 duty in their filing to raise all their points of

1 disagreement with the Staff in that filing on the
2 question of setting the hearing schedule?

3 A. I don't think I'm assuming that.

4 Q. Well, then, in effect isn't that what you
5 just said?

6 A. No. What I told you was, they didn't do it
7 in those documents. You said there's no documents
8 that relate to that. And I'm saying in response --
9 Southwestern Bell's response, they didn't raise that
10 as a concern.

11 Q. They obviously disagreed with the Staff,
12 correct?

13 A. Yes.

14 Q. Okay. They didn't in those documents
15 articulate the basis for their disagreement, correct?

16 A. Correct.

17 Q. And they didn't in any other written
18 document, correct?

19 A. That I know of.

20 Q. Right. And the -- and that's because there
21 was a settlement, correct?

22 A. Well, again, they didn't articulate their
23 exact reason why there were disputes. Now, they
24 didn't articulate in that response that Staff couldn't
25 bring those adjustments forward.

1 Based on review of those documents, I think
2 you can see that Southwestern Bell felt that the Staff
3 had the right to bring those adjustments forward under
4 the agreement.

5 JUDGE REGISTER: Mr. Cynkar, I'm going to
6 interrupt here.

7 Let me ask you if you have knowledge as to
8 why Southwestern Bell did not file in writing their
9 objections to the Staff's proposal? Do you know why
10 Southwestern Bell did not file anything in writing?

11 THE WITNESS: Well, after reviewing the
12 documents, I believe it's because the issues were
13 done.

14 JUDGE REGISTER: That answers your question,
15 Mr. Cynkar.

16 MR. CYNKAR: Thank you. I appreciate the
17 assistance.

18 BY MR. CYNKAR:

19 Q. Now, if you turn to your deposition, on
20 pages 86 to 87, beginning on line 21 through page 87,
21 line 1, you say that your recollections with respect
22 to this question of Southwestern Bell not making the
23 argument that the Staff had no right to bring certain
24 adjustments forward was based on discussions you had
25 with the individuals who were involved, directly

1 involved with the monitoring process of Southwestern
2 Bell; isn't that true?

3 A. That's what I say there, yes.

4 Q. And that's accurate, correct?

5 A. Correct.

6 Q. And you did not participate in the
7 monitoring of Southwestern Bell personally, correct?

8 A. Correct.

9 Q. You did not participate in the settlement
10 negotiations with Southwestern Bell personally,
11 correct?

12 A. Correct.

13 MR. CYNKAR: Your Honor, I just have a
14 couple more points in cross, but obviously what we
15 just did goes to my objection. So I thought I'd hold
16 the argument on that until I've finished my cross. I
17 just have a couple more points. Is that acceptable?

18 JUDGE REGISTER: That's fine.

19 MR. CYNKAR: Thank you.

20 THE WITNESS: Let me ask, the settlement
21 negotiations you're talking about, settlement of the
22 issues in that sharing period?

23 BY MR. CYNKAR:

24 Q. Correct.

25 A. That's what you were talking about?

1 Q. Yes, sir.

2 A. That's correct.

3 Q. Is it fair to say that when you expense an
4 item, you are recognizing a cost faster and getting it
5 off your books faster?

6 A. Yes.

7 Q. And conversely, when you capitalize an item,
8 it goes into rate base and you're amortizing it, so
9 the recognition of that cost is slower, stretched out
10 over time; is that fair?

11 A. Yes.

12 Q. Okay. So would it be fair to say that when
13 you expense an item, it reduces the likelihood that
14 that cost will be around in future years; isn't that
15 true?

16 A. Yes.

17 Q. Okay. And so isn't it fair to say in the
18 context of potential restructuring of the industry
19 that expensing an item reduces or mitigates stranded
20 costs; isn't that true?

21 MR. DOTTHEIM: Objection on the grounds of
22 relevance.

23 MR. CYNKAR: Well, it's quite relevant, your
24 Honor, because on page 6 of his surrebuttal testimony,
25 at lines 12 to 14, Mr. Rackers says, this position of

1 UE, the expensing of items, is unfair and inequitable
2 particularly with respect to potential stranded costs
3 concerns that electric utilities may face in the
4 future if restructuring is implemented. So
5 Mr. Rackers has made it relevant.

6 JUDGE REGISTER: I'll overrule the
7 objection. Do you remember the question, Mr. Rackers?

8 THE WITNESS: I think so. And I'm not sure
9 I can answer with a yes or no.

10 JUDGE REGISTER: Can you restate the
11 question?

12 MR. CYNKAR: I think he said he remembered
13 the question, your Honor. I'd be happy to for you.

14 JUDGE REGISTER: If you would, please.

15 BY MR. CYNKAR:

16 Q. In light of the questions and answers that
17 we exchanged concerning expensing versus capitalizing,
18 I said isn't it true that expensing a cost mitigates
19 the possibility of future stranded costs?

20 A. Yes.

21 Q. And finally, you are not familiar with the
22 incentive compensation plans at Union Electric; is
23 that fair?

24 A. In their current form, yes.

25 Q. And so, as you testified in your deposition,

1 you did not know that the incentive plan for the
2 senior managers, a hundred senior managers of the
3 company are tied to price earnings ratios, correct?

4 A. Correct.

5 Q. And you also were not aware of any other
6 incentive compensation plans for lower level employees
7 at UE; is that fair?

8 A. I'm not aware of their specific terms.

9 MR. CYNKAR: Your Honor, that's all I have.
10 If you'd like me to proceed to my argument.

11 JUDGE REGISTER: That's just recross. Let's
12 hold your argument to the end of all the examinations.

13 MR. CYNKAR: That's fine.

14 JUDGE REGISTER: That way if there's
15 anything else that would change your opinion in your
16 argument, those other parties have the opportunity to
17 ask those questions.

18 That should conclude cross and we should now
19 go to questions from the Bench. Commissioner Drainer,
20 do you have any questions for this witness?

21 COMMISSIONER DRAINER: I just have a couple.

22 QUESTIONS BY COMMISSIONER DRAINER:

23 Q. Good afternoon, Mr. Rackers.

24 A. Good afternoon.

25 Q. Can I ask, at any time did you or your staff

1 members that you supervise indicate to UE or to each
2 other that you believed that UE was cooking the books?

3 A. No.

4 Q. Do you believe that UE has intentionally
5 manipulated its -- or changed any form of accounting
6 to cause excess expenses to lower their
7 overearnings --

8 A. No.

9 Q. -- during this phase?

10 A. Sorry. No.

11 Q. Can you tell me, were you involved in
12 discussions here at the PSC with staff members in
13 putting together this experimental plan?

14 A. Yes.

15 Q. And were you aware of or did you have access
16 to the initial January 27th, 1995 Exhibit 21, which
17 was a letter to Mr. Rademan?

18 A. Yes.

19 Q. Can you tell me why with respect to the
20 reconciliation procedure, which was Attachment B to
21 that document -- have you got that with you?

22 A. Yes.

23 Q. Okay. Attachment B, the reconciliation
24 procedure, there is a paragraph 3, why that was not
25 made a paragraph in the final document, in the final

1 Stipulation and Agreement?

2 A. I don't specifically know the answer to your
3 question. I'm thinking that perhaps it's covered in
4 another section, and I was going to check real quick.

5 MR. CYNKAR: Your Honor, if I could be of
6 assistance in terms of Commissioner Drainer's
7 question, in the final EARP on page 18, paragraph 8.

8 JUDGE REGISTER: You said final. You don't
9 mean the second one. You mean the first one, final
10 version?

11 MR. CYNKAR: We're talking about the drafts
12 here, yes. It's Exhibit 13. It's similar, but I
13 don't think -- it's not identical, but that's the
14 closest that I know of.

15 JUDGE REGISTER: What page was it?

16 MR. CYNKAR: Page 18.

17 COMMISSIONER DRAINER: So in the Stipulation
18 and Agreement, page 18, line 8?

19 MR. CYNKAR: That's correct. I don't know
20 if that helps you out, Mr. Rackers, but that's the
21 closest I know.

22 JUDGE REGISTER: Would you consider that to
23 be similar language, Mr. Rackers?

24 THE WITNESS: Yes. I would presume that it
25 was taken out of -- it was not included in the

1 reconciliation procedure because it's covered on
2 page 18.

3 JUDGE REGISTER: Thank you. Do you have any
4 other questions, Commissioner Drainer?

5 BY COMMISSIONER DRAINER:

6 Q. Okay. So you would believe that would have
7 covered it. Then let me get to the heart of this
8 initial area on the Stipulation and Agreement. Did
9 the Staff believe that the issues that have been left
10 to be resolved by this Commission were significant
11 enough and were outside of normal accounting methods
12 of costing that it had to be brought before the
13 Commission, that no way you're violating the
14 Stipulation and Agreement by bringing these issues to
15 us?

16 A. I missed the very part.

17 Q. That in no way do you believe that you are
18 violating the Stipulation and Agreement by bringing
19 these issues to us?

20 A. I would agree.

21 Q. And I'm sure you have heard discussion in
22 this hearing room with respect to the costing, and the
23 words new category are not in there, but there's a
24 costing category.

25 Do you believe that, to use Commissioner

1 Murray's example of if the Company were to buy a
2 plane, even though there's a transportation category,
3 do you believe that there are issues that are
4 significant enough in cost or in changes that even
5 though there's a category for them to be in that
6 rightfully so the Staff should bring that to the
7 Commission for analysis?

8 A. Yes, I do.

9 Q. On whether or not that was prudent, whatever
10 that cost is?

11 A. Well, Staff is not asserting that any of the
12 costs are imprudent.

13 Q. Okay. But --

14 A. But we --

15 Q. You would bring them to us because? Why
16 would you bring them to us, then?

17 A. Well, you were specifically talking about
18 new items. Because they are new items, we don't think
19 that they're appropriate for inclusion in the sharing
20 period.

21 Q. Well, I guess I wonder about the No. 8,
22 Roman Numeral viii where it talks about that the
23 Staff, OPC and other signatories have the right to
24 present to the Commission concerns over any category
25 of cost that has been included in UE's monitoring

1 results and has not been included previously in any
2 ratemaking proceeding.

3 And I want to be clear on how Staff views
4 that when they interpret that paragraph. Were you
5 here when we asked that question earlier of
6 Mr. Brandt?

7 A. Yes, I was. I think the term new has
8 evolved out of the language that when it talks about
9 that it has not been previously -- included previously
10 in any ratemaking proceeding. That's sort of where
11 the word new comes from. It doesn't specifically use
12 that word in Item 8.

13 Q. But here's my concern is, the way it is
14 written, when it talks about a cost that wasn't
15 previously in any ratemaking proceeding, in Staff's
16 opinion, in your opinion as an expert witness before
17 this Commission on numerous cases in accounting
18 matters, does a change in cost in a category, any
19 category cost where there's significant increase or
20 decrease, does that fall into this or is it exempt
21 from being looked at?

22 A. I think a significant change in an expense
23 could fall into No. 8. I think I address it in my
24 testimony. That would be in my surrebuttal, page 4,
25 line 4.

1 JUDGE REGISTER: Line what? I'm sorry.

2 THE WITNESS: Surrebuttal, page 4, line 4.

3 JUDGE REGISTER: Page 4, line 4?

4 THE WITNESS: Right. I talk about items
5 arising in situations/circumstances significantly
6 different than previously encountered by UE.

7 COMMISSIONER DRAINER: All right. Thank
8 you. I have no other questions.

9 JUDGE REGISTER: Thank you, Commissioner
10 Drainer. Commissioner Murray, do you have any
11 questions?

12 COMMISSIONER MURRAY: Yes, thank you.

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. I'd like to follow up on that just a little
15 bit. If there were a significant increase in the cost
16 of a specific category that had been considered
17 previously, would you be addressing it under 3 -- I
18 don't remember whether it's 2.f.viii or 3.f.viii.

