

EC20021v6  
BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

STIPULATION PRESENTATION

July 24, 2002

Jefferson City, Missouri

Volume 6

Staff of the Missouri Public	)	
Service Commission,	)	
Complainant,	)	
vs.	)	Case No.
Union Electric Company, d/b/a	)	EC-2002-1
AmerenUE,	)	
Respondent.	)	

BEFORE:

LEWIS R. MILLS, JR.  
DEPUTY CHIEF REGULATORY LAW JUDGE.  
KELVIN SIMMONS, Chair  
CONNIE MURRAY,  
SHEILA LUMPE,  
STEVE GAW,  
BRYAN FORBIS,  
COMMISSIONERS.

REPORTED BY:  
TRACY L. CAVE, CSR  
ASSOCIATED COURT REPORTERS

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A P P E A R A N C E S

JAMES J. COOK, Attorney at Law  
THOMAS BYRNE, Attorney at Law  
ROBERT J. CYNKAR, Attorney at Law  
1901 Chouteau Avenue  
St. Louis, Missouri 63166-6149

5           314-554-2237  
FOR: Union Electric Company d/b/a AmerenUE

6 JAMES M. FISCHER, Attorney at Law  
Fischer & Dority  
7           101 Madison Street  
Jefferson City, Missouri 65101  
8           573-636-6758  
FOR: Kansas City Power & Light Company

9  
MICHAEL C. PENDERGAST, Attorney at Law  
10 RICK ZUCKER, Attorney at Law  
720 Olive Street  
11           St. Louis, Missouri 63101  
314-342-0532  
12 FOR: LaCade Gas Company

13 ROBERT JOHNSON, Attorney at Law  
LISA LANGENECKERT, Attorney at Law  
14           Law Offices of Robert Johnson  
720 Olive Street, Suite 2400  
15           St. Louis, Missouri 63101  
314-345-6441  
16 FOR: Missouri Energy Group

17 ROBIN FULTON, Attorney at Law  
135 E. Main Street  
18           Fredericktown, Missouri 63645  
573-783-7212  
19 FOR: Doe Run Company

20 RONALD MOLTENI, Assistant Attorney General  
SHELLY A. WOODS, Assistant Attorney General  
21           Broadway State Office Building  
P. O. Box 899  
22           Jefferson City, Missouri  
573-751-3321  
23 FOR: State of Missouri

24  
25

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1                           A P P E A R A N C E S (CONT'D)

2 SAMUEL OVERFELT, Attorney at Law  
618 E. Capitol Avenue  
3           Jefferson City, Missouri 65102  
573-636-5128  
4 FOR: Missouri Retailers Association

5 DIANA M. VUYLSTEKE, Attorney at Law  
Bryan Cave, L.L.P.  
6           211 North Broadway, Suite 3600  
St. Louis, Missouri 63102  
7           314-259-2000  
FOR: Missouri Industrial Energy Consumers

8  
9 JOHN B. COFFMAN, Deputy Public Counsel  
RUTH O'NEILL, Legal Counsel  
Governor Office Building  
10 P. O. Box 7800  
Jefferson City, Missouri 65102  
11 573-751-3234  
FOR: Office of the Public Counsel and the Public  
12  
STEVEN DOTTHEIM, Chief Deputy General Counsel  
13 THOMAS R. SCHWARZ, JR., Deputy General Counsel  
NATHAN WILLIAMS, Assistant General Counsel  
14 P. O. Box 360  
Jefferson City, Missouri 65102  
15 573-751-7434  
FOR: Staff of the Missouri Public Service Commission  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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1 JUDGE MILLS: We're on the record this morning  
2 for a question and answer session about the Stipulation and  
3 Agreement that the parties have provided and filed in Case  
4 No. EC-2002-1.  
5 The procedure we're going to follow this  
6 morning, we are going to begin with questions from the  
7 Bench. I think to a large degree the questions will be  
8 directed to a party's representative.  
9 To the extent that the Commissioners have  
10 questions for a specific witness for the party, we'll swear  
11 in those witnesses. I don't know that there will be a need

12 for anyone to take the witness stand. And to the extent  
13 that a question is just posed generally to a party and the  
14 attorney believes that the question could be better answered  
15 by one of that party's witnesses, then we'll bring the  
16 witness forward to one of the microphones and swear him or  
17 her in.

18 I want to note for the record that the  
19 attorney for Doe Run, Rob Fulton, has had a death in the  
20 family and is called out of town for a funeral and won't be  
21 here this morning and his absence is excused.

22 Are there any questions about the way we're  
23 going to proceed or anything in the way of preliminary  
24 matters we need to address before we get into questions from  
25 the Bench?

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1 Mr. Dottheim?

2 MR. DOTTHEIM: Yes, thank you. This  
3 morning -- and I apologize for the lateness in filing it --  
4 I filed on behalf of Staff an addendum to the memorandum  
5 filed by the Staff on last Friday. Hopefully, copies have  
6 caught up with the Commissioners. Unfortunately, I would  
7 expect the Commissioners haven't had an opportunity to  
8 really take a look at that, but I apologize.

9 It addresses one matter that inadvertently was  
10 left out of the memorandum last Friday and another matter  
11 that was brought to our attention by the office of the state  
12 representative on Monday of this week. And we are  
13 attempting to deal with and provide answers and confront a  
14 situation that never had been raised before. It involves

15 territorial agreements with customers leaving the UE system  
16 and customers coming onto the UE system.

17 And the other matter addressed in the addendum  
18 was a provision in the Stipulation and Agreement regarding  
19 the nuclear decommissioning cost studies that the company  
20 files every three years with the Commission and the  
21 statutory provision 393.292.

22 The Staff also filed a revision of  
23 Attachment A to the Stipulation and Agreement. The changes  
24 are minor. Unfortunately, we weren't able to get copies to  
25 the other parties before a short while ago. If the

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1 Commissioners have any desire for us to address those, we  
2 can, or I can even file something with the Commission  
3 specifically identifying what those minor changes are.  
4 Thank you.

5 JUDGE MILLS: Thank you, Mr. Dottheim.

6 Just one other matter, there are a lot of you  
7 here and because of the format that we're not going to bring  
8 you up one at a time to the witness stand or to the podium,  
9 it may be a little difficult for the court reporter to  
10 recognize who you all are, so please be cognizant of that.  
11 When you begin to speak, say your name for the record so  
12 that we know and the court reporter knows who you are.

13 Obviously if you're being questioned by the  
14 Commissioners for two hours, you don't need to say your name  
15 at the beginning of every sentence, but be aware that the  
16 record will not be clear unless we can tell who's speaking  
17 at all times.

18 Let's go ahead with questions from the

19 Commissioners. We'll begin with Chairman Simmons.

20 CHAIR SIMMONS: Thank you, Judge.

21 Good morning everyone. Let me first of all  
22 say that we are happy that you all are here this morning. I  
23 would like to add that we appreciate that we are at this  
24 point and at this juncture where we have a Stipulation and  
25 Agreement before us.

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1 I don't want to speak for all the  
2 Commissioners, but I believe that we are much more happier  
3 to be at this point than a long protracted litigation  
4 process that we would have been looking at. And I would  
5 just say to all of you, we wish that we were here a lot  
6 sooner than we are, particularly when you have to read  
7 volumes of material.

8 Having said that, I would like to say that in  
9 the Stipulation and Agreement that we have before us, a lot  
10 has been made about the monetary part of this Stipulation  
11 and Agreement. As we look at the monetary parts of the  
12 Stipulation and Agreement, that's one phase of what we, as  
13 Commissioners, look at as we determine what is in the  
14 public's interest as we entertain what's before us right  
15 now.

16 A lot of issues will not be addressed because  
17 of this Stipulation and Agreement. A lot has been made  
18 about policy issues in terms of the short-term policies of  
19 this Commission and the long-term policies of this  
20 Commission. We don't reach those policies with this  
21 Stipulation and Agreement.

22                   Some of those may be a concern for I know  
23 myself and some of the other Commissioners and there are  
24 some issues that we would like to have clarification on.  
25 And I believe that my first round of questions will probably

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1           center on some of those policy issues that we don't address,  
2 but maybe there's an opportunity for some clarification  
3 here.

4                   My first round of questions, Judge, will be to  
5 one of the parties. And, particularly, I would like to ask  
6 for Mr. Rainwater, who is here representing AmerenUE, some  
7 of his thoughts about the Stipulation and Agreement that is  
8 before us, so you may need to swear Mr. Rainwater.

9                   JUDGE MILLS: I think I will. Thank you.  
10 Mr. Rainwater, if you could raise your right hand, please.

11                   (GARY L. RAINWATER SWORN.)

12                   JUDGE MILLS: Thank you.

13                   CHAIR SIMMONS: Good morning, Mr. Rainwater.

14                   MR. RAINWATER: Good morning, Chairman  
15 Simmons.

16                   CHAIR SIMMONS: When I first started with the  
17 hearing process, one of the things that I started down the  
18 road right after the opening statements was to talk about  
19 policy issues and ask our Staff about certain policy issues  
20 as it related to this case.

21                   I notice that in your statements and your  
22 sworn testimony you talk a lot about some of the policy  
23 issues. And I want to ask you some of your thoughts there  
24 as it relates to the company and as it relates to the  
25 Stipulation and Agreement.

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1 I will ask those questions and I will just  
2 think of those as some of the -- what I would call some of  
3 the fastballs, sliders and curves that I'm going to probably  
4 throw at you as far as questions are concerned.

5 But the first thing I'm going to do is  
6 probably throw you a softball question and that is probably  
7 to ask you why is this Stipulation and Agreement in the best  
8 interest of your company and also in the best interest of  
9 the public?

10 MR. RAINWATER: Well, as you said in your  
11 opening comments, Commissioner Simmons, we are all pleased  
12 to be here with a settlement agreement rather than in a long  
13 contentious litigation process, because we don't believe  
14 that that kind of process lends itself very well for good  
15 resolutions -- necessarily good resolutions to all the  
16 issues and for good continuing relationships with the  
17 Commissioners or with the Staff.

18 And I think the way that you characterized the  
19 policy issues in opening also is exactly how I would  
20 characterize the issues, is that there are short-term issues  
21 and there are long-term issues, there are regulatory kinds  
22 of issues, there are energy policy kind of issues.

23 But I guess my take on where we seem to be  
24 headed was that we were putting much too great emphasis on  
25 the short-term with the intent to drive rates to the lowest

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1 possible levels with very little regard for what that did  
 2 for the financial viability of companies and with regard for  
 3 their ability to invest in the future, for their ability to  
 4 invest in the infrastructure in the state, infrastructure in  
 5 terms of new generation, new transmission, new distribution  
 6 to provide for the level of service to customers that we  
 7 need for the future.

8                   And my personal opinion about that level of  
 9 service is that as the electric power industry has evolved,  
 10 our economy has become more and more dependent on  
 11 electricity to the point today that much of the economy is  
 12 computerized. We need to provide a much higher level of  
 13 service today than we have in the past. We'll need to  
 14 provide a much higher level of service in the future than we  
 15 have in the past.

16                   But we have a regulatory process that  
 17 primarily looks at the past and looks at cost levels and  
 18 service levels that were established in the past. And if we  
 19 follow that kind of process strictly, it almost locks us  
 20 into a status quo where we can't really progress and  
 21 provide -- or I shouldn't say can't, but it is very  
 22 difficult for us to provide increasing levels of service,  
 23 very difficult to provide infrastructure investment,  
 24 particularly with a very severe rating or very severe  
 25 outcome in a rate case where return on equity is set at a

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1 very low level, depreciation rates are set at a very low  
 2 level, cash flows are very low, credit ratings are

3 threatened.

4 My feeling was that the direction that we were  
5 headed probably did not properly consider those short-term  
6 versus long-term issues and probably had not considered the  
7 energy policy issues and regulatory issues involved there.

8 With all that said, though, I think that the  
9 settlement that we have reached is the best possible balance  
10 of all those issues that we could reach in this kind of a  
11 process.

12 And as far as how that addresses the public  
13 interest, all of the parties who represent the public  
14 interest were involved in the process. And while probably  
15 no single party achieved all of the objectives that it would  
16 have had or would be entirely happy with the exact outcome,  
17 I think that, you know -- speaking for our company, I can't  
18 speak for everybody, but I think speaking for our company,  
19 we believe that we have achieved the best balance possible  
20 in that -- in that process.

21 So overall, we think we've addressed the  
22 policy issues and we're happy with the outcome.

23 CHAIR SIMMONS: Along those lines, in this  
24 case there was much attention given to what is called a new  
25 alternative rate regulation plan. As I looked at the

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1 July 16th press release from Ameren, it speaks to the fact  
2 that, and I'll quote, The joint settlement includes a new  
3 alternative rate regulation plan inclu-- I mean,  
4 incorporating a rate moratorium through June 30, 2006.

5 There seems to be a dispute here with  
6 relationship to our Staff. And I believe to paraphrase,

7 they would probably say that there is no alternative rate  
8 regulation plan in this Settlement and Agreement.

9 Can you please clarify for me whether you  
10 believe that it is or it isn't? And I'm going to also  
11 address the same issue to Staff.

12 MR. RAINWATER: Uh-huh. Maybe the best way to  
13 characterize it is that it's a negotiated settlement  
14 agreement. Whether we call it an alt reg agreement or an  
15 incentive comp agreement, I think those are all matters of  
16 semantics.

17 I think the key issue is that we've reached an  
18 agreement that balances and achieves I think the best  
19 balance possible of all of the issues in the case. So from  
20 my point of view, I'm fairly indifferent to what we call it.

21 It is, however -- sometimes I don't know when  
22 to stop. It is an alternative to the traditional process,  
23 so that's why we called it an alt reg plan.

24 CHAIR SIMMONS: My next question along those  
25 lines, as we look at the alternative rate regulation plan,

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1 that has been characterized in a number of different ways,  
2 either as a policy issue or an issue that this Commission is  
3 either going on record in support of or in opposition of. I  
4 don't believe that we've made that statement one way or the  
5 other.

6 My question to you would be whether or not  
7 your company would seek to go elsewhere to define this  
8 issue? And my elsewhere would basically mean to the  
9 legislature. If it is basically an issue that is not

10 resolved with this Stipulation and Agreement, would you see  
11 your company as going to the Legislature to potentially  
12 define this area in such a way that it becomes state policy  
13 by virtue of legislation?

14 MR. RAINWATER: I'm not sure I clearly  
15 understand the question, but I'll take it to mean the --  
16 well, let's call it the fact that we have an alt reg plan  
17 you see as a policy issue.

18 I don't view that myself as a policy issue. I  
19 view that -- and, again, I don't want to make an issue out  
20 of semantics. We don't need to call it an alternative reg  
21 plan. It is simply a settlement agreement that all parties  
22 to the case believe addresses the issues in the best way  
23 possible.

24 As far as would we go to the Legislature to  
25 try to clarify that, I guess I don't see a need to do that.

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1 And I certainly would emphasize that we've worked very hard  
2 to achieve this result and our intent is absolutely to honor  
3 the commitments that we're making as part of this agreement.  
4 So we have an absolutely no plans to go to the Legislature  
5 and do anything that would undermine this agreement.

6 Our intent is to work under the guidelines  
7 that we've set out in this agreement, to manage our company  
8 as best we can under this agreement and achieve the best  
9 results that we can for both our customers and for our  
10 stockholders under this agreement.

11 CHAIR SIMMONS: One of the reasons I raise the  
12 question is that in the Stipulation and Agreement itself,  
13 particularly as it relates to the rate moratorium,

14 Section 3, it speaks to -- part 3 in regards to a  
15 significant change in federal or state utility laws and  
16 regulations.

17 And that would be one of the reasons of  
18 rationale that I posed that question with the potential that  
19 if there's a change, would that have an impact on this  
20 Stipulation and Agreement that is now before us? And I  
21 think that we would want to make sure that that is  
22 clarified.

23 MR. RAINWATER: Okay. Well, let me clarify  
24 again that we are committed to work under this agreement and  
25 we will honor this agreement and we will do nothing

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1 legislatively to undermine this agreement.

2 CHAIR SIMMONS: Thank you. I appreciate that.

3 As you understand and from what we're seeing  
4 throughout the country with the number of our utility  
5 companies and also telecommunication companies, we are  
6 having a number of those companies going through significant  
7 layoffs to deal with cost adjustments. We understand that  
8 the investment community is probably vastly different today  
9 than it has been in the past.

10 Having said that, do you see any potential  
11 layoffs as it relates to your company or employment shifts  
12 as it relates to your company because of this Stipulation  
13 and Agreement?

14 MR. RAINWATER: Well, to answer it as shortly  
15 as I can, we certainly don't see any potential layoffs. And  
16 that is partly because of just the way that we've managed

17 our company in the past and that we put a very high priority  
18 on providing job security for employees and avoiding  
19 layoffs.

20 Now, that's not to say though that we won't or  
21 don't intend to manage our business as efficiently as we  
22 possibly can. And if you look at the history of our  
23 company, we actually have reduced staffing in our company by  
24 about 35 percent over the past 10 or 12 years.

25 And where we have opportunities to improve

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1 efficiency and that results in staff reductions in the  
2 future, we're certainly going to pursue those, but our  
3 intent would be to do that without layoffs, to do that  
4 through attrition. That's the way that we've managed that  
5 in the past and that's how we would hope to and expect to  
6 manage it in the future.

7 CHAIR SIMMONS: Very good. Lastly, as we  
8 think of the Stipulation and Agreement and we talk about the  
9 side that is the public side and have a good agreement for  
10 the public in general, the ratepayers, we also deal with  
11 your company and the viability of your company.

12 A lot has been made in the testimony -- sworn  
13 testimony about the financial aspects of your company,  
14 particularly as it relates to the analysts and how they view  
15 Ameren. We've had, I believe, exhibits from both Fitch and  
16 Moody that talks about the financial stability of the  
17 company.

18 I guess my question to you would be, in light  
19 of this Stipulation and Agreement, which, you know, will  
20 force the company to have a moratorium in rates and also

21 give back a significant portion of money and also place  
22 money into other areas, shareholders' monies, how will the  
23 financial analysts on Wall Street tend to look at this  
24 Stipulation and Agreement?

25 MR. RAINWATER: Our reading so far is that the

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1 analysts will see this as a positive, because it's a  
2 continuation of a plan -- while not identical to the kind of  
3 plans that we've had in the past, similar to the plans in  
4 the -- that we've had in the past in that it phases in rate  
5 reductions and it gives us some certainty for a period of  
6 time that allows us to manage our business in a way that  
7 achieves good results. That's our expectation.

8 And let me rely on Warner here for a second,  
9 but I believe that the credit analysts have already  
10 reaffirmed our ratings based on the prospective agreement,  
11 even though it has not been approved at this point.

12 JUDGE MILLS: Mr. Baxter, before you expend on  
13 Mr. Rainwater's answer, let me swear you in.

14 (WARNER L. BAXTER SWORN.)

15 JUDGE MILLS: Thank you.

16 Go ahead.

17 MR. BAXTER: Chairman Simmons, as Gary  
18 stated --

19 JUDGE MILLS: If I can interrupt, please pull  
20 the microphone closer to you.

21 MR. BAXTER: One of the my principal  
22 responsibilities at Ameren is working directly with the  
23 analysts on Wall Street as well as with the credit rating

24       agenci es.

25                   A couple points.   The analysts -- as we put

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1       out our release last week with regard to announcing the  
2       reaching of the Stipulation and Agreement, the analysts'  
3       reaction has been as Gary stated, positive.

4                   What that means is that from their  
5       perspective, there's a great deal of regulatory uncertainty  
6       associated with this case over the company and the market  
7       that we operate today certainty is one of the premiums that  
8       they place on evaluation of companies and, similarly, the  
9       credit rating agencies.

10                  And so to that extent, they -- they are happy  
11       that this regulatory uncertainty could very well be lifted,  
12       assuming that the Commission would ultimately approve this  
13       agreement.

14                  Secondly, with regard to the stability of cash  
15       flows from their perspective, that ability to have a  
16       moratorium in place with designed rate reductions is  
17       comforting to them because they, again, can see further into  
18       the future, which is helpful.

19                  From the credit rating agency standpoint,  
20       we've had discussions with them as part of this  
21       announcement. And their initial reaction, again, has been  
22       in line generally with their expectations.

23                  And while I can't say specifically today that  
24       all of the rating agencies have weighed in, because they  
25       have to look and analyze the agreement more fully, we have

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1 received some feedback from Standard and Poors, which has  
2 resulted in an announcement stating that there would be no  
3 movement in our credit ratings. Moody's and Fitch have not  
4 specifically stated, but in general the reaction has been  
5 positive, but that analysis ultimately is still pending.

6 Certainly from the company's perspective, as  
7 we entered into this agreement, one of the things we were  
8 very mindful of was not only the impact on cash flows, but  
9 also our need to invest in infrastructure, the ability to  
10 finance the infrastructure needs and at the same time  
11 provide an adequate return to our shareholders.

12 We believe that the agreement that we struck  
13 taken as a whole, will continue to allow us to do that,  
14 coupled with the fact that this agreement has incentives  
15 associated with it as a result of rate moratorium, which  
16 will also allow us the financial flexibility to continue to  
17 move forward.

18 CHAIR SIMMONS: Okay. Thank you. That will  
19 be all the questions that I have for these witnesses from  
20 AmerenUE.

21 I think, as we talked about earlier, I have a  
22 few questions for -- I'm going to direct my questions  
23 towards Staff, OPC and the AG's office for my final  
24 questions. And I believe that I will not be calling any  
25 witnesses and so the representatives of those entities can

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1 pretty much answer my questions.

2 JUDGE MILLS: Okay. Please go ahead.

3 CHAIR SIMMONS: For the next question, Staff,  
4 you heard me earlier direct a question towards Mr. Rainwater  
5 as it related to the issue of the alternative rate  
6 regulation plan. The simple question is, quacks like a  
7 duck, looks like a duck, is it traditional rate-making or  
8 not? And what is your thought there?

9 MR. DOTTHEIM: It's more akin to traditional  
10 rate-making than what may be termed an alternative  
11 regulation plan, if that is meant by an incentive regulation  
12 plan or performance-based regulation.

13 There are people who would characterize a  
14 moratorium such as exists in the Stipulation and Agreement  
15 as alternative regulation. So it's not my intent to argue  
16 semantics, but again, some people view a moratorium even  
17 though it doesn't have a sharing grid or performance-based  
18 regulation as in itself an alternative to traditional  
19 regulation.

20 The Staff has entered into and the Commission  
21 has approved any number of moratoriums over the years.  
22 Again, I think the Staff views the settlement in this case  
23 more in the nature of the moratoriums that -- than  
24 traditionally have been presented to the Missouri Commission  
25 and approved.

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1 At the same time, some people might find some  
2 distinctions in the fact of the provisions for  
3 infrastructure activities that are in this settlement, the  
4 commitments by the company. That might be viewed as some as

5 some form of alternative regulation.

6 In other moratoriums, other commitments have  
7 been -- have been made. I think historically at the  
8 Commission it's been more in the nature of years ago in the  
9 telecommunications area as opposed to the electricity, but  
10 that's a distinction that some entity might want to ascribe  
11 to the settlement.

12 The Staff believes that there are provisions  
13 in the Stipulation and Agreement that address economic  
14 development, which the Staff is concerned respecting. There  
15 are other provisions in the Stipulation and Agreement as far  
16 as low-income customer assistance, residential and  
17 commercial energy efficiency fund, demand response option,  
18 time of use pilot project.

19 I think the Staff would view those more in the  
20 nature of traditional form of regulation. It's not peculiar  
21 to traditional rate-making for agreements to be reached on  
22 programs of that nature. I don't recall offhand a  
23 Stipulation and Agreement, a settlement, with as many items  
24 of this nature in it.

25 CHAIR SIMMONS: Okay. I'll stop you there and

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1 go to the next question, and I'd like to have some  
2 clarification from Staff. On page 12 of the Stipulation and  
3 Agreement, I believe what I have is Section C.

4 And this particular section speaks to the  
5 issue of what potentially could void this agreement. And so  
6 my question to you is, if this Commission were to modify or  
7 seek to modify any portion of this agreement, would that be  
8 a situation where this agreement would be null and void?

9 MR. DOTTHEIM: If a party objected to it. I  
10 think this provision covers the possibility -- the option of  
11 a signatory or signatories agreeing to conditions or  
12 modifications that the Commission would want to effectuate,  
13 but it is at the determination of the parties whether such  
14 conditions or modifications would be acceptable and the  
15 Stipulation and Agreement in that instance, if not deemed to  
16 be objectionable, would not be voided by the party or  
17 parties.

18 CHAIR SIMMONS: So there is the potential that  
19 a modification could occur and if the signatories were not  
20 objecting, then we would still have a settlement and  
21 agreement?

22 MR. DOTTHEIM: Yes.

23 CHAIR SIMMONS: Okay.

24 MR. DOTTHEIM: But I think -- excuse me,  
25 Chair, the parties would have to weigh in --

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1 CHAIR SIMMONS: Okay.

2 MR. DOTTHEIM: -- respecting that modification  
3 or condition.

4 CHAIR SIMMONS: Understandable. Last question  
5 to you, Staff, and I'm also going to pose this, I believe,  
6 to the Attorney General's office.

7 On page 5 of the agreement under the rate  
8 moratorium, Section B, if you could explain that provision  
9 to me. It says, No signatory, excluding the Office of the  
10 Attorney General, may file a general rate increase case or a  
11 general rate decrease case before January 1, 2006 and it

12 goes on.

13 Explain to me what that means when you say  
14 that no signatory, excluding the Office of the Attorney  
15 General, and that process.

16 MR. DOTTHEIM: Well, the Staff interprets that  
17 as the Office of the Attorney General having the option of  
18 filing what in all probability would be a general rate  
19 decrease case or a request for an investigation. And that  
20 would not be in contravention of the Stipulation and  
21 Agreement.

22 The Office of the Attorney General is not  
23 barred from filing or seeking the filing -- the initiation  
24 of a a general rate decrease case, whereas the other parties  
25 are, unless any of these events that are listed occur or

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1 some unusual significant event other than one of these items  
2 occurs.

3 CHAIR SIMMONS: Gotcha.

4 Mr. Molteni, explain that to me. By statute  
5 you can? Or how does this work?

6 MR. MOLTENI: Well, Mr. Chairman, not by  
7 statute --

8 CHAIR SIMMONS: I don't know if your -- is  
9 your microphone on?

10 MR. MOLTENI: Mr. Chairman, not necessarily by  
11 statute but by agreement of all the parties, including  
12 AmerenUE, the Attorney General is excluded from the  
13 moratorium. The Attorney General's Office has -- let me  
14 back up a little bit.

15 A moratorium implies agreeing not to take

16 action based upon future conduct of the parties. The  
17 Attorney General's Office, because it is the chief law  
18 enforcement office of the state, has a philosophical concern  
19 about agreeing not to take action in the future about a  
20 party's future action.

21 I think the other parties to this case  
22 understand that. I think AmerenUE understands that. And  
23 that is why everyone agreed that the Attorney General would  
24 not be bound by a moratorium that exists in this agreement.

25 CHAIR SIMMONS: So that's not by statute,

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1 that's just by general agreement of this particular  
2 Stipulation and Agreement?

3 MR. MOLTENI: Yes, sir.

4 MR. DOTTHEIM: Chair --

5 CHAIR SIMMONS: Yes, sir.

6 MR. DOTTHEIM: -- excuse me. To further  
7 illuminate or clarify, in the Staff's memorandum in support,  
8 the Staff set out certain statutory provisions whereby it is  
9 specified by statute what entities can file for an  
10 investigation or, in essence, a rate decrease case.

11 There are political subdivisions identified,  
12 there's also an identification of as far as individual  
13 customers are concerned, there must be 25 individual  
14 customers or 25 prospective customers. So the language in  
15 the Stipulation and Agreement, I think, and I'll let  
16 Mr. Molteni respond if he chooses to, would still be bound  
17 by the statutory provisions in Chapter 386 and 393.

18 CHAIR SIMMONS: Okay. My last question will

19 go to the Office of Public Counsel. As the Office of Public  
20 Counsel has that responsibility of protecting the ratepayers  
21 in cases that come before this Commission and you are a  
22 signatory to this Stipulation and Agreement, tell me why you  
23 believe from your position this Stipulation and Agreement is  
24 in the best interest of the general public who you protect.

25 MR. COFFMAN: Thank you. I think, first of

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1 all, and most significantly -- is that better?

2 CHAIR SIMMONS: Yes.

3 MR. COFFMAN: First of all, and most  
4 significantly, there is a stair-stepped rate reduction that  
5 we believe brings the rates for AmerenUE's electric  
6 customers much closer to where they should be under cost of  
7 service regulation.

8 In analyzing this settlement, we took into  
9 account the time value of money, the ability to avoid the  
10 delay and uncertainty of appellate review as well as other  
11 significant terms in this agreement.

12 And we believe that it is, based on the net  
13 present value calculations we've done, a very significant  
14 and reasonable result for the ratepayers of the state.  
15 We're also very pleased about the ability to get an  
16 additional reduction above the equal percentage to the small  
17 business customers, the SGS customer class.

18 The \$40 million credit also alleviates or relieves  
19 the potential protracted litigation of the last year of the  
20 experimental alternative regulation plan. And as you may  
21 know, that is currently scheduled to take place earlier this  
22 fall.

23 Our experience with the third year of the  
24 first EARP was not good as far as timeliness. We have only  
25 now reached the Court of Appeals as far as that case, three

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1 years later. There's no interest provision in the  
2 alternative regulation plan, so each delay just further  
3 devalues what we think the sharing credit should be. That  
4 being said, \$40 million is a very reasonable settlement of  
5 that matter as well.

