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Witness: Ryan Kind
Sponsoring Party: Union Electric Co.
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Case No: ER-2007-0002
Date Testimony Prepared: January 11, 2007

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Reporter XF Case No. ER-2007-0002

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

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

DEPOSITION OF RYAN KIND,

a witness, produced, sworn and examined on the 11th day of
January, 2007, between the hours of 8:00 a.m. and
6:00 p.m. of that day at the offices of AmerenUE,
101 Madison Street, in the City of Jefferson, County of
Cole, State of Missouri, before

KELLENE K. FEDDERSEN, RPR, CSR, CCR
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and Notary Public within and for the State of Missouri,
commissioned in Cole County, Missouri, in the
above-entitled cause, on the part of Union Electric
Company, d/b/a AmerenUE.

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<p>1 APPEARANCES</p> <p>2 FOR UNION ELECTRIC COMPANY, D/B/A AMERENUE:</p> <p>3 THOMAS BYRNE</p> <p>4 Attorney at Law</p> <p>5 Ameren Services Company</p> <p>6 P.O. Box 66149</p> <p>7 1901 Chouteau Avenue</p> <p>8 St. Louis, MO 63103</p> <p>9 (314)554-2237</p> <p>10 FOR THE COMMERCIAL GROUP (VIA TELEPHONE):</p> <p>11 RICK D. CHAMBERLAIN</p> <p>12 Attorney at Law</p> <p>13 6 NE 63rd Street, suite 400</p> <p>14 Oklahoma, OK 73105</p> <p>15 (405)848-1014</p> <p>16 FOR NORANDA ALUMINUM:</p> <p>17 STUART CONRAD</p> <p>18 Attorney at Law</p> <p>19 Finnegan, Conrad & Peterson</p> <p>20 3100 Broadway</p> <p>21 1209 Penntower Officer Center</p> <p>22 Kansas City, MO 64111</p> <p>23 (816)753-1122</p> <p>24 FOR THE STATE OF MISSOURI (VIA TELEPHONE):</p> <p>25 DOUGLAS MICHEEL</p> <p>Assistant Attorney General</p> <p>P.O. Box 899</p> <p>Supreme Court Building</p> <p>Jefferson City, MO 65102</p> <p>(573)751-3321</p> <p>FOR THE OFFICE OF THE PUBLIC COUNSEL:</p> <p>LEWIS MILLS</p> <p>Public Counsel</p> <p>P.O. Box 2230</p> <p>200 Madison Street, Suite 650</p> <p>Jefferson City, MO 65102-2230</p> <p>(573)751-4857</p>	<p>1 RYAN KIND, being sworn, testified as follows:</p> <p>2 DIRECT EXAMINATION BY MR. BYRNE:</p> <p>3 Q. Good afternoon, Mr. Kind.</p> <p>4 A. Good afternoon, Mr. Byrne.</p> <p>5 Q. My name is Tom Byrne, and I am an attorney</p> <p>6 for AmerenUE, and this afternoon I'm taking your</p> <p>7 deposition in Missouri Public Service Commission Case</p> <p>8 No. ER-2007-0002, which has been consolidated for hearing</p> <p>9 purposes with Case No. GR-2007-0003. I guess at the</p> <p>10 beginning I would ask, Mr. Kind, if you don't hear one of</p> <p>11 my questions or if you don't fully understand it, please</p> <p>12 just ask me and I'll repeat it or clarify for you. Is</p> <p>13 that okay?</p> <p>14 A. That's fine.</p> <p>15 Q. And is there -- do you know of any reason</p> <p>16 that you won't be able to answer my questions today?</p> <p>17 You're not taking any medication or anything like that?</p> <p>18 A. No, there's no reason.</p> <p>19 Q. Okay. And if you want to take a break,</p> <p>20 just say so and we'll stop whenever you want to.</p> <p>21 A. Okay.</p> <p>22 Q. Can you please state your name?</p> <p>23 A. My name is Ryan Kind.</p> <p>24 Q. And by whom are you employed, Mr. Kind?</p> <p>25 A. I'm employed by the Missouri Office of the</p>
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<p>1 ALSO PRESENT: Gary Weiss</p> <p>2 Michael Moehn (via telephone)</p> <p>3 Mark Van Trease (via telephone)</p> <p>4 Greg Meyer</p> <p>5 Steve Rackers (via telephone)</p> <p>6 SIGNATURE INSTRUCTIONS:</p> <p>7 Presentment waived; signature requested.</p> <p>8 EXHIBIT INSTRUCTIONS:</p> <p>9 None marked.</p> <p>10</p> <p>11 INDEX</p> <p>12 Direct Examination by Mr. Byrne 4</p> <p>13 Cross-Examination by Mr. Mills 75</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Public Counsel.</p> <p>2 Q. Okay. And in what capacity?</p> <p>3 A. As the chief energy economist.</p> <p>4 Q. And how long have you been employed by the</p> <p>5 Office of Public Counsel?</p> <p>6 A. Since 1991.</p> <p>7 Q. Okay. And are you the same Ryan Kind that</p> <p>8 filed two sets of testimony in Case No. ER-2007-0002 on</p> <p>9 behalf of the Office of the Public Counsel?</p> <p>10 A. Yes, I am.</p> <p>11 Q. And do you have any substantive changes</p> <p>12 that you need to make to your testimony at this point in</p> <p>13 time?</p> <p>14 A. No. There's a few grammatical errors. If</p> <p>15 there is any grammatical errors that have led you to not</p> <p>16 understand what I was trying to say, I'll be glad to</p> <p>17 clarify.</p> <p>18 Q. That's okay, if it's just nonsubstantive</p> <p>19 things.</p> <p>20 MR. CHAMBERLAIN: Rick Chamberlain just</p> <p>21 joined.</p> <p>22 BY MR. BYRNE:</p> <p>23 Q. Mr. Kind, I guess I'd like to start off by</p> <p>24 asking you some questions about EEInc similar to those</p> <p>25 that I asked Mr. Meyer earlier today. And I think you</p>

2 (Pages 2 to 5)

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1 were here for that part of his deposition; is that right?

2 A. Yes, I was.

3 Q. Okay. Well, some of them will sound

4 familiar, then.

5 A. Okay.

6 Q. I guess first of all, are you generally

7 familiar with EEInc?

8 A. Yes.

9 Q. And what is your understanding of what

10 EEInc is?

11 A. I guess a lot of the basics there are

12 set forth in my direct testimony, and I don't know that

13 there's a whole lot in terms of just the basics that I

14 would

15 add beyond what's there. If you go to page 24 of my

16 testimony, I mean, of course that on page 24, the answer

17 beginning at line 6, it sort of lays out a lot of the

18 basic information about EEInc and --

19 Q. Okay.

20 A. -- and Union Electric's relationship to

21 EEInc at the time EEInc filed their 2004 FERC Form 1.

22 Q. Okay. And do you know who -- as I

23 understand it, your answer on page 24 has the current

24 ownership percentage of EEInc in there; is that right?