19 JUDGE REGISTER: 3.f.viii. The small
20 letters are under 3.

21 BY COMMISSIONER MURRAY:

22 Q. Or would you look at it under the language
23 in the reconciliation section that says an allegation
24 of manipulation could include significant variations
25 in the level of expenses associated with any category

1 of cost where no reasonable explanation has been
2 provided?

3 A. I believe we would address the adjustments
4 that you spoke of in 3.f.vii.

5 Q. And 3.f.vii?

6 A. I'm sorry. Vii.

7 Q. Okay. Tell me there how you're addressing
8 the category that's been the subject of a rate
9 proceeding previously, a category of cost, and because
10 the costs have increased, nothing else but just the
11 level of the costs has increased, how are you
12 addressing that under 7?

13 A. Staff's interpretation of 7 gives parties
14 the right to bring issues which cannot be resolved by
15 them related to the operation or implementation of the
16 plan to the Commission for resolution.

17 Now, as an example, there's some very good
18 language in 7 that talks about a significant increase
19 in an expense for which a reasonable explanation has
20 not been provided.

21 Q. And that's talking about an allegation of
22 manipulation; is that correct?

23 A. I don't believe so.

24 Q. Well, read it to me. Tell me where it is,
25 and read the whole sentence.

1 A. Starts on the bottom of page 9. Yeah,
2 starts on the bottom of page 9.

3 Q. Read the sentence.

4 A. An allegation of manipulation could include
5 significant variation in the level of expenses
6 associated with any category of costs where no
7 reasonable explanation has been provided.

8 Q. And what were the first four words of that
9 sentence?

10 A. An allegation of manipulation.

11 Q. And you're saying this is not an allegation
12 of manipulation?

13 A. No.

14 Q. Okay. I have great trouble understanding
15 how you interpret language. How can you read that
16 sentence to not be an allegation of manipulation?

17 A. Because it said it could include.

18 Q. What could include?

19 A. An allegation of manipulation could include
20 this definition.

21 Q. All right.

22 A. It's giving an example of manipulation.
23 It's not -- I don't believe it's intended to be
24 all-inclusive.

25 Q. An allegation of manipulation could include.

1 So you're saying that anything else, any other
2 allegation could also include that? It doesn't have
3 to be an allegation of manipulation?

4 A. To include a significant variation in
5 expense, no.

6 Q. Okay. I don't want to -- as the little
7 humorous thing that was passed around earlier, I don't
8 want to beat a dead horse here. So I will move on.

9 You testified earlier during some
10 questioning that you didn't -- you were not
11 considering the mission of the Commission as we state
12 it now when you were negotiating the terms of this
13 agreement; is that correct?

14 A. Not as specifically enunciated on that
15 document.

16 Q. Okay. Would you agree that it's always been
17 the charge of this Commission to balance the interests
18 of all the constituencies?

19 A. Yes.

20 Q. Okay. Now, did you come at that negotiation
21 from that standpoint?

22 A. Yes, we did, or yes, I did.

23 Q. Okay. Under your interpretation of the
24 agreement, is there any kind of an adjustment that you
25 think it would be impermissible for Staff to make and

1 be in compliance with the agreement for Staff to
2 recommend?

3 A. Well, during cross-examination we discussed
4 an adjustment to the grid. I think that would be
5 inappropriate. And there's also some specific
6 language in the agreement that deals with depreciation
7 rates, and I think there are certain circumstances in
8 which you could propose an adjustment to those
9 depreciation rates.

10 But other than those two, I would view that
11 Staff has the right to bring any adjustment forward.

12 Q. And the reason that you stated it would not
13 be appropriate to bring an adjustment under the grid
14 was because language in the agreement specifically
15 states what will be used for determination of the
16 grid; is that correct?

17 A. Yes. And I don't view that the language
18 under item 7 or 8 or 2G in the reconciliation
19 procedure when it talks about bringing issues forward
20 envisions changing the grid.

21 Q. But you do think it envisions changing the
22 reconciliation?

23 A. Well, I don't view that I've changed the
24 reconciliation because 2G, which is part of the
25 reconciliation procedure, speaks to bringing issues

1 forward regarding the operation and implementation of
2 the plan.

3 Q. Okay. When this agreement was entered into,
4 did the Company give up anything in consideration of
5 agreeing to the terms it agreed to?

6 A. I believe it did give up something. I have
7 opinions about the value of what it gave up, but it
8 did give things up.

9 Q. Okay. And what did the other parties give
10 up under the terms of the agreement in consideration
11 of the Company giving up something?

12 A. Well, Staff gave up the right to file a
13 complaint case.

14 Q. Okay. What else?

15 A. Other parties to the agreement also gave up
16 that right.

17 Q. Anything else?

18 A. Let me check something real quick. That's
19 the only thing. And actually, that -- on page 5 of
20 the agreement, there is a clause which would allow
21 under certain circumstances the filing of a complaint.

22 Q. So the only thing Staff or any other party
23 gave up was the right to file a complaint case, and
24 that was only in certain circumstances; is that your
25 testimony?

1 A. Yes.

2 Q. Okay. What's the purpose of the Staff's
3 contention that the UE EARP is based upon the
4 Southwestern Bell plan? For what purpose are you
5 linking the two?

6 A. Well, the purpose that we're linking the two
7 is that Staff's experiences on how it operated, how it
8 monitored the Company under the Southwestern Bell plan
9 would guide them in terms of how it operated under
10 UE's plan. That would be its experience with
11 alternative regulation.

12 Q. And where is that stated in the UE EARP that
13 the Southwestern Bell plan monitoring procedures would
14 be used?

15 A. It doesn't state that. Many of the terms
16 and sentences in the two documents are not the exact
17 language but very similar.

18 Q. Okay. And are you claiming that more than
19 those phrases are applicable? You're saying that some
20 were taken from that or the language was very
21 similarly used. Are you claiming that there are other
22 portions of that Southwestern Bell document that were
23 incorporated into this agreement?

24 A. No. What I'm saying is, Staff's experiences
25 operating under that plan would guide it in terms of

1 operating under other alternative regulation plans.

2 Q. Guide it in what way?

3 A. Well, if Staff viewed certain terms in the
4 Southwestern Bell plan as similar if not the very same
5 as in the UE plan and it had experiences about how it
6 operated under the Bell plan, it would naturally
7 assume that it would operate the very same way under
8 the UE plan which has the same or similar terms and
9 agreements.

10 Q. Are you making an allegation that the
11 Company has manipulated or is the Staff making an
12 allegation of manipulation?

13 A. No.

14 COMMISSIONER MURRAY: That's all my
15 questions. Thank you.

16 JUDGE REGISTER: Commissioner Drainer?

17 FURTHER QUESTIONS BY COMMISSIONER DRAINER:

18 Q. I just want to follow up very quickly. At
19 the time the original plan was put in place, had Staff
20 been involved in doing an overearnings investigation
21 on UE?

22 A. Yes.

23 Q. And from the Staff's investigation, what was
24 their position on whether or not UE was overearning?

25 A. Staff believed based on its investigation

1 that UE was overearning.

2 Q. How much?

3 A. I think a document was presented to the
4 Commission that had something in the order of
5 60 million. There were iterations during the
6 investigation where the number was as high as
7 100 million.

8 Q. Okay. So if Staff, to get to the question
9 on what Staff or the other parties were giving up by
10 not having an overearnings case where if you start
11 with 100 million -- I don't know why this seems to
12 happen, but oftentimes it ends up being about half the
13 amount. Should the overearnings investigation have
14 shown that the Company was overearning 50 million, and
15 even then they would have on a going forward basis a
16 reduction to all customers at 50 million annually,
17 correct?

18 A. If Staff would have brought that complaint
19 and that would have been the Commission's finding,
20 then rates should have been reduced 50 million.

21 Q. How much since this plan has gone in effect
22 on an annual basis have the rates been reduced?

23 A. The rates have been reduced 30 million on an
24 annual basis during this plan. There have been
25 credits of 40 million the first year, approximately

1 17 the second year, and we're debating about the third
2 year.

3 Q. So if the final number that you're saying
4 Staff had was 60 million, and if you cut it in half at
5 30 million, by doing this plan and the Company not
6 having to go through an overearnings investigation,
7 it's probably been a wash to date on average. Do you
8 agree with that?

9 A. I'm not sure I followed your math there.
10 Sorry.

11 Q. Well, you're telling me that Staff started
12 off with 100 million, and I said, you know, these rate
13 cases tend to end up at what they start with. Then
14 you told me that you thought it got to 60 million.

15 So I'm saying if we'd gone into a rate case
16 at 60 million and if after the hearing the Commission
17 would have found for 30, that there would have had to
18 have been a \$30 million reduction, you now are telling
19 me that from this experimental plan there has been on
20 average a \$30 million reduction, and I'm saying, had
21 we had the rate case or this plan, it's been a wash.

22 A. Well, I --

23 Q. Do you agree with that or not?

24 A. No, I don't. I'm sorry. I may have misled
25 you when we were talking about the amount of rate

1 reduction.

2 Q. Okay.

3 A. There was a permanent rate reduction that
4 was part of this plan that took effect right away of
5 \$30 million. So if we would have done a complaint
6 proceeding and found overearnings of \$30 million
7 and -- I'm sorry -- or if we would have reduced rates
8 by \$30 million, that part would have been a wash. But
9 we've had credits on top of those rate reductions that
10 would have been in excess of 30.

11 Q. So in reality ratepayers have probably been
12 better off because of this plan?

13 A. Well, if that's all we would have found from
14 overearnings in a complaint case. Depending on what
15 the outcome of that case would have been and the
16 timing of when those rates would have taken effect, we
17 could have exceeded what the ratepayers realized under
18 this agreement.

19 COMMISSIONER DRAINER: Okay. No other
20 questions. Thank you.

21 JUDGE REGISTER: Commissioner Murray?

22 COMMISSIONER MURRAY: That's all.

23 JUDGE REGISTER: I just have a few
24 questions.

25 QUESTIONS BY JUDGE REGISTER:

1 Q. I think that I can clear up one point we
2 were trying to get to earlier. If you graphically --
3 I'll share my graph here. If you graphically identify
4 manipulations in one scope and significant variations
5 in another, it's my understanding your testimony was
6 earlier that manipulations could include significant
7 variations that are not reasonably explained?

8 A. Correct.

9 Q. But that there could be -- I think the part
10 we didn't get to was that there could be significant
11 variations outside that are not manipulations?

12 A. Correct.

13 Q. And so that this would be -- this graph
14 showing the two circles intersecting would be a fair
15 depiction of that graphically of your testimony in
16 relation to manipulations and significant variations?

17 A. Well, where the two intersect, I guess,
18 would be a graphic display of when you had significant
19 variations in expense and you asserted manipulation.

20 Q. So there are -- there could be significant
21 variations where there's no explanation that is not a
22 manipulation?

23 A. Correct.

24 Q. And is that what the Staff is alleging in
25 relation to some of the pending issues here in this

1 case?

2 A. That's correct.

3 Q. Now, one of the questions that Mr. Cynkar
4 was asking you was, I'm going to ask you to look at
5 your testimony, surrebuttal testimony, on page 7.
6 Actually, I'm going to ask you to look at page 6 and
7 7, but he was talking about page 7, line 7 through 10,
8 where you were talking about the Southwestern Bell
9 adjustments.

10 And he asked you about the statement where
11 it says over the duration of the SBIRE, Southwestern
12 Bell never raised objections to the Commission over
13 provisions of the plan as UE has in this proceeding.

14 And he asked you if there were any documents
15 that referenced that, referenced -- I'm sorry -- more
16 specifically Southwestern Bell's objections. And your
17 response was no, there were no documents.