6 I might add on that point that I think we  
7 believe that with regard to the issue raised by Staff's  
8 addendum for the customers who have been switched in recent  
9 times based on change of supplier applications or  
10 territorial agreements, that those customers should also  
11 receive a fair share if at all possible.

12 Based on AmerenUE's records, that is a share  
13 of the \$40 million for those customer whose have been  
14 switched in the most part against their will to a co-op  
15 because they were, you know, living at that same address  
16 during the time of the alternative regulation plan.

17 The moratorium we believe is an important  
18 provision. It's important that this moratorium swings both  
19 ways as far as rate increases or decrease cases, but it's  
20 also very significant to us that the moratorium applies --  
21 it is basically a three and a half year moratorium as to the  
22 filing of a general rate increase or general rate decrease  
23 case.

24 This is not a moratorium in our understanding  
25 of any other type of case that the Office of the Public

1 Counsel or any other party may wish to bring. That is to  
2 missed billings, violation of tariffs, statutes, Commission  
3 rules, other policy matters that may be important to bring  
4 up. And I can assure you that the Office of the Public  
5 Counsel will continue to monitor closely many of the areas  
6 of policy that it raised through the testimony of this case  
7 and in the EARP cases.

8 Our discovery rights are preserved under this,  
9 that there are -- have been some arguments under the  
10 alternative regulation plan that there were some  
11 limitations. There are no such limitations on our discovery  
12 rights pursuant to this agreement.

13 For example, transactions involving S02  
14 allowance and affiliate relationships will continue to be  
15 monitored closely. And if we have concerns in the future  
16 about these type of matters, you know, it is possible that  
17 we could raise those in a future case.

18 CHAIR SIMMONS: So this provision does not  
19 preclude that?

20 MR. COFFMAN: In my opinion. And I'm sure  
21 that if AmerenUE or someone else has a different opinion,  
22 they will pipe up, but this is a moratorium. The moratorium  
23 in this agreement is just relating to general rate increase  
24 and rate decrease cases.

25 There is a stay on the Commission's affiliate

1 rule currently as it relates to AmerenUE. That issue may be  
2 resolved within a year perhaps and so there may be a time --  
3 a period of time when the Commission's rules would then  
4 apply to AmerenUE during this moratorium period and it is  
5 possible that cases could come before you relating to that  
6 in the future.

7 But it's our hope that some of the things that  
8 we had concern about as far as affiliate transactions and  
9 other operations of the company have been noted and  
10 hopefully we'll see some improvement in the future, but  
11 we'll be monitoring that closely.

12 Just briefly, the infrastructure provision is  
13 very significant in our opinion as it relates to the word  
14 "regulated." The commitment to new generating capacity,  
15 which is rather significant in this period, is to be  
16 regulated generating capacity.

17 And that improves the picture in our opinion  
18 as to the -- some of the affiliate concerns that we have  
19 when generation is built only in other non-regulated  
20 affiliates.

21 I think it's also important to point out --  
22 and I've received some questions about this and some  
23 confusion, but the programs -- the low-income assistance  
24 program and weatherization funds, which we believe are very  
25 positive, are to be only funded through shareholder money.

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1 It is, as we say, below the line and we're not -- was not  
2 considered in any way a trade-off for the significant rate  
3 reduction, in our opinion, that is contained in the

4 agreement.

5 And we would look forward to working on the  
6 various collaborative efforts that this agreement would  
7 allow, including the time of use rates that we promoted in  
8 the case. So that's, in summary, why I think it's in the  
9 public interest.

10 CHAIR SIMMONS: Thank you very much.

11 Judge, at this time that is the last set of  
12 questions I have. I may reserve a second round based on  
13 questions from other Commissioners and some follow-up.  
14 Thank you, Commissioners, for your patience.

15 JUDGE MILLS: Thank you.

16 Commissioner Murray?

17 COMMISSIONER MURRAY: Thank you, Judge.

18 First of all, I would just ditto Chair  
19 Simmons' opening statements. We are pleased that the  
20 parties have all worked together. And I know it's been a  
21 very big task to come together with the Stipulation and  
22 Agreement in this case in which there were many disputed  
23 issues.

24 And like Chair Simmons, I would start with my  
25 questions for the company and they can be answered by

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1 Mr. Rainwater or Mr. Baxter or your counsel, if you'd  
2 prefer. But my first question is, the new rate that is set  
3 in the Stipulation and Agreement is not tied in any way to  
4 cost of service; is that correct

5 MR. RAINWATER: It is not tied explicitly to  
6 cost of service. And, as you know, there was a -- excuse

7 me. You can hear this better with the microphone on.  
8 It isn't tied specifically to a cost of  
9 service number. There was a wide range of opinions in this  
10 case over cost of service. Our best judgment of where we've  
11 landed within that range is somewhere in the middle, that if  
12 you look at the spectrum of opinions across the country by  
13 Commissions, we are somewhere in the middle of that  
14 spectrum.

15 COMMISSIONER MURRAY: Does this agreement  
16 leave room for company incentive to reduce your cost of  
17 service in order to achieve a higher rate of return between  
18 now and 2006?

19 MR. RAINWATER: In my opinion, it certainly  
20 does, because it gives us certainty of our rate levels over  
21 the next four years. And if we manage our business very  
22 effectively, as I said a while ago, and achieve higher  
23 efficiency levels, we may earn a higher cost of service or a  
24 higher return during this period. And then at the end of  
25 this period, we will have established a lower cost of

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1 service number depending on where costs are three years from  
2 now, which may set lower rate levels.

3 COMMISSIONER MURRAY: I assume that you read  
4 Staff's memorandum in support of the Stipulation and  
5 Agreement; is that correct?

6 MR. RAINWATER: (Nodded.)

7 COMMISSIONER MURRAY: Did Ameren file any  
8 response to that?

9 MR. BAXTER: Commissioner Murray, no, we did  
10 not.

11 COMMISSIONER MURRAY: All right. I would like  
12 to pursue a little bit about what the moratorium means in  
13 terms of a potential rate reduction case and at what period  
14 of time.

15 And I will ask you this. Do you foresee the  
16 possibility of Staff or the Office of Public Counsel or some  
17 other party filing a rate reduction case or a complaint case  
18 on January 1 of 2006 and claiming that AmerenUE has been  
19 over-earning during the time in which this rate moratorium  
20 was in effect?

21 MR. BAXTER: Commissioner Murray, if I may,  
22 obviously January 1, 2006 represents some period of time  
23 between now and then. What I can say is that all the  
24 parties, as we entered into the discussions and the due  
25 diligence, which was extensive throughout this process,

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1 clearly entered into this period of time understanding that  
2 not only would this agreement, except for extraordinary  
3 circumstances, continue to be maintained, but subsequent to  
4 that we'd all have the opportunity to file -- we will  
5 provide a cost of service case to all the parties.

6 I'll speak for the company. The company today  
7 can't predict where rate levels or what that cost of service  
8 study would ultimately come out. And as I think Mr. Coffman  
9 said and I believe the Staff pointed out in their memo, that  
10 door can swing both ways. So at this point in time it's  
11 difficult to predict exactly what will be that ultimate  
12 filing.

13 We, frankly, will begin the process by filing

14 the cost of service study for the 12 months ending June 30,  
15 2005. So the process will ultimately be commenced by the  
16 company. But at that point in time, what will happen on  
17 January 1st, 2006, given the uncertainties and the  
18 challenges that we have not only as a company but the  
19 industry as a whole has, coupled with significant  
20 infrastructure investments that will be part of this  
21 agreement, it is, at least from the company's perspective,  
22 unclear exactly what will happen at this point in time.

23 COMMISSIONER MURRAY: Well, if there were a  
24 complaint case stating that or claiming that the company had  
25 been over-earning, what would the benchmark be to determine

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1 over-earnings?

2 MR. BAXTER: From the company's perspective,  
3 if the claim was made that there was over-earning, the  
4 company's perspective would say all the parties have done  
5 extensive due diligence and entered into this agreement with  
6 very good knowledge and to the extent to say that we had  
7 over-earned would be, in our view, a difficult statement to  
8 make, because we knew the facts as we saw them today as we  
9 entered into the agreement, we agreed to a, relatively  
10 speaking, a four-year moratorium that to over-earn would be  
11 difficult to say because basically we -- if we comply with  
12 the terms of the agreement, then that's, in fact, what we  
13 did, we complied with the terms of the agreements. And then  
14 you determine what your approach for cost of service should  
15 be going forward from there.

16 COMMISSIONER MURRAY: Going forward. And  
17 ordinarily when an over-earnings complaint case is brought,

18 it is based upon a company exceeding its authorized rate of  
19 return, is it not?

20 MR. BAXTER: That would be correct, yes,  
21 Commissioner Murray.

22 COMMISSIONER MURRAY: So in this case with the  
23 Stipulation and Agreement, you are being authorized to  
24 charge a specific rate, which also, it would appear,  
25 authorizes you to achieve a rate of return in connection

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1 with that specific rate. Is that a somewhat convoluted but  
2 perhaps accurate statement?

3 MR. BAXTER: I think I understand what you're  
4 saying, Commissioner Murray. I guess I would suggest that  
5 the parties, as they go into this case, did not just look  
6 specifically at the numbers.

7 As I think Mr. Rainwater pointed out, I think  
8 as our discussions pointed out, there are more factors in  
9 determining what appropriate rate setting should be other  
10 than just a pure cost of service run.

11 And those policy issues we brought up with  
12 regard to the need for infrastructure, financial  
13 flexibility, stability of rates, all of those things really  
14 went into the negotiations from all the parties and the  
15 settlement that we reached.

16 So I would suggest certainly from the  
17 company's perspective, there is no specific rate of return  
18 that is necessarily embedded in this. From our perspective,  
19 we believe that we have the opportunities and the incentives  
20 to take not only these rate reductions, but to continue to

21 earn reasonable rates of returns for our company and our  
22 investors going forward.

23 That gives us not only the financial  
24 flexibility we need, but also to honor our commitments under  
25 the agreement including those infrastructure commitments.

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1 COMMISSIONER MURRAY: Okay. On page 15 of  
2 Staff's memorandum in support of the Stipulation and  
3 Agreement at paragraph 8 that memorandum talks about whether  
4 the Commission is precluded from directing Staff to conduct  
5 an excess earnings revenue complaint case under either two  
6 scenarios, either a non-signatory so requests or upon its  
7 own motion.

8 And then on page 18 of that same memorandum,  
9 Staff states that, quote, By approving the Stipulation and  
10 Agreement, the Commission cannot lawfully diminish its own  
11 jurisdiction as prescribed by the Legislature, end quote.

12 And my question to you is, do you know of  
13 anything that would preclude Staff from requesting that the  
14 Commission on its own motion direct it to conduct an  
15 investigation and/or file a complaint?

16 MR. BAXTER: In part, let me give you this  
17 financial person's perspective on that and then I think in  
18 part you've raised a legal question.

19 From my perspective, as all the parties went  
20 and spent not only just days but literally months  
21 negotiating the Stipulation and Agreement, the parties went  
22 into this with the full intention and understanding that  
23 subject to those extraordinary circumstances which we cite  
24 in the agreement, that we would all honor the terms of the

25 agreement and essentially abide by the rate moratorium and

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1 the rate reductions as well as the other commitments that  
2 are under this plan and that we would continue to do that.

3 And so as we entered into the agreement, there  
4 was nothing sort of in the back of our minds saying there  
5 was going to be something else come up after the fact that  
6 we'd try to find a loophole, if you would, to try to find a  
7 way to raise the case or to bring that to the attention of  
8 the Commission.

9 And in many respects, we operated that way for  
10 the past six years under -- I guess is the right term the  
11 alternative rate regulation plan that we had that expired in  
12 June 2001. There were conditions that -- whereby rate cases  
13 could be filed.

14 And as it turned out in this condition, there  
15 were no conditions that came up and so the Commission did  
16 not order a particular rate -- general rate increase or  
17 decrease case. So those provisions were ultimately honored  
18 by all the parties. And from the company's perspective, as  
19 we enter into this, we would expect the same of that.

20 MR. COOK: May I add to that, please?

21 COMMISSIONER MURRAY: Please, Mr. Cook.

22 MR. COOK: In the Stipulation and Agreement  
23 itself, Section 14-D on page 12 indicates that when approved  
24 by the -- when approved by the -- and adopted by the  
25 Commission, the agreement will constitute binding agreements

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1 between the signatories, the signatories include the Staff,  
2 and that the signatories shall cooperate in defending the  
3 validity of the enforceability of this agreement.

4 We would view that as prohibiting the Staff  
5 from going around the agreement and suggesting to the  
6 Commission that an investigation should be begun. I believe  
7 it's accurate to say that it does not preclude the  
8 Commission for the other reasons that they mention in their  
9 memorandum from, in turn, asking the Staff to do something,  
10 but the Staff could not initiate that.

11 COMMISSIONER MURRAY: Okay. So, in your  
12 opinion, it would be outside the bounds of what was agreed  
13 to in the stipulation if Staff were to come to the  
14 Commission and specifically request that the Commission  
15 order it to do an investigation or direct it to file a  
16 complaint?

17 MR. COOK: Yes. As well as to go to someone  
18 else and suggest that they might want to ask the Commission  
19 to do so. I think that would also be prohibited.

20 COMMISSIONER MURRAY: Now, and this may be  
21 again another legal question, so you might keep the  
22 microphone for a minute or two, Mr. Cook.

23 If the Commission ordinarily exercises its own  
24 jurisdiction by directing its Staff to perform an  
25 investigation and authorizing its Staff to file a complaint,

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1 other than the spirit of the agreement, is Staff really

2 conceding anything here?

3 MR. COOK: Probably that would be a good  
4 question for the Staff as well, but it seems to me that the  
5 Commission relies upon its Staff to inform it that it  
6 will -- that the Staff believes that a company's earnings  
7 should be looked at.

8 And so if the Staff had voluntarily agreed  
9 that they will not do that over a particular period of time  
10 in exchange for other things that Staff believes were good  
11 things to agree to, then yes, I think they're giving up that  
12 ability to do their own initial investigation and then  
13 request Commission approval to go forward with a formal  
14 case.

15 COMMISSIONER MURRAY: All right. And this  
16 question I'm not sure who would like to answer, but on  
17 page 6 of Staff's memorandum, the statement is made that,  
18 The question of the Commission's authority to adopt an  
19 alternative regulation plan is at issue in this case and  
20 will not be addressed as a result of the Stipulation and  
21 Agreement.

22 I thought what was at issue in this case  
23 regarding an alternative regulation plan was what an  
24 alternative regulation plan should contain, if one were  
25 adopted, rather than the Commission's authority to adopt

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1 one. Do you agree that the Commission's authority to adopt  
2 an alternative regulation plan was at issue in this case?

3 MR. COOK: I don't believe it is at issue now  
4 with this stipulation. I think that the Staff intended to  
5 raise that legal issue if it had gotten that far.

6                   Concerning the company's proposal and its  
7     rebuttal filing, that instead of a strict cost of service  
8     analysis type of thing that the Staff had suggested that the  
9     company was proposing an alternative plan and had included  
10    great detail of that alternative plan, which was somewhat  
11    similar to the first two EARPs.

12                  My understanding was Staff was going to raise  
13    the issue from a legal standpoint that absent everyone's  
14    participation and agreement, that the Commission could not  
15    so order.

16                  It was the company's position that only the  
17    Commission and the company needed to agree to the terms of  
18    such an alternative plan. And so I think that legal issue  
19    may have been before the Commission.

20                  COMMISSIONER MURRAY: Just the legal issue of  
21    the Commission ordering an alternative plan without the  
22    agreement of everyone?

23                  MR. COOK: That was my understanding, yes.

24                  COMMISSIONER MURRAY: Thank you. At pages 20  
25    and following of Staff's memorandum in support, under the

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1     prudence of UE's infrastructure projects topic, Staff makes  
2     the statement that the signatories are not barred in future  
3     rate-making proceedings from raising prudence and  
4     reasonableness issues regarding infrastructure projects  
5     covered by the Stipulation and Agreement.

6                  Do you think that the signatories could later  
7     challenge the prudence and reasonableness of making the  
8     specifically enumerated infrastructure investments or just

9 the prudence and reasonableness of how those investments  
10 were made?

11 MR. COOK: I would view that as the latter.  
12 Certainly the parties were very particular in knowing  
13 in as much detail as possible what infrastructure  
14 investments were going to be undertaken.

15 And I believe what is attempted to be reserved  
16 here is that should it later be determined by the Staff that  
17 a particular infrastructure investment they believe ended up  
18 costing twice as much as it should have, they'd still be  
19 able to raise that. And although we'd probably disagree, we  
20 would not say the stipulation precludes them from doing  
21 that.

22 COMMISSIONER MURRAY: Okay. And the  
23 agreed-upon infrastructure investments that are referenced  
24 on page 6 of the Stipulation and Agreement, when will that  
25 infrastructure be considered for addition to rate base?

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1 MR. COOK: Let me ask Mr. Baxter.

2 MR. BAXTER: Those infrastructure investments,  
3 from a timing perspective, will be taking place between now  
4 and the middle of, frankly, January -- or June of 2006. Of  
5 course, under our rate moratorium, on our books and records  
6 as they are put in service, we will put them in our books  
7 and records as they come into service.

8 To the extent that they have been placed into  
9 service, as we do with cost of service study on June the  
10 2005, they will then be reflected in rate base or to the  
11 extent that there may be some of those specific investments  
12 which will occur, say, immediately thereafter that are known

13 and measurable, then I would suggest that that would be then  
14 part of that cost of service filing and, therefore, then in  
15 rate base.

16 COMMISSIONER MURRAY: Now, will they be  
17 treated under the terms of an AAO or will the company  
18 somehow absorb any regulatory lag or has that been decided  
19 yet?

20 MR. BAXTER: I think they -- they will not be  
21 treated under an AAO. The company will simply record those  
22 as they normally would regulated additions to its utility  
23 plant.

24 And then as part of the rate moratorium, the  
25 company takes on the -- not only the construction risk, but

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1 also the financing risk. That is part of this deal that  
2 we've entered into, that the recovery of those assets will  
3 not take place from a regulatory perspective specifically  
4 set out in rate base until in -- frankly, until some time at  
5 the end of 2006 when there's actually a proceeding put forth  
6 before the Commission.

7 But, of course, as we entered into this  
8 agreement, we weighed the -- from the company's perspective,  
9 we weighed the entire agreement as well as the rate  
10 reductions that are put in place and the cash flow effects.  
11 We weighed those significant infrastructure commitments in  
12 our overall plan in determining whether this was in the best  
13 interest of the company, ratepayers and investors.

14 COMMISSIONER MURRAY: So there would be some  
15 regulatory lag involved?

16 MR. BAXTER: Clearly. There will clearly be  
17 regulatory lag and the significant infrastructure  
18 investments will be upon the company to finance those. And  
19 that's why as we started this whole discussion, the old  
20 policy issues of balancing all those interests in future  
21 infrastructure was so critical to the company in this  
22 proceeding.

23 COMMISSIONER MURRAY: Has anyone made the  
24 suggestion in this proceeding that the capital expenditures  
25 should be linked in any way to current depreciation?

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1 MR. BAXTER: If I understand your question  
2 correctly, Commissioner Murray, is whether the capital  
3 expenditures if you're asking should be tied numerically to  
4 your level of depreciation. I don't recall that claim being  
5 made.

6 The company did make a claim in its testimony  
7 that the depreciation rates, which were originally proposed  
8 by the Staff, while not having a specific earnings effect  
9 had significant cash flows effect -- cash flow effect on us.

10 And so a significant lowering of the  
11 depreciation rate would harm our ability to have the  
12 sufficient cash flows to make those infrastructure  
13 investments. So to that extent, we did raise that issue in  
14 what might be an indirect way to respond to your question.

15 COMMISSIONER MURRAY: This Stipulation and  
16 Agreement does not provide that you will be considering  
17 those and the Commission will consider those as  
18 contributions in aid of construction those depreciation  
19 amounts, does it?

20 MR. BAXTER: No, it does not.

21 COMMISSIONER MURRAY: Thank you very much for  
22 your answers.

23 And my next questions will be directed to  
24 Staff. And I think that probably the counsel will be able  
25 to answer those. If not, you might suggest a witness you'd

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1 I like to have sworn.

2 But, first of all, I will repeat several of my  
3 questions that I had asked the company and ask you to  
4 respond to those. Let me start here. If the Staff were to  
5 bring a complaint -- well, do you foresee the possibility of  
6 Staff or OPC or some other party filing a rate reduction or  
7 a complaint case on January 1, 2006 and claiming that UE had  
8 been over-earning during the time in which this rate  
9 moratorium was in effect?

10 MR. DOTTHEIM: I wouldn't be surprised to --  
11 for the Staff to engage in a cost of service investigation  
12 of Union Electric Company as the January 1, 2006 date  
13 approached. That has generally been the approach of the  
14 Staff not only with Union Electric Company, but with I think  
15 generally all companies that are involved in a moratorium.

16 Now, whether that investigation would lead to  
17 the filing of a rate reduction case, that would just be  
18 clearly conjecture on my part. I would certainly expect the  
19 Staff to look at a determination what would be an  
20 appropriate rate of return at that time on a going-forward  
21 basis and look historically over the moratorium period as to  
22 what the company's earnings had been, but the case itself,

23 if there were a case, a rate reduction case, complaint case  
24 filed by the Staff, would have to be on a prospective basis  
25 as far as the -- whether the company would be earning excess

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1 earnings, excess revenues.

2 COMMISSIONER MURRAY: So you don't see any  
3 scenario under which the Staff would claim that AmerenUE has  
4 been over-earning by a certain amount?

5 MR. DOTTHEIM: Amongst other things, there is  
6 no rate of return that's set by the Stipulation and  
7 Agreement, which is typically the case.

8 In some rare instances a rate of return has  
9 been specified, but that's not the situation here, so there  
10 is no -- and I think you possibly asked the company  
11 something of the nature of any assertion or a rate reduction  
12 case, complaint case be based on the company earning in  
13 excise -- in excess of its authorized rate of return. There  
14 is no authorized rate of return that is set by this  
15 Stipulation and Agreement and that's traditionally what is  
16 done.

17 COMMISSIONER MURRAY: So would it be accurate  
18 to say there's no benchmark against which you would measure  
19 an over-earnings complaint?

20 MR. DOTTHEIM: Other than just for comparative  
21 purposes. Again, it's just conjecture on my part. I assume  
22 there will be other cases that do go to hearing and that the  
23 Commission would be setting rates of return in those cases  
24 involving other companies, not involving Union Electric  
25 Company. But there might be some comparison that is made

1 just for a historical perspective as to what the company had  
2 been earning over the moratorium period.

3 COMMISSIONER MURRAY: Well, now I'm limiting  
4 to my questions to what you could claim in terms of  
5 AmerenUE's earnings and whether it was over-earnings during  
6 the period of time that the rate moratorium was in effect.

7 MR. DOTTHEIM: And I don't anticipate the  
8 Staff would be making that argument.

9 COMMISSIONER MURRAY: Mr. Joyce?

10 MR. JOYCE: Yeah. I'm kind of straining. I  
11 think if what you're -- as you know, you know, the rate  
12 setting, rate-making process is not precise, you know. It's  
13 a look-back, project-forward effort. You know, we're never  
14 going to be able to get rates set close enough in time to  
15 the period of time that we're looking at to get them in  
16 sync.

17 But if your question is if we'd be looking  
18 back and arguing that rates produced excessive revenue  
19 during the period of the moratorium, then the answer is no,  
20 but we would be looking at that period for purposes of  
21 projecting forward, that once we do a new cost of service  
22 review and determine what's an appropriate rate of return  
23 going forward if those past -- if that test year indicates  
24 that on a going-forward basis, they'll exceed a future rate  
25 of return that we project is appropriate, then that's what

1 the case would be based on. We would not be saying that the  
2 company over-earned during the period of the moratorium.

3 COMMISSIONER MURRAY: Okay. Thank you. That  
4 is exactly what I wanted to clarify.

5 Then you probably heard my questions to the  
6 company about the Staff's ability or lack thereof under the  
7 terms of the Stipulation and Agreement to come to the  
8 Commission and specifically request that the Commission  
9 direct the Staff to conduct an excess earnings investigation  
10 or to file a complaint. And do you agree that Staff has  
11 agreed not to come to the Commission and initiate such a  
12 request?

13 MR. DOTTHEIM: Yes. I would agree that that  
14 is the agreement. And as far as that provision, that's not  
15 any different, I don't believe, than what is standard  
16 moratorium language.

17 And I'm not aware of the Staff ever having  
18 done what you've described as having entered into a  
19 Stipulation and Agreement where it's agreed that there is a  
20 moratorium period and that during that moratorium unless  
21 certain events occur, the parties will not go to the  
22 Commission and seek either a rate increase or rate decrease  
23 case. I'm not aware of the Staff ever having done anything  
24 of the nature of what I think you're describing.

25 COMMISSIONER MURRAY: All right. Now, I'd

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1 I like to ask you another question that I also asked the  
2 company, which refers to pages 20 and following of your  
3 memorandum under the topic of prudence of UE's

4 infrastructure projects.

5 And there you state that the signatories are  
6 not barred in future rate-making proceedings from raising  
7 prudence and reasonableness issues regarding infrastructure  
8 projects covered by the Stipulation and Agreement.

9 How do you interpret the Stipulation and  
10 Agreement as to what could be challenged for prudence in  
11 terms of the agreed-upon infrastructure projects?

12 MR. DOTTHEIM: Well, I would look to page 7 of  
13 the Stipulation and Agreement, the very last sentence in  
14 Section 4 that deals with infrastructure investments. And  
15 the language is, quote, Further, nothing in this section  
16 would prohibit any signatory to this agreement from raising  
17 issues regarding the prudence and reasonableness of the  
18 foregoing infrastructure investment decisions, closed quote.

19 I think the Staff or any signatory could raise  
20 prudence questions as to how infrastructure was effectuated.  
21 I think any party could raise questions as to the prudence  
22 of infrastructure items that are not specifically addressed  
23 in the Stipulation and Agreement.

24 And there may be changed circumstances  
25 involving any one of these infrastructure items that I think

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1 a signatory could raise the question that based upon changed  
2 circumstances, the item might no longer be a prudent  
3 activity for the company to be engaging in.

4 COMMISSIONER MURRAY: So in terms of the  
5 infrastructure -- the specific infrastructure investments  
6 themselves, is it accurate to say that the only way that the  
7 prudence of actually making those specific investments --

8 not how the money was spent, but just the fact that those  
9 speci fi c investments were made, the prudence of those  
10 speci fi c ones, a challenge to that could only be based upon  
11 changed circumstances?

12 MR. DOTTHEIM: Changed circumstances,  
13 information not previously aware that had been requested not  
14 provided. Changed circumstances most -- most -- most  
15 defi ni tely.

16 COMMI SSI ONER MURRAY: So under the Stipulation  
17 and Agreement, is it your opinion that the speci fi c  
18 infrastructure investments, that those will be made, that  
19 basic premise has already been agreed to?

20 MR. DOTTHEIM: Yes. But I think they're also  
21 subject to review too on a going-forward basis.

22 COMMI SSI ONER MURRAY: As to how those  
23 investments were made or as to whether changed circumstances  
24 made it imprudent to make those investments?

25 MR. DOTTHEIM: Both. And I would want to be

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1 very clear that I am not seeking to speak on behalf of any  
2 other party regarding the provisions of the Stipulation and  
3 Agreement.

4 COMMI SSI ONER MURRAY: I understand that. And  
5 when I'm finished with these questions, I will ask if  
6 there's any party that has anything to add to those answers.

7 But do you agree that there has been no tying  
8 of current depreciation to any of these infrastructure  
9 investments?

10 MR. DOTTHEIM: That I wouldn't feel

11 comfortable giving you a definitive answer on. I would,  
12 frankly, want to consult some of the technical experts in  
13 the case who are familiar with depreciation issues that are  
14 in the case.

15 COMMISSIONER MURRAY: And who would that be?

16 MR. DOTTHEIM: That would be -- since the -- I  
17 don't know that the -- originally the Staff witnesses were  
18 available. I think that would be at this point either Greg  
19 Meyer or Bob Schallenberg of the Staff.

20 COMMISSIONER MURRAY: We would be happy to  
21 swear one of them in to have that question answered.

22 JUDGE MILLS: Mr. Schallenberg, come on up  
23 front, please.

24 (ROBERT E. SCHALLENBERG SWORN.)

25 JUDGE MILLS: Please go ahead.

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1 MR. SCHALLENBERG: The answer to your question  
2 would be no, there is no connection between the depreciation  
3 and the infrastructure investments.

4 COMMISSIONER MURRAY: Okay. And Staff has not  
5 taken the position that any of these new infrastructure  
6 investments that are specifically enumerated here would be  
7 considered to have been contribution by the ratepayers based  
8 upon any depreciation; is that correct?

9 MR. SCHALLENBERG: That's correct.

10 COMMISSIONER MURRAY: Thank you.

11 Mr. Dottheim, on page 4 of the Staff  
12 memorandum, you posed the question of whether there are any  
13 policy decisions that will not be made if the Commissioners  
14 accept the Stipulation and Agreement. And your answer there

15 to the question that you posed was, yes, but a limited yes.  
16 Would you please clarify your meaning?

17 MR. DOTTHEIM: I think I identified those at  
18 least limited areas from the Staff's perspective where it  
19 might be asserted that policy decisions are being made or  
20 not -- not being made as a consequence of the Stipulation  
21 and Agreement. I think each of the parties probably has  
22 their own perspective on that.