25 A. Let's see. Well, it says Ameren Energy

Page 7

1 Resources. I don't know. Seems like I've seen some

2 things that indicate Ameren Energy Resources actually is a

3 subsidiary of another company, Ameren Development Company

4 or something like that, that is actually the owner.

5 Q. Okay.

6 A. Or I guess maybe -- maybe Ameren

7 Development Corporation owns it through Ameren Energy

8 Resources, but essentially that is -- I don't think the

9 ownership has changed since then because that reflects the

10 changes from the Illinois Power acquisition.

11 Q. Well, let me go back to when EEInc was

12 first formed. Do you know when EEInc was first formed?

13 A. I think that's covered in my testimony. I

14 guess I don't reference the initial applications, but it

15 was in the early 1950s.

16 Q. Okay. And do you know who the original

17 owners of the shares of stock in EEInc were back when it

18 was first formed?

19 A. Not off the top of my head, no.

20 Q. Okay. And do you know what the purpose

21 that EEInc was formed for was?

22 A. Yeah. It was to provide a power supply for

23 a uranium enrichment facility for the Atomic Energy

24 Agency.

25 Q. And do you know where that uranium

Page 8

1 enrichment facility was located?

2 A. You know, it's not really far away from the

3 actual Joppa plant, is all I know. I mean, it would be

4 within -- at least within a couple hundred miles, is my

5 understanding. But as far as the precise town where it's

6 located, I couldn't tell you that.

7 Q. Okay. And how did -- what did EEInc do in

8 order to provide service to the uranium enrichment

9 facility?

10 A. Well, built a coal-fired generating

11 facility and provided some of the output from that plant

12 to the enrichment facility.

13 Q. Okay. And is that the Joppa plant you're

14 talking about?

15 A. That's the coal-fired plant, yes.

16 Q. Okay. And I was asking Mr. Meyer if he

17 knew some basic information about the Joppa plant, so I'll

18 ask you, too. Do you know where the Joppa plant's

19 located?

20 A. Close to Joppa, Illinois, is my

21 understanding.

22 Q. And do you know how many megawatts the

23 entire plant is?

24 A. I think it's a little over 1,000 megawatts,

25 somewhere between 1,000 and 1,100.

Page 9

1 Q. Okay. And do you know how many individual

2 units make up the Joppa plant?

3 A. Not off the top of my head, no.

4 Q. Okay. And do you know where the funds came

5 from that were used to originally construct the plant?

6 A. Yeah. It's my understanding it was just

7 like, you know, construction of any other power plant,

8 that funds came from utility shareholders. In this case

9 it was shareholders from a group of companies, as opposed

10 to just one company, when a company would be building a

11 plant on their own.

12 Q. Like the original sponsoring companies, is

13 that your understanding, the original set that were the

14 sponsoring companies?

15 A. Well, there were different injections of

16 money over time, I think. There's a couple of early

17 cases, I know, and I think there was -- the first case

18 there was some money provided, and I think there was

19 additional money provided in a second case.

20 Q. And those early cases, that was for the

21 original construction of the plant; is that correct?

22 A. I believe so.

23 Q. Okay. And to the extent -- my

24 understanding is Union Electric Company provided some of

25 that money as an owner; is that right?

Page 10

1 A. Correct.

2 Q. And my understanding is that that money was

3 provided by AmerenUE's shareholders rather than

4 ratepayers, is that correct, the cash up front?

5 A. Yeah, just like -- I mean, anything that

6 gets acquired for Union Electric's operations, it's not

7 usually explicitly tagged to a ratepayer contribution.

8 Yeah, this would be the same as everything else that I'm

9 aware of.

10 Q. Okay. And it's also my understanding that

11 the Joppa plant and UE's portion of the Joppa plant was

12 not included in UE's rate base. Do you agree with that?

13 A. How are you referring to rate base? Do you

14 mean just in terms of the calculation of the rates that

15 customers paid or some way of developing revenue

16 requirement? I'm not sure.

17 Q. Yeah. I guess my understanding was -- and

18 correct me if you disagree -- is that the plant itself was

19 not placed in UE's rate base when rates were calculated,

20 but that the -- that the costs paid to EEInc for power

21 were included in AmerenUE's cost of service. It was Union

22 Electric Company at the time.

23 A. I guess when you say placed in rate base,

24 I'm just not sure if the Commission ever makes a

25 determination if a plant is in rate base. I don't know

Page 11

1 that I've ever seen an Order that says that we determine

2 this plant to be in rate base or not in rate base.

3 Q. So do you think -- I guess, are you saying

4 you don't know whether it was included in rate base when

5 Union Electric Company had rate cases such that the rate

6 of return authorized by the Commission was applied to that

7 investment, you just don't know whether that occurred or

8 not?

9 A. Well, I mean, I'm aware that there's a

10 contract where there's a set 15 percent return. That's

11 established in the purchased power agreement.

12 Q. And I guess what I'm trying to get

13 at is my understanding -- and maybe you have a different

14 understanding, but my understanding is the costs that

15 were included in that contract were reflected in

16 Union Electric's rates as opposed to the capital

17 investment being included in rate base and having a

18 Commission-approved rate of return applied to it.

19 A. I just don't know that I've ever examined

20 that. I know in the most recent rate case with Ameren,

21 the 2001 complaint case, the Commission didn't make any

22 determination about revenue requirement. And of course,

23 it was -- other rate cases were so far before then that it

24 was before I would have been employed.

25 Q. I guess there's a black box settlement like

Page 12

1 there was in 2002, your point is there's no determination

2 as to exactly what's in rate base; is that right?

3 A. Not that I'm aware of, no.

4 Q. So basically what you're telling me is you

5 don't know whether it was included in rate base, the

6 investment of the plant was included in rate base or not?

7 A. It's not an issue that I've ever

8 investigated, so I don't really have an informed basis for

9 giving an opinion on that.

10 Q. Okay. Fair enough. And I guess maybe

11 another way of answering or asking the same question,

12 which may lead you to the same answer, you don't know

13 whether AmerenUE's investment in EEInc was treated above

14 the line or below the line at the time back in the early

15 1950s when it was made?

16 A. Right. I haven't examined how UE's rates

17 were set at that time, no.

18 Q. Fair enough. And I guess my understanding

19 is that you believe that the Joppa plant is a low cost

20 producer of electricity; is that true?

21 A. That's correct.

22 Q. Okay. And why do you consider the Joppa

23 plant to be a low cost producer, compared to what?

24 A. Well, that would just be sort of based on

25 my general knowledge. Of course, I've been extensively

Page 13

1 involved in the resource planning process of Union

2 Electric since the early 1990s, and also aware that there

3 have been either UE or Ameren officials that have made

4 statements over time about it being a low cost resource.

5 I think you've seen some of those statements cited in

6 testimony that I've done on this issue in other cases.