18 Looking at page 6 where you corrected your
19 testimony this morning on line 21, based upon my own
20 and other Staff members' memories and the
21 documentation located by Staff, would it -- does your
22 statement on page 7, line 7 through 10, is that based
23 upon your or other person's -- other Staff members'
24 memories of the negotiations that you had with
25 Southwestern Bell that Southwestern Bell did not raise

1 any objections?

2 A. Well, with regard to the sharing period
3 that's discussed in the documents attached to
4 Mr. Schallenberg's testimony, I believe there are
5 documents that do show that Southwestern Bell did not
6 raise as an objection to the Staff's proposed expenses
7 the concerns that UE has raised here that they're not
8 appropriate, that they violate the agreement, that
9 they're not items that should be brought forward for
10 Commission resolution.

11 Q. And did you have anything else to add to
12 that testimony, to that statement?

13 A. Well, now, in addition to that, my
14 discussions with the individuals involved with the
15 monitoring of the Southwestern Bell agreement during
16 the time they were actually performing that also led
17 me to that conclusion.

18 Q. And that's that conclusion referring to the
19 statement you made on page 7, line 7 through 10?

20 A. Correct.

21 JUDGE REGISTER: I don't believe I have any
22 other questions of Mr. Rackers. Commissioner Murray,
23 anything else you have to ask before I return to
24 recross?

25 COMMISSIONER MURRAY: Just give me a second.

1 JUDGE REGISTER: Okay. Everybody else gets
2 it. We have to give it to you.

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Just a follow-up here, Mr. Rackers. Was it
5 your testimony that a party to the agreement can bring
6 to the Commission as a disputed item any category of
7 cost in which there has been what that party would
8 consider a significant increase for no other reason
9 than that the costs have gone up?

10 A. I would add to that, for which we haven't
11 received a reasonable explanation or an adequate
12 explanation.

13 Q. And where is that language --

14 A. Well --

15 Q. -- that requires a reasonable explanation in
16 the agreement?

17 A. Well, that language actually appears in the
18 agreement in 3.f.vii.

19 Q. Is that in the sentence that's speaking
20 about an allegation, what an allegation of
21 manipulation could include?

22 A. Could include, yes. Now, in my opinion, you
23 wouldn't have to meet that criteria that you had a
24 significant variation in expense for which there was
25 no reasonable explanation. You could still bring an

1 adjustment under item 7. It wouldn't have to meet
2 that specific criteria.

3 Q. And why wouldn't it if that's the criteria
4 that's set out in the language of the agreement?

5 A. Well, I believe that's an example of
6 criteria.

7 Q. For?

8 A. For item 7 for adjustments that can be
9 brought to the Commission. Item 7, the first six
10 lines talk about bringing issues that cannot be
11 resolved by them and which relate to the operation or
12 implementation of the plan to the Commission for
13 resolution.

14 Q. And the next sentence includes examples,
15 correct?

16 A. Correct.

17 Q. And what do those examples include?

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

23 Q. Okay. So would this be a disagreement about
24 the mechanics of calculating the monitoring report?

25 A. Well, again, it says --

1 Q. Yes or no?

2 A. About the mechanics? No.

3 Q. Would it be a disagreement about alleged
4 violations of the Stipulation and Agreement?

5 A. No.

6 Q. Would it be a disagreement about alleged
7 manipulations of earnings results?

8 A. No.

9 Q. Would it be a request for information that
10 wasn't previously maintained by UE?

11 A. No. I would probably have to change my
12 answer with regard to mergers and acquisition costs.
13 I think that's something that's sort of part of the
14 mechanics of the agreement with the second EARP, and I
15 believe Staff is interpreting those sections that deal
16 with that in a different manner than UE is.

17 Q. I'm sorry. We weren't talking about mergers
18 and acquisitions, were we? I thought we were talking
19 about any category of costs that had gone up where the
20 costs had risen.

21 A. Well, I'm sorry. I didn't realize you were
22 limiting the discussion to that.

23 Q. No. I'm limiting the discussion to looking
24 at a category of cost where the costs have increased
25 and for what purpose or under what circumstances you

1 can look at a category of cost. And I'm trying to get
2 an explanation from you since you say you're not
3 alleging manipulation.

4 A. Correct.

5 Q. I'm trying to figure out what you are
6 alleging. Simply that the costs have risen?

7 A. And that we haven't received a reasonable
8 explanation about why they should be included in the
9 third sharing period for the determination of credits.

10 Q. And you don't call that an allegation of
11 manipulation?

12 A. Staff has not alleged manipulation.

13 COMMISSIONER MURRAY: Thank you.

14 JUDGE REGISTER: We're concluded with
15 questions from the Bench. We return to recross, and
16 Public Counsel, Mr. Coffman?

17 MR. COFFMAN: Yes, thank you.

18 RECROSS-EXAMINATION BY MR. COFFMAN:

19 Q. Mr. Rackers, have you read pleadings filed
20 by my office regarding the interpretations of these
21 various stipulation provisions?

22 A. Yes, I have.

23 Q. Referring to that Roman Numeral -- paragraph
24 Roman Numeral vii, is it your understanding that
25 Public Counsel believes its issues to be -- fall under

1 that first example as to the mechanics of calculating
2 the monitoring report, or do you recall?

3 A. I don't specifically recall.

4 Q. With regard to the reconciliation procedure
5 that is attached to the stipulation, it includes a
6 list of various adjustments that should be reflected?

7 A. Yes.

8 Q. And is it your opinion that those
9 adjustments are all-inclusive?

10 A. No.

11 Q. In other words, you don't believe the
12 reconciliation procedure prohibits Staff from bringing
13 issues that were not contemplated by the
14 reconciliation procedure?

15 A. That's correct.

16 MR. COFFMAN: I think that's all I have.

17 JUDGE REGISTER: Thank you, Mr. Coffman.
18 Intervenors, Ms. Schmidt?

19 MR. SCHMIDT: No questions.

20 JUDGE REGISTER: Mr. Fulton?

21 MR. FULTON: No, your Honor.

22 JUDGE REGISTER: Mr. Johnson?

23 MR. JOHNSON: No questions.

24 JUDGE REGISTER: Ms. Forrest?

25 MS. FORREST: No questions.

1 JUDGE REGISTER: Mr. Dottheim?

2 MR. CYNKAR: Your Honor, actually --

3 JUDGE REGISTER: I'm sorry. Recross. Thank
4 you very much. I was losing my place here.
5 Mr. Cynkar?

6 MR. CYNKAR: I do have a few questions, and
7 then I don't know if your Honor would like me to then
8 make my arguments concerning the objections to the
9 testimony or wait until --

10 JUDGE REGISTER: Let's go all the way
11 around.

12 MR. CYNKAR: Okay. Great.

13 RE-CROSS-EXAMINATION BY MR. CYNKAR:

14 Q. Mr. Rackers, if you could -- the copy of
15 this transcript that I loaned to you from July of
16 1995, if you could turn to page 7.

17 Now, Commissioner Drainer's questions, I
18 believe she posed what would happen if the Commission
19 ordered essentially a \$50 million permanent rate
20 reduction. Did I understand that colloquy you had
21 with her correctly?

22 A. You said 50 million?

23 Q. Didn't she originally suggest a -- she said
24 that in terms of your overearnings calculation before
25 the EARP went into effect, you suggested that there

1 were documents that suggested overearnings between
2 60 and \$100 million, and she picked 50 as a middle
3 ground in the way rate proceedings tended to end out
4 and was trying to compare what would happen if the
5 Commission ordered \$50 million rate reduction compared
6 to what happened under the EARP; is that correct?

7 A. Okay.

8 Q. If I turn your attention first of all to
9 page 7 of this document, which is the transcript again
10 from July 1995, and particularly lines 14 to 15,
11 Mr. Dottheim is speaking and is addressing the
12 overearnings calculation that had been done by the
13 Staff, and he makes the point, quote, the Staff's
14 heightened earnings monitoring was less than a full
15 scale financial audit, close quote.

16 Is it fair to say that the overearnings
17 calculations you were talking about were, as
18 Mr. Dottheim says, less than a full-scale financial
19 audit?

20 A. That's correct.

21 Q. Okay. Now, if you turn the page to page 9,
22 in explaining why the Staff was in favor of the EARP,
23 if I can direct your attention to lines 8 to 12,
24 Mr. Dottheim says, quote, there's also from the
25 Staff's perspective the time value of money for a rate

1 reduction going into effect sooner than later, which
2 would be the case if the rate reduction, the excess
3 earnings situation had to be prosecuted, so to speak,
4 by the Staff, close quote.

5 Do you agree with that statement?

6 A. That would have to be considered, the time
7 value of money, yes.

8 Q. And if you go down the page further to the
9 paragraph on lines 16 through 21, Mr. Dottheim there
10 points out that even if a case were to be settled,
11 that normally doesn't happen until after a full-scale
12 financial audit has been completed.

13 Is that a correct understanding of that
14 paragraph?

15 A. Yes.

16 Q. And then he goes on to say, quote,
17 evidentiary hearings are almost always required, close
18 quote, correct?

19 A. Correct.

20 Q. So if, picking up on Commissioner Drainer's
21 questions, we were positing a \$50 million rate
22 reduction that the Commission wanted to put in place,
23 that would not happen in July of 1995, would it?
24 That's the beginning of the EARP, correct?

25 A. The rate decrease would not have taken

1 effect then?

2 Q. That's correct.

3 A. I believe that's likely, yes.

4 Q. Because as we've just discussed, there would
5 have to be a full-scale financial audit first,
6 correct?

7 A. Some work had already been done. So it
8 wouldn't be like we were starting from scratch.

9 Q. But it would require a full-scale financial
10 audit, correct?

11 A. Yes.

12 Q. And as Mr. Dottheim suggested, then to order
13 that kind of a rate decrease, you would have to have
14 evidentiary hearings, correct?

15 A. Well, I think your assumption is that
16 Staff's investigation would have to have culminated
17 into a complaint case that would have had to have been
18 ruled on by the Commission and for a rate reduction to
19 take effect.

20 Now, there have been situations particularly
21 with UE where we have put together a revenue
22 requirement and the Company has -- we've negotiated
23 and reduced rates.

24 Q. And do you recall that in recent years the
25 largest settlement involving a rate reduction for UE

1 was \$40 million? That was in 1993, by the way.

2 A. I'll accept that subject to check.

3 Q. And so let's for the sake of comparison

4 here, if you would, assume that UE would not agree to

5 a \$50 million rate reduction.

6 A. Okay.

7 Q. Okay. And with that assumption, you would

8 have to do a full-scale financial audit, correct,

9 complete what you'd already started?

10 A. Complete what we've already started.

11 Q. Have evidentiary proceedings, correct?

12 A. If UE didn't agree anywhere along the

13 process.

14 Q. Absolutely.

15 A. Yes.

16 Q. And there is an 11-month deadline for

17 proceedings under a complaint case; isn't that true?

18 A. I don't think that is true.

19 Q. So it could be longer?

20 A. Yes.

21 Q. Okay. So how long do you think it would

22 take to complete that full-scale financial audit if

23 you wanted to justify a \$50 million rate reduction?

24 A. Well, I think I made the statement that at

25 least one iteration of that review showed

1 \$100 million.

2 Q. Right.

3 A. So I would suggest that it probably wouldn't
4 take that long, a few months --

5 Q. So --

6 A. -- to get that in in order to support
7 50 million.

8 Q. So is 50 million a fairly large rate
9 reduction in your view?

10 A. Yes.

11 Q. And so you say it would take a couple months
12 to produce the data needed to support a significant
13 rate reduction like that; is that what you're saying?