23 COMMISSIONER MURRAY: When you say a limited  
24 yes, that there are policy decisions that will not be made  
25 if we accept the Stipulation and Agreement, what policy

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1 decisions are you claiming we are making by accepting the  
2 Stipulation and Agreement?

3 MR. DOTTHEIM: The decision to proceed forward  
4 with a moratorium as an appropriate form of regulation in  
5 this instance.

6 COMMISSIONER MURRAY: What else?

7 MR. DOTTHEIM: It could be argued that every  
8 element of the Stipulation and Agreement is a policy  
9 decision that the Commission is deciding to approve.

10 COMMISSIONER MURRAY: But by approving a  
11 Stipulation and Agreement, the Commission itself is not  
12 making a statement that that is its policy on that  
13 particular issue, is it?

14 MR. DOTTHEIM: No. I think that's what the  
15 Staff would probably argue itself, but there are other  
16 parties who might argue that the Commission is making a  
17 policy decision respecting those items.

18                   COMMISSIONER MURRAY: Well, my problem with  
19           that is that I don't see how you can separate the parts of a  
20           Stipulation and Agreement when it is all combined and we  
21           accept or we reject a Stipulation and Agreement. And I  
22           don't think the parties themselves are even making  
23           statements about their positions on each individual issue  
24           that is contained with the Stipulation and Agreement.

25                   So how can you say the Commission itself, by

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1           approving a Stipulation and Agreement, is making policy  
2           statements about those specific issues?

3                   MR. DOTTHEIM: I don't think the Commission  
4           is. I would say that there may be other parties that do  
5           believe that.

6                   COMMISSIONER MURRAY: But your memorandum  
7           talks about decisions that will not be made if the -- okay.  
8           So you're not -- maybe I read your memorandum -- your  
9           question was are there any policy decisions that will not be  
10          made if the Commission accepts the Stipulation and  
11          Agreement. You are saying policy decisions that will not be  
12          made by the parties rather than by the Commission?

13                  MR. DOTTHEIM: No. I was addressing that from  
14          the perspective of there are issues in the case that the  
15          Commission will not be called upon to decide because the  
16          case is settled; that is, if the Commission accepts the  
17          Stipulation and Agreement.

18                  COMMISSIONER MURRAY: Okay. But I've still  
19          got to pursue what it is you're saying here, because I still  
20          don't understand what you're saying. It sounds to me as if  
21          you're saying, yes, but a limited yes, there are policy

22 decisions that will not be made; therefore, it seems you are  
23 saying there are policy decisions that are being made by the  
24 Commission in this Stipulation and Agreement. And I want to  
25 be clear what policies you think we are setting by accepting

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1 this Stipulation and Agreement, if we do so.

2 MR. DOTTHEIM: Again, I would agree that it  
3 could not be argued that the Commission has affirmatively  
4 selected policy decisions by accepting the Stipulation and  
5 Agreement or the fact -- or even it be argued that the  
6 Commission has entered into a contract by approving the  
7 Stipulation and Agreement.

8 COMMISSIONER MURRAY: So is your answer that  
9 we are not making policy decisions if we accept a  
10 Stipulation and Agreement?

11 MR. DOTTHEIM: You're not making policy  
12 decisions by accepting the Stipulation and Agreement and  
13 you're not making policy decisions respecting the issues  
14 that are presented in the case that you would have been  
15 called upon to decide if the case had gone forward.

16 MR. JOYCE: Commissioner Murray, let me put in  
17 my two cents as a co-drafter here. I think that that  
18 particular section is intended to tell the Commission that  
19 novel or new issues that were raised in this case, you know,  
20 will not be decided. And those are the ones respecting the  
21 pension issue and the rate design issue are a few of them  
22 that were mentioned.

23 In all other respects, what Staff is saying is  
24 that it's following Commission policy as set out in prior

25 reports and orders and decisions of the Commission. So it's

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1 really saying that there are -- the new issues that are  
2 raised, these are the limited ones that the Commission will  
3 not be setting policy on, but all of the others, you know,  
4 there's no other deviation from prior Commission policy.

5 Now, then you asked -- you asked a larger  
6 question though as to whether adopting this particular  
7 agreement is setting policy. And while I agree with  
8 Mr. Dottheim that you're not explicitly setting it  
9 obviously, because you are not involved in negotiation or  
10 you are not issuing an order setting a policy, but certainly  
11 implicitly, you're setting policy because you're stating  
12 that the goals -- the policy goals that are implicit in this  
13 document are not unacceptable to the Commission.

14 COMMISSIONER MURRAY: Well, Mr. Joyce, do you  
15 think it's appropriate to cite to a Stipulation and  
16 Agreement as evidence of Commission policy as to specific  
17 issues?

18 MR. JOYCE: I would say that I would have  
19 difficulty doing that, but I certainly think that other  
20 parties would take the fact that the Commission has approved  
21 a Stipulation and Agreement as the Commission adopting a  
22 particular policy. But that's certainly not a view I would  
23 take.

24 COMMISSIONER MURRAY: Do you think it would be  
25 appropriate for a party to point to something that another

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1 party had agreed to in a Stipulation and Agreement in  
2 another case and say, You see, this party agrees to that  
3 treatment of that issue?

4 Isn't it all related to the total agreement  
5 and you can't take anything piecemeal out of it to determine  
6 what a party's position is on an issue?

7 MR. JOYCE: I would agree with your prior  
8 statement that once you sign a Stipulation and Agreement, it  
9 isn't an indication that every single party has an equal  
10 stake in the understanding of each provision that's in that  
11 document.

12 I mean, so it would be difficult to take a  
13 piece and say, Well, you signed that, so you specifically  
14 believe this and you are going to have to be consistent with  
15 that in another case or another -- with another party.

16 COMMISSIONER MURRAY: Okay. I'm going to move  
17 on. On page 21 of the Staff memorandum, paragraph 10, the  
18 memorandum talks about the possibility of UE being able to  
19 escape from the commitments that it has made a part of the  
20 Stipulation and Agreement.

21 And my first question to you, Staff, is are  
22 there any ways that Staff or any of the other signatories  
23 could escape from the commitments that they have made as  
24 part of the Stipulation and Agreement?

25 MR. DOTTHEIM: On behalf of the Staff, I don't

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1 think there is. Again, I won't presume to speak on behalf  
2 of any other party. And I think it's set out in the

3 Stipulation and Agreement itself those situations, events by  
4 which a signatory could file a rate increase case or file a  
5 rate decrease case.

6 COMMISSIONER MURRAY: Do you have any reason  
7 to suggest that UE or any other party would attempt to  
8 escape from the commitments made here?

9 MR. DOTTHEIM: I know of no plan or intention  
10 on any parties' part to engage in such activity.

11 COMMISSIONER MURRAY: Okay. In the memorandum  
12 you go on to talk about, and I quote, The escape permitted  
13 by Section 3B. And by using that language, are you  
14 suggesting in any way that Staff doesn't agree with  
15 Section 3B?

16 MR. DOTTHEIM: That Staff does not agree with  
17 3B?

18 COMMISSIONER MURRAY: Yes.

19 MR. DOTTHEIM: No.

20 COMMISSIONER MURRAY: And under 3B-2, wouldn't  
21 a significant change in federal or state law end the rate  
22 moratorium for all parties; in other words, give all parties  
23 the right to file for a rate change?

24 MR. DOTTHEIM: Yes.

25 COMMISSIONER MURRAY: So it doesn't single UE

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1 out?

2 MR. DOTTHEIM: No, it does not. No, it does  
3 not.

4 COMMISSIONER MURRAY: My last question to you,  
5 Staff, is do you still support this Stipulation and

6 Agreement as being in the public interest?

7 MR. DOTTHEIM: Yes.

8 COMMISSIONER MURRAY: And I have just a couple  
9 of questions for the large industrials. And I'm not sure  
10 who's here to answer those questions.

11 Just briefly I'd like to know if the higher  
12 reduction to the industrials rate is a sufficient move in  
13 the direction of class cost of service?

14 MS. VUYLSTEKE: Commissioner Murray, we have  
15 our witness, Maurice Brubaker, here on behalf of the  
16 Missouri Industrial Energy Consumers, and I think he would  
17 be the most appropriate person to answer your question. We  
18 don't have a microphone at our table, so can you hear we all  
19 right?

20 JUDGE MILLS: We can hear you fine.  
21 Unfortunately, the video streaming that's going out to the  
22 world wide web won't pick up anything that's not picked up  
23 by the microphone.

24 MS. VUYLSTEKE: We'll just adjust and move  
25 over here.

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1 (MAURICE BRUBAKER SWORN.)

2 JUDGE MILLS: Thank you. Please go ahead.

3 MR. BRUBAKER: Yes. This is Maurice Brubaker,  
4 Commissioner Murray. Your question was I believe did we  
5 feel like what we achieved in the stipulation in terms of  
6 the reduction to industrial rates went far enough?

7 COMMISSIONER MURRAY: Is a sufficient move  
8 towards the cost of class of service?

9 MR. BRUBAKER: I think, like any other party,

10 we didn't get everything we wanted, but that's the spirit of  
11 the stipulation. And we felt that it was a significant move  
12 that was made with the rate decrease in the stipulation.  
13 And at this point in time at least, we're satisfied with  
14 that movement. We'll probably look for further movement in  
15 the future, but that will be a decision to be made in the  
16 future.

17 COMMISSIONER MURRAY: That was my next  
18 question. And then in terms of the rates comparing now with  
19 other utilities in the region for large industrials, have  
20 you done any analysis of how those rates will compare after  
21 this Stipulation and Agreement?

22 MR. BRUBAKER: We think that they should look  
23 more in line with the rates for the other utilities. We  
24 haven't actually put any quantification together on that,  
25 but we think it should help them move them -- move them in

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1 line.

2 COMMISSIONER MURRAY: The Attachment A that  
3 was attached to the Stipulation and Agreement and then there  
4 was a revised Attachment A filed this morning shows some  
5 percentages of current revenues for the various classes. Do  
6 you have those with you?

7 MR. BRUBAKER: I have Attachment A, yes, and I  
8 think I will have a revised Attachment A in a second.

9 COMMISSIONER MURRAY: I'd just like for you to  
10 clarify whether this revised attachment shows anything about  
11 the percentages of current revenues that will come from each  
12 class after the Stipulation and Agreement is in effect. I

13 can't tell by looking at it, but it's probably just that I'm  
14 not understanding how to interpret it.

15 MR. BRUBAKER: Commissioner, I don't believe I  
16 see that either, although this was prepared by Staff and I  
17 would certainly defer to Staff if they know where that is or  
18 if it's in here.

19 COMMISSIONER MURRAY: All right. Thank you.  
20 Does the Staff know the answer to that  
21 question?

22 MR. DOTTHEIM: I believe what you're looking  
23 for -- I'm sorry. I believe what you're looking for,  
24 Commissioner Murray, is not in the schedules.

25 COMMISSIONER MURRAY: All right. But the

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1 percentages for the large industrials as a total percentage  
2 go down?

3 MR. DOTTHEIM: Yes.

4 MR. BRUBAKER: They do.

5 COMMISSIONER MURRAY: I believe that's all my  
6 questions for you, Mr. Brubaker. Thank you.

7 And then I would just ask the Office of Public  
8 Counsel and any other of the signatories who are here who  
9 might like to respond to any of the questions that I asked.

10 MR. COFFMAN: Yes. Thank you very much. John  
11 Coffman again. I would like to just briefly address about  
12 three or four of the points that you raised and give my  
13 perspective.

14 With regard to your question about whether  
15 someone could at a future date, say, in 2006, file a case  
16 and claim that AmerenUE had been over-earning during that

17 period, I think that it's important to realize that in  
18 Missouri we have a legal prohibition against retroactive  
19 rate-making.

20 And it's sometimes difficult for the public or  
21 people in the media to understand this sometimes because we  
22 in a typical rate case use a historical test year. And  
23 sometimes cases like this one are described as cases  
24 involving returning money to customers when, in fact, rates  
25 can only be set prospectively.

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1 So I don't think it would be fair to say if  
2 someone filed a rate case at the first date possible after  
3 the three and a half year moratorium, that that case would  
4 be about returning money during a period, but it would be  
5 possible, I think, for our office or anyone else who has a  
6 right to, file a case that utilized or analyzed a test year  
7 that was there at the end of the moratorium period, but that  
8 would not be suggesting that there had been earnings that  
9 needed to be refunded in any way.

10 They would only be a reflection of what would  
11 be expected prospectively and the complaint, I would gather,  
12 would be about what would be just and reasonable based on  
13 the current moment going forward.

14 COMMISSIONER MURRAY: Let me clarify that. Do  
15 you envision a scenario in which you could claim that  
16 AmerenUE had been making excessive earnings during this  
17 period of time in which you had agreed to the rates?

18 MR. COFFMAN: I think, as Mr. Dottheim pointed  
19 out, it would be difficult given that there is no rate of

20 return specifically mentioned in this agreement. There  
 21 might be some comparison made to what some party believed to  
 22 be a reasonable rate of return at that point. But, yeah, I  
 23 don't think that it would be very easy to claim what was the  
 24 benchmark during the moratorium.

25 COMMISSIONER MURRAY: Okay.

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1 MR. COFFMAN: The next point I wanted to  
 2 briefly mention was the legal issue about whether the  
 3 Commission has the authority to approve an alternative  
 4 regulation plan.

5 If this case is litigated, that would be  
 6 something that the Office of Public Counsel would take great  
 7 interest in and would provide legal citations and arguments  
 8 on.

9 The question is not easily answered when you  
 10 use the phrase "alternative regulation," because as we've  
 11 talked about, it's a semantical word that's been used in  
 12 many contexts. It's hard to say what you mean by an  
 13 alternative regulation plan anymore.

14 So I would have to -- if you're going to ask  
 15 if the Commission is legally authorized to approve one, you  
 16 have to understand what components are in that plan. There  
 17 may be a properly structured one that the Commission could  
 18 impose on other parties, but as Staff pointed out, the  
 19 Commission has not yet imposed a plan on unwilling  
 20 participants.

21 And there are a couple of components of the  
 22 plan that had been proposed sort of as an alternative by the  
 23 company in this case which I believe would be beyond the

24 Commission's legal authority specifically limiting discovery  
25 rights of the Office of the Public Counsel, also placing

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1 moratoriums on rates outside of an agreement of all the  
2 parties. I believe those are beyond what the Commission has  
3 the legal authority to approve, but --

4 COMMISSIONER MURRAY: So the issue that has  
5 been raised as to the Commission's authority, is the  
6 Commission's authority to order an alternative rate plan  
7 versus the Commission's authority to approve an agreed-upon  
8 plan; is that correct?

9 MR. COFFMAN: Right. That's correct. That's  
10 correct. And, as you know, we've agreed to two earlier ones  
11 with this company that we thought were good based on what we  
12 knew at the time.

13 I think I need to address the issue that you  
14 raised regarding I guess page 7 of the stipulation and the  
15 sentence about raising issues of prudence and  
16 reasonableness. I think I agree with Mr. Dottheim's answer.  
17 I'm not sure -- I'm not sure whether I agree with Mr. Cook's  
18 answer on that question.

19 I think that -- I guess it's possible that  
20 there could be some interpretations that diverge on this in  
21 the future, but I think in my mind the sentence is clear  
22 regarding the ability to raise prudence and reasonable  
23 issues about the foregoing infrastructure investment  
24 decisions.

25 Now, primarily prudence issues involve the

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1 implementation of a particular plan, but that's not always,  
2 in my mind, very clear what is a decision to, say, build a  
3 particular piece of plant as opposed to the implementation  
4 of it.

5 And I think it's important to also recognize  
6 that this entire section on infrastructure recognizes a lot  
7 of leeway during the time period that this agreement would  
8 be in effect. The company is only bound to do what is,  
9 quote, commercially reasonable. That's a term that could be  
10 open to some interpretation.

11 But the recognition is there that factors may  
12 change and what at this point may seem reasonable may depend  
13 on, you know, load factors, you know, just changes in the  
14 markets for electricity and what happens in the surrounding  
15 areas.

16 There is built into this agreement an ongoing  
17 integrated resource planning process. There is the process  
18 for waivers from this plan that the company is not  
19 necessarily bound to it. And I think symmetrically other  
20 parties are not necessarily bound to not raise issues  
21 regarding prudence and reasonableness that may touch on  
22 these issues.

23 Of course, I think this agreement could be  
24 raised as a relevant factor in whether something was prudent  
25 or reasonable, but as the Commission has often done in

1 agreements, is not binding itself as to future rate-making  
2 decisions and other parties are not binding themselves as to  
3 what issues they may raise involving these investment  
4 decisions.

5 COMMISSIONER MURRAY: Let me follow-up there  
6 with you on that. Under the Stipulation and Agreement, the  
7 company is making the commitment to include the completion  
8 or substantial completion of the following construction  
9 projects. And then those projects are enumerated; isn't  
10 that correct? And you're saying that the company's decision  
11 to abide by that commitment could be challenged for  
12 prudence?

13 MR. COFFMAN: This agreement would bind the  
14 company to make decisions that are commercially reasonable  
15 along these lines. But, for instance, the particular  
16 projects that may be developed to meet the 700 megawatts of  
17 new regulated generating capacity are not spelled out. And  
18 we would anticipate, you know, in meetings and in  
19 information provided, work with the utility as they see the  
20 needs for the particular projects to meet this component  
21 going forward, but --

22 COMMISSIONER MURRAY: Okay. Let me just  
23 specifically point to one that is very specific, the  
24 replacement of steam generators at the Callaway power plant.  
25 Now, you don't anticipate a situation in which you or

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1 another party could come back and say it was imprudent for  
2 UE to replace the steam generators at the Callaway power  
3 plant, do you?

4 MR. COFFMAN: No. I think it would be

5 difficult to challenge the actual decision to replace the  
6 steam generators and that does seem reasonable at this time.  
7 Of course, in the implementation of that, I guess there  
8 could potentially be issues raised about the manner in which  
9 it was replaced or cost overruns, etc.

10 COMMISSIONER MURRAY: Yes. I certainly  
11 understand that. What I'm trying to distinguish here is  
12 whether this agreement prevents a prudence challenge to the  
13 making of the investment itself, to going ahead with the  
14 project?

15 MR. COFFMAN: We -- I mean, we would stand by  
16 the agreement in that it does specify certain projects. And  
17 certainly, you know, with regard to that specific project, I  
18 think it would be difficult to challenge the prudence of the  
19 actual decision to replace steam generators at the Callaway  
20 nuclear plant.

21 I guess it's possible that factors could  
22 change over the years of this plant, viability of nuclear  
23 power is -- has been questioned post-September 11. We could  
24 find out about different load changes in the next year or  
25 two that would perhaps impact how that was replaced, but you

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1 know, I would anticipate that any challenge that could be  
2 raised about prudence or reasonableness would most likely be  
3 in the implementation aspect of it, but --

4 COMMISSIONER MURRAY: You are agreeing that  
5 these investments need to be made and that the company is  
6 committing to make them; is that correct?

7 MR. COFFMAN: At this time, they appear

8 reasonable from what we know, yes, and we certainly look  
9 forward to going forward with the integrated resource  
10 planning to communicate and work with the company.

11 COMMISSIONER MURRAY: So challenge as to the  
12 prudence or reasonableness of making these investments, is  
13 it your opinion that such a challenge would have to be based  
14 upon change of circumstances?

15 MR. COFFMAN: Or the provision of information  
16 that we're not now aware of. And, again, I think that this  
17 agreement itself would be relevant in addressing such  
18 prudence matters. In other words, the fact that parties  
19 have entered into the particular wording of this section and  
20 if the Commission approves it, it would have some relevant  
21 impact --

22 COMMISSIONER MURRAY: Now, would --

23 MR. COFFMAN: -- but -- I'm sorry.

24 COMMISSIONER MURRAY: Go ahead.

25 MR. COFFMAN: Whether there was pre-approval

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1 of every aspect of an investment decision that would be  
2 related under this, I believe that the parties would reserve  
3 the right to at least raise the issue.

4 COMMISSIONER MURRAY: If AmerenUE did not meet  
5 its commitment to complete or substantially complete any one  
6 of those projects, would it be in breach of this agreement?

7 MR. COFFMAN: Possibly. I mean, but there's a  
8 process here of notifying the parties, there is a -- the  
9 process of explaining why there might be a waiver. I mean,  
10 I would think it very likely that given a significant change  
11 in circumstances, the parties would all recognize there

12 might be a need for a waiver from this.

13 COMMISSIONER MURRAY: So AmerenUE might have  
14 an out from this particular provision of the Stipulation and  
15 Agreement based upon a substantial change in circumstances;  
16 is that right?

17 MR. COFFMAN: Yes. As well as --

18 COMMISSIONER MURRAY: And the other parties  
19 would also have that potential out from this particular part  
20 of the Stipulation and Agreement based upon a substantial  
21 change in circumstance; is that accurate?

22 MR. COFFMAN: Yes. I think -- I think that  
23 is. As well as the commitment is, of course, also  
24 conditioned on what is commercially reasonable. I think  
25 that is a recognition that as things change, what we know

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1 now and what we believe to be reasonable may change before  
2 investment decisions are made. That's the best --

3 COMMISSIONER MURRAY: Did you have other --

4 MR. COFFMAN: Yes. Just a couple, I think. I  
5 wanted to mention that I think I agree with you as far as  
6 your concern about various parties citing to Stipulations  
7 and Agreements and particularly particular components of  
8 Stipulations and Agreements. I think that has raised  
9 concern for me in the past and I think it's very important  
10 that Stipulations and Agreements be viewed as a whole as a  
11 component.

12 And as to rate design shift, I just had to  
13 note that the additional reductions that are targeted for  
14 the large industrial classes in this agreement do go beyond

15 what the cost of service analysis that our office performed;  
16 however, we do believe it's within the zone of  
17 reasonableness and support the entire package.

18 Just wanted to make it clear that this --  
19 didn't want someone claiming that this agreement was some  
20 precedent to a particular cost of service study methodology  
21 on behalf of my office and --

22 COMMISSIONER MURRAY: And that's a part of the  
23 whole analysis of the Stipulation and Agreement --

24 MR. COFFMAN: That's right. That's right.

25 COMMISSIONER MURRAY: -- not being a policy

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1 statement by any party as to any issue; is that correct?

2 MR. COFFMAN: That's right. And there is an  
3 additional paragraph in the agreement that makes it clear  
4 that no one is agreeing to any particular cost of service  
5 issue or rate design methodology.

6 I think that covers the issues that you asked  
7 of other parties. I thank you for giving me an opportunity  
8 to respond.

9 COMMISSIONER MURRAY: Thank you.

10 Did any other party wish to add? Mr. Cook?

11 MR. COOK: Commissioner, I think probably to  
12 make sure that the record is clear, I should respond  
13 somewhat to the discussions regarding the prudence on the  
14 infrastructure.

15 I think we're okay on this. In 2006 or  
16 whenever the moratorium is over and the company then -- if  
17 there's a rate case and the company attempts to put into  
18 rate base the infrastructure investments that this

19 particular Stipulation and Agreement requires us to do,  
 20 obviously the company is not going to look kindly upon some  
 21 signatory saying, Well, we've changed our mind and you  
 22 shouldn't have done the Callaway replacements and you  
 23 shouldn't have done 1,300 megawatt upgrades and you  
 24 shouldn't have added 600 megawatts of regulating generating  
 25 capacity.

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1 I think probably the changed circumstances  
 2 discussion is addressed by the rest of this section that  
 3 Mr. Coffman has referred to. And that is that we're going  
 4 to have status updates on a quarterly basis, we're going to  
 5 continue to meet with all the signatories or certainly Staff  
 6 and Public Counsel on an ongoing basis on our infrastructure  
 7 plans and those types of issues.

8 And as that goes along, we would anticipate  
 9 that should a party see a changed circumstance on the  
 10 horizon or if it becomes apparent, that those will have to  
 11 be addressed at that point. And if it's 700 megawatts  
 12 that's decided needs to be changed to 500, we'll discuss  
 13 that. And I suspect should there be a disagreement that  
 14 cannot be resolved, we'll have to address that.

15 What I think this does do is it keeps a party  
 16 from sitting back in the bushes and waiting until the end of  
 17 that period and saying, We've changed our mind and we don't  
 18 think it was prudent to do that. I think the responsibility  
 19 is on all the parties to make sure that those kinds of  
 20 concerns are brought out during this period so they can be  
 21 addressed. So I don't think that that will be a concern.

22 And I would also mirror the -- or repeat the  
23 company's position that we do not believe that a stipulation  
24 as being approved by this Commission indicates that the  
25 Commission or any of the parties is specifically buying off

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1 any particular issue that's included in the stipulation. To  
2 the extent that the Commission is setting policy by  
3 approving the stipulation, I expect it's setting policy that  
4 it approves this stipulation.

5 COMMISSIONER MURRAY: Thank you.

6 MR. COOK: Thank you.

7 Mr. Pendergast?

8 MR. PENDERGAST: Thank you. I'd just like to  
9 throw my two cents worth in, if I could, on this issue about  
10 stipulations and what impact they have. And I would --  
11 perhaps I should --

12 COMMISSIONER MURRAY: I'm having trouble  
13 hearing.

14 MR. PENDERGAST: Thank you. And I certainly  
15 agree with what we've heard here today that one has to be  
16 cautious when citing a Stipulation and Agreement as  
17 establishing any particular principle. I've been in  
18 situations before where stipulations have been cited to my  
19 disadvantage in that way and it's something that I think you  
20 need to be very careful of.

21 By the same token, I don't think that  
22 consideration can completely obviate another concern and  
23 that's a concern of having some kind of uniformity in how  
24 very important policy matters before this Commission are  
25 applied.

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1                   And, of course, this Commission -- this  
2       Stipulation and Agreement does spell out a treatment of  
3       depreciation that is different from the treatment of  
4       depreciation that's been applied by the Commission with  
5       respect to Laclede, I think with respect to Empire District  
6       Electric Company. And it establishes that that different  
7       treatment is going to continue for some period of time.

8                   And, quite frankly, I'm not sure exactly what  
9       to make of that, but I do think that at some point it is a  
10      consideration that needs to be taken into account by the  
11      Commission. Whether it's done through a contested  
12      proceeding or it's done through a stipulation, what does it  
13      mean when policies of that importance are being applied in  
14      significantly different ways?

15                  And I think that is something that probably we  
16      all need to think about and we all need to go ahead and give  
17      some consideration as to how appropriate that is. I don't  
18      have a specific answer on it yet, because I just thought  
19      about it in response to these questions, but wanted to go  
20      ahead and bring it up. Thank you.

21                  COMMISSIONER MURRAY: Thank you.

22                  JUDGE MILLS: Thank you, Mr. Pendergast.

23                  MR. PENDERGAST: I'm sorry?

24                  JUDGE MILLS: I said thank you.

25                  MR. PENDERGAST: Oh, thank you.

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1 JUDGE MILLS: Just so the record's clear,  
2 Commissioner Murray did sort of throw out to the field to  
3 anyone who wanted to respond. And so the record's clear,  
4 I'm going to go through one by one and ask those who didn't  
5 whether or not they do have any response.

6 Mr. Molteni?

7 MR. MOLTENI: I don't think I have anything to  
8 add to what's already been said.

9 JUDGE MILLS: Thank you.

10 Mr. Overfelt?

11 MR. OVERFELT: No addition.

12 JUDGE MILLS: Mr. Johnson?

13 MR. JOHNSON: Nothing to add.

14 JUDGE MILLS: Mr. Fischer?

15 MR. FISCHER: No, thank you, your Honor.

16 COMMISSIONER LUMPE: Can I follow-up with  
17 Mr. Johnson?

18 JUDGE MILLS: Sure.

19 COMMISSIONER LUMPE: Mr. Johnson, the question  
20 was asked of the other industrials, I think, as to whether  
21 this was a movement closer to cost of service for the  
22 industrials. Do you have any comment on that? Do you feel  
23 it is a move closer?

24 MR. JOHNSON: Yes, it is. Very definitely it  
25 is a move -- It's a significant move toward cost of

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1 service.

2 COMMISSIONER LUMPE: Thank you.

3 JUDGE MILLS: I think before we move on to  
4 questions from Commissioner Lumpe, we'll take a noon recess.  
5 I don't know that we're going to run into a time crunch  
6 today, but I don't know that many of you from out of town  
7 want to spend any more time than you have to, so let's keep  
8 it relatively brief and we'll come back promptly at  
9 one o'clock. We're off the record.

10 (A RECESS WAS TAKEN.)

11 JUDGE MILLS: Let's go back on the record.  
12 We're back on the record in EC-2002-1. We're continuing  
13 with questions from the Commissioners of the parties.  
14 Commissioner Lumpe?

15 COMMISSIONER LUMPE: Yes. Thank you, Judge.

16 Some of the questions have been asked. I  
17 think we've established that there's no precedential value  
18 in Stipulations and Agreements. I think we've established  
19 there's no restriction on the Commission to do its job or to  
20 use its Staff if it needed to if there was a complaint.

21 I think it's been established that there's  
22 some what I'll call wiggle room in the investments area that  
23 depending on various factors and parties coordinating and  
24 providing reports and that sort of thing, so that there  
25 is -- it's not a fast and firm -- there is some wiggle room

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1 there. And also I think we've established that the rate  
2 design issue is put off until 2006; is that correct? That  
3 that was supposed to have -- was part of an earlier stip  
4 that was continued to be put off I guess for future rate  
5 design to be done, a rate design to be done; is that  
6 correct?

7 MR. DOTTHEIM: That is correct.

8 COMMISSIONER LUMPE: Okay. Thank you.

9 Then given that, I guess, Mr. Rainwater, I'd  
10 like to just kind of start with you and just to make certain  
11 that I think we're on the same wavelength. And you are  
12 aware that it was the Commission, not unanimously, but a  
13 majority of the Commission, that did authorize the Staff to  
14 do an earnings investigation. You're aware of that?