7 And then there's also -- you probably know if you read my

8 testimony, there's a schedule in my testimony that

9 addresses this issue as well.

10 Q. And which schedule is that?

11 A. Let's see. That would be -- that would be

12 Attachment 5, which is the first page of a -- of a

13 schedule that was contained in Warner Baxter's testimony

14 that looks at the total production costs for all the major

15 utilities in the United States. I've just got the first

16 of three pages here because it was the one that had

17 information for both Electric Energy, Inc. and for Union

18 Electric.

19 And so if you look at that schedule, you'll

20 see that the fourth lowest cost utility listed there is

21 Electric Energy, Inc. and it's my understanding most of

22 their output comes from the Joppa coal-fired plant. And

23 then you'll see Union Electric two lines below that, and

24 there's quite a substantial cost difference, of course,

25 between the cost of energy output from UE versus EEInc for

4 (Pages 10 to 13)

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1 these years, 2002 to 2005.

2 Q. And I guess this schedule would suggest

3 that EEInc's a relatively low cost provider compared to

4 other units in the -- across the United States and a

5 little bit lower than UE's?

6 A. No. I think it says more than just being a

7 relatively low cost provider. There's, you know, dozens

8 and dozens of companies listed here, and it's No. 4. So

9 it's not just -- it's very low cost, and I think Ameren

10 officials have characterized it that way in the past.

11 Q. Do you know why it's so low cost compared

12 to the other units around the country?

13 A. Not any, you know, particulars as to why

14 the operating costs would be that low. I know there have

15 been enhancements to the plant over time. You know, UE

16 came in with this financing application that I reference

17 in my testimony, I think during the '70s, and sought

18 Commission approval for getting some backing for some

19 financing, and that was associated with some upgrades at

20 the plant. So I would assume there's similar other

21 upgrades that have taken place over the years as well.

22 Q. Do you know -- in that particular case

23 where UE sought Commission approval, do you know what the

24 financing was for?

25 A. I'm not sure if I reference that in my

Page 15

1 testimony or not. I can look at it. I know I reference

2 that case in my testimony, but if it's not in my

3 testimony, I couldn't tell you off the top of my head. I

4 see it on page 26, the third bullet. It just refers there

5 to -- in line 8, proceeding with improvements to the Joppa

6 plant and, of course, in 9 it goes on to talk about how

7 the PSC stated that UE was assured of a continuous source

8 of economic power in return for guarantee of these

9 financial obligations.

10 Q. But you don't know exactly what they're

11 for, the financial obligations?

12 A. Well, the case is referenced there.

13 Anybody could look it up.

14 Q. Right. But sitting here, you don't know?

15 A. No. I've already said I don't know it off

16 the top of my head.

17 Q. Okay. And same with you don't know how

18 much the guarantee was for, I assume?

19 A. No. I don't have any knowledge in my

20 memory about this case, other than just what I've got in

21 my testimony there.

22 Q. And do you know whether Union Electric

23 Company ever had to pay anything to make good on the

24 guarantee in that case?

25 A. I don't know, like I said, anything about

Page 16

1 it other than what's stated here.

2 Q. Do you know of any other cases where Union

3 Electric Company provided any kind of a similar guarantee

4 to the Joppa plant?

5 A. Well, there's the guarantee, I think it's

6 in the purchased power agreement, that if the plant's

7 incapable of producing power, UE was required to pay for

8 the power, whether they received it or not. Of course,

9 that's a pretty substantial guarantee.

10 Q. Other than that and this guarantee, do you

11 know of any others?

12 A. Not off the top of my head, no.

13 Q. I want to ask you some questions about the

14 physical layout of the plant. Do you know -- well, first

15 of all, what fuel does the plant run on, if you know?

16 A. I believe that's a coal-fired plant.

17 Q. And do you know where the coal comes from

18 that is used to operate the plant?

19 A. I haven't investigated that, no.

20 Q. Okay. And do you know --

21 A. I mean, the only thing I might know is, I

22 guess it's my understanding that probably there are Ameren

23 affiliates involved in procuring the fuel. I don't know

24 if your question was what particular geographic location

25 or what company. I think it's -- what's the Ameren --

Page 17

1 Ameren fuel subsidiary, whatever that one is, I think

2 they're involved in facilitating the purchases.

3 Q. Yeah. I was really asking for what area of

4 the country does the coal come from, if you know.

5 A. Okay. Okay.

6 Q. You don't know, I guess?

7 A. I don't. I haven't looked it up.

8 Q. How about transmission lines to take the

9 electricity from the Joppa plant out, do you know how many

10 transmission lines there are?

11 A. All I know is just some general

12 recollections from the Metro East transfer case that, you

13 know, the transmission lines that were owned by Union

14 Electric on the Illinois side of the river were being

15 transferred, and that at least one of those lines hooked

16 up to the Joppa plant.

17 Q. Okay. Are you aware of any other

18 transmission lines either not -- either owned by UE or not

19 owned by UE that are hooked up to the Joppa plant besides

20 that one?