14 A. Yes.

15 Q. Okay. And then after that, how long do you
16 think evidentiary proceedings would take?

17 A. Well, it depends on the schedule the Company
18 set up. If Staff is in a position to file testimony
19 in a couple of months, the Company would be given at
20 least a month to respond. Could have hearings.

21 Q. And don't you think it's fair to say with a
22 significant rate reduction the size of \$50 million,
23 the evidentiary proceedings would be fairly involved?

24 A. Well, we're concerned about time periods,
25 correct. They might only take a week.

1 Q. So it's your testimony that the evidentiary
2 proceedings for a \$50 million rate reduction would
3 only take a week?

4 A. What you're suggesting is how long a hearing
5 in front of the Commission would take?

6 Q. That's exactly right.

7 A. Potentially only a week, yes.

8 Q. Potentially only a week. And now I realize
9 you're not a lawyer, so feel free to say you have no
10 idea to this question. But if this Commission after
11 only a week's worth of hearings ordered a \$50 million
12 rate reduction and UE challenged that in court, do you
13 have any idea how long the court proceedings would
14 take after that?

15 A. No.

16 Q. Okay. So at the very least, with what you
17 said, you could be -- wouldn't it be fair to say that
18 you'd be eating up at least the remainder of 1995 in
19 proceedings before the Commission, correct?

20 A. Now, when you say proceedings before the
21 Commission, you're talking about the entire process
22 where the Commission issues an Order or just the
23 hearings?

24 Q. The Commission issues an Order, not
25 including court appeals and challenges to that.

1 A. I think it's fair to say that we would use
2 the rest of '95.

3 Q. Okay. And so I certainly don't mean to
4 suggest that I think that's accurate, but at the very
5 least your \$50 million rate reduction would not have
6 gone into effect by the beginning of 1996, correct?

7 A. Well, I thought we just used as an example
8 that it would -- the Commission would come out with
9 its Order and that the rates would take effect.

10 Q. Well, no. I'm talking about the Commission
11 coming out with its Order. When the rates take effect
12 is a totally different question. Let's assume that
13 that part of the process is completed and UE goes to
14 court.

15 Okay. So the rates are not -- I take it it
16 wouldn't be your testimony that, both because you're
17 not a lawyer and it would be speculation, that the
18 \$50 million rate reduction would go into effect even
19 if there was a challenge on appeal? There's no way
20 for you to know that, right?

21 A. I don't think I can answer your question,
22 but if you want me to assume that the Company took the
23 Commission to court and that the Commission had its
24 Order out by the end of '95, would the rates take
25 effect January 1? I would say no.

1 Q. You'd say no. Okay. So then you have the
2 unspecified time, possibly unknowable amount of time
3 for proceedings up the court system, correct?

4 A. Correct.

5 Q. Okay. And so is it fair to say that those
6 proceedings might stretch on through much of 1996
7 based on your experience?

8 A. I don't think I know the answer to your
9 question.

10 Q. Okay. But going back to your recognition
11 and Mr. Dottheim's recognition of the time value of
12 money here, that it's fair to say that by virtue of
13 the EARP, at the very least consumers by the end of
14 '96 have benefited to the total of \$104 million; is
15 that fair? To refresh your recollection, that's the
16 \$30 million permanent rate reduction, the up-front
17 \$30 million credit, plus the credit for the first
18 year.

19 A. You're saying by the end of '96?

20 Q. Yes, sir. I recognize, by the way, just so
21 there's no confusion, that the first sharing period
22 would have ended June 30, '96, but I'm just for common
23 sensical purposes saying by the end of '96 the
24 benefits of the first sharing period were \$104 million
25 to consumers; isn't that true?

1 A. I agree.

2 Q. Okay. Now, if I could ask you to turn your
3 attention to page 37 in the transcript that we have
4 before us, and I'm directing your attention to lines
5 12 through 25 on page 37 and through line 5 on page
6 38. And if I may, just so everyone knows what we're
7 looking at, if I may just briefly read this and then
8 I'll ask my final question.

9 JUDGE REGISTER: Is it relevant to the
10 recross?

11 MR. CYNKAR: It's relevant to exactly what
12 we're talking about in this whole question of
13 comparing alternative actions by the Commission.

14 BY MR. CYNKAR:

15 Q. Okay. Quote, and Chairman Mueller asked
16 this question: As far as the effective date, if we're
17 talking about a \$30 million rate reduction at the
18 present time in addition to a credit, and I just did
19 some back figuring as to how much it is per day, per
20 month, et cetera, I assume that we're talking about a
21 three point something million, 3.2 million a month as
22 we wait for, just based on the 30 million, that we're
23 going to have \$30 million rate reduction.

24 Mr. Dottheim: Yes.

25 Chairman Mueller: Okay. As soon as we

1 approve The order, ten days later new rates go into
2 effect. That's \$30 million a year that's not going to
3 be collected?

4 Mr. Dottheim: Correct.

5 Chairman Mueller: So for every day, for
6 every week?

7 Mr. Dottheim: 3.2 million per month. What
8 are we looking at?

9 Chairman Mueller: And that's just taking it
10 on a flat basis.

11 Now, my question is, do you agree with
12 Chairman Mueller's understanding of the benefit of the
13 EARP?

14 A. He's talking about considering the time
15 value of money of giving the \$30 million reduction up
16 front as opposed to having to wait some amount of time
17 to give the \$30 million reduction.

18 Q. Yes, sir.

19 A. And I agree that there is a time value of
20 money consideration.

21 MR. CYNKAR: Thank you. I have no further
22 questions, your Honor.

23 JUDGE REGISTER: That completes recross.

24 Mr. Dottheim?

25 MR. DOTTHEIM: One moment, please.

1 JUDGE REGISTER: Certainly.

2 REDIRECT EXAMINATION BY MR. DOTTHEIM:

3 Q. I'd like to direct you to your surrebuttal
4 testimony, Exhibit 2, I believe, and I'd like to
5 direct you to page 7, and I'd like to direct you in
6 particular to lines 7, 8 and 9.

7 Is your statement about Southwestern Bell
8 never raising objections to the Commission or
9 interpreting the provisions of the plan as UE is doing
10 in this proceeding, is that in part based upon Staff
11 adjustments that were proposed and accepted by
12 Southwestern Bell in the sharing period covered by the
13 plan?

14 A. Yes.

15 Q. I'd like to direct you to the first EARP,
16 page 9, and I'd like to direct you to 3.f.vii.

17 JUDGE REGISTER: That's Attachment A?

18 MR. DOTTHEIM: Yes, your Honor.

19 JUDGE REGISTER: I just was wondering.

20 BY MR. DOTTHEIM:

21 Q. And I'd like to direct you to the examples
22 that are listed in addition to the first sentence.
23 Would any of those examples either explicitly or
24 implicitly suggest that parties can seek changes in
25 the sharing grid?

1 MR. CYNKAR: Objection, leading.
2 JUDGE REGISTER: Do you have a response,
3 Mr. Dottheim?
4 MR. DOTTHEIM: Well, yes. I can rephrase
5 the question.
6 JUDGE REGISTER: Withdraw that question and
7 rephrase?
8 MR. DOTTHEIM: I withdraw the question.
9 JUDGE REGISTER: Thank you, Mr. Dottheim.
10 BY MR. DOTTHEIM:
11 Q. Mr. Rackers, are the examples listed in
12 3.f.vii as far as you understand an exhaustive list?
13 A. No.
14 Q. Do the examples that are set out in 3.f.vii
15 place any limitations on what the Staff can bring for
16 resolution to the Commission?
17 A. No.
18 MR. DOTTHEIM: One moment. I'm sorry.
19 JUDGE REGISTER: That's fine.
20 BY MR. DOTTHEIM:
21 Q. Mr. Rackers, I think you've been asked some
22 questions regarding the credits for years one and two
23 and this year and various scenarios if there were no
24 alternative regulation plan in place.
25 If there were no incentive reg-- excuse me.

1 If there were no alternative regulation plan in place
2 and the Staff performed an audit, would the Staff look
3 at all items?

4 A. Yes.

5 Q. Would that include return on common equity?

6 A. Yes, it would.

7 Q. Do you know what returns on common equity
8 the Staff has been proposing in the most recent rate
9 increase case or rate decrease cases?

10 A. Yes.

11 Q. And could you please identify what rate --
12 what returns on common equity the Staff has been
13 recommending?

14 A. In the -- I would say that Staff has been
15 recommending returns on equity of approximately
16 10 percent.

17 Q. With respect to questions that you received
18 on injuries and damages, the Staff's adjustment, is
19 the Staff's adjustment based solely on the increase in
20 the third sharing period?

21 A. No.

22 Q. Could you explain that?

23 A. A portion of Staff's adjustment relates to
24 the average balance of the injuries and damages
25 reserve during the first two years of the EARP in

1 comparison to the portion of the expense related to
2 restoring the reserve to an appropriate level.

3 Q. Is there anything in the experimental
4 alternative regulation plan that limits what Union
5 Electric Company can do with its earnings above
6 12.61 percent?

7 A. Would you ask me that again, please?

8 Q. Is there anything in the experimental
9 alternative regulation plan that limits -- that limits
10 Union Electric Company in what it can use its earnings
11 above 12.61 percent for, that part that is not flowed
12 to the ratepayers?

13 A. No.

14 Q. Could Union Electric Company use it to
15 mitigate asserted stranded costs?

16 A. Yes, it could.

17 Q. Could it use those earnings to write down
18 reported at-risk generating investment?

19 A. Yes, it could.

20 MR. DOTTHEIM: I have no further questions.

21 JUDGE REGISTER: Okay. Thank you,
22 Mr. Dottheim.

23 I believe that concludes the examination of
24 this witness on this issue. You may step down.

25 Mr. Rackers. Of course, you are subject to recall and

1 are still under oath.

2 (Witness excused.)

3 JUDGE REGISTER: Off the record.

4 (A recess was taken.)

5 JUDGE REGISTER: Go on the record.

6 Let the record reflect that Mr. Schallenberg
7 has come to the witness stand according to our list.

8 MR. DOTTHEIM: Your Honor, we still have to
9 the rule on the admissible sections of Mr. Rackers'
10 testimony. I don't know if you want to do that before
11 we swear Mr. Schallenberg.

12 JUDGE REGISTER: Yeah. I'm sorry,
13 Mr. Schallenberg. If you want to have a seat.

14 Thank you for reminding me about that.
15 Exhibit No. 2, you had an objection you wanted to
16 state, Mr. Cynkar?

17 MR. CYNKAR: Yes. Your Honor, I would
18 object to the admission of a portion of Mr. Rackers'
19 surrebuttal testimony going from line 16 on page 6
20 through line 11 on page 7.

21 I have two bases for my objection to this
22 testimony. One is that it is hearsay, and the second
23 is that it may also involve knowledge coming from
24 settlement negotiations.

25 Hearsay, the evidence shows that there's no

1 written documents that describe the position of
2 Southwestern Bell on any of those disagreements.
3 Mr. Rackers said that there might be other documents,
4 but they're not in evidence. So at best he would be
5 relying on hearsay statement from a document that's
6 not in evidence. So I believe this is objectionable
7 on that grounds.

8 In addition, your Honor, as the testimony
9 explains, the issues that are in -- that are
10 identified in the attachment to Mr. Schallenberg's
11 testimony ultimately resolved in the context of
12 settlement negotiations. Those are obviously
13 confidential, and indeed we have approached
14 Southwestern Bell, and they view them as confidential
15 and refuse to at all divulge the nature of those
16 discussions.

17 And so I think that insofar as any of these
18 oral representations that were hearsay to Mr. Rackers
19 come from knowledge from discussing face-to-face the
20 issues in that case as part of a settlement, it
21 breaches the confidentiality of settlement.