15 MR. RAINWATER: Yes, I am.

16 COMMISSIONER LUMPE: And then that the  
17 Commission felt that after six years of a program, an  
18 alternative program, that perhaps rates might need  
19 rebalancing and that it should be looked at. That's your  
20 understanding also?

21 MR. RAINWATER: Yes, it is.

22 COMMISSIONER LUMPE: All right. And then that  
23 Staff, with the authorization that we had given them, looked  
24 at the books to determine if there were excess earnings and  
25 they did that and came up with the numbers that were

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1 provided. Would you agree that it is the Commission that  
2 sets policy as opposed to the Staff setting policy?

3 MR. RAINWATER: I'm not sure which is more  
4 appropriate, but in a case like this, I believe that policy  
5 issues should be considered. It wasn't apparent to me that  
6 they had been, just from reading the Staff's testimony, so I  
7 felt that someone should set policy. And I suppose I would  
8 naturally look to the Commissioners themselves rather than  
9 the Staff to take the leadership on those sort of issues.

10 COMMISSIONER LUMPE: And would you agree with  
11 me that parties frequently cite to past Commission  
12 decisions, statutes, rules, those sorts of things -- had the  
13 litigation continued that parties frequently cite to those?

14 MR. RAINWATER: Yes, I would.

15 COMMISSIONER LUMPE: All right. And Staff  
16 did, in many cases, cite to those particular past decisions  
17 in its testimony, rules, etc.?

18 MR. RAINWATER: Yes.

19 COMMISSIONER LUMPE: Okay. And that parties  
20 can use different methodologies as they wish. And I think  
21 one of the courts had said something to the effect that it's  
22 not so much the method, but whether the result is  
23 reasonable. And you believe we've come to a reasonable  
24 determination in this stipulation?

25 MR. RAINWATER: In the settlement, yes, I do

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1 believe we have.

2 COMMISSIONER LUMPE: All right. And the  
3 parties sometimes also want us to follow tradition and  
4 sometimes they want us to follow other methods because of  
5 changing environments; is that correct?

6 MR. RAINWATER: That certainly is correct.

7 COMMISSIONER LUMPE: All right. So that --  
8 and different parties may disagree, one party may want to  
9 follow tradition, another party not and another party may  
10 want to follow something because of a changing environment  
11 and another party not; is that correct?

12 MR. RAINWATER: That is always true.

13 COMMISSIONER LUMPE: And, again, it is the

14       reasonableness of the result that is the important thing.  
15       And if someone does want to change from tradition, is it  
16       important then that they give adequate explanation as to why  
17       that change should be made?

18                     MR. RAINWATER:   Certainly I would agree with  
19       that.

20                     COMMISSIONER LUMPE:   All right.   Thank you,  
21       Mr. Rainwater.

22                     I have some questions for Staff then and I  
23       think Public Counsel.   One of the items that I didn't see  
24       addressed had to do with the affiliate abuse issue.   And can  
25       you tell me how that will be addressed?   Is it going to be

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1       addressed in some other forum or where?

2                     MR. DOTTHEIM:   As far as the specific items  
3       which the Staff in testimony has asserted is affiliate  
4       abuse, that will not be addressed.

5                     COMMISSIONER LUMPE:   Okay.   Are we going to  
6       wait for the Western District to make a decision?   Is that  
7       the way we will go?

8                     MR. DOTTHEIM:   In part.   It's right now, I  
9       believe, before the Missouri Supreme Court.

10                    COMMISSIONER LUMPE:   Oh, Missouri Supreme  
11       Court.

12                    MR. DOTTHEIM:   And even -- even without the  
13       Commission's rules, there are cases, case law in the state  
14       which address affiliate transactions.   They're more dealing  
15       with the telecommunications industry where affiliate  
16       transactions were more pervasive than they are necessarily

17 involving the electric and gas industry, but there is case  
18 law on affiliate transactions that the Staff, any party can  
19 cite to.

20 COMMISSIONER LUMPE: And since that's not part  
21 of the Stipulation and Agreement, it could be addressed  
22 further --

23 MR. DOTTHEIM: Well, it --

24 COMMISSIONER LUMPE: -- or not?

25 MR. DOTTHEIM: -- in that there's a moratorium

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1 and the rates are set, other than monitoring activity or --  
2 that is set out in the Stipulation and Agreement or that the  
3 Staff or any party, Public Counsel, believes should be  
4 monitored -- earlier in the day I believe Mr. Coffman noted  
5 emission allowances, the SO2 emission allowances.

6 That sort of surveillance, monitoring is still  
7 available, but the rates are set. So if there is any  
8 affiliate abuse, it will not be addressed in the form of  
9 rates.

10 COMMISSIONER LUMPE: Mr. Coffman, did you wish  
11 to add anything? I heard your comments earlier and so I  
12 thought maybe you might have something to add.

13 MR. COFFMAN: I don't know that I have much  
14 else to add. I agree with Mr. Dottheim. As the instances  
15 of affiliate abuse, the issues raised by our office in our  
16 testimony would be resolved by this agreement as they relate  
17 to the general rates.

18 COMMISSIONER LUMPE: Okay.

19 MR. COFFMAN: But that would not preclude  
20 these issues being raised in other cases.

21 COMMISSIONER LUMPE: Okay. Maybe I should ask  
22 this of you. I'm looking on page 9 and it's paragraph 9 of  
23 the stipulation. And it's the demand response issue.

24 MR. COFFMAN: Okay.

25 COMMISSIONER LUMPE: Is this in any way tied

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1 to the legislation that was passed this year? Does it go  
2 beyond that? Does it have any relationship to it at all?

3 MR. COFFMAN: I'm not sure exactly which  
4 legislation -- oh the -- yes, there -- yes, there is  
5 anticipated in here some customer-owned generation.  
6 Frankly, the legislation that passed this year, I don't know  
7 that I would actually characterize it as net metering, but  
8 there is certain provisions for customer-owned generation to  
9 be received -- to flow both ways and some provisions about  
10 it. Yeah, this does touch on that type of customer  
11 connection to the grid.

12 COMMISSIONER LUMPE: Does this go beyond that  
13 legislation? Is it just in sync with it or --

14 MR. COFFMAN: I think potentially it could.  
15 Actually, this is a very broad concept here. It could  
16 include a great number of other issues. Obviously  
17 potentially it could include interruptible load, changes.  
18 This was actually a provision that was negotiated out of a  
19 variety of different concerns that different parties had  
20 raised and will be the subject of a collaborative if this  
21 agreement is approved, so it really could take many forms.

22 MR. DOTTHEIM: Commissioner, excuse me for  
23 interrupting. I think Mr. Coffman has indicated this, but

24 there may be other parties that might want to address that  
25 Section 9 that found that to be a significant item in the

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1 Stipulation and Agreement.

2 COMMISSIONER LUMPE: Okay. Could I ask who  
3 those parties might be and whether they would like to do so  
4 right now? Mr. Johnson?

5 MR. JOHNSON: Yes. I would like to comment.  
6 We have a -- obviously I think everybody's interested in  
7 reducing the need for generation, for new generation to be  
8 built by this utility, which is expensive. And we have been  
9 urging for some time the use of interrupt-- mandatory  
10 interruptible rates to at least partially resolve this  
11 problem.

12 So interruptible rates are very important for  
13 my clients. Clearly the evidence in this case and in a  
14 prior case confirms that an interruptible rate is  
15 substantially cheaper than building new gas-fired combustion  
16 turbine-type generations, so we -- this is one of the areas  
17 that we feel very strongly about and that we will push for  
18 and seek to put in place appropriate interruptible tariffs  
19 and that will reduce the need for generation and at the same  
20 time benefit everybody.

21 COMMISSIONER LUMPE: Okay. Ms. Randolph, do  
22 you have anything to add to that? Okay. I'm sorry.

23 MS. RANDOLPH: I might if you want to swear me  
24 in as a witness, if you want a brief comment.

25 COMMISSIONER LUMPE: Was DNR a party?

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1 MS. WOODS: Yes. But I do think she has  
2 something she'd like to add.

3 (ANITA RANDOLPH SWORN.)

4 JUDGE MILLS: Thank you.

5 MS. RANDOLPH: My name is Anita Randolph with  
6 the Department of Natural Resources Energy Center. And we  
7 are very interested in the issue of demand response, not  
8 only through the technique of interruptible loads, but also  
9 other kinds of energy efficiency and demand control or  
10 demand response options that would go beyond simply  
11 interruptible loads.

12 We are pleased to see this option in the  
13 proposed Stipulation and Agreement for the Commission's  
14 consideration and would be most interested in pursuing these  
15 options with the other parties. We believe it does have  
16 public benefit in terms of helping customers reduce utility  
17 bills and helping the utility companies either avoid or  
18 postpone some of the investments that would be needed in new  
19 generating capacity. Thank you.

20 COMMISSIONER LUMPE: And I'd like to thank you  
21 and Ameren both for the photovoltaic array that I now see on  
22 our roof, for doing that. Thank you, Ms. Randolph.

23 Anyone else?

24 MR. COFFMAN: Excuse me.

25 COMMISSIONER LUMPE: Yes.

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1 MR. COFFMAN: I believe Ryan Kind would have

2 an additional comment.

3 COMMISSIONER LUMPE: Mr. Kind.

4 MR. COFFMAN: He needs to probably be sworn.

5 (RYAN KIND SWORN.)

6 JUDGE MILLS: Thank you.

7 MR. KIND: Yeah. I just wanted to mention a  
8 couple of the reasons why our office is strongly supportive  
9 of this program. And one of the main things is the changes  
10 going on at the federal level currently in electric  
11 regulation.

12 The FERC has one of its main initiatives that  
13 it's in the middle of undertaking right now is the attempt  
14 to create and implement what they're referring to as the  
15 standard market design.

16 And that standard market design, I'm sure the  
17 Commissioners have probably been informed by Dr. Proctor to  
18 some extent what's going on, but it will probably result  
19 within the next two or three years in location specific  
20 real-time and day ahead prices being available throughout  
21 the eastern interconnection.

22 And we think it could be very beneficial for  
23 customers to be able to respond to those market prices  
24 either through shifting their load or through having their  
25 own in-house generation that could actually provide them

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1 some economic benefits by putting energy onto the grid in  
2 response to market prices or just reducing their loads.

3 And so we think it's really a timely program  
4 to get underway at this time that we could hopefully get

5 something underway and will kind of mesh with the  
6 initiatives going on at the federal level.

7 COMMISSIONER LUMPE: Okay. Can I ask Staff  
8 then, the various programs the low-income, the  
9 weatherization, the residential efficiency program, this  
10 program, do you have some sort of time line established or  
11 is that the next thing to get together and establish some  
12 sort of time line?

13 MR. DOTTHEIM: That is the next thing. I'm  
14 trying to recall whether we actually have set out time lines  
15 as far as the collaborative effort. And I think in the  
16 various instances we do. And --

17 COMMISSIONER LUMPE: Not in the stipulation  
18 though?

19 MR. DOTTHEIM: Yes.

20 COMMISSIONER LUMPE: In the stipulation?

21 MR. DOTTHEIM: Yes. In the stipulation  
22 starting on the bottom of page 9, 11 collaborative efforts.  
23 And I think for most you'll see that it's a 90-day period  
24 after the Commission's Report and Order.

25 COMMISSIONER LUMPE: And you'll have them

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1 concluded in 90 days, is that -- or you're going to start  
2 them in 90 days?

3 MR. JOYCE: Initiate, start.

4 MR. DOTTHEIM: Initiated. I don't know that  
5 anybody would be disappointed if it could meet a result  
6 within the 90-day period. In one instance the time frame is  
7 120 days for the collaborative effort.

8 COMMISSIONER LUMPE: And I guess what my

9       curiosity was, once you've started them, do you have any  
10       sort of deadline by which they would be accomplished? Not  
11       at this point?

12                 MR. DOTTHEIM: I think it's within that --  
13       that time frame. And in all but the instance, I believe, of  
14       the economic development -- the Ameren community development  
15       corporation, disputes are to be brought to Commission -- to  
16       the Commission for determination.

17                 COMMISSIONER LUMPE: That's the only dispute,  
18       isn't it? We don't have to deal with other disputes, do we?  
19       I mean, should there be further disputes --

20                 MR. DOTTHEIM: Outside of these collaborative  
21       efforts?

22                 COMMISSIONER LUMPE: Right.

23                 MR. DOTTHEIM: That may occur. I don't know  
24       that that's specifically addressed in the Stipulation and  
25       Agreement, but I would certainly think that if any party was

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1       asserted to be in violation, they might file something with  
2       the Commission if they thought the Commission could provide  
3       them some form of relief.

4                 COMMISSIONER LUMPE: Okay. The issue of the  
5       \$12 million for the MISO, is that resolved?

6                 MR. DOTTHEIM: Yes. That's resolved in the  
7       dollar settlement.

8                 COMMISSIONER LUMPE: Okay. I didn't see it  
9       set out specifically, but it's part of the overall package?

10                 MR. DOTTHEIM: Yes. Yes. So it's not  
11       specifically identified, but arguably that and the other

12 issues are within the contemplation of the parties --

13 COMMISSIONER LUMPE: Okay.

14 MR. DOTTHEIM: -- when they reach agreement on  
15 a dollar figure and other terms of the Stipulation and  
16 Agreement.

17 COMMISSIONER LUMPE: All right. The  
18 depreciation, the 20 million annually, is that for three  
19 years or two years or -- on the --

20 MR. DOTTHEIM: That's for each year.

21 COMMISSIONER LUMPE: Each year?

22 MR. DOTTHEIM: Yes.

23 COMMISSIONER LUMPE: Meaning four years?

24 MR. DOTTHEIM: Yes.

25 COMMISSIONER LUMPE: I wasn't clear on that.

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1 So it is the four years. Okay.

2 MR. DOTTHEIM: Yes.

3 COMMISSIONER LUMPE: You had talked about the  
4 revisions to the attachment. Are they lengthy or -- you  
5 said they were minor. I'm wondering if you could just give  
6 them to us now unless they're very lengthy and --

7 MR. DOTTHEIM: They are not. And -- well, if  
8 I could direct the Commissioners to page 7 of 8. And I'm  
9 referring to page 7 of 8 for both the revised Attachment A  
10 and page 7 of 8 for the original Attachment A that was filed  
11 along with the Stipulation and Agreement.

12 And if I could direct the Commissioners to the  
13 billing units column, the very -- well, the second column.  
14 Those numbers have changed, but regardless of that, if I  
15 could direct the Commissioners that even with those numbers

16 changing, the only two rates that change, if I could direct  
17 the Commissioners to the very first column, energy charges,  
18 summer, the line next 200 HU, next 200 hours of use, and if  
19 I could then direct the Commissioners to the column proposed  
20 rates, year two.

21 And if you would look at the comparable entry  
22 for both the initial Attachment A and the revised  
23 Attachment A. In the initial Attachment A the entry is --  
24 that's .0539 dollars. And if you would look in the revised  
25 Attachment A, it's .0540 dollars.

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1 The other rate that changes is the next line  
2 down over 350 HU, hours of use. And if I could direct the  
3 Commissioners to the column proposed rates, year three. In  
4 the original page 7 of 8, the number is .0355 dollars. And  
5 in the revised Attachment A, in the column proposed rates,  
6 year three, over 350 hours of use, the number is the .0356.

7 Now, those are the only rates that have  
8 changed, but some of the percentages have changed. If you'd  
9 look at the column percent difference, year one, and you'll  
10 see in the original Attachment A, page 7 of 8, it's negative  
11 2.57 percent. In the revised Attachment A, page 7 of 8, the  
12 number is negative 2.56 percent. And I believe -- I believe  
13 those are the only rates that have changed.

14 Now, in putting the document in a different  
15 format, a PDF format, I believe, instead of a word format,  
16 we picked up a column that actually had dropped off the  
17 schedule that we filed. And that's the very last column,  
18 the percent difference cumulative, which I believe is just

19 cumulative for the preceding three years.

20 And that has also -- that phenomenon occurred  
21 on some of the other pages. So if you would turn, for  
22 example, to page 8 of 8, you will see in the revised  
23 Attachment A the last column on the right is percent  
24 difference cumulative. There is no similar column for the  
25 original page 8 of 8.

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1 One other thing that I am aware of, if I could  
2 direct the Commissioners to page 3 of 8. And if the  
3 Commissioners would look in kind of the middle part of the  
4 page, right-hand side, there's a line in bold-faced type  
5 going across, computation of percent change to rates, paren,  
6 demand and energy charges, closed paren. Those percentages  
7 have changed slightly in some instances.

8 And as I say that and I look, I look above  
9 that area to the percentage change to rates. Some numbers,  
10 dollars have changed also in those columns. For example,  
11 energy charge, which is shown for large general service and  
12 small primary service in the original Attachment A  
13 537, 423, 697. It's shown on the revision 538, 299, 427.

14 COMMISSIONER LUMPE: Okay. Thank you. One  
15 further question I think and that might be it.

16 MR. DOTTHEIM: I probably should note -- I  
17 think I may have mentioned this earlier, the other parties  
18 haven't had an opportunity to review this document. The  
19 Staff generated these revised pages in working with Union  
20 Electric Company, but Union Electric Company, I don't  
21 believe earlier than rather -- earlier this morning didn't  
22 have a copy of these to review themselves, so --

23 COMMISSIONER LUMPE: Okay. Thank you.  
24 There's been discussion that within this  
25 stipulation there's no rate of return that's set at the end;

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1 however, I think in your comments you talk about it falling  
2 within Staff's range. What did you mean by that?

3 MR. DOTTHEIM: Well, from the perspective, of  
4 course, different parties will get to their number  
5 differently. When you look at the -- if the Commission were  
6 to adopt the Staff's rate of return issue, that alone would  
7 put the case at the approximate \$110 million number  
8 depending on the low end or the high end of the rate of  
9 return range, and that's if arguably the Staff lost every  
10 other issue.

11 And I gave as an example that the Staff on the  
12 depreciation area, its case was based on an \$80 million  
13 reduction in depreciation rates. And the Staff agreed with  
14 the company in the Stipulation and Agreement to a reduction  
15 of \$20 million in the depreciation rates.

16 Well, you could deduct from the case the  
17 Staff's rate of return range \$60 million. And I think what  
18 I compared it to was the range of the approximate \$214  
19 million to \$250 million rate reduction. If you drop that by  
20 \$60 million, you're then at \$150 million to \$190 million.

21 And you can get down to the \$110 million range  
22 by not utilizing various Staff adjustments and, again, using  
23 just the rate of return or even any combination of certain  
24 Staff adjustments that the Commission might authorize in  
25 rate of return determination. So that's --

1                   COMMISSIONER LUMPE: So you were suggesting  
2     it's sort of within parameters depending upon how you might  
3     make adjustments --

4                   MR. DOTTHEIM: Yes.

5                   COMMISSIONER LUMPE: -- up or down?

6                   MR. DOTTHEIM: Yes.

7                   COMMISSIONER LUMPE: All right. Thank you  
8     very much.

9                   MR. DOTTHEIM: Certainly. And actually, for  
10    comparison purposes what I had done is I pulled the Staff's  
11    accounting schedules that were filed on July 1 for purposes  
12    of that comparison.

13                   One could also utilize the accounting  
14    schedules which the Staff filed as part of its Surrebuttal  
15    Testimony which on the high end, the number is lower than  
16    200 and 250 million dollars, so that would arguably even  
17    bring it closer to that rate of return range.

18                   COMMISSIONER LUMPE: So it's within a range  
19    you believe, but there is actually no rate of return  
20    established in this case?

21                   MR. DOTTHEIM: That's correct. And that  
22    reference was not intended to indicate that a rate of return  
23    was being authorized or asserted to be authorized in this  
24    proceeding.

25                   COMMISSIONER LUMPE: Okay. Thank you, Mr.

1 Dottheim. That's all the questions I have.

2 JUDGE MILLS: Thank you.

3 Commissioner Gaw?

4 COMMISSIONER GAW: Thank you, Judge. Let me  
5 compliment the parties on the simplicity of the agreement.  
6 It is easy to understand and it's easy to grasp what the  
7 plan is, although I can see how some parts might be subject  
8 to interpretation from the discussion so far this morning.

9 But because of its simplicity, it perhaps  
10 makes evaluating its fairness a little more difficult from  
11 my standpoint in order to evaluate what it does in the --  
12 over the course of time in comparison to what we would  
13 normally do in a rate case in determining what the  
14 appropriate revenue streams ought to be, particularly since  
15 we're not dealing in this case with any kind of rate of  
16 return mechanism.

17 So I want to ask just some questions that will  
18 help me a little bit. I think a number of those questions  
19 have already been asked and answered this morning. I'll try  
20 not to be too redundant as I go along.

21 If I could, just to follow-up on Commissioner  
22 Lumpe's last inquiry, in regard to assumptions about range  
23 of rate of return and inquire of Staff. When you're making  
24 statements about it being within your range of rate of  
25 return, are you talking about something in general or do you

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1 have some specific number in mind, counsel?

2 MR. DOTTHEIM: We're referring to what was  
3 filed by the Staff as the range. For example, the 8.91, the

4 9.91 return on common equity.

5 COMMISSIONER GAW: All right. And, again,  
6 because of the other issues that are resolved in this case,  
7 it wouldn't be possible for you to say that this falls  
8 within this range exclusive of those other issues because  
9 it's all resolved in one piece?

10 MR. DOTTHEIM: Each of the parties presumably  
11 have gotten to the settlement differently in evaluating each  
12 of their issues.

13 COMMISSIONER GAW: If I could, I may come back  
14 on this, but Public Counsel, I want to ask you to respond to  
15 that same inquiry and perhaps follow-up in more detail since  
16 I think Staff answered that question fairly exclusively on  
17 rate of return.

18 In regard to your analysis of the fairness of  
19 this settlement to your constituency, can you tell me what  
20 you believe this settlement does in regard to some sort of a  
21 measured rate of return and whether or not you went through  
22 that type of analysis?

23 MR. COFFMAN: We certainly did go through the  
24 analysis of what we thought were the strengths and  
25 weaknesses of various issues, ours and others. And I think

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1 it's certainly important to realize different parties judge  
2 those in a variety of ways and get them to differently.

3 In this case, I don't think there is anything  
4 in the Staff memorandum or addendum that I would disagree  
5 with, but I think it's important to understand that we often  
6 do not get to a settlement the same way that the Staff does.

7                   As I said earlier, we took into account also  
8     the net present value of knowing when money would be in the  
9     hands of ratepayers and when reductions would take place.  
10    And that certainty in the net present value of getting it  
11    sooner than later has a lot of value in our analysis.

12                  During the settlement process, various parties  
13    had different programs and -- and matrixes and ways that  
14    they analyzed it. There were a variety of ways that  
15    different parties looked at the total benefits or net  
16    present value benefits of this and some parties included  
17    some factors and some didn't. So it's just a variety of  
18    issues.

19                  Nonetheless, I don't think there's any doubt  
20    among the parties who signed this that this result is within  
21    the range of the volumes of evidence that have been marked  
22    and agreed to be entered into evidence in this case. I  
23    don't think there's any doubt that there would be competent  
24    and substantial evidence supporting this agreement.

25                  And let me just add on, the fact that this is

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1     a moratorium as opposed to some sharing grid or some other  
2     mechanism actually made it easier for us to evaluate as far  
3     as determining what the value is. I mean, it's a lot --  
4     it's a lot more certain and it's something that we are  
5     actually more comfortable with.

6                  We have entered into numerous stipulations  
7    that involve moratoriums on rate cases and it is, in our  
8    mind, an extension of traditional rate-making. It just  
9    isn't a somewhat more -- there's somewhat more certainty  
10   about the amount of regulatory lag where you expect that

11 there always will be some regulatory lag after a case is  
12 litigated. Here we know there will be a longer period of  
13 lag and that provides an incentive.

14 In fact, as much of the incentive that was in  
15 place during the alternative regulation plan, to -- not  
16 exactly the same incentives, but we think very good  
17 incentives to cut costs and reap real cash benefits on  
18 behalf of the utility.

19 And then down the road when the moratorium  
20 expires, if those savings have been realized and they've  
21 been real, there's the chance for ratepayers, hopefully, to  
22 then have those savings recognized when rates are reset yet  
23 again. So it's a mechanism -- an animal we're very familiar  
24 with and very comfortable with and which was actually easier  
25 to evaluate than a sharing grid or some other more

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1 complicated mechanism.

2 COMMISSIONER GAW: But from the standpoint  
3 strictly of dealing with traditional rate of return  
4 analysis, Public Counsel believes that this is within an  
5 appropriate range of rate of return from Public Counsel's  
6 analysis and position on rate of return of AmerenUE in this  
7 case?

8 MR. COFFMAN: We believe it is.

9 COMMISSIONER GAW: All right. And, Mr. Cook,  
10 this is a little more difficult perhaps to evaluate from  
11 Ameren's standpoint, but I want -- if you could respond to  
12 that inquiry from Ameren's standpoint, recognizing that  
13 we're not dealing with a rate of return in this settlement,

14 but from the standpoint of Ameren's belief as to what an  
15 appropriate rate of return ought to be for the company, do  
16 you believe that this is within Ameren's range of  
17 appropriate rate of return for the company during the period  
18 of time that this settlement will encompass?

19 MR. COOK: I'd ask Mr. Baxter to respond, if  
20 that's all right.

21 COMMISSIONER GAW: That's fine.

22 MR. BAXTER: Thank you, Commissioner Gaw. The  
23 simple answer to your question is, yes, it is within our  
24 reasonable range. And as the other parties assess this, we  
25 may look at issues and come to our conclusions in a much

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1 different manner, but the bottom line, it is within that  
2 reasonable range.

3 Not only do we just look at the return that  
4 you may get on equity or return on assets, whatever metric  
5 you want to utilize, but you look at the other aspects of  
6 the agreement. I think Mr. Coffman very well pointed out  
7 that there are clear incentives associated with this  
8 agreement from our perspective. So over the term of the  
9 agreement, we believe that we can continue to earn that  
10 reasonable return on equity during the term.

11 COMMISSIONER GAW: All right. And if I could  
12 then go on to this -- there have been several suggestions.  
13 I'm not sure that I hear total unanimity and I'm not sure  
14 whether it really makes a difference whether this is  
15 alternative rate-making or not.

16 But this isn't traditional rate-making, in my  
17 opinion, and I guess I'd ask -- but by the same token, it

18 isn't what we normally consider to be an incentive program  
19 that deals in percentages of sharing.

20 So while I'm not sure this is not the first --  
21 I know this isn't the first time that this type of  
22 settlement has occurred, what I'm interested in from the  
23 parties, and I'll start with Ameren, is what kind of  
24 incentives are created with this type of an agreement in  
25 regard to investment, in regard to expenditures?

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1 And I'm going to get more specific a little  
2 later, but I'd like to have some initial response from you  
3 all in general to that question. And whoever you'd like to  
4 deal with that from Ameren's standpoint.

5 MR. BAXTER: Maybe, Commissioner Gaw, I'll  
6 start and if Mr. Rainwater wants to add, perhaps he can.

7 From our perspective, we clearly see this plan  
8 as having a great deal of benefit to the company, which  
9 would include the incentives. Clearly we see this agreement  
10 offering -- giving us the financial flexibility that we  
11 believe we need to operate not only sort of a status quo,  
12 because, as we know, the energy markets are a little bit  
13 tumultuous at this point in time. But more importantly --

14 COMMISSIONER GAW: Not just the energy  
15 markets.

16 MR. BAXTER: True. We've all looked at our  
17 portfolios recently, haven't we?

18 But, also, to make the necessary  
19 infrastructure investments going forward that we and the  
20 other parties agree are necessary. And at the same time

21 return an appropriate return to our investors.

22 This agreement does give us -- gives us  
23 similar incentives that we really had under the alternative  
24 rate regulation plan. I don't want to get into the  
25 semantics either. This is not quote/unquote traditional

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1 rate-making. It is something different and we can call it  
2 whatever we choose to.

3 It does give us those incentives to try to  
4 take our operations and continue to be effective and raise  
5 them to new levels to bring not only those efficiencies to  
6 our shareholders, but ultimately to our ratepayers.

7 Those types of things when you put the  
8 financial flexibility coupled with the incentives associated  
9 with just the rate moratorium are very beneficial. And,  
10 similarly, when you -- we've talked in many cases around  
11 here this morning, the regulatory uncertainty that would  
12 continue with this plan as well as the potential for  
13 litigation. Those two are very important factors from the  
14 company's perspective.

15 COMMISSIONER GAW: All right. Mr. Rainwater,  
16 if you wish to, and I'll leave it up to you.

17 MR. RAINWATER: Just to add a little bit and  
18 I'll address this not so much from the point of view of that  
19 this plan offers an incentive, but just to give you a little  
20 background on the business plans of our company and where we  
21 see the business headed is that we --

22 COMMISSIONER GAW: Good. Because I was going  
23 that direction. That will help.

24 MR. RAINWATER: We strongly believe that we

25 need to improve the quality of service to customers. As I

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1 said in kind of the opening comments, we think that  
2 customers expect a lot more from us today, they will expect  
3 a lot more tomorrow. So we really want to make the  
4 investments to be able to provide that higher quality of  
5 service.