21 A. I don't think UE owns transmission in

22 Illinois anymore except for some really minor equipment

23 directly adjacent to the Venice plant, is my

24 understanding, that it was all transferred away. And with

25 the guarantees that were mentioned this morning by

<p style="text-align: right;">Page 18</p> <p>1 Mr. Meyer that Union Electric had agreed as a condition of 1 2 the Metro East transfer to hold Missouri ratepayers 3 harmless for any adverse consequences of transferring 4 those transmission lines away from UE to SIPS. 5 Q. Okay. 6 A. And incidentally, I'm still, of course, 7 waiting for a DR response related to that issue. That's, 8 you know, seems like over at least a month overdue. So I 9 might have more information to give you on that subject 10 once I see that DR response. 11 Q. Okay. Perhaps we'll schedule another 12 deposition after you receive that response. 13 MR. MILLS: Oh, joy. 14 BY MR. BYRNE: 15 Q. Okay. Do you know if EEInc has any 16 subsidiary corporations? 17 A. I'm aware that they have at least one. I 18 don't know if they -- you know, the number that they have. 19 I'm just aware of just from general knowledge that they 20 have at least one. 21 Q. Do you know what the one that you're aware 22 of does? 23 A. It was a vehicle for building some 24 combustion turbines. 25 Q. And do you know where those combustion</p>	<p style="text-align: right;">Page 20</p> <p>1 understanding as well? 2 A. Yes, it is. 3 Q. And I guess the same question I asked 4 Mr. Meyer a little bit earlier today, and that is, do you 5 believe Union Electric Company has the unilateral right to 6 insist on receiving power at cost from the Joppa plant? 7 A. Well, I have to say part of the information 8 I have sought in this case that would be related to 9 answering that question, your company has refused to 10 provide it, of course, and some of that information being 11 the EEInc minutes that your company's only provided just 12 selective pieces of that. But there's other aspects of 13 the entitlement issue that are addressed in my testimony, 14 and we can go through that if you'd like. 15 Q. Okay. I would like to do that. 16 A. Do you have the page references there for 17 that? 18 Q. No. I guess I'm just asking you, again, do 19 you believe UE has a unilateral right to purchase power at 20 cost from the Joppa plant? And you can refer to your 21 testimony if you'd like, but that's my question. 22 A. Well, I mean, there's several ways to 23 answer that question. Some are just, you know -- 24 Q. How about starting with yes or no, and 25 then --</p>
<p style="text-align: right;">Page 19</p> <p>1 turbines are located? 2 A. Not for sure. Best I recall, they were 3 probably on the property of the Joppa plant, but I'm not 4 certain. 5 Q. Okay. And it's my understanding that in 6 general, like Mr. Meyer, you believe that AmerenUE's 7 ratepayers are entitled to purchase at-cost power from the 8 Joppa plant; is that correct? 9 A. I'm not sure I'd look at it that way. I 10 believe, like Mr. Meyer, I think that UE is entitled to 11 get 40 percent of the output from the Joppa plant, and I 12 believe that it would be an imprudent decision for UE not 13 to take advantage of that entitlement. 14 Q. Okay. And to the extent that that power is 15 low cost economical power, you believe the benefit of that 16 should flow through to UE's ratepayers, right? 17 A. Well, I believe that they should make 18 choices to include the lowest cost resources as part of 19 their resource portfolio. I mean, that's the guidance 20 that comes from the Missouri Commission and the IRP rule, 21 and I think that they should be making plans and operating 22 consistent with that guidance. 23 Q. And it's my understanding that the most 24 recent contract between UE and EEInc for power from the 25 Joppa plant expired at the end of 2005. Is that your</p>	<p style="text-align: right;">Page 21</p> <p>1 A. I'll just start with, you know, I guess 2 relying on the statements of Ameren officials, I believe 3 so. And those statements, of course, referenced in my 4 testimony starting in the answer at line 9 on page 28 5 where it says, Craig Nelson acknowledged in his oral 6 testimony in Case No. EO-2004-0108 that the then current 7 EEInc bylaws contain provisions that entitle UE to 8 40 percent of the output from the EEInc Joppa plant. 9 And then I've footnoted that to the 10 transcript from the hearing where I paraphrased that from 11 And then more information on this subject is in the next 12 sentence where it says, UE witness Nelson also stated the 13 EEInc board has the right to alter UE's entitlement and 14 sell the power to some other entity if 75 percent of the 15 EEInc board agrees to do so, and again that's footnoted in 16 Footnote 10. 17 When you put those two statements together 18 from an Ameren vice president, I don't know how you can 19 conclude that they don't have the entitlement. It sounds 20 like he was saying that they had it, you know, at the time 21 he was testifying and referencing the then current bylaws, 22 and then he was saying that that entitlement could not go 23 away unless there was a 75 percent vote of the board to do 24 so. And of course, with Union Electric owning 40 percent 25 of the stock, you couldn't get a 75 percent vote to do so</p>

6 (Pages 18 to 21)

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1 unless UE went along with it.
 2 Q. And did you go back and look at the bylaws
 3 to verify what Mr. Nelson had said?
 4 A. I have read the bylaws. I mean, there's --
 5 there are provisions in there on voting and changing the
 6 bylaws, and I didn't have any difference with his
 7 interpretation, I don't think.
 8 Q. Okay.
 9 A. I haven't -- I don't think they've been
 10 changed since the time I read them, but if they have been
 11 changed, it couldn't have been done without the agreement
 12 of Union Electric to do so.
 13 Q. And I notice in your quotations of
 14 Mr. Nelson, he talks about entitlement but he doesn't talk
 15 about entitlement at any particular price. What --
 16 where's the source of -- if you think that AmerenUE is
 17 entitled to purchase the power at cost, what's the source
 18 of the entitlement at cost?
 19 A. Well, I think that, you know, it's the same
 20 here. It's just if they -- if you're a 40 percent owner,
 21 then you really, I think, have substantial amount of
 22 control over the company.
 23 Q. Would you agree with me that the cost of
 24 the power produced at the Joppa plant currently is below
 25 the market price for power?

1 modifications to it?
 2 A. Uh-huh.
 3 Q. You think you looked at the modifications?
 4 A. I think I did, yes.
 5 Q. Okay.
 6 A. Yeah.
 7 Q. Did you look at any of the contracts
 8 between Union Electric Company and EEInc for periods prior
 9 to 1987 back to when the plant was built?
 10 A. I don't think I have, no.
 11 Q. Okay. So I guess you don't -- you wouldn't
 12 know the terms of any of the arrangements up until 1987?
 13 A. No. I mostly would just know that, you
 14 know, there was references consistently, it seemed like,
 15 in early applications before the Missouri Commission that
 16 this would be providing the utility with a continuous
 17 source of low cost power, and so I would assume that the
 18 contracts would have been consistent with those statements
 19 by Union Electric.
 20 Q. Okay. But the actual contracts may or may
 21 not have. There could have been different contracts in
 22 that period of time; isn't that true?
 23 A. Well, those statements were made in the
 24 early '50s and then I think repeated in the '70s, so there
 25 could have been something different in the '60s, I guess.

1 A. You could draw that conclusion by looking
 2 at the schedule that we were looking at earlier.
 3 Q. Okay. Do you think that's probably true?
 4 A. I think that it probably is, yes. I don't
 5 know that it would be an issue in this case if that
 6 weren't the case.
 7 Q. Okay.
 8 A. If it were above market, then instead of UE
 9 not permitting its ratepayers to take advantage of it,
 10 they would probably be trying to compel their ratepayers
 11 to pay for it. It would be the opposite situation we'd be
 12 dealing with.
 13 Q. Have you reviewed the terms of the contract
 14 that expired at the end of 2005, the sponsor's agreement,
 15 I think it's been referred to?
 16 A. I have, but not recently. I heard
 17 Mr. Meyer's interpretation of Section 3.01 this morning,
 18 you know, and I recall generally I had the same
 19 understanding of that section as he did.
 20 Q. You've at least read the contract, is that
 21 true, at some point?
 22 A. Yeah. And I think it was the most recent
 23 version probably.
 24 Q. I guess there was some -- after the
 25 original document was signed in 1987, there were some

1 Q. Okay. I guess one of the main things I
 2 want to ask is what I asked Mr. Meyer earlier today, and
 3 that is, I'd like to know all the reasons that you think
 4 the ratepayers -- well, UE and through UE the ratepayers
 5 ought to be entitled to power at cost from the Joppa
 6 plant. I think you've already given me some reasons, but
 7 I'd like to make sure I fully understand your logic.
 8 A. So you want to know reasons that I've given
 9 you, in addition to like just the prudence argument, is
 10 that it?
 11 Q. You talked about the prudence of Union
 12 Electric.
 13 A. I haven't really thought about it a whole
 14 lot further since my testimony, but I have the reasons
 15 listed in there. I can certainly review those reasons for
 16 you.
 17 Q. Okay.
 18 A. Well, I thought I'd summarized them at some
 19 point, but I'm not really seeing them. I guess the
 20 additional reason -- again, it's touched on here, and I
 21 don't know where I summarized it -- is just basically
 22 UE's, you know, responsibility, to me, their obligation as
 23 a public utility to provide service at just and reasonable
 24 rates. And again, that sort of relates to the prudence
 25 decision.