22 So on both grounds I think those portions of
23 Mr. Rackers' surrebuttal testimony is inadmissible.

24 JUDGE REGISTER: Let me clarify. You're not
25 claiming that it breaches the confidentiality of the

1 settlement that UE has had with Staff or any other
2 party in this case, but you're claiming that it
3 breaches the confidentiality of Southwestern Bell?

4 MR. CYNKAR: That's correct, your Honor.
5 It's not so much, frankly, claiming that we have a
6 right to protect their interests, but because they
7 view it as confidential, they are unwilling to
8 disclose their part of those conversations. So we are
9 disabled from challenging any representation of the
10 Staff concerning what those conversations might have
11 been.

12 I think that's basically unfair, and
13 consistent with the rules of evidence, I think that
14 would be inadmissible from that perspective. So both
15 of those points.

16 JUDGE REGISTER: Thank you. Mr. Dottheim?

17 MR. DOTTHEIM: Your Honor, I have no
18 knowledge, I've not been apprised, completely unaware
19 of any discussion that Union Electric Company has had
20 with Southwestern Bell.

21 Mr. Rackers in his deposition tracked
22 matters involving the Southwestern Bell alternative
23 regulation plan, even reviewing draft documents, which
24 he's testified to. He also indicated on redirect that
25 part of his knowledge is based upon, in addition to

1 the documents which are attached to Mr. Schallenberg's
2 testimony, objections that were not raised by
3 Southwestern Bell respecting other adjustments during
4 the course of that incentive regulation plan.

5 JUDGE REGISTER: Okay. Do any --
6 Mr. Coffman, do you have any contributions to this
7 objection response?

8 MR. COFFMAN: No.

9 JUDGE REGISTER: Intervenors, does anyone
10 else want to comment?

11 MR. FULTON: Judge, the only comment I would
12 make with regard to the point about the, quote,
13 confidential settlement negotiations, it's my
14 understanding of the rules of evidence in the State of
15 Missouri that rule, evidentiary rule deals solely with
16 negotiations between parties to a particular lawsuit.
17 That does not have anything to do with negotiations
18 between other unrelated parties that are not a part
19 and parcel of the lawsuit.

20 So I do not believe that that part of the
21 objection is well taken under the rules of evidence in
22 the State of Missouri.

23 MR. COFFMAN: I guess I would add one thing,
24 that I guess the -- it doesn't seem to me from the
25 statements that were identified for striking that

1 settlement discussions are mentioned. It appears that
2 Mr. Rackers is referring to the implementation, the
3 duration of the plan itself.

4 I'm not really sure exactly what settlement
5 discussions actually occurred, and certainly there's
6 some hearsay involved, but the Commission is a
7 sophisticated trier of fact that doesn't need to
8 necessarily concern itself with hearsay as far as
9 admitting evidence. Rather, it can consider that for
10 the weight of the evidence.

11 MR. CYNKAR: Could I very briefly respond?
12 To clarify as I did before, we're not claiming that
13 confidentiality of Southwestern Bell, but rather
14 because of that we do not have access to evidence
15 concerning those conversations. The written record
16 shows no arguments by Southwestern Bell on those
17 positions, except we know there were disagreements on
18 those issues.

19 And given that there were settlement
20 discussions and so forth, and I wouldn't be surprised
21 that Southwestern Bell expressed its point of view in
22 those discussions, we are unable to have access to
23 evidence to rebut the characterization that
24 Southwestern Bell's arguments included some things but
25 not other things.

1 And I think under any rules of evidence
2 anywhere that I know of, that the trier of fact has a
3 duty to apply the rules of evidence fairly and to do
4 substantial justice, and it is unjust to allow
5 evidence in that we do not have the ability to rebut.
6 And so I think that's a substantial ground for keeping
7 this out, along with hearsay.

8 JUDGE REGISTER: Hearing all the arguments,
9 the Commission will admit Exhibit No. 2 into the
10 record in its entirety.

11 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

12 JUDGE REGISTER: Is there anything further
13 on Exhibit No. 2?

14 MR. DOTTHEIM: No.

15 JUDGE REGISTER: Mr. Schallenberg, we're
16 back to swearing you in.

17 (Witness sworn.)

18 JUDGE REGISTER: Please spell your name for
19 court reporter.

20 THE WITNESS: It's Robert E. Schallenberg.
21 It's S-c-h-a-l-l-e-n-b-e-r-g.

22 JUDGE REGISTER: Mr. Dottheim?

23 MR. DOTTHEIM: Yes, thank you.

24 ROBERT E. SCHALLENBERG testified as follows:

25 DIRECT EXAMINATION BY MR. DOTTHEIM:

1 Q. Would you please state your name for the
2 record.

3 A. Robert E. Schallenberg.

4 Q. And would you please state your address and
5 place of employment.

6 A. Post Office Box 360, Jefferson City,
7 Missouri. I'm employed by the Missouri Public Service
8 Commission.

9 Q. Mr. Schallenberg, do you have a copy of what
10 has been marked as Exhibit 3, your surrebuttal
11 testimony --

12 A. Yes, I do.

13 Q. -- in this proceeding?

14 Do you have any corrections or changes to
15 make to Exhibit 3 at this time?

16 A. No, I do not.

17 Q. If I were to ask you the same questions that
18 are contained therein, would your answers today be the
19 same?

20 A. Yes, they would.

21 Q. Is the information contained therein true
22 and correct to the best of your knowledge and belief?

23 A. Yes, it is.

24 MR. DOTTHEIM: At this point I tender
25 Mr. Schallenberg for cross-examination and offer

1 Exhibit 3.

2 JUDGE REGISTER: Okay. Are there any
3 objections to the admission of Exhibit 3 into the
4 record?

5 MR. CYNKAR: Your Honor, I don't know if
6 it's necessary since the Commission has already ruled
7 on our Motion to Strike Mr. Schallenberg's testimony
8 whether I need to reiterate the hearsay objection. If
9 I need to, I do so for the record, and I understand
10 the ruling of the Commission.

11 JUDGE REGISTER: Any other comments at this
12 time?

13 MR. DOTTHEIM: Other than the Staff would
14 make the same arguments in response to renewed hearsay
15 arguments.

16 JUDGE REGISTER: We'll consider the Motion
17 to Strike and the responses that were made both by
18 OPC, Public Counsel and Staff previously ruled on and
19 renewed in its entirety, and the ruling would remain
20 the same, and Exhibit No. 3 will be admitted into the
21 record.

22 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

23 JUDGE REGISTER: Cross-examination, Public
24 Counsel. Mr. Coffman?

25 MR. COFFMAN: No questions.

1 JUDGE REGISTER: And the parties other than
2 Public Counsel and UE, Interveners, Ms. Schmidt?

3 MS. SCHMIDT: No questions.

4 MR. FULTON: No questions.

5 MR. JOHNSON: No questions.

6 JUDGE REGISTER: All right.

7 MS. SCHMIDT: Ms. Forrest had to leave to
8 teach a class. She asked me to let you know that she
9 didn't have any questions for Mr. Schallenberg.

10 JUDGE REGISTER: Thank you, Ms. Schmidt. So
11 we are ready for Union Electric's cross-examination.
12 Mr. Cynkar?

13 CROSS-EXAMINATION BY MR. CYNKAR:

14 Q. Hello again, Mr. Schallenberg. It is true,
15 isn't it, that you did not participate in the
16 negotiations over the first or second Union Electric
17 EARP, correct?

18 A. That's correct.

19 Q. You never spoke with Mr. Brandt about the
20 EARP, true?

21 A. True.

22 Q. And you also never spoke to anyone else
23 negotiating for Union Electric?

24 A. True.

25 Q. And your knowledge of who the players were

1 in those negotiations come from looking at the
2 documents that are now available, true?

3 A. Yes. From the documents from both sides,
4 yes. Excuse me. And the on-the-record presentation.
5 I've read the on-the-record presentation. There's
6 some mention of people in that as well.

7 Q. Okay. Now, you did not know presumably
8 until Mr. Brandt's testimony here that he personally
9 wrote most of that proposal of January 1995, true?

10 JUDGE REGISTER: Can you clarify which
11 proposal you're speaking of?

12 MR. CYNKAR: The January letter that is
13 Exhibit 21, I believe it is, your Honor.

14 JUDGE REGISTER: Thank you. Do you have a
15 copy of Exhibit No. 21, Mr. Schallenberg?

16 THE WITNESS: I have one.

17 MR. CYNKAR: I'm not going to refer to it.

18 JUDGE REGISTER: Can you answer the question
19 without reviewing the document?

20 THE WITNESS: I can answer the question that
21 I did not know how much of that document Mr. Brandt
22 wrote before he testified today.

23 BY MR. CYNKAR:

24 Q. Okay.

25 A. Now, if you asked me if he wrote most of it,

1 I didn't understand his testimony to be that he wrote
2 most of it.

3 Q. As you said in your deposition on page 22,
4 lines 5 to 6, at the time you viewed Mr. Brandt as,
5 quote, nothing more than a conveyer, close quote, of
6 UE's proposal; isn't that fair?

7 A. Yes.

8 Q. And you do not know what Union Electric
9 actually knew about the text of the Southwestern Bell
10 plan at the point of negotiations, do you?

11 A. The point you're talking about in January of
12 1995?

13 Q. The negotiations all the way up to but not
14 including the presentation of the EARP to the
15 Commission.

16 A. I do not know the state of Union Electric's
17 understanding of the Southwestern Bell incentive plan,
18 no.

19 Q. Now, in your testimony on page 6, line 1 to
20 3, you say, quote, the Staff made representations
21 prior to EARP's adoption that it intended to operate
22 the monitoring functions in a manner consistent with
23 its past practice under SBIRE, close quote. I read
24 that accurately?

25 A. I'm sorry. I'm still trying to find it.

1 Q. I'm sorry. Page 6, lines 1 to 3.

2 A. Yes.

3 Q. Okay. Now, do you recall that in your
4 deposition you identified those representations as the
5 ones being made by the Staff during the presentation
6 of the EARP in July of 1995; is that correct?

7 A. Yes. I think I mentioned the quote that's
8 on page 6.

9 Q. Exactly right. Now, if I could direct your
10 attention to page 7 of your testimony, starting at
11 line 28 on page 7, going through line 7 on page 8,
12 there's a reference to an internal Staff memorandum?

13 A. Yes.

14 Q. Do you see that?

15 A. Yes, I do.

16 Q. Okay. And do you recall that it was your
17 testimony in your deposition that that internal Staff
18 memo was not shared with Union Electric during the
19 negotiations of the EARP; is that true?

20 A. I'm not aware it was shared.

21 Q. So not to your knowledge?

22 A. Not to my knowledge.

23 Q. Okay. And it is your position that the
24 Staff can propose adjustments to the earnings
25 calculation in the reconciliation procedure that in

1 the Staff's judgment it feels are necessary; isn't
2 that true?

3 A. Yes. I think in my deposition I even
4 referred to, is it paragraph 6 of EARP that talks
5 about that the --

6 Q. Actually, I'm referring to page 50 of your
7 deposition, lines 13 through 17.

8 A. Okay. You said which lines?

9 Q. Lines 13 through 17.

10 JUDGE REGISTER: What page was that?

11 MR. CYNKAR: Page 50.

12 THE WITNESS: Oh, yes. In fact, that's what
13 I was just looking for.

14 BY MR. CYNKAR:

15 Q. That's why I told you that because I thought
16 you were.

17 A. There's a part of the -- of EARP that talks
18 about the Commission's rights.

19 Q. Excuse me. I just want to make sure, we're
20 in the deposition on page 50.

21 A. What I was referring to, the part of the
22 EARP that talks about that the Commission rights and
23 whatever the Staff believes that was necessary to make
24 sure that none of that took place --

25 Q. That's fine.

1 A. -- it would have the right to bring forward
2 to the Commission, yes.

3 Q. Now, it's also true, isn't it, that it's
4 your view that the corporate independence of Union
5 Electric, and by that I mean not being a subsidiary of
6 a larger national firm, is not really an important
7 consideration; isn't that true?