6 And I think that this agreement gives us a  
7 four-year window -- kind of a window of opportunity to make  
8 investments. And if we can manage the business well, manage  
9 the business efficiently to be able to finance those  
10 investments through efficiency improvement and to do it -- I  
11 don't want to get into other semantic argument over alt reg  
12 or incentive agreement or whatever you'd like to call this  
13 agreement, but it is a very good agreement from our point of  
14 view in that it gives us that flexibility to manage the  
15 business, carry out our business plan and the opportunity, I  
16 would say -- emphasize that it's certainly not a guaranteed  
17 return during this four-year period, but an opportunity to  
18 earn a reasonable return for stockholders provided we manage  
19 the business well.

20 COMMISSIONER GAW: If I could go a little  
21 farther with this question of incentives. One of the things  
22 that I get concerned about in regard to -- I'm not talking  
23 about Ameren or this settlement specifically, but in regard  
24 to the current environment is whether or not we are creating  
25 incentives to move funding away from the regulated portions

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1 of companies who have subsidiaries or perhaps divisions, but  
2 particularly when we're dealing with separate corporate  
3 entities, when you have a regulated subsidiary and what has  
4 tended to become the way of what at least appears to be  
5 doing business of creating holding companies that are  
6 unregulated that have their long-time regulated entities  
7 then as a subsidiary along with other affiliates of the  
8 holding company who are unregulated.

9 And the possibility and perhaps the incentive  
10 to move revenue sources either by actual transfer of revenue  
11 sources or perhaps by putting more emphasis on construction  
12 in the unregulated entities because those profits then flow  
13 through directly to the holding company or can flow through  
14 directly to the holding company without any concern of the  
15 cost of service issues that come up that cause some of that  
16 to be shared with ratepayers under a regulated utility. And  
17 I hope I'm not making this too complicated.

18 But I'm interested in knowing how this  
19 settlement impacts the incentives that might exist under  
20 traditional rate-making for monies or revenue sources to be  
21 moved away from those regulated entities and away from the  
22 benefit of ratepayers and whether or not -- that could be  
23 addressed by whoever would like to do it. I'll leave it up  
24 to you all.

25 MR. RAINWATER: Well, I'll take a shot at

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1 starting. And there are a lot of issues there.

2                   COMMISSIONER GAW: There are. And I don't  
3 expect a simple answer.

4                   MR. RAINWATER: And it's possible we could  
5 spend the rest of the afternoon discussing these issues.  
6 One of the issues --

7                   COMMISSIONER GAW: I promised Commissioner  
8 Forbis it would be 6:00, but --

9                   MR. COOK: No later or no earlier?

10                  COMMISSIONER GAW: I'm sorry.

11                  MR. RAINWATER: But you are raising an issue  
12 about the structure of the industry, how the industry will  
13 be structured long term. And I guess I would have a  
14 slightly different view of that today than I might have had  
15 several years ago.

16                  And several years ago I would probably have  
17 said that it is just a matter of time until the entire  
18 industry is restructured and all states have restructured in  
19 a way that provides at least their largest customers direct  
20 access to the markets so that some of the industry will be  
21 competitive.

22                  I think the pendulum has kind of swung on that  
23 issue partly because of California, partly because of Enron  
24 and lots of other things. There's a great deal of  
25 uncertainty now about where the industry will ultimately end

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1 up. I don't think that any of us can say with any certainty  
2 how the industry would be structured, say, 5 to 10 years  
3 from now.

4                  The issue though of investing in the regulated  
5 or the unregulated side of the business is a key issue.

6 Obviously all companies have limited amounts of capital and  
7 would like to invest their capital where they can earn the  
8 greatest return and would like to invest with, if not a  
9 certainty, at least a reasonable prospect of earning a fair  
10 return.

11 And I think that is one of the doubts that's  
12 been raised in particular by this case is can companies  
13 invest in Missouri with the prospect of earning a reasonable  
14 return. And that's what I meant in my testimony when I said  
15 there are policy issues here.

16 I guess I would take some comfort at least in  
17 the fact that while we started far apart, we've ended up  
18 with what I consider a reasonable solution. And I would add  
19 to that that our company has gone through this process a  
20 number of times going back in 1990. This is actually the  
21 fifth time that we've gone through a settlement negotiation  
22 like this. And I would say that in all cases, we have ended  
23 up with a reasonable result.

24 It's just the extreme differences in positions  
25 starting out that is troublesome not only to me but to every

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1 manager of a utility in the state who is looking at  
2 prospective investments in infrastructure in that state.

3 And positions taken in cases like this can  
4 either encourage or discourage those kind of investments.  
5 And making decisions on those things are never just black  
6 and white decisions where we run a financial model and we  
7 say if return is above X, then we'll go ahead with the  
8 investment. We have to read the entire political climate,

9 regulatory climate and make decisions about those  
10 investments. Again, the positions were not encouraging, but  
11 the result, I think, was good.

12 I think a follow on to this case -- we've  
13 reached a good settlement in this case, but I think for the  
14 future we do need to think through some of those issues and  
15 think about the needs for infrastructure investment in the  
16 state.

17 From an energy policy point of view for the  
18 state, issues like should the state be energy independent or  
19 at least for -- from the point of view of being able to  
20 generate its own electric power independently and not rely  
21 on other states. And, if so, then what regulatory policies  
22 are appropriate to support that kind of an energy policy.

23 I think when I said in my testimony that the  
24 Commission itself needs to provide some leadership on those  
25 kind of issues -- we didn't get into discussing those in

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1 this case, but I think that is fertile ground for discussion  
2 among the Commissioners, perhaps with the Staff, perhaps  
3 with others in the case going forward.

4 You know, from my point of view, I would like  
5 to see a regulatory climate that provided us a little more  
6 assurance or feeling of the prospect of being able to earn  
7 what we consider a reasonable return. Of course, there are  
8 always going to be differences among people on what they  
9 consider reasonable.

10 COMMISSIONER GAW: All right. I appreciate  
11 your comments. What I'm looking for right now is whether or  
12 not this settlement changes in any way the incentives that

13 exist from Ameren's standpoint of -- and the possibility of  
14 shifting revenues such as off-system sales away from the  
15 regulated entity and over to some of your generation that's  
16 available to you in your unregulated subsidiary, Ameren  
17 holding companies unregulated subsidiary.

18 MR. BAXTER: Excuse me, Commissioner Gaw.

19 COMMISSIONER GAW: I've got a specific issue  
20 that causes me to ask that question, which may or may not  
21 have any bearing on the -- might not have had anything to do  
22 with what I am basing my question upon. If you'd like, I'll  
23 hit on that, but if you want to answer it in general first,  
24 that would be good.

25 MR. BAXTER: Well, Commissioner Gaw, I think

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1 from our perspective, from shifting between regulated or  
2 unregulated, frankly, we don't see this particular plan  
3 incenting us to do one thing or the other, other than doing  
4 what you should be doing.

5 We're on a rate moratorium. And we operate  
6 now in a regulated environment that has, from a financial  
7 perspective, some certainty as to the cash flows and the  
8 future cash flows. As we all know, in the unregulated  
9 marketplace, you don't enjoy those same kind of -- I  
10 wouldn't call them assurances, but certainly the same kind  
11 of comfort. So from our perspective, we look at not only  
12 that, but also sort of risk adjusted returns.

13 But simply put, because of the rate  
14 moratorium, we operate very similarly certainly over these  
15 next four years then our unregulated business would. And we

16 have little, if any, incentive really to try shifting  
17 because we have this agreement in place.

18 And, frankly, to the extent that we can do  
19 well from a return on equity standpoint in the regulated  
20 business, we can do those same things in the unregulated and  
21 it ultimately will come to the bottom line if we operate  
22 effectively.

23 COMMISSIONER GAW: It strikes me that -- and I  
24 may be incorrect and I'd like to have an opinion about this.  
25 It strikes me that since you know what your income levels

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1 will be from the ratepayers for that period of time to a  
2 great degree of certainty now and since it will not have  
3 any -- the off-system sales by AmerenUE will not have any  
4 impact on rates during that period of time, that you no  
5 longer have an incentive to move potential off-system sales  
6 away from AmerenUE and onto your unregulated sub-- Ameren  
7 holding company's unregulated subsidiary. Is that accurate  
8 or not --

9 MR. BAXTER: If I could respond --

10 COMMISSIONER GAW: -- or overly simplified?

11 MR. BAXTER: I guess a couple of things,  
12 Commissioner Gaw. One, I guess, while there may have been  
13 an incentive prior to this agreement to move those, I  
14 wouldn't necessarily agree with the embedded maybe assertion  
15 that that indeed happened.

16 COMMISSIONER GAW: I wouldn't expect to have  
17 you admit to that.

18 MR. BAXTER: I think you'd made another  
19 statement as well that we have a great deal of certainty

20 with regard to our income on the regulated business. I  
21 would suggest that is not the case either.

22 We do have certainty as to regard to the  
23 reductions that will take place. And it will take a lot of  
24 hard work between now and then to continue to maintain our  
25 not only return levels, but income. So there will continue

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1 to be, whether it's regulated or unregulated, a great deal  
2 of uncertainty. But those are challenges that we deal with  
3 every day.

4 I would agree with you that all things being  
5 equal that I think -- as I tried to state before and  
6 probably didn't do it so clearly, that you look -- we look  
7 very similar on the regulated side during the next four  
8 years as you would with an unregulated business when you  
9 talk about the premise that you're discussing, that is all  
10 virtually the same.

11 COMMISSIONER GAW: It also strikes me that, in  
12 fact, there may be in regard to investment in new generation  
13 less risk under this kind of an agreement and under the --  
14 just the things that normally go along with regulation for  
15 investment in new generation under the regulated wing when  
16 you're assured that there will be some return over the  
17 course of many years under at least traditional rate-making  
18 for that investment in a generation asset as opposed to the  
19 unregulated company investing in new generation and having  
20 to depend upon whether or not they can make ends meet on  
21 their sales.

22 MR. BAXTER: The premise that you have, I

23 would agree with that. Because obviously we would invest in  
24 the regulated generation and the need to invest in regulated  
25 generation is due to the fact that there -- there is a

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1 quote/unquote contract, so to speak, because there is a need  
2 for our regulated customers.

3 Whereas, if on an unregulated business you  
4 would build a new plant, you have the risk that you may not  
5 have the demand to support that plant unless you are able to  
6 contract it prior to actual -- it going into service. So  
7 from that perspective, I understand and I agree.

8 COMMISSIONER GAW: Earlier, Mr. Rainwater, you  
9 were discussing -- I think it was you discussing that  
10 Missouri needs to set some sort of a policy or it would be  
11 good to have some sort of an understanding of a policy in  
12 regard to having sufficient generation to meet the state's  
13 needs within its own boundaries.

14 It is sometimes difficult to evaluate where we  
15 are today, it seems to me, in regard to that investment with  
16 current policies in -- on the federal level appearing to go  
17 away from that notion that states take care of their  
18 generation needs in favor of how do we do this on a regional  
19 or even a national basis in such a way to access wholesale  
20 generation in the best fashion without regard to the  
21 customers served by regulated utility.

22 In other words, while I see this state as  
23 traditionally being involved and this Commission in assuring  
24 that there's sufficient generation for Missourians, on the  
25 federal level it seems to me that there is an in-- that

1 incentive or that direction does not exist because there is  
2 this other policy cutting across that grain of how do we  
3 connect everybody up in such a way so that generation can  
4 move from whatever source is the lowest price to whatever  
5 source -- whatever sink will pay the most. That's a little  
6 bit overstated.

7 How do Commissioners and State Commissions  
8 such as this set a policy without -- and take that into  
9 account in today's environment, if you have an opinion?  
10 Because it seems to me that that's a very important part of  
11 figuring out where we're going with policy as a State  
12 Commission against that federal backdrop.

13 MR. RAINWATER: Well, it certainly has become  
14 more confusing because of deregulation, the federal  
15 wholesale markets while we still have some states that are  
16 operating under what I would call traditional regulation.  
17 And those are the kind of issues, I would add, that can be  
18 addressed to -- to some extent through our normal resource  
19 planning process.

20 The key issue, if we want to look at it from a  
21 customer point of view, is which approach will result in the  
22 lowest cost to customers. And the key issue, if we want to  
23 look at it from an investor point of view, is do those  
24 investments earn an adequate return commensurate or  
25 proportionate with the risks that we face in that part of

1 the business.

2 And I would point out that, you know, one of  
3 the issues that if it has been addressed, it has never  
4 really been resolved is that because of federal deregulation  
5 of the wholesale markets, the investment in generation has  
6 become much more risky, there are different ways that that  
7 can be addressed at the state level.

8 One obvious way would be to address it by  
9 allowing a fuel adjustment clause, which would take the  
10 risk -- the excess risk created by those wholesale markets  
11 out of the generation business and make that investment more  
12 like a traditional utility investment in terms of level of  
13 risk. Another way to address it would be to allow some  
14 additional risk premium in terms of return on that  
15 generation investment.

16 The key point though is that because of the  
17 deregulation of the wholesale markets, generation investment  
18 has become much more risky. While that's outside the  
19 control of the State Commission, it somehow needs to be  
20 recognized in the regulatory process somehow, you know,  
21 either through fuel adjustment, either through premium  
22 return.

23 And since we're here today to discuss the  
24 settlement, let me bring it back again to the settlement. I  
25 feel that in the settlement, we have achieved an overall

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1 agreement that gives us the opportunity to invest in  
2 generation, at least for the next few years, and earn a fair  
3 return on it.

4                   So based on this agreement, we're certainly  
5 willing to operate -- well, in fact, that's our  
6 preference, is that we build, own and operate our own  
7 generation in the regulated utility to serve the regulated  
8 utility's needs.

9                   We would prefer not to buy that power from the  
10 market. We'd rather do that business ourselves. And we  
11 would prefer not to buy that power from our affiliates. We  
12 would rather do that ourselves in the regulated side of the  
13 business and keep the lines between the regulated and  
14 unregulated businesses as clean as we possibly can.

15                  COMMISSIONER GAW: That kind of approach would  
16 facilitate somewhat trying to determine how much of the risk  
17 was being born by shareholders or a ratepayer in a  
18 particular case too, I would assume, from what you just  
19 said.

20                  MR. RAINWATER: I think so.

21                  COMMISSIONER GAW: Chairman Simmons asked  
22 about the plans that AmerenUE might have in regard to its  
23 workers over the course of the next few years. And it's my  
24 understanding that you do have some general plans to perhaps  
25 trim work force by attrition. Did I hear that or did I hear

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1                  you say if there were plans, it would be done by attrition?

2                  MR. RAINWATER: I would say that we do not  
3 have plans to trim work force for the sake of just trimming  
4 work force. The way that we approach that is we look for  
5 opportunities to improve efficiency in the business and  
6 where we can achieve those, then we can make work force  
7 reduction. But I think it's important that it come in that

8 order.

9 COMMISSIONER GAW: But today you have no  
10 immediate plans to have any significant change in your work  
11 force level under AmerenUE?

12 MR. RAINWATER: We don't have any specific  
13 plans, but here's my expectation. Over the last 10 years,  
14 we've made significant reductions on the order of  
15 35 percent. I would guess that 10 years from now, we will  
16 find ways to make more reductions.

17 I don't know yet where they're coming from and  
18 I don't have any specific plans on how to get there, but  
19 I -- but we will continue to put a lot of management  
20 attention on improving the efficiency of the business. My  
21 expectation is we'll have fewer people 10 years from now  
22 than we do today.

23 COMMISSIONER GAW: But, again, there are no  
24 specific plans that you have today in regard to reduction of  
25 particular work forces?

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1 MR. RAINWATER: No, there are not.

2 COMMISSIONER GAW: All right. In regard to  
3 other kinds of expenses that AmerenUE currently has, do you  
4 foresee over the next -- during the time frame of the  
5 settlement agreement, any significant reductions in expenses  
6 that you are aware of today? Whoever would like to --

7 MR. RAINWATER: Well, none that I'm aware of  
8 again. However, we manage our business with what we call  
9 financial discipline. And we have control processes in  
10 place within the company that do create pressure to make

11 cost reductions. We encourage people to find ways to manage  
12 things more efficiently and at lower costs. So my  
13 expectation again is that we will find ways to reduce costs.  
14 We certainly hope to.

15 And when we talked a while ago about the  
16 opportunity to earn a reasonable return, we know going into  
17 this agreement that there will be challenges just based on  
18 our own budget forecast to earn a reasonable return. We  
19 would see our return declining substantially unless we are  
20 able to make efficiency improvements.

21 COMMISSIONER GAW: And you say you would see  
22 it decline substantially. Is that strictly because of the  
23 reduction in rates under the settlement?

24 MR. RAINWATER: It -- it's because of a  
25 combination of things. The reduction in rates under the

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1 settlement combined with capital investment that -- that we  
2 need to make, combined with the concept that I talked about  
3 a while ago, the need to bring about continuous improvement  
4 in the quality of service. And obviously that requires more  
5 money both in terms of infrastructure investment and  
6 sometimes in terms of operating the business.

7 COMMISSIONER GAW: All right. Anything else  
8 on that then as far as expenses are concerned?

9 MR. BAXTER: I think, Commissioner, Gary  
10 Rainwater summed it up fairly well. I would suggest that  
11 one of the additional challenges we would continue to see  
12 going forward, and none of us can predict the future, is  
13 obviously the economy continues to be sluggish and that has  
14 effects.

15 But it has effects on our expenses as well,  
16 especially on our employee benefits because of the  
17 investments in our employee benefit plans. And those  
18 returns, as you might expect, have not been particularly  
19 good as really the industry as a whole. So as a result, we  
20 see pressure in those areas as well with those rising  
21 benefit costs for pension and medical benefits and the  
22 rising cost of medical costs.

23 COMMISSIONER GAW: Well, on the other -- on  
24 the other side, the revenue side, I'll ask you the same  
25 question. Today do you see any significant change in the

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1 course of this period of time that you know of today that  
2 you plan today to change the revenue stream of AmerenUE  
3 during the course of this settlement agreement?

4 MR. BAXTER: At this point today, of course,  
5 we have the rate reductions which are -- which are part of  
6 the agreement.

7 Putting those aside, no significant changes in  
8 the nature or significant towards seeing revenue increases.  
9 Again, a recovery in economy is always in the best interest  
10 of the company as well as potentially recovery in the energy  
11 markets, but both of those, as we all know, are very  
12 sluggish today.

13 COMMISSIONER GAW: And the reason I'm asking  
14 these questions is because we are not dealing with a rate of  
15 return here. Ameren can do as good as it can do over the  
16 course of the time frame from here to 2006 and that's up to  
17 you how well you do it in making this agreement to your

18 advantage or not.

19 What I'm trying to determine is based upon the  
20 statements from Public Counsel and Staff about what they  
21 felt like was an appropriate range of rate of return,  
22 whether there was any significant differences that were  
23 already known today that would have an impact on your  
24 revenue or expense side. So that's why I'm inquiring.

25 MR. BAXTER: And, Commissioner Gaw, those are

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1 fair questions. And I think not only do we have these  
2 discussions here today, but as the group -- as we continued  
3 to have these discussions over the last several months and  
4 not only dealt with in testimony, those issues were  
5 addressed and discussed as well. So we all go in  
6 understanding where things are at as best as we can see them  
7 in the future.

8 COMMISSIONER GAW: Yeah. Well, I understand  
9 that. And I appreciate the answers. I might just as a  
10 follow-up, ask if the -- is that already completed? I'll  
11 let you come back to that.

12 In regard to the affiliate transactions issue,  
13 I understand that that issue is not -- will not be relevant  
14 under the settlement agreement because the rates are set.  
15 Whether you buy or sell from your affiliates at a certain  
16 price level, the risk is -- and that internal accounting is  
17 entirely with the company, would not have any impact on  
18 ratepayers under the settlement agreement. Is that Ameren's  
19 understanding?

20 MR. BAXTER: That's correct. Rates can do  
21 nothing but -- under this agreement, absent extraordinary

22 circumstances, do nothing but go down under this agreement.

23 COMMISSIONER GAW: Under the general rule of  
24 the settlement agreement?

25 MR. BAXTER: Uh-huh.

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1 COMMISSIONER GAW: And Staff and Public  
2 Counsel agree with that, from what I understood earlier?

3 MR. DOTTHEIM: Yes. And I don't know that I  
4 actually mentioned earlier. The agreement on infrastructure  
5 in part, from the Staff's perspective, addresses some of the  
6 affiliate transaction concerns.

7 COMMISSIONER GAW: Do you want to expand on  
8 that briefly for me so I understand what you're saying?

9 MR. DOTTHEIM: From the perspective of the  
10 company, AmerenUE's building regulated generation as opposed  
11 to meeting its obligation to serve through Ameren Energy  
12 Marketing, Ameren Generating Company, an unregulated  
13 affiliate.

14 COMMISSIONER GAW: All right. The issue of  
15 the MISO payment is at least resolved in some fashion by  
16 this agreement, as I understand it. What I am curious  
17 about, there is -- again, impacting revenue stream, does  
18 Ameren anticipate that its latest movement toward rejoining  
19 the MISO through, I think it's Grid America or something,  
20 whether or not that will amount to a significant change in  
21 revenue stream from the use of Ameren's transmission assets  
22 by other generation -- generators outside of AmerenUE?

23 MR. BAXTER: With regard to Grid America, our  
24 objective principally in entering into that organization is

25 to keep things pretty much status quo and not actually lose

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1 as opposed to have significant gains.

2 COMMISSIONER GAW: All right. Staff, did you  
3 have follow-up?

4 MR. DOTTHEIM: Yes. I don't want to drag  
5 another proceeding in --

6 COMMISSIONER GAW: I'm trying to avoid doing  
7 that, but -- except as to this settlement.

8 MR. DOTTHEIM: But as a consequence of saying  
9 too little by not saying anything, I would note that there  
10 still is pending before the Commission another proceeding  
11 involving the Midwest ISO where UE has filed a Motion to  
12 Dismiss respecting its request for authorization to  
13 withdraw.

14 And earlier this week both the Staff and the  
15 Office of Public Counsel made filings in those -- in those  
16 proceedings suggesting an alternative way of proceeding at  
17 this point.

18 In trying to address whether the Midwest ISO  
19 issue is resolved in the presently pending case, I was  
20 attempting to address in particular the question of the exit  
21 fee of \$12.5 million to Union Electric Company, AmerenUE.  
22 And that item is resolved, from the Staff's perspective, in  
23 that this is a total dollar settlement, all issues are  
24 resolved in the context of the Stipulation and Agreement.

25 COMMISSIONER GAW: Okay.

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1 MR. COFFMAN: Commissioner Gaw --

2 COMMISSIONER GAW: Public Counsel?

3 MR. COFFMAN: Yes. Just in effort to make  
4 sure that we're being fully responsive, I don't know if this  
5 relates, but I want to reiterate what I've said before, that  
6 is my understanding of this agreement with regard to the  
7 potential filing of other non-rate case proceedings.

8 And I think, you know, it's clear that as to  
9 the affiliate issues and other issues that would impact  
10 rates, those would be resolved by this agreement, the rates  
11 during the moratorium period, the four-year period that is  
12 contemplated.

13 But it's possible -- and we have no plans at  
14 the moment to do so, but it would be possible we might see  
15 an issue that involves affiliate transactions, for example,  
16 SO2 allowance transactions that we might feel -- and that's  
17 just as an example -- might want to raise to the  
18 Commission's attention.

19 And the relief that we might be asking would  
20 not be regarding changing rates during the four-year period,  
21 but the relief we might be asking for could have an impact  
22 one way or another on rates down the road after the  
23 moratorium was lifted, if that --

24 COMMISSIONER GAW: Well, I would assume that a  
25 number of these issues of the 47, 48, I don't know how many,

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1 a number of those issues are likely to come back to this  
2 Commission after this settlement term has expired. I would

3 assume that lack of resolution of those issues specifically  
4 is putting off a number of them to a future debate.

5 MR. COFFMAN: My experience is a lot of these  
6 issues are never ultimately resolved, but --

7 COMMISSIONER GAW: Yeah.

8 MR. DOTTHEIM: I might answer.

9 COMMISSIONER GAW: Go ahead, Mr. Dottheim.

10 MR. DOTTHEIM: Not to throw any cold water on  
11 the present situation of the amicable resolution among the  
12 parties, but we -- of course, I think as the Commissioners  
13 are aware and all the parties in this proceeding, thought we  
14 had an amicable resolution when we entered into the first  
15 and second experimental alternative regulation plans.

16 And we ultimately went -- fell into disputes  
17 as what was covered or contemplated by the experimental  
18 alternative regulation plans and had to come to the  
19 Commission for resolution and are still in the court system  
20 now before the Western District Court of Appeals resolving  
21 that.

22 Hopefully, that won't happen in this instance,  
23 but I think any number of the questions from the  
24 Commissioners today as to what are the parties'  
25 contemplations with these various terms are good questions.

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1 I think we've all tried to answer them as best we can and  
2 hopefully we won't be back before the Commission before the  
3 conclusion of the present moratorium.

4 COMMISSIONER GAW: All right. On  
5 infrastructure investment, from Ameren's perspective, how

6 much difference is there in what you were planning on  
7 investing in the specific infrastructure that's mentioned in  
8 this agreement prior to the settlement as compared to after  
9 the settlement?

10 MR. BAXTER: I think, Commissioner Gaw, with  
11 regard to that issue, the overall capital expenditure budget  
12 that we had prior to, I guess, the settlement is still  
13 consistent.

14 Of course, if we weren't able to reach this  
15 amicable settlement and found ourselves in a situation where  
16 there would have been significant rate reductions, far more  
17 significant than what we have today, as we stated in our  
18 testimony, the exposure was we wouldn't have the financial  
19 wherewithal to make all those infrastructure investments.

20 So today where we sit, those capital  
21 expenditures, based upon this settlement and agreement, are  
22 still consistent.

23 COMMISSIONER GAW: So, in other words, Ameren  
24 feels like these investments are good investments from  
25 Ameren's standpoint as a regulated utility?

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1 MR. BAXTER: Absolutely. Absolutely. And I  
2 think our investments that we have discussed here in this  
3 Stipulation and Agreement are consistent with the joint  
4 resource planning efforts that we've conducted with the  
5 Staff and Office of Public Counsel. And as well as not just  
6 the joint resource planning efforts, but the continuing  
7 discussions that we have with them.

8 COMMISSIONER GAW: And from Staff's  
9 perspective, I'm assuming -- there are a lot of issues that

10 you say they all resolve together, but I'd like to know  
11 specifically in regard to infrastructure, does Staff believe  
12 that the infrastructure investments that are in this  
13 agreement are needed and beneficial to ratepayers in  
14 Ameren's jurisdiction?

15 MR. DOTTHEIM: Yes. Based upon the  
16 information we have, we do believe that.

17 COMMISSIONER GAW: Do you have somebody that  
18 can be a little more specific, Mr. Dottheim, without -- I  
19 don't want a lot of detail.

20 MR. DOTTHEIM: Certainly. I would think  
21 either Mr. Schallenberg or Ms. Mantle or Mr. Meyer are the  
22 three people offhand that I can think of. Of course,  
23 Dr. Proctor is not available --

24 COMMISSIONER GAW: Yeah.

25 MR. DOTTHEIM: -- otherwise, in particular, I

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1 would name Dr. Proctor.

2 COMMISSIONER GAW: And if Mr. Schallenberg  
3 wants to tackle that, fine. He always seems to be willing.

4 MR. SCHALLENBERG: They volunteered me when  
5 you picked three.

6 COMMISSIONER GAW: I saw that.

7 Mr. Schallenberg, did you hear my question?

8 MR. SCHALLENBERG: Yes. You asked about the  
9 specific items that were listed?

10 COMMISSIONER GAW: Yes.

11 MR. SCHALLENBERG: And the Staff has reviewed  
12 those items. And in those cases, we see a need for those,

13 particularly in the -- now, one is addressing a policy  
14 issue. The Staff has had a preference to get AmerenUE to  
15 have its own generation and not depend on purchases.

16 And if you look at the 700 megawatts, that's  
17 an expression of that preference to move AmerenUE from a  
18 capacity deficiency situation so that it would have its  
19 own -- own capacity and not have to buy in the market and in  
20 the past have to buy from its affiliate.

21 COMMISSIONER GAW: And this settlement  
22 agreement does that over the course of time?

23 MR. SCHALLENBERG: This settlement agreement  
24 moves us in that direction. There is another item that's  
25 been discussed with AmerenUE which is the transfer of the

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1 Illinois load or the Illinois customers away from AmerenUE's  
2 generation for -- that would then free up that generation  
3 that's dedicated to the Illinois load to now be available  
4 for Missouri load, which then gives us more capacity.

5 That item is also -- was part of the Staff's  
6 thinking. That's not specifically addressed, but that will  
7 also put us in a situation where we will not need to  
8 purchase outside of AmerenUE's generation.

9 COMMISSIONER GAW: And when you say not need  
10 to purchase, just from the standpoint of that general  
11 statement, are you talking about not need to purchase at any  
12 time or are you talking about in general during normal  
13 periods of electric usage that there will be no need to  
14 purchase outside of the system?

15 MR. SCHALLENBERG: When I'm speaking of  
16 purchase, I'm not speaking of the fact that at any given

17 time there are purchases that will be made because of  
18 economic reasons, that there is energy on -- in the grid  
19 that is cheaper than AmerenUE's existing generation that  
20 would be purchased.

21 What I'm speaking about is that given -- for  
22 reliability purposes to go into a summer period, that there  
23 has been a need for AmerenUE to before the summer period buy  
24 additional capacity to have adequate reserves to ensure  
25 reliability.

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1 Those are the type of purchases that I'm  
2 talking about that the 700 megawatts and the other item that  
3 we still have discussions going on with AmerenUE, we're  
4 trying to move AmerenUE in a situation where it no longer  
5 has to buy capacity in advance to meet those reliability  
6 needs.