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<p>1 And then the other one is really the</p> <p>2 guidance given in the Missouri Commission's IRP rules</p> <p>3 about that you should be -- primary guidance is that you</p> <p>4 should be minimizing PVRR, the present value of revenue</p> <p>5 requirements, over the 20-year planning horizons in the</p> <p>6 plans that you select, and it doesn't seem possible that</p> <p>7 you could be selecting a plan to minimize present value</p> <p>8 revenue requirements without including EEInc in the plans.</p> <p>9 And then just some things that are sort of</p> <p>10 related to that I guess would be that I've listed in here</p> <p>11 some IRP filings where UE had essentially stated its</p> <p>12 intentions to be using this resource at least through</p> <p>13 2014. Of course, those were -- a lot of those were things</p> <p>14 that -- commitments that UE made before they reorganized</p> <p>15 and became a holding company and developed all those</p> <p>16 additional affiliate issues.</p> <p>17 Q. That was the IRP filing in the early '90s?</p> <p>18 A. Yes, they're referenced beginning with the</p> <p>19 answer at line 17 on page 26.</p> <p>20 Q. Okay.</p> <p>21 A. They weren't all in the early '90s.</p> <p>22 There's a reference to the filing in 1995, and then</p> <p>23 there's a reference to another later filing that looks</p> <p>24 like it occurred in 1997.</p> <p>25 Q. Okay. Any other reasons besides those</p>	<p>1 limited excerpts from the EEInc minutes that Ameren has</p> <p>2 provided indicated that there were discussions prior to</p> <p>3 the expiration of the contract. I haven't seen all those</p> <p>4 minutes, so I can't see really everything that was going</p> <p>5 on in the decision-making process. But it's -- it's</p> <p>6 apparent that there was a decision that was made prior to</p> <p>7 the expiration of the contract that included EEInc board</p> <p>8 representatives from the Ameren affiliates in making that</p> <p>9 decision.</p> <p>10 Q. That decision you're talking about, that</p> <p>11 was a decision from EEInc's board; is that correct?</p> <p>12 A. Well --</p> <p>13 Q. Comprised of --</p> <p>14 A. Yeah. To the extent that it -- I mean,</p> <p>15 that a corporation that's 80 percent owned by another</p> <p>16 corporation may -- if you could characterize it as being</p> <p>17 their decision, it's their decision.</p> <p>18 Q. I mean, it was at an EEInc board of</p> <p>19 directors meeting, right --</p> <p>20 A. Yes.</p> <p>21 Q. -- that that decision was made?</p> <p>22 A. Well, I don't really know. It could have</p> <p>23 been made, you know, at a meeting of the -- for instance,</p> <p>24 the Ameren senior team, and that it was just then actually</p> <p>25 carried out by the EEInc board.</p>
Page 27	Page 29
<p>1 you've just listed that UE's -- UE, and through them their</p> <p>2 ratepayers, should be entitled to at-cost power from the</p> <p>3 Joppa plant?</p> <p>4 A. At this point in my analysis of the issue,</p> <p>5 I don't have any others --</p> <p>6 Q. Okay.</p> <p>7 A. -- to state.</p> <p>8 Q. And would you agree that -- well, maybe</p> <p>9 we've gone over this, but let me ask it anyway. Would you</p> <p>10 agree that it's necessary -- well, UE by itself cannot get</p> <p>11 at-cost power from the Joppa plant, it needs the agreement</p> <p>12 of EEInc to do that. Would you agree with that or do you</p> <p>13 disagree?</p> <p>14 A. I don't know. I look at it more like the</p> <p>15 access to cost-based power could not go away unless UE</p> <p>16 agreed, allowed it to go away. That's sort of the way</p> <p>17 I've analyzed it.</p> <p>18 Q. Okay. And once the contract expired,</p> <p>19 though, what was the source of the at-cost -- I know</p> <p>20 you've referenced the bylaws, that they had access to a</p> <p>21 certain amount of power, but once the contract expired at</p> <p>22 the end of 2005, what was the source of your belief that</p> <p>23 they have a right to the power at cost?</p> <p>24 A. Well, I wouldn't look at it from the point</p> <p>25 of view of once it expired. You know, the limited --</p>	<p>1 Q. But the minutes you were referring to are</p> <p>2 EEInc board minutes, right?</p> <p>3 A. That's correct. I was talking about EEInc</p> <p>4 board minutes.</p> <p>5 Q. You talked about -- we've talked a little</p> <p>6 bit about the Joppa plant being a low cost source of</p> <p>7 power. Do you have any reason to think that at any point</p> <p>8 in time it hasn't been a low cost source of power for UE</p> <p>9 and its ratepayers?</p> <p>10 A. I have never seen any information that</p> <p>11 would indicate that.</p> <p>12 Q. Okay. Do you know -- well, let me --</p> <p>13 there's a place in your testimony where you talk about --</p> <p>14 I guess I'm on page 25. You're talking about the steady</p> <p>15 stream of financial support, page 14, line 25 of the</p> <p>16 EEInc piece of testimony.</p> <p>17 A. Yes. Which line was it again?</p> <p>18 Q. Starting on line 14, you're talking about a</p> <p>19 steady stream of financial support for the last 50 years.</p> <p>20 Then on line 16 you say, full payment of UE's share of all</p> <p>21 capital costs on a front-loaded basis. I was wondering</p> <p>22 what a front-loaded basis means.</p> <p>23 A. That just means that I don't believe that</p> <p>24 the depreciation was -- you know, it's not a leveled</p> <p>25 type of depreciation, that it's a situation similar to</p>