8 A. I don't remember it was defined as that way.
9 I didn't -- I think I said I didn't find the corporate
10 independence to be a major factor one way or the
11 other.

12 Q. Well, if I could direct your attention to
13 pages 33 and 34 of your deposition.

14 A. Yes.

15 Q. First on page 33, if I can direct yourself
16 -- your attention to page 16 and through line 20 --
17 I'm sorry. Line 16 through line 20 on page 33 where I
18 ask you this question, quote, now, from the
19 perspective of Missouri's, of the Missouri sort of
20 electric customer, is Union Electric's corporate
21 independence an important thing?

22 Answer: I would say no. And then you go on
23 and answer that, and we're talking about in terms of
24 the merger with CIPSCO. And on page 34, line 7
25 through line 15, I clarify and I say, quote, well, I'm

1 not sure CIPSCO is an example of losing corporate
2 independence. More what I was thinking of is if an
3 outside company acquired UE and sort of made it a
4 subsidiary of a larger national firm perhaps. That's
5 the kind of corporate independence or dependence I was
6 talking about. Answer: I would still say no.

7 Is that still accurate?

8 A. Yes.

9 MR. CYNKAR: I have no further questions,
10 your Honor.

11 JUDGE REGISTER: Questions from the Bench
12 then, Vice Chair Drainer?

13 QUESTIONS BY COMMISSIONER DRAINER:

14 Q. Good evening, Mr. Schallenberg.

15 A. Good evening.

16 Q. Mr. Schallenberg, with respect to the
17 Stipulation and Agreement, paragraph 6, that goes to
18 the Commission rights, that states that nothing in the
19 Stipulation and Agreement is intended to impinge or
20 restrict in any manner the exercise by which the
21 Commission to -- exercise the manner -- excuse me --
22 restrict in any manner the exercise by the Commission
23 of any statutory right, including the right of access
24 to information and any statutory obligation, period.

25 Since you just referenced that, would you

1 please tell me why you believe that that paragraph is
2 important and what it meant to you?

3 A. Yes. EARP, unlike the Southwestern Bell
4 agreement, did not have the Commission as a party.
5 The Commission was a party to a large portion of the
6 Southwestern Bell agreement, not the Staff, and so
7 that's why the monitoring and procedures were
8 something that were developed for the Commission, but
9 it was a Commission agreement, not a Staff agreement.

10 EARP is not an agreement of Southwestern
11 Bell. While it uses the language and the concepts, it
12 is agreement reached between the Staff and Public
13 Counsel and Union Electric. Therefore, while the
14 Commission has still the statutory requirements
15 obligation, it is dependent on its staff to bring to
16 it information that would be necessary to keep and
17 stay in compliance with paragraph 6.

18 So given the open-ended nature of the way
19 the monitoring agreement was set for Southwestern Bell
20 and applying it to the fact that now the Commission's
21 no longer a party, that would give a broad -- that
22 would give the catch-all or the safety net to the
23 Commission that the Staff will be under an obligation
24 to bring to the Commission anything it was aware of
25 that would be necessary for the Commission to stay in

1 compliance with paragraph 6.

2 Q. So let me be clear. Where we have
3 referenced some other sections in the Stipulation and
4 Agreement or the reconciliation, Section G and those
5 areas, that it is your -- is it your opinion that it
6 is this paragraph 6 that really is more to the point,
7 the catch-all as you would say that should there be an
8 issue that the Staff believes the Commission needs to
9 be aware of, that this allows you to bring it to us?

10 A. I think it's an obligation of the Staff. I
11 think it's an obligation of the Staff to do that, and
12 that the open-ended nature to the monitoring agreement
13 allows the Staff to do it. But I think it's an
14 obligation under paragraph 6 that we have to bring it
15 to your attention.

16 Q. And then how does this not in some way
17 become single-issue ratemaking when we look at just
18 certain areas and not the Company's entire revenues,
19 when you look at the computer costs or the territorial
20 agreements?

21 A. I can't tell you it doesn't have some of the
22 characteristics of single-issue ratemaking because you
23 do not have an examination that has the breadth and
24 scope of a rate case or complaint case.

25 So to the extent that it's limited in the

1 scope of the investigation and the issues that do come
2 out through these type of plans, it has the limited
3 nature of single-issue ratemaking other than the fact
4 that it's not limited to a single issue, but you do
5 not have the full examination that would take place in
6 a rate case or complaint case.

7 COMMISSIONER DRAINER: All right. I have no
8 other questions at this moment.

9 JUDGE REGISTER: Thank you. Commissioner
10 Murray, do you have any questions?

11 COMMISSIONER MURRAY: Thank you, yes.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Mr. Schallenberg, do you -- is it your
14 understanding that the parties to the agreement
15 entered into a binding agreement to abide by the terms
16 of that agreement?

17 A. Yes.

18 Q. Okay. And then is it also your
19 understanding that this Commission approved that
20 agreement?

21 A. Yes.

22 Q. Okay. So if you look at paragraph 6 on
23 page 17 of the Attachment A that Vice Chair Drainer
24 referenced a few moments ago, that nothing in this
25 Stipulation and Agreement is intended to impinge or

1 restrict in any manner the exercise by the Commission
2 of any statutory right, including the right of access
3 to information and any statutory obligation.

4 You would not have to look at that paragraph
5 to mean that the Commission could go back and change
6 an agreement that it had approved; is that correct?

7 A. I guess that's correct. I don't look at it
8 as that, from the Staff's perspective, the Commission
9 has to change an agreement. I look at it from the
10 Staff's perspective, that to the extent that I
11 encounter something during operation of the plan that
12 would cause the Commission to have -- be at odds with
13 its requirement under paragraph 6, I have to bring it
14 to the Commission's attention.

15 Q. When the parties agreed to the terms that
16 are in this agreement, the parties all agreed that if
17 they -- if everyone complied with those terms, that
18 that agreement would not be a detriment to the public;
19 is that right?

20 A. I know they agreed. I don't know that they
21 agreed to that detriment part, but they may have.

22 Q. Well, let me ask you this. Would Staff and
23 OPC have agreed to terms that they felt were
24 detrimental to the public interest?

25 A. I'd say -- at times I'd say I don't know

1 because there are times when that issue is not
2 considered by the Staff. I can't speak for Public
3 Counsel.

4 Q. Well, when Staff is working with parties to
5 come up with an agreement, what are you considering?

6 A. In agreements such as these, you would
7 consider what your options were.

8 Q. And whose interests would you be looking at?
9 Would you be considering the interests of the Company?

10 A. In part, yes.

11 Q. Would you be considering the interests of
12 the ratepayers?

13 A. Yes.

14 Q. And would you be considering the obligation
15 to balance the interests?

16 A. Yes.

17 Q. So would you enter into any agreement that
18 would be detrimental to any of the constituencies
19 involved, in your opinion?

20 A. The reason I say that is, detriment's like
21 beauty. It's like in the eye of one of those groups.
22 I can say I balance it. Somebody will say it's
23 detrimental. I don't know that we go through that
24 process to say that we believe that the whole -- the
25 product is a balanced product.

1 Q. Well, when you go through the process of
2 entering into a Stipulation and Agreement, do you
3 intend to be bound by the terms of the agreement?

4 A. Yes, I would say the Staff views that it's
5 always bound by any agreement it entered into.

6 Q. So you would want to be careful that the
7 terms of that agreement didn't require you to do
8 something that was not in the public interest,
9 wouldn't you?

10 A. If that was one of the goals, yes.

11 Q. And if there were Stipulations and
12 Agreements entered into and approved by the
13 Commission, would those agreements have any value if
14 the parties couldn't rely on the terms of the
15 agreement?

16 A. They would have a reduced value. I don't
17 know. I wouldn't say they have no, but they would
18 have a reduced value.

19 Q. Significantly reduced, would it not be?

20 A. Well, it would depend on what the residual
21 value is. I mean --

22 Q. If the -- let me follow that up. If this
23 Commission were to approve agreements and then decide
24 that really, because one party may have benefited a
25 little more than was anticipated in the beginning,

1 that the Commission would make -- would order changes
2 in the way the agreement was carried out, changes that
3 were not in the original terms, would any other
4 parties in the future be able to look to the
5 Commission and think there would be any value in
6 entering into Stipulations and Agreements and getting
7 them approved by the Commission?

8 I mean, what good -- what value would
9 approval by the Commission be to parties in terms of
10 relying on expectations, relying on there being no
11 surprises, that kind of thing? Would that diminish
12 the value of Stipulations and Agreements, in your
13 opinion, if the Commission could just decide to change
14 them because they didn't like the outcome?

15 A. It would -- it would cause the parties to
16 enter into agreements in a different manner to the
17 extent that they believe the Commission would change
18 the agreement within its terms. I'm not aware of that
19 ever happening, but if that happened, I know the Staff
20 would look at agreements differently, but it would
21 adjust to it. I'm assuming other parties would as
22 well.

23 Q. But if you knew that the terms of the
24 agreement didn't mean anything in terms of whether it
25 would -- whether you would really have to abide by

1 them, what value would the agreement be?

2 A. I guess it depends on the relationship of
3 the parties. I'm aware that the Staff has operated
4 under an agreement that it was told it no longer had
5 to use, but it did abide to the terms of the agreement
6 even though it was told it was no longer effective,
7 and I know that was done for several years.

8 So in that case, it was still valuable to
9 the parties because the parties still operated under
10 it even though they didn't need to. So I guess the
11 answer to your question, and I'm not trying -- would
12 be it would depend on the way the parties acted.

13 Q. Well, the parties under an agreement can
14 mutually agree to change the terms of the agreement,
15 correct?

16 A. Yes.

17 Q. And that would not be a violation or a
18 breach of the agreement in your opinion, right?

19 A. Yes. Yes.

20 Q. But that's a mutual agreement to act under
21 changed terms?

22 A. Right.

23 Q. On page 12 of your rebuttal testimony -- or
24 surrebuttal testimony, at lines 24 through 27, you
25 speak about the Company's interpretation, and you say,

1 this restrictive interpretation centers around the
2 Company's assertion that there was an agreement
3 between Staff, OPC and UE regarding accounting
4 methodologies or practices, underlined, EARP.

5 Are you saying that there was not agreement
6 between the parties regarding accounting methodologies
7 and practices?

8 A. Yes.

9 Q. And why would the parties leave out such a
10 critical part of implementation of the agreement?

11 A. I can't speak to why -- I can speak to why
12 they did it is they used the Bell agreement, and it
13 didn't exist in Bell either.

14 Q. And what evidence do you have that they used
15 the Bell agreement?

16 A. The comparison of the monitoring procedures
17 from Bell to what was used in EARP, and there was no
18 underlying agreement as to accounting methodologies
19 and practices.

20 And two is, there is no specific mention in
21 EARP that there is such an agreement. And then three
22 is there's that no acquiescence paragraph in EARP that
23 says people didn't agree to underlying principles.
24 It's in paragraph 8 in EARP.

25 JUDGE REGISTER: For the record,

1 Mr. Schallenberg, you're referring to page 18 of 23 of
2 Exhibit No. 13?

3 THE WITNESS: I have a different copy, but
4 it's whatever paragraph 6 was for the Commission
5 rights, paragraph 8 is no acquiescence, which is also in
6 Bell.

7 JUDGE REGISTER: In the Stipulation and
8 Agreement?

9 THE WITNESS: Right. In fact, I have a
10 notation at the bottom of mine, says Attachment A,
11 page 18 to 23.

12 JUDGE REGISTER: Thanks.

13 THE WITNESS: Now, I guess I would add that
14 the last thing is, I'm aware that Mr. Dottheim on
15 behalf of the Staff represented to the Commission at
16 the presentation that there were no side agreements
17 that weren't contained within the document. So that
18 would be the basis for my answer.