7 COMMISSIONER GAW: But we're not talking about  
8 building to the extent that Ameren is building a generator  
9 for one peak day in the summer, are we? In other words, I'm  
10 trying to understand the breadth of the electric demand need  
11 within the system that Staff believes ought to be covered.

12 MR. SCHALLENBERG: When I speak --

13 COMMISSIONER GAW: I'm not saying that very  
14 articulately.

15 MR. SCHALLENBERG: When I speak about --  
16 AmerenUE does not have -- it has needs to have additional  
17 capacity on peak.

18 COMMISSIONER GAW: Yes.

19 MR. SCHALLENBERG: Now, when you look at that

20 need, that need on AmerenUE's system, given the amount of  
21 capacity that it has in what I call base load, which is  
22 coal --

23 COMMISSIONER GAW: Yeah.

24 MR. SCHALLENBERG: -- that need is generally a  
25 summer need, not a need for all year round. We have other

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1 utilities in this jurisdiction that have a need for capacity  
2 that would be different, that they could use capacity all  
3 year round. Given AmerenUE's need, it only needs peakers to  
4 meet that capacity need. It does not need another Callaway  
5 in order to meet that need.

6 COMMISSIONER GAW: Yeah. And the generation  
7 that will be added under this agreement, how far does it go  
8 to meeting what Staff believes ought to be done in regard to  
9 generation within AmerenUE?

10 MR. SCHALLENBERG: With the 700 megawatts, of  
11 which some of that capacity is already on line today, and  
12 depending on the resolution of the Illinois load issue or  
13 project, and then I think there's one other item which is --  
14 I refer to it as JOPA, those are the three items that in  
15 connection -- depending on their resolution, AmerenUE would  
16 be sufficient depending on the combination of how those  
17 three items work out definitely throughout this four-year  
18 period.

19 COMMISSIONER GAW: Yeah. And I can't recall.  
20 Those units that you just mentioned, when would they be up  
21 and running, if they were done according to the schedule?

22 MR. SCHALLENBERG: I believe it's -- 240  
23 megawatts of it was already brought on line by June of this

24 year.

25 COMMISSIONER GAW: All right.

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1 MR. SCHALLENBERG: I don't know the schedule  
2 yet of the additional capacity.

3 COMMISSIONER GAW: Does Ameren have anything  
4 to add to that?

5 MR. BAXTER: Commissioner Gaw, I think with  
6 regard to the additional capacity -- Mr. Schallenberg is  
7 correct, 240 watts did come on line by June.

8 The additional capacity we would foresee  
9 coming within the next 12 or certainly 24 months. Some of  
10 that additional capacity, as we stated in the Stipulation  
11 and Agreement, can simply be purchased from our affiliate of  
12 existing generation capacity. So there is no construction  
13 time that would have to take place.

14 And so that -- that is contemplated. So it  
15 could happen very soon. And we would balance that as -- as  
16 the needs are clearly there for a regulated business from a  
17 timing perspective.

18 COMMISSIONER GAW: All right. Is that Staff's  
19 understanding as well?

20 MR. SCHALLENBERG: Yes. In fact, I expect  
21 that the 700 megawatts were made up mostly of transfers of  
22 us buying units at -- and I think the agreement specifies  
23 net book that we will be buying some of GENCO's units.

24 COMMISSIONER GAW: So buying some units from  
25 the affiliate?

1 MR. SCHALLENBERG: Right. They will be  
2 transferred from the unregulated GENCO, they will be moved  
3 into AmerenUE's regulated portfolio.

4 COMMISSIONER GAW: Where would those be  
5 located, those units? Is that spelled out?

6 MR. SCHALLENBERG: It's not specified yet. I  
7 think they're all either in Illinois, there is I think  
8 one -- one unit in Missouri, maybe two.

9 MR. RAINWATER: Yeah. I'm not sure --  
10 Commissioner Gaw, I'm not sure if we've agreed on the exact  
11 units, but we have four units in Columbia, Missouri which I  
12 think have been put on the table. As Warner just mentioned,  
13 we have brought on line 240 megawatts of new capacity this  
14 year, four units at our Keokuk plant, one unit at our Venice  
15 plant. The other plant that we've discussed is in  
16 Pinckneyville, Illinois and it's roughly 300 megawatts and  
17 8 small units peaking -- peaking capacity.

18 COMMISSIONER GAW: I was having an easier time  
19 seeing when Mr. Dottheim was sitting in front.

20 Going back, Mr. Rainwater, to my little  
21 comment earlier about this balancing between state and  
22 federal policies and guarding different territories, if you  
23 would, of interest, from your perspective does this  
24 construction of these generation facilities meet some sort  
25 of a balance between under- and over-built for the regulated

1 company?

2 MR. RAINWATER: It brings about a pretty good  
3 balance between the two companies in that it gives UE an  
4 adequate supply to meet its summertime loads. And, as  
5 Mr. Schallenberg said, that could be done in either one of  
6 two ways, either to transfer Illinois service area to  
7 essentially CIPS, our Illinois company, so that capacity now  
8 that's dedicated to Illinois could come back to Missouri, or  
9 we can transfer units. And we're fairly indifferent on  
10 which -- which approach we use.

11 COMMISSIONER GAW: All right.  
12 Mr. Schallenberg, in this inevitable catch-22 that comes  
13 about when things are changed in any way, if the Illinois  
14 portion of Ameren's customer base were perhaps moved over  
15 to -- and off of the Missouri regulated base, would that  
16 have any impact on Staff's analysis of a rate of return  
17 under a traditional rate of return case or any significant  
18 impact?

19 MR. SCHALLENBERG: It will have -- will have  
20 an impact because we now have to allocate -- when we look at  
21 AmerenUE, we have to allocate AmerenUE's units between  
22 Missouri and Illinois. We have to al -- in fact, you would  
23 have had an issue --

24 COMMISSIONER GAW: Yes.

25 MR. SCHALLENBERG: -- on that list of

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1 jurisdictional allocations.

2 COMMISSIONER GAW: Yes.

3 MR. SCHALLENBERG: It will impact that item  
4 substantially.

5 COMMISSIONER GAW: But does it just impact the  
6 question of whether that's an issue? What I'm really asking  
7 is whether it really impacts the final calculation of  
8 appropriate rate of return or if it's just a change in  
9 whether you're dealing with an allocation or just not having  
10 it in as an issue?

11 MR. SCHALLENBERG: I think the answer is it  
12 will address the cost of service of AmerenUE. I don't  
13 perceive that of our options -- while AmerenUE's numbers may  
14 be 10 million or 20 million, when you're looking at a cost  
15 of service of about -- I think our arguments here were  
16 between 1.6 billion and 2 billion, those numbers are not of  
17 the type that they're going to move the numbers  
18 substantially.

19 COMMISSIONER GAW: But it is possible it could  
20 increase the cost of service somewhat because you lose some  
21 of your -- well, that's what I guess I'm asking. Does it  
22 change -- which way does the cost of service go as you're  
23 losing customer base but you're gaining percentage-wise  
24 generation over toward the regulated Missouri customer,  
25 since your number of customers per generation has changed in

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1 that way?

2 MR. SCHALLENBERG: We haven't -- when we  
3 looked at the issue in the discussions with the company  
4 regarding the transfer of Illinois customers, there was --  
5 in the first year there was an additional cost to Missouri,  
6 but then as the Missouri units are depreciated, as you go  
7 forward in time, you no longer buy capacity or have to build

8 new capacity, it becomes cheaper.

9 There's a turnover -- there's a crossover  
10 point as you go forward in time. In the Staff's view in the  
11 long term, you will see the benefit in a relatively short  
12 period of time, but in the first year, it would actually  
13 have a higher cost.

14 COMMISSIONER GAW: Yeah. As far as this  
15 settlement is concerned, you understand all of those things  
16 may be in play over the course of the next three or four  
17 years, that does not -- that change in the move from those  
18 customers from Illinois away from Ameren's base, would that  
19 have -- that would not cause Staff to believe there was some  
20 significant change that would warrant -- by itself warrant  
21 setting aside this settlement, would it? And I don't know  
22 if that's a question for you, Mr. Schallenberg, or -- but  
23 whoever wants to tackle it.

24 MR. SCHALLENBERG: No. In fact, in all of  
25 those items we've talked about, either the transfer of the

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1 customers or buying those units, those would still be cases  
2 before you --

3 COMMISSIONER GAW: Yeah.

4 MR. SCHALLENBERG: -- under merger cases.

5 COMMISSIONER GAW: Yes. But what I'm after is  
6 whether or not that would be a significant enough change to  
7 warrant Staff believing that this settlement were somehow no  
8 longer okay?

9 MR. SCHALLENBERG: The answer would be no,  
10 because we know it now when we're entering into it.

11 COMMISSIONER GAW: That's all I'm trying to

12 establish, I think.

13 Back to construction, this would be to Ameren.  
14 In regard to transmission construction in this case, do you  
15 think the transmission construction contemplated in this --  
16 that you have contemplated within the boundaries of this  
17 settlement agreement will be sufficient to deal with  
18 Ameren's not only -- I guess what I want to get to is  
19 whether -- first of all, does it meet Ameren's needs as far  
20 as its customer base is concerned? That's my first part A  
21 question.

22 MR. RAINWATER: Okay. It addresses the  
23 immediate needs. And I would say there are questions longer  
24 term, how much additional transmission we need, which depend  
25 a lot on what happens to the wholesale markets.

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1 COMMISSIONER GAW: That's part B of my  
2 question, so just go ahead with it if you want.

3 MR. RAINWATER: It is very difficult to  
4 predict what will happen in the wholesale markets. As you  
5 know, companies like Enron, Dyne-G, Aquila, companies that  
6 have been large-scale power traders now are very marginal  
7 and it's questionable whether or not they'll survive.

8 And the power flows over the transmission  
9 system over the past few years that really have driven the  
10 need for increased transmission may or may not be there. So  
11 those are issues that we're trying to figure out and figure  
12 out exactly what is required.

13 What we have committed to in the short term,  
14 we believe is needed to address import and export capability

15 on our system to be able to provide an adequate safety  
16 margin in the case if our own generation is not available,  
17 we need to be able to bring power in from off-system for  
18 reliability reasons.

19 COMMISSIONER GAW: So if we were to assume,  
20 which is not a good assumption, but if we were to assume  
21 that your load would remain somewhat similar to what it is  
22 today, plus what you've experienced in increase over the  
23 last few years, would your plan for transmission over the  
24 next four years be adequate?

25 MR. RAINWATER: If we -- let me add one point

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1 to that.

2 COMMISSIONER GAW: Please do.

3 MR. RAINWATER: If we would re-regulate the  
4 wholesale markets so that those power flows were a lot more  
5 predictable, I would say it probably would be adequate. But  
6 the big uncertainty is what happens in those markets.

7 COMMISSIONER GAW: What you're talking about  
8 there, I assume, is that you have no way of knowing what any  
9 particular load requirement might be across your  
10 transmission lines with any great advance notice because of  
11 the buying and selling of electricity in the wholesale  
12 market. Is that generally what you're talking about?

13 MR. RAINWATER: It's -- yes, I would say that  
14 that's an accurate statement. That was one of the  
15 advantages of having a fully regulated industry is that  
16 power flows were much more predictable than they are today.  
17 Today it's virtually impossible to predict in large scale  
18 regional power flows that take place.

19 COMMISSIONER GAW: And how much of what  
20 AmerenUE -- if any, how much of what you're planning on  
21 investing in the next -- during the course of this agreement  
22 span is due to that issue of the wholesale sale of  
23 unregulated electricity markets?

24 MR. RAINWATER: Well, I'm -- I don't really  
25 know the answer to that question. Warner, do you have any

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1 idea?

2 COMMISSIONER GAW: I don't know that there  
3 will be a number.

4 MR. BAXTER: I think that's a fair statement.  
5 I don't know that there is a number. I think, as  
6 Mr. Rainwater stated, the 1,300 megawatts -- the  
7 transmission is what we're talking about here. We believe  
8 that based upon everything we know, that in -- we'll deal  
9 with the short term.

10 In the short term, probably two, three, four  
11 years here especially when you're talking about transmission  
12 because that takes time to build. Beyond that, you know, if  
13 we find that the wholesale markets continue to be robust,  
14 it's not to say that this is the only transmission upgrades  
15 that we would continue to invest during this time.

16 And, similarly, if -- if we need to do other  
17 things, that's what the joint resource planning efforts  
18 would do. It would take care of that issue as we work with  
19 the Staff and others.

20 COMMISSIONER GAW: And Ameren, I assume,  
21 intends to get an adequate price for the use of its

22 transmission lines to the extent it's able when it's  
23 utilized by other entities in order to help with the share  
24 of the costs that ratepayers have paid over the years for  
25 those transmission lines?

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1 MR. BAXTER: That is true.

2 COMMISSIONER GAW: Staff, do you have any  
3 comment on that issue? And I'll ask Public Counsel since I  
4 see some interest over there.

5 MR. SCHALLENBERG: We're aware of the number  
6 associated with costs to get the 1,300 megawatts. It's --  
7 it was given to us as being highly confidential.

8 COMMISSIONER GAW: Okay. Well, I don't know  
9 that it's necessary for you to give me the number. If you  
10 want to evaluate what it means, that would be fine.

11 MR. SCHALLENBERG: In terms of total  
12 commitment, it's not a significant number.

13 COMMISSIONER GAW: All right. Public Counsel?

14 MR. COFFMAN: Thank you. I think we just had  
15 a couple of things -- items we wanted to address on the  
16 broader infrastructure issues that you raised, which I think  
17 were pretty incisive. You focused in on a lot of the issues  
18 that we've been wrestling with as we discussed whether to go  
19 forward with this agreement.

20 To the extent that there might be any perverse  
21 incentive to a moratorium type agreement, one of the  
22 potential perverse incentives is that there would not be  
23 enough building, not enough investment in rate base.

24 COMMISSIONER GAW: Yeah.

25 MR. COFFMAN: And so while we think that this

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1 is probably a commitment to infrastructure that was already  
2 consistent with capital improvement plans, I think it's a  
3 good idea to put it in an agreement, especially that has a  
4 moratorium this long to counteract that.

5 We also then have the concern we might be  
6 encouraging over-building if circumstances change. And  
7 maybe the largest factor that we're aware of that is  
8 potential that we know about now, of course, is the Illinois  
9 transfer. And you're right to focus in on that because that  
10 could dramatically change loads.

11 However, I think that it has been contemplated  
12 somewhat in the infrastructure agreement, it has been  
13 excluded to some degree. And I think it would be  
14 appropriate to let Ryan Kind make a couple more specific  
15 comments.

16 COMMISSIONER GAW: Mr. Kind?

17 MR. KIND: Thank you. I just wanted to  
18 clarify a little bit on the 700 megawatts. As was stated  
19 before, some of that's already been built. And just so the  
20 Commissioners would understand why we're listing numbers in  
21 here that have already been built, if you -- it lists 700  
22 megawatts at the top of page 6.

23 If you look at the bottom of page 5, the dates  
24 are January 1, 2002, beginning there, through the middle of  
25 2006. So that's why it includes 240 megawatts that are

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1 already on line. So the first bullet is really talking  
2 about an additional 460 megawatts.

3 And one other point I wanted to touch on was I  
4 think you may have heard someone indicate that the  
5 460 megawatts may not be needed if the Illinois transfer  
6 takes place. And that's not our understanding.

7 And, in fact, the agreement I think is pretty  
8 explicit that they're going to build these megawatts and  
9 that the Illinois transfer -- the transfer of Illinois load  
10 would not be a way for them to achieve part of this  
11 700 megawatt commitment. The agreement is pretty specific  
12 on that.

13 And we were in agreement with that, that those  
14 were both necessary to bring their supply and demand for  
15 generation into balance over the time period of the  
16 agreement.

17 The only other point I wanted to make just in  
18 terms of infrastructure investment is that there was a lot  
19 of testimony in this case about needs even beyond the time  
20 period that we're talking about here and how great those  
21 needs were and how that should be taken into consideration.

22 And I just wanted to alert the Commission that  
23 we -- we still have a major outstanding issue that we intend  
24 to address through the resource planning process. And that  
25 is whether or not the current contract that AmerenUE has

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1 with one of its affiliates named EEI for power from the JOPA  
2 power plant, which expires about the end of this agreement,

3 whether or not that contract is renewable and whether given  
4 the fact that Ameren is the majority owner of EEI, that  
5 that's something that they should be able to negotiate a  
6 continuance of that contract at reasonable -- something  
7 similar to the reasonable cost-based rates that are in place  
8 currently.

9 COMMISSIONER GAW: Ameren or Staff, either  
10 one, would you like to respond to Mr. Kind?

11 MR. BAXTER: I think from Ameren's  
12 perspective, we recognize the Office of Public Counsel's  
13 issue that they spoke about with regard to the EEI and  
14 contract. And I think it is fair to say as we go over the  
15 next several years and deal with the joint resource planning  
16 efforts, that issues will be discussed and ultimately  
17 resolved.

18 COMMISSIONER GAW: All right.

19 JUDGE MILLS: Why don't we go ahead -- at this  
20 point we've been on the record almost two hours. Why don't  
21 we take a 10-minute recess. We're off the record.

22 (A RECESS WAS TAKEN.)

23 JUDGE MILLS: Commissioner Gaw, please go  
24 ahead.

25 COMMISSIONER GAW: Thank you, Judge. Well,

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1 the good news is I lost my train of thought. Bad news is I  
2 thought of more questions.

3 Seriously, I want to go to a question that --  
4 or issue that Commissioner Simmons raised just briefly. And  
5 that is the exception dealing with the Attorney General's  
6 office. And I thought that perhaps, Mr. Cook, you had some

7 comments earlier about that, but I might have misinterpreted  
8 that and I was curious if you had any comments.

9 MR. COOK: I thought I did.

10 COMMISSIONER GAW: Now you're not so sure. If  
11 not, I'll pursue it in a different way.

12 MR. COOK: I believe Mr. Dottheim may have  
13 responded adequately while I was mumbling behind someone's  
14 back.

15 COMMISSIONER GAW: What I'm looking for is the  
16 answer that I didn't hear. And that was -- I heard that  
17 there were reasons why the Attorney General's office wanted  
18 to be excepted. What I was unclear about is what that means  
19 and what the jurisdiction of the Attorney General's office  
20 is to do something on a complaint case under the current  
21 statutes and their authorization. And I wondered if someone  
22 could help me with that. I'll allow the Attorney General's  
23 office to do this.

24 MR. JOYCE: Steve's further away from the mic.  
25 I'll take a shot at it. Just the fact that the Attorney

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1 General's excepted does not automatically give the Attorney  
2 General standing to file what we would expect to be a rate  
3 decrease case.

4 It would still have to meet the requirement of  
5 25 consumers if, in fact, the Attorney General is  
6 representing a consumer. And I don't believe there are  
7 25 state agents -- you know, state departments. But  
8 conceivably as long as the Attorney General could pull  
9 together 25 unique consumers, then the Attorney General

10 could file.

11 MR. MOLTENI: I would qualify that.

12 COMMISSIONER GAW: Does the Attorney General's  
13 office want to respond to that, help me out a little bit?

14 MR. MOLTENI: Yes. I think the Attorney  
15 General doesn't have any restriction on it to bring a rate  
16 case. In its -- in the Attorney General's capacity under  
17 Chapter 27, the Attorney General has very broad powers as  
18 the Attorney General under Chapter 27. And if it is in the  
19 state's interest to bring a rate case, we don't feel that  
20 the Attorney General is restricted in that capacity.

21 If the Attorney General were seeking standing  
22 on the basis solely of being a consumer, then Mr. Joyce's  
23 comment might be accurate under -- seeking standing under  
24 the basis that are under the section -- or in Chapter 393.  
25 but the Attorney General has very broad powers that aren't

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1 necessarily limited by Chapter 393.

2 COMMISSIONER GAW: I see. How many times has  
3 the Attorney General's office bought a complaint case in  
4 front of this Commission in the past?

5 MR. MOLTENI: That I'm aware of, none.

6 COMMISSIONER GAW: So you don't want to --  
7 you're arguing that you don't want to give up something that  
8 you believe you have, but it's never been exercised in the  
9 past?

10 MR. MOLTENI: I think that's correct,  
11 Commissioner Gaw.

12 MR. COOK: I think --

13 COMMISSIONER GAW: Mr. Cook?

14 MR. COOK: -- the Staff's statement is  
15 consistent with what the company understands it to be. This  
16 stipulation would not be used to preclude the Attorney  
17 General from trying to find some authority to file such a  
18 case, and whether it is there or not would be left to that  
19 point in time.

20 COMMISSIONER GAW: Ameren is not conceding the  
21 Attorney General's position --

22 MR. COOK: Correct.

23 COMMISSIONER GAW: -- on the question of  
24 whether they have authority to bring a rate case in front of  
25 the Commission or a complaint case?

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1 MR. COOK: That's correct.

2 MR. JOYCE: Neither is Staff.

3 MR. COOK: But we would not raise the  
4 stipulation as being something -- because of the wording  
5 that's in there, we would not raise the stipulation as being  
6 that which would prevent them from doing so.

7 COMMISSIONER GAW: That was very confusing  
8 reading that in there. And I was just trying to make sure  
9 that we weren't contemplating with the settlement some sort  
10 of a shift of jurisdiction on a complaint cases. It doesn't  
11 sound like we are.

12 MR. MOLTENI: Commissioner Gaw, we don't have  
13 any card up our sleeve, we're not waiting to ambush  
14 AmerenUE. I think I tried to answer Commissioner Simmons'  
15 question accurately and that is the sense that the Attorney  
16 General is the chief law enforcement officer in the state

17 and the concept of a moratorium, while it may be something  
18 that's certainly palatable in terms of regulation of utility  
19 and concepts involving regulatory lag, it's not palatable to  
20 the Attorney General in the concept of unknown future --  
21 giving somebody carte blanche about unknown future actions in  
22 an agreement that the Attorney General would -- without  
23 knowing what future actions are, on a carte blanche basis  
24 say, Okay, we agree to have our hands tied and not take  
25 action.

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1 COMMISSIONER GAW: But are you talking about  
2 some sort of a criminal type of a proceeding or are you  
3 talking about a complaint case?

4 MR. MOLTENI: We're not talking about anything  
5 in specific. All I'm saying in a -- this agreement does  
6 not -- does not bind the Attorney General's office in terms  
7 of prohibiting the Attorney General from bringing a rate  
8 case.

9 COMMISSIONER GAW: So does that mean that you  
10 think it would be an error for this Commission to accept its  
11 Staff seating that issue or Public Counsel seating that  
12 issue?

13 MR. MOLTENI: I believe the enabling statutes  
14 regarding the Commission Staff specifically allow the  
15 Commission Staff to adopt a moratorium. Do I believe it's  
16 an error or not? I don't think so. I don't think so. I  
17 don't have a rock solid opinion on that, but I'm leaning in  
18 the direction --

19 COMMISSIONER GAW: I'm sort of depending on  
20 your opinion on that in regard to whether we should accept

21 the settlement.

22 MR. MOLTENI: Yes. I think you should accept  
23 the settlement. I think it's lawful for the Staff and OPC  
24 to do that.

25 MR. DOTTHEIM: Commissioner Gaw, I don't

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1 recall offhand the Attorney General's application for  
2 intervention. I think it was on behalf of DNR, but I seem  
3 to recall that --

4 MR. MOLTENI: It was on behalf of the State of  
5 Missouri.

6 MR. DOTTHEIM: And in prior instances it's my  
7 recollection it's on behalf of the State of Missouri as a  
8 consumer of -- whether it be energy services or  
9 telecommunications services.

10 And, again, Mr. Molteni has addressed the  
11 matter of who the Attorney General's office sought  
12 intervention on in this proceeding. I don't know -- I don't  
13 recall whether it went any further in specifying the basis  
14 for that intervention.

15 And as far as -- I didn't raise this matter  
16 when Commissioner Murray was asking some of her questions  
17 this morning, but on lawfulness of a moratorium, there is a  
18 case on that, which I think is cited on occasion to the  
19 Commission, the State ex rel. Jackson County, a case where  
20 the Commission in the mid-1970's adopted on its own a  
21 moratorium respecting Missouri Public Service Company. And

22 Missouri Public Service Company filed for a  
23 rate increase and Jackson County raised the issue that it

24 was unlawful because there was a moratorium. And I can't  
25 remember if it was Western District Court of Appeals or

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1 Missouri Supreme Court, ruled that the Commission could not  
2 limit its jurisdiction.

3 Even if the Commission itself said there was a  
4 two-year moratorium, and I think that's what it was, a  
5 two-year moratorium, that the Commission has jurisdiction to  
6 review a utility's rates basically at all times, under  
7 changed circumstances amongst other things.

8 And I think the Commissioners are well aware  
9 of the situation after the Staff's second complaint case  
10 against Southwestern Bell in 1993 where the Commission  
11 offered to Southwestern Bell after the termination of the  
12 Bell alternative regulation plan, what the Commission called  
13 the accelerated modernization plan, an alternative  
14 regulation plan and Southwestern Bell declined the offer.

15 There were some intervenors in the case,  
16 Missouri Cable Television, it's also referred to I think as  
17 Missouri Cable Telecommunications, brought a writ of review  
18 in circuit court challenging the authority of the Commission  
19 to offer an alternative regulation plan.

20 And ultimately it was determined in the  
21 Western District Court of Appeals that the issue was moot.  
22 The court was not going to rule on the question of whether  
23 the Commission had the authority to offer Southwestern Bell  
24 an alternative regulation plan because Southwestern Bell  
25 declined, so there was no controversy. So there was no

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1 ultimate judicial resolution of that.

2 In the present situation at least, all the  
3 parties involved are either signatories to the Stipulation  
4 and Agreement or have indicated to the Commission that they  
5 neither oppose or support the Stipulation and Agreement.

6 COMMISSIONER GAW: Well, I guess there are two  
7 things that -- which I was glad you all discussed earlier.  
8 One was it seems that there is some basic agreement in  
9 regard to this Commission's authority to oversee the  
10 utilities.

11 And secondly, Mr. Molteni -- Mr. Molteni,  
12 excuse me, it strikes me that the Attorney General's office  
13 is not a party in the sense that they are the party in the  
14 case that you all are representing as an attorney. Either  
15 it's the State of Missouri and its building and how much it  
16 costs or Department of Natural Resources, so I find it a  
17 little -- it just struck me as a little odd that the  
18 Attorney General would find a need to specify that it was  
19 somehow not precluded from doing whatever statutory  
20 authority it had to do in the future when it technically  
21 wasn't, at least in my mind, a party like some of the others  
22 are, so --

23 MR. MOLTENI: But the Attorney General has  
24 signed the Stipulation and Agreement. And to alleviate any  
25 future confusion that might arise from the Attorney General

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1 having signed the Stipulation and Agreement and in what

2 capacity, we felt the need to carve out from the moratorium  
3 that --

4 COMMISSIONER GAW: Perhaps the wording in the  
5 future could be so it doesn't create the same kind of  
6 perception. If you're carving yourself out because you're  
7 not a party but you're representing others and you feel like  
8 there might be some confusion about you being precluded as a  
9 party in a case, it would be easier -- at least from my  
10 understanding, to understand it.

11 MR. MOLTENI: We'll certainly take that into  
12 consideration in the future. I thought it was clear when it  
13 says excluding the Office of the Attorney General.

14 COMMISSIONER GAW: It was just not clear why  
15 you were the only one mentioned. But as I understand it,  
16 nothing in that agreement is intended to preclude the  
17 Commission itself, only the Commission Staff in initiating  
18 something on its own?

19 MR. MOLTENI: Commissioner Gaw, if I may add a  
20 footnote, in the course of litigating the EARP, one of the  
21 things that we've argued at the circuit court level was the  
22 Commission doesn't and can't advocate for jurisdiction. We  
23 would have not signed onto this agreement if we saw anything  
24 in the four corners of it that we thought would be  
25 advocating the Commission's statutory jurisdiction and

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1 responsibilities.

2 COMMISSIONER GAW: That's what I assumed,  
3 Mr. Molteni, and I just wanted that clarified for the  
4 record. Thank you.

5 Just one other general point of clarification  
6 and that has to do with the designation in the settlement  
7 agreement of the additional \$3 million in rate reductions to  
8 the large industrials. And I'm getting mixed messages on  
9 what that is due to and I want to make sure I understand  
10 whether those positions are just positionings of the parties  
11 or whether I just -- if I misunderstood.

12 I didn't hear Staff inquire of earlier in  
13 regard to why that additional \$3 million. I did see in the  
14 settlement agreement a reference to that being for economic  
15 development purposes. What I'm curious about is whether you  
16 agree or disagree with the comments from the large  
17 industrials that it was due to bringing things in line on  
18 cost of service?

19 MR. DOTTHEIM: If my memory serves me  
20 correctly, that is consistent. And when I say consistent,  
21 I'm not saying it's the exact dollars involved, but in Case  
22 No. E0-96-15, which was a rate design proceeding, which I  
23 believe for the most part was settled and there was a  
24 stipulated agreement which there would be a rate design  
25 based upon utilizing the dollars that would come out of the

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1 provision in Case No. EM-96-149 about -- after the first  
2 EARP concluded, there was to be a rate reduction based upon  
3 the weather normalized sharing credits for the three  
4 years -- an average for the three years.

5 And the rate design dollars, as far as its  
6 distribution, was based upon what rate reduction was going  
7 to occur as a result of that -- of that provision.

8 In part, the rate design in this case, in

9 particular, singling out the larger primary service, is a  
10 result of the rate design that was agreed to in that earlier  
11 case, E0-96-15. The entire rate design, as far as moving  
12 classes closer to cost of service, was not able to be  
13 completely effectuated because the rate reduction was not  
14 large enough.