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 utility ratemaking where you've got the value of the 2 plant. Initially you're paying a return on the full 3 original cost of the plant, you know, halfway into the 4 depreciable life and then you're only paying on 50 percent 5 of the original cost, and if it's a 40-year depreciation, 6 then 40 years in your plant's mostly paid off, just like 7 the EEInc plant is. 8 Q. Okay. But you're not saying they put up 9 the money up front to build the plant or anything, that's 10 not what front-loaded costs mean, is it? 11 A. No. It's more talking about the return 12 on and return of the investment that's, you know, 13 reflected -- what was reflected in the rates of Missouri 14 customers. 15 Q. Okay. A little bit above that on that same 16 page, beginning on line 8, you say, in addition to paying 17 the full cost of service, UE's ratepayers have borne the 18 risk that UE may be obligated to make payments under the 19 PSA, regardless of whether EEInc was able to generate and 20 deliver energy from the Joppa plant. 21 Isn't it true, though, that -- wouldn't the 22 Missouri Public Service Commission have the authority to 23 disallow such costs if they believed they were imprudently 24 incurred? 25 A. I suppose they would. I'm just referring</p>	<p style="text-align: right;">Page 32</p> <p>1 unable to generate and deliver energy but the ratepayers 2 nonetheless had to pay the cost of it? 3 A. I don't know. I guess that's the subject 4 that I haven't explored that maybe I should. 5 Q. Okay. And towards the bottom of 25 and top 6 of 26, you're talking about payment for pollution control 7 and other modernization investments that extend the life 8 of the plant. Do you see that, bottom of 25? 9 A. Yeah, and I think that's referring to what 10 happened in the financing case. I guess I was saying 11 before that I wasn't really sure about that, but what -- 12 actually, I think it seems like redoing the stacks or some 13 aspect of that part of that financing case. 14 Q. I mean, but to the extent that those 15 capital investments are depreciated over their entire 16 life, isn't it true the people who take the power would 17 only be paying for it during the time they're taking the 18 power? 19 A. They would, but then it's front loaded in 20 the sense that we've discussed earlier, in terms of the 21 return of and return on the capital. And I -- I included 22 in my testimony, I think, some figures on what the gross 23 plant value of EEInc is, you know, as of I think the end 24 of '05 and what the accumulated depreciation was, and 25 there's not a lot of difference between those two figures.</p>
<p style="text-align: right;">Page 31</p> <p>1 to a risk here. I'm not referring to a certainty. 2 Q. You're talking about, like, the term of the 3 contract, right? 4 A. What do you mean by the term, the length in 5 time? 6 Q. No. 7 A. The contract -- 8 Q. Provisions. 9 A. Provisions? 10 Q. Yeah. 11 A. Yes. 12 Q. But would you agree -- I mean, I guess I'm 13 just saying, even though that's a provision in the 14 contract, the Missouri Public Service Commission 15 ultimately has the authority to decide what costs are 16 passed through; isn't that true? 17 A. I suppose, unless you -- you know, Ameren 18 occasionally appeals their decisions, so -- 19 Q. Right. Subject to appeal, the Missouri 20 Public Service Commission can decide what costs are 21 prudently incurred and what can be passed on to 22 ratepayers; is that right? 23 A. Yeah. I mean, from my point of view, 24 there's a risk to ratepayers. That's all I'm saying. 25 Q. Was there a point where the Joppa plant was</p>	<p style="text-align: right;">Page 33</p> <p>1 So it's really just a matter of fairness 2 and equity. Do the ratepayers, you know, pay over time to 3 essentially pay off the plant, and then after a certain 4 point in time, you know, once it becomes a really low cost 5 plant that's essentially paid off, all of a sudden the 6 shareholders should be reaping 100 percent of the 7 benefits? 8 Q. And is it your understanding that UE 9 ratepayers basically paid for the plant through their -- 10 through the power that they took over the last 50 years? 11 A. Yeah. I think that's indicated in these 12 schedules, and I think I reference some of the numbers 13 from those FERC Form 1s in my testimony. 14 Q. Where are you? Can you show me what you're 15 referring to? 16 A. Yeah. I'm going to try and find them. 17 Okay. Here it is (indicating). It's at the top of 18 page 23, so it begins at the bottom of 22 with the 19 sentence on line 23, in addition to the low production 20 cost of EEInc's generation facilities, the EEInc steam 21 generation facilities are almost fully depreciated. Page 22 205 of the EEInc 2005 FERC Form 1, and I've got it as an 23 attachment that shows gross steam production plant of \$370 24 million, and page 219 of the same report shows accumulated 25 depreciation for plant of \$330 million.</p>

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1 So you're talking about nearly 90 percent
 2 of EEInc's plant being paid off at the time that the
 3 contract was terminated.
 4 Q. So I mean, the general idea is UE
 5 ratepayers take the power from the plant, pay
 6 depreciation, essentially pay the costs of the plant for
 7 50 years or so or even more than 50 years, finally the
 8 plant's depreciated, and so even if they don't maybe
 9 literally own the plant, they've got some kind of
 10 equitable entitlement to the plant by virtue of having
 11 paid all the costs for those years. Is that a fair
 12 summary?
 13 MR. MILLS: I'm going to object to the
 14 question about equitable entitlement as calling for a
 15 legal conclusion. Go ahead and answer.
 16 THE WITNESS: I haven't really drawn that
 17 conclusion. I mean, this is just -- certainly there are
 18 equity concerns, I think, but you know, the main concern
 19 is just, is it a prudent decision? You've got a plant
 20 that's almost completely paid off and you could be getting
 21 power from it to provide service to ratepayers and there's
 22 going to be very little depreciation expense, return on
 23 investment associated with that source of power. How
 24 could it be prudent to just pass it up?
 25 BY MR. BYRNE:

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1 Q. And what's the source of your belief that
 2 it was UE's decision to pass it up rather than EEInc's
 3 decision not to --
 4 A. Like we discussed earlier in this
 5 deposition, UE has refused to provide a lot of the
 6 materials related to the EEInc decision-making process, as
 7 well as materials that were related to that. There's a
 8 number of DRs that UE objected to, and one of those DRs is
 9 a Data Request related to the -- a place in the minutes
 10 where the president of EEInc says, I would like for the
 11 sponsoring companies to appoint members to a committee to
 12 figure out what to do with the future -- you know, future
 13 contracts once this expires. And of course we have asked
 14 UE to provide us documents related to the work of that
 15 committee and UE has objected.
 16 Q. And I think the grounds of the objection
 17 are that it's -- that those are EEInc documents rather
 18 than UE documents; is that your understanding?
 19 A. I don't recall that being part of the
 20 grounds of the objection, actually.
 21 Q. Okay.
 22 A. Even if it was, there's the rule, the
 23 affiliate transaction rules, of course, require, seems to,
 24 utilities to hand over documents of their affiliates when
 25 they hold a controlling interest in them.