19 BY COMMISSIONER MURRAY:

20 Q. So there were no side agreements that
21 weren't contained in the agreement. Where is the
22 reliance upon Southwestern Bell's monitoring
23 procedures contained in the agreement?

24 A. It's -- I get it from the representation
25 made by Mr. Dottheim that Mr. --

1 Q. No. I'm talking about in the agreement.

2 A. In the agreement is the similar paragraphs
3 from Southwestern Bell.

4 Q. Are you saying that -- okay. Let's go to
5 those similar paragraphs. Let's go to the first one,
6 if you can recall which one you would come to first.

7 A. If you go to using EARP, first paragraph
8 would be under -- it's 3.f. Roman Numeral ii.

9 JUDGE REGISTER: Do you have a page number
10 on the bottom?

11 THE WITNESS: I'm sorry. It's Attachment A,
12 page 8 of 23, and it's got those Roman Numeral ii.

13 JUDGE REGISTER: Thank you,
14 Mr. Schallenberg.

15 BY COMMISSIONER MURRAY:

16 Q. Would you read that one.

17 A. It says, Staff, OPC, UE have conferred and
18 determined what items based on prior Commission Orders
19 should be excluded from the calculation of UE's return
20 on equity. These items are identified in Attachment C.

21 Q. Okay. And those are set out in Attachment C
22 in this agreement?

23 A. Right. That's the same format that Bell
24 used.

25 Q. Okay. And you are alleging that the Company

1 is not complying with that Section 2, that there's any
2 disagreement that this was included?

3 A. No. I'm not the one that's alleging that
4 someone's violating this agreement.

5 Q. Okay. Are you -- is everyone in agreement
6 that Section 3.f.ii is included in the terms of the
7 agreement and that the parties have to abide by it?

8 A. I can't speak for everybody.

9 Q. Okay. What's the next section that --

10 A. If you go to Attachment A, page 9 of 23, in
11 fact, both what is called -- what's listed as 6 and 7,
12 both can be traced back to Bell.

13 Q. Okay. And there's specific language in
14 there about finding evidence that operating results
15 have been manipulated in 6, is that right, and that
16 Staff can -- Staff, OPC or other signatories may file
17 a complaint requesting an investigation?

18 And then in 7, UE, Staff and OPC and other
19 signatories reserve the right to bring issues which
20 cannot be resolved by them related to the operation or
21 implementation of the plan. And we get into the fact
22 that this is -- there were some examples that are
23 nonexclusive that are set out here, and then further
24 on the language about what can be included in an
25 allegation of manipulation.

1 Okay. Now, tell me this. Is this the
2 section that you are claiming that you are relying
3 upon to bring the adjustments that you're
4 recommending?

5 A. Now, the specific adjustments, they've gone
6 through different parts. The different Staff
7 witnesses have gone through different parts of the
8 agreement that they used. It would be one of the
9 paragraphs that would allow the Staff to bring the
10 issues to you.

11 Q. And if this language does allow that, it's
12 not necessary to go back to the Southwestern Bell
13 agreement, is it, to say that you were relying on that
14 agreement? You're actually relying on the language of
15 this agreement; is that correct?

16 A. That's true.

17 Q. So is there any place in this -- any place
18 that you are relying upon language that appears in the
19 Southwestern Bell agreement that does not appear in
20 this agreement?

21 A. You mean -- you're asking in terms of
22 supporting the adjustments to Staff?

23 Q. Yes.

24 A. No. No.

25 Q. Okay. So I'm still having trouble

1 understanding why it is that Staff is trying to tie
2 this case to the Southwestern Bell case rather than
3 just use the specific language in this agreement.

4 A. And I would say that that -- the
5 Southwestern Bell agreement is used based on, at the
6 time I filed the testimony, the belief that UE was
7 asserting that we had had an agreement, a meeting of
8 the minds to adopt UE's interpretation of these
9 paragraphs.

10 And the reason Southwestern Bell was used is
11 to show that consistently throughout the negotiation
12 of EARP, up until the presentation, Staff's frame of
13 mind of these paragraphs was from the Southwestern
14 Bell experience. That doesn't mean it was UE's, but
15 it was definitely Staff's.

16 And for UE to assert that we had accepted
17 another interpretation that would be different than
18 the UE would not be true.

19 Q. So you're saying there was not a meeting of
20 the minds as to the agreement regarding accounting
21 methodologies or practices underlying EARP at the time
22 that it was entered into?

23 A. Yes.

24 Q. Now, Section 8, 3.f.viii, was that also
25 language that was taken from similar language in the

1 Southwestern Bell agreement?

2 A. Yes. You're talking about page 10 of 23?

3 Q. Yes.

4 A. Yes.

5 Q. And is it Staff's position that any category
6 of cost, whether or not it has been previously
7 included in a ratemaking proceeding, can be brought in
8 for an adjustment simply on the basis that the cost
9 has increased?

10 A. I would say no.

11 Q. Under what circumstances can -- does the
12 agreement provide for an adjustment to be made to a
13 category of cost?

14 A. It would be that you'd have to have a
15 concern about that category. In fact, it could be a
16 decrease.

17 Q. And is there anything in the agreement that
18 could help the parties know what level of concern or
19 what is -- you know, what is a reasonable concern?
20 Can somebody just say, oh, I don't like the No. 5, so
21 I'm concerned? I mean, is there a standard? How can
22 you determine what's a reasonable concern under the
23 terms of the agreement?

24 A. I guess to answer your question, there is no
25 standard definition to determine what is a genuine

1 concern by one party or a concern that's not genuine.
2 That issue was one that has to be resolved between the
3 parties as to how they operate under this agreement,
4 and to the extent they can't resolve it, then it goes
5 to you.

6 Q. So any concern, whether it's reasonable or
7 logical or has any basis in fact, can be the subject
8 of a proceeding before the Commission under the terms
9 of the agreement?

10 A. Assuming that the parties don't resolve it,
11 is that --

12 Q. Uh-huh.

13 A. Yes, and assuming the Commission hears it,
14 chooses to hear it.

15 Q. Why do you think -- scratch that.

16 COMMISSIONER MURRAY: I think that's all my
17 questions. Thank you.

18 JUDGE REGISTER: Vice Chair Drainer, did you
19 have any questions?

20 FURTHER QUESTIONS BY COMMISSIONER DRAINER:

21 Q. I just want to finish up with a couple
22 things with respect to the questions about
23 Southwestern Bell and why Staff is using the
24 comparison with the Southwestern Bell plan, and I want
25 you to tell me if you agree with this.

1 It seems to me that what you're really
2 saying is it's like the parent that has a teenager
3 that you let them drive a car, but you say, here's the
4 agreement. You drive the car. You pay for the gas.
5 So little SWBT drives the car, and every time SWBT
6 finishes driving the car for the evening, fills it
7 back up with gas and life goes on. And the one time
8 SWBT doesn't do it, I tell them in the morning you've
9 got to go fill up the car. Oh, yeah. I'll go do it
10 now. So the experience is that worked.

11 Teenager No. 2 comes along, same agreement,
12 and all of a sudden I get my Shell charge card and I
13 find that this agreement they've taken -- expensed it
14 different and charged it all on my charge card and
15 said -- all I'm seeing is that it's being filled up
16 with gas, and then I find out that child No. 2 charged
17 it and then we have to get into the dispute of, well,
18 now you owe me \$50 and they don't have \$50 today. And
19 a lot of us have teenagers, so we know how that goes.

20 And the experience was different, and so we
21 say, well, why -- why did you assume it would work?
22 Well, I assumed it would work because it worked the
23 first time so well, and now that same agreement isn't
24 working so well.

25 Is that what I'm dealing with here is when

1 Staff tries to tell us the experiences, its experience
2 of Bell and how that plan worked and that this isn't
3 working the same way? Is that what we're dealing with
4 the comparison of?

5 A. I would say yes. I mean, we -- the
6 agreement in Bell when structured had a lot of
7 viability to it. I remember that very clearly. In
8 hindsight, though, the Bell monitoring worked beyond,
9 I think, anybody's expectations, especially given the
10 adversarial nature that existed between the Staff and
11 Southwestern Bell.

12 I think the expectation for UE probably was
13 that, if it worked for Bell it will work for UE. And
14 we never got to the stage with UE, but that's just one
15 of the risks people take.

16 Q. But that's why there's this comparison,
17 because there was this expectation and you don't feel
18 that that's been met with UE?

19 A. Well, I think that's -- that's what
20 happened. Now, the reason the comparison was made is
21 the assertion that the Staff made an agreement with UE
22 that it's now going back on, and the Staff never made
23 that agreement. I cannot find any evidence that the
24 Staff ever agreed to the interpretation that UE is
25 espousing in this hearing.

1 Now, you may interpret that you want the
2 Staff to operate from this day forward under that, and
3 we will, but I cannot find -- and the reason I use
4 that is we've been operating under this agreement
5 somewhat the way we operated under Southwestern Bell.

6 Q. Okay. And then a final question. Let me
7 ask you the same final question I had asked the chief
8 financial officer for UE. As division director over
9 the case, is there anything here that hasn't been
10 asked that you feel you need to clarify or make a
11 statement on? And don't go to the meaning of life.
12 Just short answer would be nice.

13 A. I don't have anything I could think of right
14 now I need to add.

15 COMMISSIONER DRAINER: Thank you very much.
16 I appreciate your answers.

17 JUDGE REGISTER: Anything further,
18 Commissioner Murray?

19 COMMISSIONER MURRAY: I don't think so.

20 JUDGE REGISTER: Okay. Since the
21 examination from the Bench is completed, we're back to
22 recross, and so Public Counsel, Mr. Coffman?

23 MR. COFFMAN: Yeah, just one question.

24 RE-CROSS-EXAMINATION BY MR. COFFMAN:

25 Q. Mr. Schallenberg, you were asked some

1 questions about, I guess, whose interest you -- or
2 whose perspective you looked out for when you were
3 negotiating or analyzing the case. Are you aware of
4 the court cases which identify the public interest as
5 the primary concern of public utility regulation?

6 A. No.

7 Q. Okay. Never mind, then.

8 MR. COFFMAN: Thank you.

9 JUDGE REGISTER: Intervenors, Ms. Schmidt?

10 MS. SCHMIDT: No questions.

11 JUDGE REGISTER: Mr. Fulton?

12 MR. FULTON: No questions.

13 JUDGE REGISTER: Mr. Johnson?

14 MR. JOHNSON: No questions.

15 JUDGE REGISTER: Okay. UE, Mr. Cynkar?

16 MR. CYNKAR: Just a couple.

17 RE-CROSS-EXAMINATION BY MR. CYNKAR:

18 Q. Actually taking a page from Mr. Coffman's
19 book, treading where he feared to tread, I just want
20 to clear up a couple things you said at the beginning
21 of your testimony.

22 And you testified that in your view the
23 Commission was not a party to this agreement. By
24 saying that, you weren't attempting to offer testimony
25 that, regardless of how you characterize the

1 Commission, this agreement might impose binding legal
2 obligations on you, were you?

3 A. No. I meant that the Commission entered
4 into the agreement with Southwestern Bell. The
5 Commissioners entered into the Southwestern Bell
6 agreement. They did not have that role in EARP.
7 That's what I meant by saying in Southwestern Bell
8 when you see a signature, that was on their behalf.
9 In EARP when you see the signature, it's on the
10 Staff's behalf. That's what I meant by they were not
11 a party.

12 Q. So you were not attempting to offer any
13 opinion concerning the legal consequences of all this?

14 A. When I said party, I meant it to be what I
15 just told you it meant. Whether that's the legal
16 interpretation or not, I don't know.