15 And so that, in part, is what I believe is the  
16 Staff's rationale as far as the rate design in this  
17 proceeding. It's not the exact number of dollars, it's  
18 larger than that, what was contemplated shifting, I believe,  
19 to, for example, the large primary service.

20 But the Staff views that portion of the  
21 Stipulation and Agreement also addressing economic  
22 development. And I don't know how many other parties would  
23 address it from that perspective, but from the Staff's  
24 perspective, that item is an economic development item for  
25 presently existing customers, potential customers in the

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1 state and that's the rationale.

2 COMMISSIONER GAW: I'm not sure if I  
3 understood all that. Are you saying that it is not, in  
4 Staff's opinion, totally due to bringing the large  
5 industrials in line on cost of service?

6 MR. DOTTHEIM: It is not from the Staff's  
7 perspective -- the number of shifts of dollars was not  
8 contemplated, but that's just the Staff's view.

9 COMMISSIONER GAW: I understand that. At  
10 least I heard the large industrials saying earlier that they  
11 believe it is bringing them at least closer, but not as

12 close as they would like, in their opinion, to cost of  
13 service. But I'm not hearing Staff say that. I'm just  
14 wanting to understand the positions of the parties in regard  
15 to that additional 3 million on the industrials.

16 MR. DOTTHEIM: Clearly it didn't prevent the  
17 Staff from signing the Stipulation and Agreement. There was  
18 a rate design item which for one reason or another we  
19 weren't able to resolve, but everything considered, we  
20 thought that the Stipulation and Agreement was reasonable.

21 COMMISSIONER GAW: I'm going to go to the  
22 heart of the matter on this issue with Public Counsel.  
23 Since in the balancing act of when you've got the rate  
24 reduction and figuring out who's going to benefit the most,  
25 what was Public Counsel's position in regard to whether or

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1 not this was economic development or cost of service driven?

2 MR. COFFMAN: As I said earlier, you know, we  
3 took this whole settlement as a package. However, if you  
4 look at the resulting rate design, it's not so far out of  
5 whack with what we know that's unreasonable.

6 I think it's important to point out that the  
7 cost of service studies that were in the last Commission  
8 case, E0-96-15, are rather stale, in our opinion, involving  
9 a great deal of pre-merger cost structures. And, you know,  
10 we do not agree with the cost of service studies necessarily  
11 proposed by industrial customers or by AmerenUE in this  
12 case. We believe that the result here is within the zone of  
13 reasonableness and we support it.

14 Whereas, Mr. Brubaker may reserve the right  
15 after the moratorium is over to suggest even more shifts in

16 the direction of his clients, we reserve the right perhaps  
17 to say that maybe things have gone too far and at the end  
18 maybe we need to come back again.

19 I don't know, you know, where we're going to  
20 be at that point. But the overall impact to the clients  
21 that we focus on in the rate design part of the case we  
22 think are treated fairly.

23 As to the economic development impact, I mean,  
24 we signed this agreement which says -- the agreement says  
25 that the reductions for the large industrial class, the

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1 additional 3 million per year, are for economic development  
2 and I agree with that.

3 I think that would be a positive thing,  
4 although I could also tell you and believe that it is the  
5 case that the reductions for the residential and small  
6 business customers, in fact, all customer classes will have  
7 a positive economic development impact.

8 COMMISSIONER GAW: Isn't it called economic  
9 development in this settlement so that parties avoid it  
10 being attributed to cost of service since there was no  
11 agreement about whether that was the reason for its  
12 reduction?

13 MR. COFFMAN: As always, I can only speak for  
14 myself, but we didn't have as much class cost of service  
15 study data in this case to give us a real hard opinion and  
16 recommend that an equal percentage application or allocation  
17 of revenue changes is our litigated position, but from what  
18 we know, we're willing to accept this rate design structure

19 in this agreement and think that the whole package is  
20 reasonable.

21 COMMISSIONER GAW: Staff?

22 MR. DOTTHEIM: Also to the reference to  
23 economic development was an effort on Staff's part to  
24 attempt to indicate and to show that the Staff is not  
25 opposed to economic development. Right now I can't recall

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1 if any UE witness literally said that the Staff was opposed  
2 to economic development or just was not interested in  
3 addressing that item.

4 That is a concern of Staff. We believe we  
5 have parameters, limitations which other parties may not --  
6 may not have, but we thought the language was important from  
7 that perspective.

8 COMMISSIONER GAW: I see. So did you --

9 MR. COFFMAN: One -- I'm sorry.

10 COMMISSIONER GAW: Public Counsel? That's all  
11 right.

12 MR. COFFMAN: Sorry to interrupt.

13 COMMISSIONER GAW: That's all right.

14 MR. COFFMAN: I think it's important on this  
15 matter and it was important to several parties, that we do  
16 have a class cost of service study or at least one that will  
17 be filed by the company to begin the process.

18 And, as you know, these cases -- these class  
19 cost of service study cases can take many years. So knowing  
20 that when this moratorium would expire, that we would have  
21 that study, we'd have a lot better data at any case that  
22 might follow this moratorium. That gave a lot of us some

23 comfort in agreeing to a moratorium this long knowing that  
24 we would start off with enough data that we could really  
25 address rate design more comprehensively in that future

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1 potential case.

2 COMMISSIONER GAW: Large industrials, do you  
3 want to make any comments in response at all? It's not  
4 necessary, I'm just asking.

5 MS. VUYLSTEKE: No. I don't think we have  
6 anything to add to what we've already said earlier.

7 MR. JOHNSON: I do have a comment.

8 COMMISSIONER GAW: Yes, sir, Mr. Johnson.

9 MR. JOHNSON: I think that the concept of  
10 economic development is an important one. The St. Louis  
11 area has had a shrinking industrial large company base now  
12 for some time. Ford Motor announced they're going to close  
13 the assembly plant in Hazelwood. The Boeing plant has  
14 dramatically reduced from about 45,000 employees to about 15  
15 or 16. Southwestern Bell has moved out, General Dynamics  
16 has moved, and there's been a whole string of these kind of  
17 events happening. So the result has been a very severe and  
18 adverse economic effect on the St. Louis area.

19 The hospitals, on the other hand, have grown  
20 and have large employment now. Barnes Hospital is the  
21 largest employment in the state with about 45,000 employees.  
22 So they are not for profits. But the industrial base has  
23 definitely shrunk. And so I think there is a very good  
24 reason to take that into consideration and into account in  
25 this stipulation.

1                   COMMISSIONER GAW: Okay. Fair enough. Anyone  
2 else want to make any comments on that issue? I didn't mean  
3 to leave anyone out.

4                   I said that was it, but I do have I think one  
5 other area of follow-up. And that is there was a discussion  
6 with Ameren about the potential to move toward any kind of a  
7 legislative agenda on change and I understand Ameren's  
8 position.

9                   I don't know if any -- if KCP&L or LaCledde  
10 would like to address their positions on those issues as it  
11 would impact potentially this settlement agreement. LaCledde  
12 is going to be brave.

13                  MR. PENDERGAST: Well, it's relatively easy  
14 for us because I think we've had a fairly consistent  
15 position on, I think, some of the issues that have been  
16 raised as far as deregulation, what kind of incentives  
17 regulation provides to move resources from one sphere to the  
18 other.

19                  And we have testified in the past that we do  
20 have very strong doubts about whether additional  
21 deregulation, at least in the natural gas industry, would be  
22 of any benefit, particularly to smaller residential and  
23 commercial customers.

24                  We haven't seen anything since that time that  
25 has dissuaded that that particular approach and those

1 particular thoughts are wrong. And I suspect that that's  
2 going to go ahead and continue to be our position.

3 Of course, as everybody has talked about  
4 changing circumstances today, that goes true as far as  
5 whatever legislative proposals you might have, but we  
6 continue to go ahead and have concerns. And, unfortunately,  
7 some of those concerns have been born out recently in fairly  
8 dramatic ways. Thank you.

9 COMMISSIONER GAW: There's nothing that you  
10 have in specific though that you know of as far as promoting  
11 a particular piece of legislation here in Jefferson City or  
12 in D.C. that would have, to your knowledge, a major impact  
13 on this settlement?

14 MR. PENDERGAST: Certainly nothing on this  
15 settlement. And, in fact, as far as I know, our only  
16 legislative proposals are ones to this point at least and  
17 maybe always develop more, but we did have one on the  
18 advisory staff last year, the ex parte rules and the mile  
19 limitation on where Commissioners can live.

20 COMMISSIONER GAW: Right. Good. Thank you.

21 MR. PENDERGAST: Thank you.

22 COMMISSIONER GAW: Is KCP&L willing to venture  
23 into that one?

24 MR. FISCHER: To the extent I can, your Honor.  
25 Jim Fischer on behalf of Kansas City Power & Light.

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1 KCP&L hasn't decided what its legislative  
2 agenda, if any, might be for the upcoming year. They've  
3 been very interested in the terms of the settlement. A

4 number of things in here could potentially impact KCP&L if  
5 they were developed for that company.

6 I can't imagine any legislative proposal that  
7 would undermine what Union Electric has agreed to here, but  
8 like I say, they do not have any specific legislative plans  
9 that I'm aware of at all.

10 COMMISSIONER GAW: There was some legislation  
11 from KCP&L this last session that had to do with moving  
12 generation. Is that likely to resurface? And if you feel  
13 uncomfortable answering that, by no means am I trying to  
14 delve into secrets and get --

15 MR. FISCHER: Kansas City Power & Light did  
16 have a witness that testified in favor of that. I'm not  
17 sure how actively they promoted that throughout the session  
18 and I don't know that they have any plans right now to  
19 proceed along that line. They're continuing to watch  
20 developments across the industry like all of us.

21 COMMISSIONER GAW: Sure. Sure. Thank you,  
22 Mr. Fischer. Thank you very much.

23 I think that that -- I think I've done enough  
24 for today, in most peoples' opinion way more than that. But  
25 I just want to thank the parties for their patience and for

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1 bearing with me in my inquiry. And I won't apologize for  
2 being pointed with my questions because I need to know the  
3 answers to some of those questions to satisfy myself and  
4 what I believe we have as our responsibility, but I do know  
5 that it's not always the most fun thing to do.

6 I do appreciate you being here. I thank the

7 parties for their effort. And I'll relay it on to whoever  
8 goes next, Judge. I promised -- my promise is broken to  
9 Commissioner Forbiss.

10 JUDGE MILLS: Commissioner Forbiss?

11 COMMISSIONER FORBIS: Thank you, Commissioner  
12 Gaw, for keeping your six o'clock promise. It's resolved  
13 that whole pizza party conundrum that's developed since  
14 yesterday so I thank you very much.

15 Just two points I'd like to talk about. One  
16 is Ryan Kind talked about all the changes that FERC is  
17 contemplating and standard market design and locational  
18 marginal pricing and so on.

19 The stipulation as we have it here, I assume,  
20 was written with an eye toward these changes or are those  
21 changes entirely outside the scope of what we're talking  
22 about today? I guess I'll give that to Ameren. I'm sorry.  
23 I didn't tell you who I was talking to first. Is there  
24 anything in the stipulation, in your opinion, that will come  
25 into conflict perhaps with what FERC is throwing out there?

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1 MR. RAINWATER: Well, we don't know yet what  
2 will come from standard market design. FERC has laid out  
3 some general principles. There will be a rule-making  
4 process. I'm not sure how long that will take or when  
5 standard market design will be implemented.

6 Maybe an important point here is that that  
7 market design would affect the wholesale markets, which are  
8 kind of in a state of flux anyway. We have considered that  
9 in the overall settlement and we don't believe that any of  
10 that kind of uncertainty should affect this settlement. So

11 given that we know that's going on, we still fully support  
12 the settlement.

13 COMMISSIONER FORBIS: And there would be  
14 nothing that FERC could do which would be on that list of  
15 extraordinary changes that might prompt something in this  
16 stipulation to happen or anything?

17 MR. RAINWATER: I certainly don't contemplate  
18 anything --

19 COMMISSIONER FORBIS: The crystal ball is what  
20 I'm asking.

21 MR. RAINWATER: Yeah. None of us can predict  
22 the future absolutely. Certainly don't contemplate  
23 anything. The kind of things that were intended that might  
24 impact the agreement are of the extreme category, you know,  
25 like terrorist attacks that might destroy a power plant.

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1 But in standard market design in the wholesale markets, I  
2 would certainly think that that is not one of those.

3 COMMISSIONER FORBIS: Thank you. You guys,  
4 OPC, want to say anything about that?

5 MR. COFFMAN: I'll let Ryan talk.

6 MR. KIND: I pretty much agree with what  
7 Mr. Rainwater said about standard market design. I think  
8 everybody knew about that, felt like the agreement would be  
9 reasonable even though we were all anticipating that to  
10 occur.

11 The one area that -- where potentially there  
12 could be some effect is where we've got some commitment to  
13 infrastructure investments and transmission. There's a

14 little bit of uncertainty as to how soon RTOs will really  
15 take over coordinating the overall transmission planning  
16 process on a region-wide basis.

17 I would anticipate that they're going to allow  
18 projects to go forward that are already in the pipeline like  
19 these, but it could affect to a small extent some of those  
20 commitments and then, you know, any transmission  
21 infrastructure investment that occurs beyond what's already  
22 in the agreement.

23 COMMISSIONER FORBIS: But nothing dramatic  
24 envisioned or problematic?

25 MR. KIND: No.

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1 COMMISSIONER FORBIS: Thank you. Go back to  
2 Ameren just for a second. I want to talk about the Ameren  
3 Community Development Corporation. I think that whole idea  
4 is really intriguing starting out with \$5 million and I  
5 think \$1 million after that.

6 Could you just kind of help me understand a  
7 little bit how that's going to work? It's going to be a  
8 five-person board and not for profit and it will give monies  
9 to small businesses, individuals? I'm looking for more  
10 information about that just for my own edification, I  
11 suppose.

12 MR. BAXTER: Well, Commissioner Forbis, with  
13 regard to the economic development, there is a corporation  
14 that's been established, but what we've put in the  
15 Stipulation and Agreement is a collaborative effort to do a  
16 number of things.

17 One would be to talk about the Governor's

18 provisions, because as we all know, that's an important  
19 aspect of putting monies into a corporation that ultimately  
20 will distribute it in the way it sees first.

21 Incorporated in those Governor's provisions,  
22 we would envision some parameters as to which those funds  
23 would be distributed to, whether it be small businesses,  
24 large business. I mean, obviously we've heard today  
25 obviously Ford and their issues associated with their

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1 Hazelwood plant. Those monies potentially could be utilized  
2 there.

3 So I think that collaborative effort -- we do  
4 not have a lot of the specific details, but one thing we are  
5 clear about is that an economic development program is  
6 clearly something that is in the public interest, at least  
7 in Ameren's view, and that there will be a group of  
8 individuals, interested parties that will work very hard and  
9 very soon to try and put those Governor's provisions in  
10 place and then utilize those funds accordingly.

11 We have suggested in testimony what that board  
12 could be and what it may be comprised of. That was simply  
13 what was suggested in testimony. That is not necessarily  
14 ultimately where that collaborative group may come out. It  
15 may be a larger board and the composition of that board is  
16 still subject to discussion.

17 COMMISSIONER FORBIS: Thanks. And you're  
18 envisioning that that would work with city government,  
19 county government, state government and all that sort of  
20 thing to target the money and make sure everybody has an

21 equal shot?

22 MR. BAXTER: Yes. I think that is a very fair  
23 standard.

24 COMMISSIONER FORBIS: Okay. Thanks,  
25 Mr. Baxter.

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1 I wanted to talk to Staff about the same thing  
2 because there's a couple of these collaborative committees  
3 and it says that the signatories can be on those committees.  
4 So do we envision that PSC Staff will -- would we like to be  
5 on those committees? Will the Staff serve on them in some  
6 capacity?

7 MR. DOTTHEIM: It was anticipated that the  
8 Staff would participate in the collaborative efforts except  
9 the community development corporation, because of the  
10 concerns which some of the other parties do not share as far  
11 as the Staff or -- and, of course, ultimately the Commission  
12 will decide that for itself or the Commission becoming  
13 involved in the details of economic development programs or  
14 the effort of the community development corporation.

15 COMMISSIONER FORBIS: And the two that the  
16 Commission is involved in, let's see, the timely use  
17 project. Right? Have I got the acronym correct? The ones  
18 that we are directly involved in resolving some of the  
19 disputes, is that because there's a tariff involved in those  
20 or just because we thought it was all right to be in those  
21 and not involved in the ones that are more grant oriented?

22 MR. DOTTHEIM: Yes, the latter.

23 COMMISSIONER FORBIS: Okay. So it's just the  
24 type of project we were concerned about?

25 MR. DOTTHEIM: Yes. The type of activity.

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1 COMMISSIONER FORBIS: Okay.

2 MR. JOYCE: Commissioner, if I might add  
3 though, even with the community development or economic  
4 development collaborative, it's spelled out in the  
5 memorandum of support that the Commission certainly, if it  
6 wants Staff to be -- as a signatory party, Staff can  
7 participate. And so it's really open ended as far as the  
8 Commission if it wishes to have -- to more actively or to  
9 participate at all, the Commission would be able to direct  
10 the Staff however it wished.

11 COMMISSIONER FORBIS: Still looking for some  
12 direction. Okay. Thank you.

13 I also have one really detailed question I'm  
14 curious about. On page 3 of the Stipulation 1A, we talk  
15 about three cases are cited that are involved and then the  
16 last sentence it says, As a consequence, two cases may be  
17 closed. EM-96-149 does not appear in that last sentence.  
18 Is there a reason for that?

19 MR. DOTTHEIM: The third year of the first  
20 experimental alternative regulation plan is still an open  
21 item within the judicial system that's pending. I think as  
22 has been indicated before, it's before the Western District  
23 Court of Appeals.

24 And although the first experimental  
25 alternative regulation plan was effectuated in a different

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1 case, Case No. E0-96-14, there is, as previously indicated,  
2 as part of what was negotiated in EM-96-149, which was the  
3 merger case of Union Electric Company and SIPSCO, a rate  
4 reduction that would occur after the first EARP based upon  
5 the sharing credits for each of the three years of the first  
6 EARP.

7 The rate reduction was effectuated in part.  
8 The dollars that are not being contested are -- have been  
9 reflected in the reduction of rates and that was in  
10 EM-96-149. So in that a portion of that case is related to  
11 the case that's on appeal to the Western District Court of  
12 Appeals, it didn't seem to -- at least from the Staff's  
13 perspective, to make sense to close that case.

14 COMMISSIONER FORBIS: Thank you. Makes sense.

15 MR. DOTTHEIM: And that's the only reason.

16 COMMISSIONER FORBIS: Okay. If I go back to  
17 Mr. Baxter, I wanted to ask another question on the ACDC.  
18 How unique is that? Is that something that is very unique  
19 to Missouri? Have other states -- other utilities tried  
20 that?

21 MR. BAXTER: To be honest with you,  
22 Commissioner Forbis, I can't say with a great deal of  
23 certainty. I am not aware of any other utility in the state  
24 that has set up a separate corporation as well as devoted  
25 the meaningful funds to such a corporation.

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1 And I'm certain that across the country that

2 there are economic development efforts that are done by  
3 public utilities, but it may be done more informally.  
4 Certainly Ameren, in the past, has participated in economic  
5 development efforts here.

6 This is really in furtherance of our  
7 commitment to economic development and by setting up the  
8 separate corporation and then obviously the Governor's  
9 provisions. But I can't speak directly about what's  
10 happening across the country.

11 COMMISSIONER FORBIS: Okay. Thanks. I'll see  
12 if I can get that acronym clear from now on, Ameren CD might  
13 be better. That's it for my -- thank you very much.

14 JUDGE MILLS: Are there further questions from  
15 the Commissioners? I'll just go through in order of rank  
16 and seniority from the beginning and ask each of you if you  
17 have further questions. Chair Simmons?

18 CHAIR SIMMONS: I have no questions.

19 JUDGE MILLS: Commissioner Murray?

20 COMMISSIONER MURRAY: I have none. Thank you

21 JUDGE MILLS: Commissioner Lumpe?

22 COMMISSIONER LUMPE: Just one. You talked  
23 about the Staff reductions. Were those in relationship to  
24 the merger between SIPS and -- were a number of those in  
25 relation to the merger between SIPS and UE when you talked

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1 about the 35 percent? Would that have been a reason for --

2 MR. RAINWATER: Commissioner Lumpe, some of  
3 those were due to the merger, but I would say the great  
4 majority of that has been due just to efficiency improvement  
5 in the business.

6 COMMISSIONER LUMPE: Okay.

7 MR. RAINWATER: I know that we estimated  
8 originally reductions of roughly 300 due to the merger and  
9 over the years we've reduced total staffing between the two  
10 companies from roughly 12,000 employees to roughly 7,400.

11 COMMISSIONER LUMPE: Okay.

12 MR. RAINWATER: So far in excess of what we  
13 feel the merger --

14 COMMISSIONER LUMPE: Okay. Thank you.

15 JUDGE MILLS: Commissioner Gaw?

16 COMMISSIONER GAW: No. I'm finished.

17 JUDGE MILLS: I have a few matters to address.  
18 They're mostly procedural, some of them I suppose may end up  
19 going into some substance.

20 First of all, in the stipulation itself in  
21 paragraph 15 it provides that the Staff can file a  
22 memorandum in support, which of course it did. It also  
23 provides that the other parties will have the opportunity to  
24 respond to the memorandum in support.

25 To my knowledge, the only party that has filed

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1 anything in support is the MIEC. And I'm just going to go  
2 around the room and ask the parties whether they have  
3 anything to offer today in response to the Staff memorandum.  
4 And I suppose as part of a party's answer to that, if any  
5 party believes that it needs time to file a response to the  
6 Staff memorandum, it's incumbent on you now to let me know.

7 I'm going to start with Office of Public  
8 Counsel?

9 MR. COFFMAN: I don't have any plans to file  
10 any response to Staff memorandum and do not believe I need  
11 any additional time to respond. And, you know, provided  
12 it's clear that the Office of Public Counsel's  
13 characterization of the stipulation may not be precisely the  
14 way the Staff characterizes it in their memorandum, but we  
15 waive the right to file a response.

16 JUDGE MILLS: Mr. Molteni?

17 MR. MOLTENI: We don't have any intention of  
18 filing any response.

19 JUDGE MILLS: Ameren?

20 MR. COOK: We also have no intention of filing  
21 anything as long as that's understood that we do not  
22 necessarily agree with the -- anything in it, but do not  
23 feel so strongly about any of those potential disagreements  
24 that we want to burden the record further.

25 JUDGE MILLS: For the Missouri Retailers

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1 Association?

2 MR. OVERFELT: No additional response.

3 JUDGE MILLS: Okay. And for the Missouri  
4 Energy Group, Mr. Johnson?

5 MR. JOHNSON: Could I have four days to make a  
6 decision on that?

7 JUDGE MILLS: No.

8 MR. JOHNSON: Three days?

9 JUDGE MILLS: No. You've already had a  
10 considerable number of days. You should know now whether or  
11 not you have any intention to file a response.

12 MR. JOHNSON: I have an intention to file,

13 yes.

14 JUDGE MILLS: You do plan to file?

15 MR. JOHNSON: Yes.

16 JUDGE MILLS: I'll come back to that. Let me  
17 go on to the other parties.

18 On behalf of Laclede Gas?

19 MR. PENDERGAST: I just echo the previous  
20 folks' comments. We don't need to file. We don't  
21 necessarily agree or disagree with what's in Staff's  
22 memorandum.

23 JUDGE MILLS: And on behalf of Kansas City  
24 Power & Light Company?

25 MR. FISCHER: Your Honor, we don't have any

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1 intention to file anything in response to Staff's  
2 suggestions. As far as I'm concerned, you can take it up  
3 tomorrow.

4 JUDGE MILLS: Well, we may or may not get  
5 there. It depends a little bit on Mr. Johnson. I certainly  
6 don't want to deprive any parties of their due process  
7 rights. Mr. Johnson, when do you intend to file a response  
8 to the Staff memorandum?

9 MR. JOHNSON: I could probably get something  
10 out tomorrow some time.

11 JUDGE MILLS: Okay. And what will be the  
12 nature of your response that you intend to file tomorrow  
13 that you couldn't do on the record today?

14 MR. JOHNSON: Well, I have been tied up in  
15 some other cases and I haven't had a real chance -- there

16 were some sections of the Staff's memorandum in support that  
17 I think tend to be somewhat argumentative of the  
18 positions -- of particular positions and I would like to  
19 have a chance to respond to that and I can do it tomorrow if  
20 that's okay.

21 JUDGE MILLS: I'll tell you what. If you can  
22 file by ten o'clock tomorrow, I will allow you until  
23 ten o'clock in the morning to file a response. And the  
24 Commission will still -- if it wants to, will then still  
25 have the opportunity tomorrow at the regularly scheduled

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1 agenda meeting to take up this case. So if you feel the  
2 need that you -- to file a response, then your response must  
3 be filed tomorrow by 10:00 a.m.

4 MR. JOHNSON: Thank you. Thank you, Judge.

5 JUDGE MILLS: In terms of Staff's filings  
6 since the memorandum in support, the modified Attachment A,  
7 I understand that the parties have not -- I'm sorry,  
8 Mr. Dottheim, go ahead.

9 MR. DOTTHEIM: This might be the most  
10 appropriate time for me to note this, which I expect any  
11 number of people, probably everybody in the room that has a  
12 copy has noted it, which I did not.

13 I was so intent in looking at the old  
14 attachment page 3 of 8 in the area where I directed the  
15 Commission, kind of the middle right-hand side of the page,  
16 I did not notice that there is a column in the document, the  
17 revised attachment A that I filed today, LGS, which shows  
18 dollars and shows a zero for each year, cumulative year two  
19 and cumulative year three.

20                   When one looks at page 3 of 8 for Attachment A  
21           that was filed with the Stipulation and Agreement on  
22           July 16th, one will find percentages in that column. What I  
23           filed today, there should have been percentages in that  
24           column and they're almost identical -- in fact, I think they  
25           are identical to what appears in page 3 of 8 that was filed

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1           on July 16th. For purposes of clarity I thought I'd file a  
2           substitute page and we --

3                   JUDGE MILLS: Okay. Let me move a step beyond  
4           there. The changes from the originally filed Attachment A  
5           to the one that was filed today I don't believe are  
6           significant enough to make much of a difference in the  
7           Commission's consideration of the Stipulation and Agreement  
8           as a whole.

9                   As I understand it, there are only two changes  
10          and those are each one-tenth of a cent in years two and  
11          three respectively of the moratorium period. And so those  
12          will not make a change to the tariffs that AmerenUE would  
13          file in response to an order approving the Stipulation and  
14          Agreement.

15                  So I don't know that there is a necessity to  
16          allow the parties the opportunity to respond to the revised  
17          Exhibit A or Attachment A any time between now and I think  
18          when tariffs are filed in year two. I think that's the only  
19          substantive effect that the changes will have, will be that  
20          one cent of one cent of that one rate in year two.

21                  So to the extent the Commission wants to move  
22          ahead with an order approving the Stipulation and Agreement,

23 I don't think that the fact the parties have not seen  
24 Attachment A before today need hold up that. The parties  
25 will, of course, have the opportunity to object to any

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1 changes to that between now and two years from now when  
2 tariffs implementing that change will be filed.

3 MR. COOK: The only comment I'd have about  
4 that, if I might interrupt, is that although we believe the  
5 attachment as amended is accurate as far as we can tell and  
6 would certainly let you know by ten o'clock tomorrow if it's  
7 not, but the agreement contemplates filing all the tariffs  
8 rather soon.

9 So certainly the second and third years will  
10 not actually be showing up on bills for two or three years,  
11 so if there is an error that has been discovered, we can  
12 certainly file corrective tariffs. But just so it's clear,  
13 we would be filing tariffs that would implement, without  
14 further action, all of the rate reductions in the future.

15 JUDGE MILLS: Thank you for that  
16 clarification. I think, however, even with that procedure,  
17 the parties will have the opportunity to object to the  
18 tariff as filed if they believe that the tariffs as filed  
19 don't reflect the agreement the parties have reached. So I  
20 think that will give the parties the opportunity to respond  
21 to any changes to Attachment A.

22 Ms. Vuylsteke?

23 MS. VUYLSTEKE: Judge Mills, I just wanted to  
24 say that the MIEC thinks that the changes to Attachment A  
25 are not significant and we certainly would not propose

1       needing any additional time to review that at this point.

2               JUDGE MILLS: Thank you. And that brings me  
3       to my next question, which is assuming that the Commission  
4       does issue an order approving the Stipulation and Agreement,  
5       be it tomorrow or at any point, how long will it take  
6       AmerenUE to file tariffs in response to that order?

7               MR. COOK: The stipulation indicates that  
8       tariffs would be filed by the later of August 1 or 5  
9       business days after the Report and Order becomes final and  
10      unappealable. On the assumption that the Report and Order  
11      would have an effective date 10 days after the issuance  
12      date, then it will be assumed that we would file it within  
13      5 business days after that 10-day period.

14              JUDGE MILLS: And do you think that's doable?

15              MR. COOK: Filing the tariffs is doable.

16              JUDGE MILLS: Okay. Okay. The next thing I  
17      want to take up is the Stipulation and Agreement provides  
18      that all of the pre-filed testimony will be admitted.  
19      There's a lot of it. I don't know that I want to go through  
20      on the record and literally go up to, you know, 169 which is  
21      the pre-filed testimony, but inasmuch as some of it has  
22      already been admitted, I think that may be the cleanest way  
23      to do it. Simply admit Exhibits 1 through 169 with the  
24      exceptions, and I will enumerate the exceptions of the ones  
25      that have already been admitted.