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1 Q. Do you think UE holds a controlling
 2 interest in EEInc?
 3 A. Well, I think it's -- I think 10 percent is
 4 the definition of a controlling interest in the affiliate
 5 rule, isn't it?
 6 Q. I don't know. Don't have it in front of
 7 me.
 8 Do you believe that UE ratepayers own the
 9 Joppa plant?
 10 A. I don't believe UE ratepayers own any of
 11 the plants that are used by UE to provide service to them,
 12 including the Joppa plant.
 13 Q. Do you believe UE owns the Joppa plant?
 14 A. UE owns a 40 percent share of EEInc, and
 15 EEInc owns the Joppa plant.
 16 Q. In your opinion, how long is AmerenUE, and
 17 through AmerenUE its ratepayers, entitled to low cost
 18 power from the Joppa plant? Are they entitled to at-cost
 19 power for the life of the plant or some shorter period of
 20 time?
 21 A. I mean, I think UE is entitled to get
 22 power from the plant as long as it chooses to do so, given
 23 its -- given its 40 percent interest.
 24 Q. But again, that wasn't quite my question.
 25 A. I've never asserted that ratepayers have an

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1 entitlement, I don't think. Have I? Is there something
 2 you want to reference me to?
 3 Q. No. Do you think the ratepayers don't have
 4 an entitlement?
 5 A. Ratepayers have an entitlement to getting
 6 safe and adequate service at just and reasonable rates.
 7 Q. Okay. You know, back to the previous
 8 question, you said they're entitled -- UE is entitled to
 9 its 40 percent?
 10 A. I didn't say that. I was quoting the
 11 Ameren executive saying that, and then I said I didn't
 12 disagree with him.
 13 Q. But the question was more than that. It
 14 was not just entitlement to an amount of power. It was
 15 entitlement to an amount of power at cost.
 16 A. Uh-huh. I think I can give you a lot more
 17 informed answer to that if Ameren would have provided the
 18 documents that they've objected to.
 19 Q. So is the answer you don't know?
 20 A. I have very -- you know, I don't -- I don't
 21 think I can provide you an additional explanation beyond
 22 what I've already told you.
 23 Q. Okay. Well, back up to the question. The
 24 question was, how long is AmerenUE, and through AmerenUE
 25 its ratepayers, entitled to power at cost from the Joppa

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1 plant? Is it entitled to power at cost for the life of
 2 the Joppa plant or some shorter period of time, in your
 3 opinion, or you don't know?
 4 A. Your question incorporates assumption that
 5 ratepayers are entitled to it, and I just never made that
 6 assertion, I don't believe.
 7 Q. Okay. I'll change the question. How long
 8 is AmerenUE entitled to get power from the Joppa plant at
 9 cost, for the life of the plant or some shorter period of
 10 time?
 11 A. You know, based on the interpretation of
 12 the bylaws that was made by Craig Nelson, I would say that
 13 it's until the bylaws change, and then the bylaws, of
 14 course, can't be changed without agreement of UE. So I
 15 would say that it would be until UE would agree to a
 16 change in the bylaws.
 17 Q. But do the bylaws reference the at-cost
 18 part of my question?
 19 A. I think they just get into control of the
 20 operations of EEInc, probably.
 21 Q. So is it possible that the bylaws do not
 22 entitle any of the owners to power at any particular rate?
 23 A. I don't think there's a reference to rates
 24 in the bylaws. You know, wholesale power rates, I don't
 25 think there is a reference to that.

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1 Q. Would it be fair to say the bylaws talk
 2 about entitlement to power, not entitlement to power at
 3 any particular price?
 4 A. Yeah. And they talk about just the
 5 governance of the corporation and, you know, how you
 6 exercise -- how the stockholders, like a 40 percent owner
 7 like UE, can exercise its influence.
 8 Q. From the standpoint of the EEInc board of
 9 directors, why in your opinion should the EEInc board of
 10 directors agree to sell AmerenUE power from the Joppa
 11 plant at cost if it could sell the power for a higher
 12 price to a third party?
 13 A. Well, there probably -- they're free to do
 14 whatever they want to do, obviously, and so I think maybe
 15 the question gets more in terms of, if you have a
 16 situation where you have a board of directors that's
 17 making decisions that are contrary to the public interest,
 18 then you need to have the Commission step in and correct
 19 the situation.
 20 Q. So that's what they ought to do is act in
 21 the public interest, in your opinion?
 22 A. Who?
 23 Q. The board of directors?
 24 A. The Missouri Commission should.
 25 Q. I was asking about the board of directors

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1 of EEInc. Is that --
 2 A. I think that I would expect Union Electric,
 3 as a regulated public utility whose primary options are
 4 providing service to the public under a monopoly franchise
 5 that's been granted by the State, I would expect them to
 6 operate in a manner that's consistent with the public
 7 interest. I think that gets more difficult when you get
 8 affiliate issues involved and when that utility gets
 9 acquired by a holding company and things like that.
 10 Q. I mean, I was just talking about the EEInc
 11 board, rather than Union Electric Company.
 12 A. Well, it's important to remember that Union
 13 Electric has 40 percent of the voting power on the EEInc
 14 board by owning 40 percent of the stock. So, you know, I
 15 don't know how you can get away from how should UE as a
 16 public utility be, you know, exerting the influence that
 17 they have.
 18 Q. So EEInc -- so UE, in your view, ought to
 19 be influencing its representatives on the board of EEInc
 20 to act in a manner that lowers the cost to the ratepayers
 21 of AmerenUE as much as possible, is that --
 22 A. It's not my position to say how I think
 23 people's representatives on a board should be acting. I
 24 could say in general how I think a public utility should
 25 be doing its business, but it's really not my position

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1 to say how they should be acting. I would say that one
 2 of the things hopefully they would take into account in
 3 their actions is that the Commission may decide that
 4 they're doing something imprudent, and even though they've
 5 acted one way to try and shift some earnings to the
 6 non-regulated side, that the Commission may decide that's
 7 not consistent with the public interest. So it seems like
 8 that's one of the things they'd want to take into account.
 9 Q. And you would --
 10 A. I'm sorry. That's --
 11 Q. Would you agree with me that AmerenUE's --
 12 in any event, AmerenUE's 40 percent representation on the
 13 EEInc board of directors doesn't control the actions of
 14 the board of directors?
 15 A. No. I think we've been through that
 16 before. I talked about how prior to the expiration of the
 17 contract, that UE was involved in that process, and I
 18 don't -- you know, of course, I don't know fully what
 19 occurred in that process because UE has refused to provide
 20 documents that would help me, you know, be better able to
 21 answer your question. But I more put it in terms of that,
 22 you know, unless they go along with a change, a change is
 23 not going to happen.
 24 Q. Let me ask something else. Again, this is
 25 a question I asked Mr. Meyer earlier today. If the Joppa