17 MR. CYNKAR: That's all I have, your Honor.

18 JUDGE REGISTER: Thank you, Mr. Cynkar.

19 Okay. So we are then on to redirect. Mr. Dottheim?

20 MR. DOTTHEIM: Yes, I have a few questions.

21 REDIRECT EXAMINATION BY MR. DOTTHEIM:

22 Q. Mr. Schallenberg, Mr. Cynkar asked you some
23 questions referring you to your deposition about the
24 corporate independence of Union Electric Company. Can
25 I refer you to your deposition transcript?

1 A. I think he said on 34 and 33?

2 Q. 33 and 34.

3 A. Yes.

4 Q. Where Mr. Cynkar asked you the question not
5 from the perspective of Missouri, but the Missouri
6 sort of electric customer, is Union Electric's
7 corporate independence an important thing? And you
8 answered, I would say no. Mr. Cynkar asked you why
9 not, and you responded. Could you please provide your
10 explanation as you gave it to Mr. Cynkar?

11 A. What I said then and what I believe is I see
12 that the customer would look at the service, the
13 quality of service and the rate of service as being
14 important. The corporate entity isn't a key element.
15 In fact, we changed the corporate entity for UE's
16 customers when we allowed UE to be merged to CIPSCO
17 and never noticed a customer, other than name change
18 confusion, to find that to be significant.

19 Q. And you provided further explanation in the
20 deposition on page 34?

21 A. When he asked me about the national firm, is
22 that the one you're referring to?

23 Q. Yes. Correct. Would you please provide
24 your response? Mr. Cynkar said, Well, I'm not sure
25 CIPSCO is an example of losing corporate independence.

1 More what I was thinking of is that -- is if an
2 outside company acquired UE and sort of made it a
3 subsidiary of a larger national firm perhaps. That's
4 the kind of corporate independence or dependence I was
5 talking about, and you responded.

6 A. I would say -- I would still say no. We've
7 had examples -- we haven't had it with UE, but we've
8 had examples where we've lost, and I said I guess my
9 corporate entity. We lose the corporate management
10 and get a new set of managers. We've had those
11 changes in other utilities.

12 Now that I say that, the reason I make my
13 answer is that we have one corporate change like that
14 where the resulting quality of service declined. I
15 think that was a negative, but that's not necessarily
16 a product of the corporate entity, the management
17 being there. It was just a result of the new
18 corporate entity. Entity I just added.

19 Q. Do you have anything to add to those
20 responses?

21 A. No.

22 Q. In regards to some questions respecting your
23 role, if any, in the Union Electric Company first
24 EARP, did you review any Staff documents other than
25 the one that you excerpted in your surrebuttal

1 testimony? Were you routed internal Staff documents
2 dealing with the negotiations with Union Electric
3 Company?

4 A. Are you asking me in preparation of my
5 testimony or are you asking me at the time when EARP
6 was negotiated?

7 Q. At the time that the EARP was negotiated?

8 A. I did review some documents at the time that
9 EARP was negotiated.

10 Q. Are you shown as being cc'd on certain
11 internal Staff documents dealing with the negotiation
12 with Union Electric Company?

13 A. Yes.

14 Q. Were you approached by anyone internally at
15 the time of the negotiations who sought your opinion
16 regarding those negotiations?

17 A. Yes.

18 Q. Did Mr. Rademan ever ask any questions in
19 relation to the negotiations with Union Electric
20 Company on the EARP?

21 A. Yes.

22 Q. Your surrebuttal testimony contains a direct
23 reference to Southwestern Bell at the time of the --
24 at the time of the on-the-record presentation
25 respecting the Union Electric Company EARP?

1 A. If you're referring to page 6 --

2 Q. Yes.

3 A. -- it does.

4 Q. Could you summarize what that excerpt is?

5 MR. CYNKAR: Your Honor, I object.

6 Mr. Schallenberg's testimony is already in the record,
7 so that excerpt is in the record. I don't know what
8 we gain by having it summarized.

9 JUDGE REGISTER: Mr. Dottheim, do you have a
10 response?

11 MR. DOTTHEIM: Well, I think there was a
12 question relating to, one, in particular what
13 knowledge did Union Electric Company have respecting
14 the Staff using the Southwestern Bell incentive
15 alternative regulation plan as a reference point, and
16 that is the reason for my asking Mr. Schallenberg to
17 refer to his surrebuttal testimony and the excerpt
18 because there is a direct reference that was made at
19 the on-the-record presentation.

20 JUDGE REGISTER: Okay. Refresh me. Where
21 are you asking Mr. Schallenberg to look to?

22 MR. DOTTHEIM: It is on page 6 of his
23 surrebuttal testimony.

24 JUDGE REGISTER: Beginning on line 18?

25 MR. DOTTHEIM: Line 18 and continuing -- and

1 continuing to the next page.

2 JUDGE REGISTER: Okay. I'm going to sustain
3 the objection. What I prefer to have is, if you want
4 him to look to the testimony that's already in the
5 prefiled, make reference to that, and then ask your
6 next question, not necessarily to read that into the
7 record. It is already in the record.

8 MR. DOTTHEIM: Okay. Fine. Thank you.

9 JUDGE REGISTER: You're at the location he
10 wanted; is that right?

11 THE WITNESS: Yes, I am.

12 JUDGE REGISTER: Go ahead, Mr. Dottheim.

13 BY MR. DOTTHEIM:

14 Q. Again, there was direct reference at the
15 on-the-record presentation to the Southwestern Bell
16 incentive regulation plan?

17 A. I would say yes, there was direct reference
18 and representation made.

19 Q. And the representations made were?

20 A. That the monitoring of EARP would be similar
21 to the monitoring that took place under Southwestern
22 Bell. Now, when I said representations, they were
23 Staff representations. I'm not alluding that --

24 Q. And in particular the representation was
25 made by who?

1 A. By you.

2 Q. Mr. Schallenberg, do you believe that the
3 Staff by its conduct in the review, the monitoring of
4 the third year of the first EARP is advocating a
5 change in the terms?

6 MR. CYNKAR: Objection, leading.

7 JUDGE REGISTER: Your response?

8 MR. DOTTHEIM: And my response is I'll
9 rephrase the question. I'll withdraw it.

10 JUDGE REGISTER: Thank you, Mr. Dottheim.
11 Please proceed.

12 BY MR. DOTTHEIM:

13 Q. Mr. Schallenberg, how would you characterize
14 the basic dispute between Union Electric Company and
15 the Staff in the third year of the first experimental
16 alternative regulation plan?

17 A. I guess I would say in regards to this issue
18 or all the issues?

19 Q. In regards to all the issues?

20 A. Well, there's one issue that's about the
21 rights and what the terms and conditions of EARP allow
22 the parties to do, which is this issue that we're
23 going to finish up sometime today. Then there's the
24 validity as to the separate adjustments that will
25 start, I assume tomorrow. I don't recall the number,

1 five, six adjustments that still remain. That's my
2 understanding.

3 Q. Are the disputes ones of interpretation?

4 A. I understand in the separate adjustments
5 there may be an interpretation issue on the one about
6 the merger. I heard Mr. Rackers discuss this issue as
7 one of interpretation. I'm not sure this is an issue
8 of interpretation, but --

9 Q. Is the dispute one to the proper application
10 of the term?

11 MR. CYNKAR: Objection, leading.

12 MR. DOTTHEIM: I'll withdraw the question.
13 I have no further questions.

14 COMMISSIONER MURRAY: I know it's past the
15 time. I have about three follow-up questions for
16 Mr. Schallenberg.

17 JUDGE REGISTER: Does anybody have any
18 objections to the Bench?

19 (No response.)

20 JUDGE REGISTER: Commissioner Murray.

21 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Mr. Schallenberg, assuming that UE knew
23 about the Southwestern Bell document and the language
24 in it and voluntarily incorporated provisions of that
25 document into the language in the Stipulation and

1 Agreement that we have before us here, did that in any
2 way indicate that UE knew how the Staff was
3 interpreting the SWBT agreement?

4 A. Not at all.

5 Q. So when Mr. Dottheim made the representation
6 that the monitoring would be the same as that applied
7 to Southwestern Bell, do you know what the date -- I
8 guess it was stated here. Do you recall what the date
9 of that representation was?

10 A. July 19th, 1995.

11 Q. And at that time, had there been any
12 proposals for adjustments brought to the Commission or
13 brought to SWBT under the SWBT agreement?

14 A. Yes. In fact, SWBT would have been finished
15 by that date.

16 Q. Okay. And would UE have had any access to
17 any of the neg-- any of the material regarding the
18 Staff negotiations with Southwestern Bell under
19 Southwestern Bell's agreement? Would they have had
20 any way to access that information and understand how
21 the Staff was monitoring under the Bell agreement?

22 A. They would have access to the documents that
23 are attached to my surrebuttal testimony, and they
24 would have access to the publicly filed statements
25 that were filed each year under the Southwestern Bell

1 plan.

2 Q. And the documents that were filed with your
3 testimony indicated that there were some disputes
4 about certain categories of costs but that those
5 disputes were resolved; is that correct?

6 A. Yeah. It listed the different types of
7 areas that were in dispute, and later on it was
8 resolved.

9 Q. And is there any document on record that
10 shows how they were resolved?

11 A. Just the total settlement.

12 Q. So that there was no public document that UE
13 could look to to see whether they were resolved in
14 accordance with Staff's interpretation; is that
15 correct?

16 A. There would be no document that would do
17 that. I mean, they never asked either, but the -- if
18 you look at the public document and you compare it to
19 the schedule of adjustments that were in the Bell
20 agreement, you can see that the public document has
21 adjustments in it or areas of dispute that do not
22 match up with adjustments that are listed in the Bell
23 monitoring procedures.

24 Q. Okay. One last question. Since this is a
25 written agreement and the parties were trying to get

1 down in writing everything that they were going to
2 abide by or all of the terms of the agreement, parties
3 wanted it in writing, I would assume, so that they
4 would understand what they were supposed to do under
5 the agreement. Would that not be your assumption?

6 A. That wouldn't be my assumption for EARP, no.

7 Q. So you think that the contract does not have
8 to be totally in writing, that negotiations and
9 statements made outside of the writing should be
10 incorporated into it?

11 A. No, I don't mean that either. I thought you
12 meant that the parties were very diligent in making
13 sure that they had checked and crossed and dotted
14 their t's and all levels of details to make sure it
15 was incorporated in the agreement.

16 Q. What I was getting at is, apparently
17 Mr. Dottheim made an oral representation somewhere,
18 well, he said July 19, 1995. If that -- if it were
19 the case that the monitoring procedures were to be the
20 same as those applied by the Staff to Southwestern
21 Bell, why were they not in writing? Was that
22 statement not in writing in the agreement, do you
23 know?

24 A. From the Staff's perspective, it would be in
25 writing to the extent that the Bell monitoring

1 procedures were used into the -- into EARP.

2 Q. I'm saying why was it not in the EARP
3 agreement stating that that's how -- that is the
4 monitoring procedures that would be used?

5 A. That was just the response Mr. Dottheim gave
6 to the Commissioners when they asked that question.

7 Q. Okay. And there's no place that that is
8 stated in writing in this agreement?

9 A. There is no statement similar to
10 Mr. Dottheim's presentation in this agreement, no.

11 COMMISSIONER MURRAY: Thank you.

12 JUDGE REGISTER: I think that we are
13 concluded for today. We will go off the record. We
14 will reconvene tomorrow at 8:30. And is there
15 anything else that we need to address this evening on
16 the record?

17 (No response.)

18 Okay. Off the record.

19 WHEREUPON, the hearing of this case was
20 adjourned until 8:30 a.m., Thursday, June 3, 1999.

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I N D E X

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