1 All parties have waived the admission of the  
2 pre-filed testimony. I don't know that the Stipulation and  
3 Agreement specifically addresses the depositions that have  
4 been premarked. Does any party object to the admission of  
5 the depositions along with the pre-filed testimony?

6 MR. DOTTHEIM: Well, the depositions weren't  
7 identified because that was not the intention, at least from  
8 the Staff's point.

9 JUDGE MILLS: So you don't anticipate having  
10 the depositions entered into the record?

11 MR. DOTTHEIM: That was the Staff's  
12 perspective.

13 MR. COOK: Well, the company preferred to do  
14 that, but I think the stipulation is clear it's the  
15 pre-filed testimony that's being admitted.

16 JUDGE MILLS: Okay. Then I think I will go  
17 through and admit them piece by piece as we go.

18 I think as far as I'm concerned, that's the  
19 last thing that I intend to do on the record today. Do any  
20 parties have anything?

21 Mr. Johnson?

22 MR. JOHNSON: Yes, Judge Mills. After  
23 reconsidering, I would -- rather than file a separate  
24 independent comments on Staff's memorandum in support, I  
25 would join in the comments previously filed this morning by

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1 the MIEC and will not file independently. In any event,  
2 these comments do not in any way alter our support of the  
3 stipulation.

4 JUDGE MILLS: Okay. Thank you very much,  
5 Mr. Johnson. Is there anything else that any of the parties  
6 want to take up before we get into the somewhat tedious  
7 process of admitting a bunch of exhibits?

8 Okay. Then let's go to it. I can see the  
9 crowd thinning out already.

10 Exhibit 1 is the Rebuttal Testimony of Stout,  
11 it has already been admitted. Exhibit 2 is the Cross  
12 Surrebuttal Testimony of Stout, it has already been  
13 admitted.

14 Exhibit 3 is the Direct Testimony from July  
15 2001 of Staff Witness Bible, it will be admitted. Exhibit  
16 No. 4 is a red-lined version of Mr. Bible's November 2001  
17 testimony, it will be admitted. Exhibit No. 5 is a complete  
18 version of Mr. Bible's November 2001 testimony, it will be  
19 admitted.

20 Exhibits 6 through 10 have already been  
21 admitted.

22 I show that Exhibit 11, which is Staff Witness  
23 Bax's Direct Testimony has not been admitted. It will now  
24 be admitted. Exhibit 11-P, which is the proprietary version  
25 of that testimony will also be admitted.

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1 Folks, it's going to be hard for the court  
2 reporter to hear what I'm talking about. If you guys would  
3 please clear the room or be quiet. Thank you.

4 Exhibits 12-NP and 12-P have already been  
5 admitted, as well as 13-NP and 13-P and 14 and 15.

6 Exhibit 16 is the Direct Testimony of Staff  
7 Witness Bender, will be admitted. Exhibit 17 is the March

8 2002 testimony of Staff Witness Bender, it will be admitted.  
9 Exhibit 18 is the Surrebuttal Testimony of Staff Witness  
10 bender, it will be admitted. Exhibits 19 and 20 is the  
11 deposition of Staff Witness Bender and the errata sheet to  
12 that, those will not be admitted.

13 Exhibit 21 is the July 2001 testimony of Staff  
14 Witness Mantle, it will be admitted. Exhibit 22 is the  
15 March 2002 testimony of Staff Witness Mantle, it will be  
16 admitted. Exhibit 23 is the Surrebuttal Testimony of Staff  
17 Witness Mantle, it will be admitted.

18 Exhibits 24 and 25 are the deposition and the  
19 errata sheet -- I'm sorry, Exhibits 24, 25 and 26 are the  
20 depositions of Staff Witness Mantle and the errata sheets  
21 that go with that. Those will not be admitted.

22 Exhibit 27 is the Surrebuttal Testimony of  
23 Staff Witness Beck, it will be admitted.

24 Exhibit 28-P and 28-NP are the testimony --  
25 the July 2001 testimony of Staff Witness Harrison. Those

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1 will be admitted. Exhibit 29 is the March 2002 testimony of  
2 Staff Witness Harrison, that will be admitted. Exhibits  
3 30-P and 30-NP are the Surrebuttal Testimony of Staff  
4 Witness Harrison, those will be admitted. Exhibits 31 --  
5 Exhibit 31 is the deposition of Staff Witness Harrison, that  
6 will not be admitted.

7 Exhibit 32 is the July 2001 Direct Testimony  
8 of Staff Witness Pyatte, that will be admitted. Exhibit 33  
9 is the March 2002 Direct Testimony of Staff Witness Pyatte,  
10 that will be admitted. Exhibit 34 is an errata sheet to the

11 Direct Testimony of Staff Witness Pyatte, that will be  
 12 admitted. Exhibit 35 is the Surrebuttal Testimony of Staff  
 13 Witness Pyatte, that will be admitted. Exhibits 36 and 37  
 14 are the deposition and the errata sheet to the deposition of  
 15 Staff Witness Pyatte, those will not be admitted.

16 Exhibit 38 is the Direct Testimony from July  
 17 2001 of Staff Witness Watkins, that will be admitted.  
 18 Exhibit 39 is the Direct Testimony from March 2002 of Staff  
 19 Witness Watkins, that will be admitted. Exhibit 40 is the  
 20 Surrebuttal Testimony of Staff Witness Watkins, that will be  
 21 admitted.

22 I think to save a little bit of time, I'm not  
 23 going to say which depositions are not admitted. I'm just  
 24 going to go to the exhibits that are admitted.

25 Exhibit 44 is the July 2000 testimony of Staff

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1 Witness Mathis, it will be admitted. 45 is the March 2002  
 2 testimony of Ms. Mathis, that will be admitted. Exhibit 46  
 3 is Ms. Mathis' Surrebuttal Testimony, that will be admitted.

4 Exhibits 48-NP and 48-P are Staff Witness  
 5 Schad's Surrebuttal Testimony, those will be admitted.  
 6 There's also an Exhibit 48-HC that's the highly confidential  
 7 version of that testimony, that will be admitted.

8 49-NP and 49-P are the July 2001 Direct  
 9 Testimony of Staff Witness Teel, those will be admitted.  
 10 Exhibit 50-NP and 50-P are the March 2002 Direct Testimony  
 11 of Staff Witness Teel, those will be admitted. Exhibit 51  
 12 is the Surrebuttal Testimony of Staff Witness Teel, that  
 13 will be admitted.

14 Exhibits 53-NP, 53-HC and 53-P are the March

15 2002 Direct Testimony of Staff Witness Proctor, those will  
16 be admitted. Exhibits 54-P and 54-HC are the Surrebuttal  
17 Testimony of Staff Witness Proctor, they will be admitted.  
18 57-NP and 57-P are the Surrebuttal Testimony  
19 of Staff Witness Fischer, they will be admitted. 58-NP and  
20 58-P are the July 2001 Direct Testimony of Staff Witness  
21 Griggs, those will be admitted.  
22 59-NP and 59-P is the July 2001 Direct  
23 Testimony of Staff Witness Gibbs, that will be admitted.  
24 60-NP and 60-P is the Direct Testimony of Staff Witness  
25 Gibbs from March 2002, it will be admitted.

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1 65-NP and 65-P is the Direct Testimony of  
2 Staff Witness Meyer from July 2001, those will be admitted.  
3 66-NP and 66-P is the March 2002 Direct Testimony of Staff  
4 Witness Meyer, that will be admitted. 67 is the Direct  
5 Testimony -- I'm sorry, the Surrebuttal Testimony of Staff  
6 Witness Meyer, it will be admitted.  
7 70-NP and 70-P is the Surrebuttal Testimony of  
8 Staff Witness Traxler, it will be admitted. 71-NP and 71-P  
9 is the July 2001 Direct Testimony of Staff Witness Cassidy,  
10 it will be admitted. 72-NP and 72-P is the March 2002  
11 testimony of Staff Witness Cassidy, it will be admitted.  
12 73-NP, 73-P and 73-HC is the Surrebuttal Testimony of Staff  
13 Witness Cassidy, it will be admitted.  
14 75 is the Surrebuttal Testimony of Staff  
15 Witness Olgischlaeger, it will be admitted.  
16 76-NP, 76-P is the July 2001 Direct Testimony  
17 of Staff Witness Rackers, it will be admitted. 77 is the

18 March 2002 Direct Testimony of Staff Witness Rackers, it  
19 will be admitted. 78 is the Surrebuttal Testimony of Staff  
20 Witness Rackers, it will be admitted.

21 80 is the -- I'm sorry 79 will not be  
22 admitted, it's a deposition.

23 80 is the Surrebuttal Testimony of Staff  
24 Witness Ross, it will be admitted. 81-NP and 81-P is the  
25 Surrebuttal Testimony of Staff Witness Bernsen, it will be

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1 admitted. 82 is the Surrebuttal Testimony of Staff Witness  
2 Ketter, it will be admitted. 83 is the Surrebuttal  
3 Testimony of Staff Witness Henderson, it will be admitted.

4 84 is Surrebuttal Testimony of Staff Witness  
5 Schallenberg, it will be admitted. 85 is the July 2001  
6 Direct Testimony of Staff Witness Schweiterman, it will be  
7 admitted.

8 86 is the July 2001 accounting schedules from  
9 the Staff, it will be admitted. 87 is the March 2002 Staff  
10 accounting schedules, it will be admitted. 88 is the  
11 revised Staff accounting schedules from June 2002, it will  
12 be admitted.

13 Okay. I think we're up to Public Counsel  
14 witnesses. 89 is the Rebuttal Testimony of Effron, it will  
15 be admitted. 90 is the Surrebuttal Testimony of Effron.  
16 91-NP and 91-HC is the Rebuttal Testimony of OPC Witness  
17 Dittmer, they will be admitted. 92 is the Cross Surrebuttal  
18 of OPC Witness Dittmer, it will be admitted.

19 93 is the Rebuttal Testimony of OPC Witness  
20 Busch, it will be admitted. 94-NP and 94-P is the  
21 Surrebuttal Testimony of OPC Witness Busch, it will be

22 admitted.

23 95 is the Rebuttal Testimony of OPC Witness  
24 Burdette, it will be admitted. 96 is the Surrebuttal  
25 Testimony of OPC Witness Burdette, it will be admitted.

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1 99 is the Rebuttal Testimony of OPC Witness  
2 Robertson, it will be admitted. 100-NP and 100-P is the  
3 Cross Surrebuttal of OPC Witness Robertson, it will be  
4 admitted.

5 103 is the Rebuttal Testimony of OPC Witness  
6 Hu, it will be admitted. 104 is the Cross Surrebuttal  
7 Testimony of OPC Witness Hu, it will be admitted.

8 107-NP and 107-P is the Rebuttal Testimony of  
9 OPC Witness Kind, it will be admitted. 107 -- I'm sorry.  
10 There's also a 107-HC version, that will also be admitted.  
11 108-P and 108-NP is the Cross Surrebuttal Testimony of OPC  
12 Witness Kind, it will be admitted.

13 109 is the Cross Surrebuttal Testimony of OPC  
14 Witness Trippensee, it will be admitted.

15 110-NP and 110-P is the Rebuttal Testimony of  
16 Industrial Witness Drazen, it will be admitted. 111 is the  
17 Cross Surrebuttal Testimony of Drazen, it will be admitted.  
18 112 is the Rebuttal Testimony of Industrial Witness Selecky,  
19 it will be admitted. 113 is the Cross Surrebuttal Testimony  
20 of Selecky, it will be admitted.

21 115 is the Rebuttal Testimony of Gorman, it  
22 will be admitted. 116 is the Surrebuttal Testimony of  
23 Gorman, it will be admitted.

24 117 is Brubaker's Rebuttal, it will be

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25 admitted. 118 is Mr. Brubaker's Surrebuttal, it will be

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1 admitted.  
2 119 is the Rebuttal Testimony of DNR Witness  
3 Randolph, it will be admitted. 120 is Ms. Randolph's  
4 Surrebuttal Testimony, it will be admitted.  
5 121 is Cline's Surrebuttal Testimony on behalf  
6 of Laclede Gas Company, it will be admitted.  
7 Now we're up to UE witnesses. 122 is the  
8 Rebuttal Testimony of Rainwater, it will be admitted.  
9 123-NP and 123-P is UE Witness Baxter's Rebuttal Testimony,  
10 it will be admitted. 124-NP and 124-P is Mr. Baxter's Cross  
11 Surrebuttal, it will be admitted.  
12 125 is UE Witness Mark's Rebuttal Testimony,  
13 it will be admitted. 126 is Mr. Mark's Surrebuttal  
14 Testimony, it will be admitted.  
15 127 is Lowry's Rebuttal, it will be admitted.  
16 128 is Lowry's Surrebuttal, it will be admitted. 129 is  
17 Kelly's rebuttal, it will be admitted. 130 is UE Witness  
18 Fox-Penner's Rebuttal, it will be admitted.  
19 131 is Mr. Weisman's Rebuttal, it will be  
20 admitted. 132 is Mr. Weisman's Surrebuttal, it will be  
21 admitted.  
22 139-NP and 139-P are UE Witness Randolph's  
23 Rebuttal Testimony, they will be admitted. 134 is  
24 Mr. Randolph's Surrebuttal Testimony, it will be admitted.  
25 MR. COOK: Excuse me. I don't have a list in

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1 front of me. Unless I heard you wrong, you went from 132 to  
2 139 to 134.

3 JUDGE MILLS: Okay. I probably did it wrong.

4 MR. DOTTHEIM: I think he did number-wise, but  
5 I don't know that you said who actually is at 139, which is  
6 Lyons.

7 JUDGE MILLS: I think I misspoke and said 139  
8 and identified it as Randolph and that's incorrect. 133-NP  
9 and P is Randolph's.

10 MR. COOK: Thank you. That's the error I  
11 thought I caught.

12 JUDGE MILLS: 135 is McShane's Rebuttal, it  
13 will be admitted. 136 is McShane's Surrebuttal and it will  
14 be admitted. 137 is Morin's Rebuttal, it will be admitted.  
15 138 is Lyons' Rebuttal, it will be admitted. 139 is Lyons'  
16 Surrebuttal, it will be admitted.

17 140 is Finnell's Rebuttal, it will be  
18 admitted. 141 is Finnell's Surrebuttal and it will be  
19 admitted.

20 142 is Whiteley Rebuttal, it will be admitted.  
21 143 is Voss Rebuttal, it will be admitted. 144 is LaGuardia  
22 Rebuttal, it will be admitted. 145-NP and 145-P is Moore  
23 Surrebuttal, it will be admitted.

24 146 is Weiss Rebuttal, it will be admitted.  
25 147 is Weiss Surrebuttal, it will be admitted. 148 is

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1 Fetter Rebuttal, it will be admitted. 149 is Nelson  
2 Rebuttal, it will be admitted.

3 150 is Lindgren Rebuttal, it will be admitted.

4 151-NP and 151-P is Cross Rebuttal, it will be admitted.

5 152 is Adams' Rebuttal, it will be admitted. 153 is

6 McGilligan Rebuttal, it will be admitted.

7 154 is Datillo -- I'm not sure if I'm

8 pronouncing that correctly -- it will be Rebuttal Testimony,

9 it will be admitted. 155 is Giljum Rebuttal, it will be

10 admitted. 156 is Peterson Rebuttal, it will be admitted.

11 157 is Beishir Rebuttal, it will be admitted.

12 158 is McVey Rebuttal, it will be admitted. 159-NP and

13 159-HC is Nelson Rebuttal, it will be admitted. 160 is

14 Nelson Surrebuttal, it will be admitted. 161 is Warren

15 Rebuttal, it will be admitted. 162 is Warren Surrebuttal,

16 it will be admitted.

17 163-NP and 163-HC is Voytas Rebuttal, it will

18 be admitted. 164-NP and 164-HC is Mr. Voytas' Surrebuttal,

19 it will be admitted. 166 is Warwick's Rebuttal, it will be

20 admitted. 16--

21 MR. COFFMAN: I'm sorry. I think you may have

22 said 166.

23 JUDGE MILLS: 165 is Warwick Rebuttal, it will

24 be admitted. 166 is Pozzo Rebuttal, it will be admitted.

25 167 is Kovach Rebuttal, it will be admitted. 168 is

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1 Kovach's Surrebuttal and it will be admitted.

2 169 is the summary of UE's testimony. I don't

3 know that that's covered by the terms of the Stipulation and

4 agreement specifically, so I won't admit that. I don't know

5 that it makes a difference at this point.

6 MR. COOK: The executive summaries were merely  
7 compiled in that book and they are a part of and included in  
8 each of the other testimonies, so that's fine.

9 JUDGE MILLS: Since it's not agreed to, I'm  
10 not going -- since some of the parties have mercifully left  
11 us, I'm not going to admit this while there's parties that  
12 aren't here to object to this.

13 (EXHIBIT NOS. 3, 4, 5, 11, 11-P, 16, 17, 18,  
14 21, 22, 23, 27, 28-NP, 28-P, 29, 30-NP, 30-P, 32, 33, 34,  
15 35, 38, 39, 40, 44, 45, 46, 48-NP, 48-P, 48-HC, 49-NP, 49-P,  
16 50-NP, 50-P, 51, 53-NP, 53-HC, 53-P, 54-P, 54-HC, 57-NP,  
17 57-P, 58-NP, 58-P, 59-NP, 59-P, 60-NP, 60-P, 65-NP, 65-P,  
18 66-NP, 66-P, 67, 70-NP, 70-P, 71-NP, 71-P, 72-NP, 72-P,  
19 73-NP, 73-P, 73-HC, 76-P, 76-NP, 77, 78, 80, 81-NP, 81-P,  
20 82, 83, 84, 85, 86, 87, 88, 89, 90, 91-NP, 91-HC, 92, 93,  
21 94-NP, 94-P, 95, 96, 99, 100-NP, 100-P, 103, 104, 107-NP,  
22 107-P, 107-HC, 108-P, 108-NP, 110-NP, 110-P, 111, 112, 113,  
23 115, 116, 117, 188, 119, 120, 121, 122, 123-NP, 123-P,  
24 124-NP, 124-P, 125, 126, 127, 128, 129, 130, 131, 132,  
25 133-NP, 133-P, 134, 135, 136, 137, 138, 139, 141, 141, 142,

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1 143, 145-NP, 145-P, 146, 147, 148, 149, 150, 151-NP, 151-P,  
2 152, 153, 154, 155, 156, 157, 158, 159-NP, 159-HC, 160, 161,  
3 163, 163-NP, 163-HC, 164-NP, 164-HC, 165, 166, 167 168 WERE  
4 RECEIVED INTO EVIDENCE.)

5 JUDGE MILLS: And that's it. There are a  
6 number of other exhibits that were marked, primarily  
7 depositions, some that were marked for cross-examination.  
8 I'm not going to admit those either.

9 MR. COOK: There were cross-examination

10 exhibits that were admitted during the hearing itself. I  
11 assume those are still admitted as they've been admitted on  
12 the record already?

13 JUDGE MILLS: Yes. The ones that already have  
14 been admitted are still admitted. The ones that were not  
15 admitted previously but marked either offered or not offered  
16 will not be admitted now.

17 Mr. Dottheim?

18 MR. DOTTHEIM: You already started off with  
19 this with the two witnesses of Bible and Bax where their  
20 depositions had already been admitted and we're going to  
21 leave them?

22 JUDGE MILLS: We're going to leave those. The  
23 ones that have already been admitted we're going to leave in  
24 the record.

25 MR. DOTTHEIM: And I assume there is a

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1 transcript being generated?

2 JUDGE MILLS: Of today's proceeding?

3 MR. DOTTHEIM: Of the first day and a half.

4 JUDGE MILLS: Certainly. Right. And that as  
5 well as the transcript of today's proceeding will all be a  
6 part of the record.

7 Anything further?

8 MR. COFFMAN: Thank you very much.

9 JUDGE MILLS: Let's adjourn. We're off the  
10 record.

11 WHEREUPON, the stipulation presentation was  
12 concluded.

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1	EXHIBITS INDEX	
2	Exhibit No. 3	Rec'd
3	Direct Testimony, 7/01, of Ronald L. Bible	601
4	Exhibit No. 4	
5	Red-lined version of Testimony, 11/01, of	
6	Ronald L. Bible	601
7	Exhibit No. 5	
8	Direct Testimony of Ronald L. Bible	601
9	Exhibit No. 11-NP	
10	Direct Testimony of Alan J. Bax, 7/01, non-proprietary	601
11	Exhibit No. 11-P	
12	Direct Testimony of Alan J. Bax, 7/01, proprietary	601
13	Exhibit No. 16	
14	Direct Testimony of Leon C. Bender, 7/01	601
15	Exhibit No. 17	
16	Direct Testimony of Leon C. Bender, 3/02	601
17	Exhibit No. 18	
18	Surrebuttal Testimony of Leon C. Bender	601
19	Exhibit No. 21	
20	Direct Testimony of Lena M. Mantle, 7/01	601
21	Exhibit No. 22	

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17	Direct Testimony of Lena M. Mantle, 3/02	601
18	Exhibit No. 23 Surrebuttal Testimony of Lena M. Mantle	601
19	Exhibit No. 27 Surrebuttal Testimony of Daniel I. Beck	601
20		
21	Exhibit No. 28-P Direct Testimony of Paul R. Harrison, 7/01, proprietary	601
22	Exhibit No. 28-NP	
23	Direct Testimony of Paul R. Harrison, 7/01, non-proprietary	601
24	Exhibit No. 29	
25	Direct Testimony of Paul R. Harrison, 3/02	601

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1	EXHIBITS INDEX (CONT'D)	Rec'd
2	Exhibit No. 30-P	
3	Surrebuttal Testimony of Paul R. Harrison, 6/02, proprietary	601
4	Exhibit No. 30-NP	
5	Surrebuttal Testimony of Paul R. Harrison, 6/02, non-proprietary	601
6	Exhibit No. 32	
7	Direct Testimony of Janice Pyatte, 7/01	601
8	Exhibit No. 33	
9	Direct Testimony of Janice Pyatte, 3/02	601
10	Exhibit No. 34	
11	Errata sheet of Janice Pyatte	601
12	Exhibit No. 35	
13	Surrebuttal Testimony of Janice Pyatte	601
14	Exhibit No. 38	
15	Direct Testimony of James C. Watkins, 7/01	601
16	Exhibit No. 39	
17	Direct Testimony of James C. Watkins, 3/02	601
18	Exhibit No. 40	
19	Surrebuttal Testimony of James C. Watkins	601
20	Exhibit No. 44	
21	Direct Testimony of Jolie L. Mathis, 7/01	601
22	Exhibit No. 45	
23	Direct Testimony of Jolie L. Mathis, 3/02	601
24	Exhibit No. 46	

20	EC20021v6 Surrebuttal Testimony of Jolie L. Mathis	601
21	Exhibit No. 48-NP	
22	Surrebuttal Testimony of Rosella L. Schad, 6/02, non-proprietary	601
23	Exhibit No. 48-P	
24	Surrebuttal Testimony of Rosella L. Schad, 6/02, proprietary	601
25		

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1	EXHIBITS INDEX (CONT'D)	Rec'd
2	Exhibit No. 48-HC	
3	Surrebuttal Testimony of Rosella L. Schad, 6/02, highly confidential	601
4	Exhibit No. 49-NP	
5	Direct Testimony of Leasha S. Teel, 7/01, non-proprietary	601
6	Exhibit No. 49-P	
7	Direct Testimony of Leasha S. Teel, 7/01, proprietary	601
8	Exhibit No. 50-NP	
9	Direct Testimony of Leasha S. Teel, 3/02, non-proprietary	601
10	Exhibit No. 50-P	
11	Direct Testimony of Leasha S. Teel, 3/02, proprietary	601
12	Exhibit No. 51	
13	Surrebuttal Testimony of Leasha S. Teel, 6/02	601
14	Exhibit No. 53-NP	
15	Testimony of Michael S. Proctor, 3/02, non-proprietary	601
16	Exhibit No. 53-HC	
17	Testimony of Michael S. Proctor, 3/02, highly confidential	601
18	Exhibit No. 53-P	
19	Testimony of Michael S. Proctor, 3/02, proprietary	601
20	Exhibit No. 54-P	
21	Surrebuttal Testimony of Michael S. Proctor, 6/02, proprietary	601
22	Exhibit No. 54-HC	
23	Surrebuttal Testimony of Michael S. Proctor, 6/02, highly confidential	601
24	Exhibit No. 57-NP	
25	Surrebuttal Testimony of Janis E. Fischer, 6/02, non-proprietary	601

24 Exhibit No. 57-P  
Surrebuttal Testimony of Janis E. Fischer, 6/02, 601  
25 proprietary

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	EXHIBITS INDEX (CONT'D)	Rec'd
2	Exhibit No. 58-NP	
3	Direct Testimony of Mark D. Griggs, 7/01, non-proprietary	601
4	Exhibit No. 58-P	
5	Direct Testimony of Mark D. Griggs, 7/01, proprietary	601
6	Exhibit No. 59-NP	
7	Direct Testimony of Doyle L. Gibbs, 7/01, non-proprietary	601
8	Exhibit No. 59-P	
9	Direct Testimony of Doyle L. Gibbs, 7/01, proprietary	601
10	Exhibit No. 60-NP	
11	Direct Testimony of Doyle L. Gibbs, 3/02, non-proprietary	601
12	Exhibit No. 60-P	
13	Direct Testimony of Doyle L. Gibbs, 3/02, proprietary	601
14	Exhibit No. 65-NP	
15	Direct Testimony of Greg R. Meyer, 7/01, non-proprietary	601
16	Exhibit No. 65-P	
17	Direct Testimony of Greg R. Meyer, 7/01, proprietary	601
18	Exhibit No. 66-NP	
19	Direct Testimony of Greg R. Meyer, 3/02, non-proprietary	601
20	Exhibit No. 66-P	
21	Direct Testimony of Greg R. Meyer, 3/02, proprietary	601
22	Exhibit No. 67	
23	Surrebuttal Testimony of Greg R. Meyer, 6/02	601
24	Exhibit No. 70-NP	
25	Surrebuttal Testimony of Steve M. Traxler, 6/02, non-proprietary	601
	Exhibit No. 70-P	
	Surrebuttal Testimony of Steve M. Traxler, 6/02, proprietary	601
	Exhibit No. 71-NP	
	Direct Testimony of John P. Cassidy, 7/01, non-proprietary	601

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1	EXHIBITS INDEX (CONT'D)	
2	Exhibit No. 71-P	Rec'd
3	Direct Testimony of John P. Cassidy, 7/01, proprietary	601
4	Exhibit No. 72-NP	
5	Direct Testimony of John P. Cassidy, 3/02, non-proprietary	601
6	Exhibit No. 72-P	
7	Direct Testimony of John P. Cassidy, 3/02, proprietary	601
8	Exhibit No. 73-NP	
9	Surrebuttal Testimony of John P. Cassidy, 6/02, non-proprietary	601
10	Exhibit No. 73-P	
11	Surrebuttal Testimony of John P. Cassidy, 6/02, proprietary	601
12	Exhibit No. 73-HC	
13	Surrebuttal Testimony of John P. Cassidy, 6/02, highly confidential	601
14	Exhibit No. 76-NP	
15	Direct Testimony of Stephen M. Rackers, 7/01, non-proprietary	601
16	Exhibit No. 76-P	
17	Direct Testimony of Stephen M. Rackers, 7/01, proprietary	601
18	Exhibit No. 77	
19	Direct Testimony of Stephen M. Rackers, 3/02	601
20	Exhibit No. 78	
21	Surrebuttal Testimony of Stephen M. Rackers, 6/02	601
22	Exhibit No. 80	
23	Surrebuttal Testimony of Anne Ross, 6/02	601
24	Exhibit No. 81-NP	
25	Surrebuttal Testimony of Deborah A. Bernsen, 6/02, non-proprietary	601
	Exhibit No. 81-P	
	Surrebuttal Testimony of Deborah A. Bernsen, 6/02, proprietary	601

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EXHIBITS INDEX (CONT'D)

1		Rec'd
2	Exhibit No. 82	
3	Surrebuttal Testimony of James L. Ketter, 6/02	601
4	Exhibit No. 83	
5	Surrebuttal Testimony of Wess Henderson, 6/02	601
6	Exhibit No. 84	
7	Surrebuttal Testimony of Robert E. Schallenberg, 6/02	601
8	Exhibit No. 85	
9	Direct Testimony of James D. Schweiterman, 7/01	601
10	Exhibit No. 86	
11	Staff Accounting Schedules	601
12	Exhibit No. 87	
13	Staff Accounting Schedules, 3/02	601
14	Exhibit No. 88	
15	Staff's Revised Accounting Schedules, 6/02	601
16	Exhibit No. 89	
17	Rebuttal Testimony of David J. Effron, 10/02	601
18	Exhibit No. 90	
19	Cross Surrebuttal Testimony of David J. Effron, 6/02	601
20	Exhibit No. 91-NP	
21	Rebuttal Testimony of James R. Dittmer, 5/02, non-proprietary	601
22	Exhibit No. 91-HC	
23	Rebuttal Testimony of James R. Dittmer, 5/02, highly confidential	601
24	Exhibit No. 92	
25	Cross Surrebuttal Testimony of James R. Dittmer, 6/02	601
26	Exhibit No. 93	
27	Rebuttal Testimony of James A. Busch, 5/02	601
28	Exhibit No. 94-NP	
29	Cross Surrebuttal Testimony of James A. Busch, 6/02, non-proprietary	601
30	Exhibit No. 94-P	
31	Cross Surrebuttal Testimony of James A. Busch, 6/02, proprietary	601

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