<p style="text-align: right;">Page 42</p> <p>1 plant was sold at a profit, do you believe that AmerenUE 2 and through AmerenUE its ratepayers would be entitled to a 3 share of the profit? 4 A. I would just have to look at all the 5 circumstances surrounding the sale, I would think. 6 Q. It depends -- it depends on the 7 circumstances of the sale? 8 A. That and probably prior Commission 9 precedent, and I can't say that I've been involved in a 10 lot of those kind of sale cases. 11 Q. Okay. And how about the same question if 12 it was sold at a loss, do you think AmerenUE and its 13 ratepayers should subsidize the loss on the sale of the 14 Joppa plant? 15 A. I would think it would be the same answer. 16 You just have to look at the specifics of it and look at 17 some Commission precedent, speak with my attorney about 18 the law in that area. 19 Q. This morning I asked Mr. Meyer a series of 20 questions, and he was saying -- in response he said that 21 UE has an obligation to seek the most economic source of 22 power, and so -- and I guess my first question is, do you 23 agree with that? 24 A. In general. I think there's some risk 25 considerations that should be taken into account as well.</p>	<p style="text-align: right;">Page 44</p> <p>1 incumbent on AmerenUE to exercise its termination rights, 2 live out the five years, but give notice of termination 3 and then acquire its power from a more economic source? 4 A. I'd have to look at the particulars of that 5 particular provision. In general it's incumbent, it 6 seems, upon UE's management to make prudent resource 7 planning decisions. 8 Q. And if that encompasses buying power from 9 the Joppa plant because it's the most economic sense, do 10 it, and if that encompasses buying power from some other 11 source that's more economic or more prudent, do that; is 12 that true? 13 A. Yeah. Of course, the details of do this 14 and do that you haven't laid out. 15 Q. Sure. 16 A. I don't know all the implications of that. 17 Q. I understand. It depends on a lot of 18 detail? 19 A. Yeah. 20 Q. But if I could summarize, see if you agree 21 with this summarization or not. UE should buy power from 22 the Joppa plant if that's the most prudent and economic 23 choice of power for its system based on a myriad of 24 considerations, and if it ever becomes to a point where 25 there's a more better, more prudent, more economic source</p>
<p style="text-align: right;">Page 43</p> <p>1 Something might be the most economic this year, but there 2 might be some risk that you would be stuck with something 3 that's going to be three times as expensive a few years 4 down the road. 5 Q. Sure, consistent with prudent resource 6 planning? 7 A. Yeah, consistent with prudent resource 8 planning. 9 Q. And so if to the extent -- to the extent 10 that the Joppa plant for whatever reason became an 11 uneconomic source of power, would you agree that AmerenUE 12 has an obligation to seek out more economic sources of 13 power? 14 A. Well, it would probably be, you know, 15 considerations as to whether the plant should be retired 16 kind of thing. I think that the -- it seems like the 17 contract that -- between UE and EEInc already, I think, 18 incorporated some plant retirement costs. 19 Q. Well, I mean, like one thing I think of is 20 in the 1987 contract that expired in 2005 there was a 21 termination provision, I think it was a five-year, 22 60-month termination provision. And so I guess my 23 question to you is, if during the period of that contract 24 the Joppa plant for whatever reason had become a higher 25 than alternative cost source of power, would it have been</p>	<p style="text-align: right;">Page 45</p> <p>1 of power than the Joppa plant, UE ought to get it; is that 2 true? 3 A. It's just -- I can't really respond to that 4 without knowing more detail. 5 Q. Fair enough. 6 A. It seems like you're trying to get at maybe 7 the idea that somehow shareholders are going to be at risk 8 if UE is driven to some decision to stop taking power from 9 the plant. First of all, I think we'd want to get on the 10 table to what extent have already the retirement costs 11 been paid for through rates to know. 12 Q. Sure. 13 A. And that's one of the relevant things to 14 look at. 15 Q. And on that point, I agree to the extent 16 that retirement costs have been paid for and other costs 17 have been paid for, that takes risk off the table for the 18 owners of the Joppa plant. But to the extent that they 19 haven't been paid for, that puts risk on the owners, 20 right? I mean, it cuts both ways. To the extent they've 21 been paid for by the ratepayers, that does not -- 22 A. My recollection of the contract, and I 23 haven't looked at it again recently just for this 24 deposition, is that it did a very thorough job of 25 protecting the interests of the shareholders pretty much,</p>

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<p style="text-align: right;">Page 46</p> <p>1 you know, regardless of contingencies that arose. 2 Q. But you will agree there was a termination 3 provision that allowed the sponsoring parties to terminate 4 the provision with five years notice? 5 A. I just don't recall that provision. If 6 you've got it and you want me to review it, I can. 7 Q. That's okay. 8 A. It's a long contract. 9 Q. Sure. I know. 10 A. It's very long. I mean, I thought maybe 11 that book you had in front of you over there was perhaps 12 the contract. 13 Q. It is, but -- 14 A. It is. 15 Q. But I don't want to make you find a 16 provision in this long contract. We have to be at a local 17 public hearing at 5:30. 18 I asked Mr. Meyer a series of questions 19 about problems that could occur at the Joppa plant and 20 whether he thought UE and its ratepayers would be 21 responsible in those situations, and I'd like to ask you 22 those same questions. Like one example was, if there was 23 a personal injury lawsuit or say a class action of 24 personal injury lawsuits where plaintiffs won a big 25 judgment against EEInc based on the operation of the Joppa</p>	<p style="text-align: right;">Page 48</p> <p>1 Joppa plant, to what degree would AmerenUE and its 2 ratepayers be responsible. And the first thing I asked 3 about is if there was a personal injury lawsuit or a class 4 action personal injury lawsuit against EEInc based on the 5 operations of the Joppa plant, in your opinion, would 6 AmerenUE and its ratepayers be responsible for paying a 7 share of that judgment? 8 A. In my opinion, just referencing the 9 description of the power supply agreement in EEInc's 2004 10 FERC Form 1, there's a description of the power supply 11 agreement there where it says the sponsoring companies and 12 DOE are required to make monthly payments for power which 13 will enable the company to acquire all of Joppa station's 14 cost of service, which includes operating expenses, taxes 15 and interest, plus generate a prescribed rate of return on 16 equity capital of 15 percent net of federal income tax. 17 So I would -- I would think if that's -- 18 the statement in EEInc's FERC Form 1 is an accurate 19 description of their contract, that UE would be obligated 20 to pay those expenses that you brought up. 21 Q. And I guess to the extent to which the 22 ratepayers would have to finance that would depend on 23 whether the Public Service Commission passed those through 24 as costs that they should bear; is that true? 25 A. To the -- yeah, it would depend on the</p>
<p style="text-align: right;">Page 47</p> <p>1 plant, would you see AmerenUE and its ratepayers being 2 responsible for their share of that judgment? 3 A. While the contract is still in effect? 4 You're talking about, like, during -- while that specific 5 contract that's sitting in front of you is still in 6 effect? 7 Q. Well, try it both ways. Yes, first while 8 that contract was in effect. 9 A. Okay. Let me see the contract. This could 10 take a while. I mean, I probably -- maybe we should just 11 take a break for 30 minutes and I'll read through it. 12 Q. No. Let me ask you to put the contract 13 down. I'll change the question if it's going to take you 14 30 minutes to answer that one. 15 How about now, when there's no contract in 16 effect, do you think AmerenUE and its ratepayers should be 17 responsible? 18 A. There could be something in this contract 19 that pertains to that as well. I just don't know without 20 looking at it. 21 MR. BYRNE: Okay. Let's take a break. 22 (A BREAK WAS TAKEN.) 23 BY MR. BYRNE: 24 Q. I guess we're back on the record. Before 25 we broke, I was asking if some bad things happened to the</p>	<p style="text-align: right;">Page 49</p> <p>1 Commission -- the decision of the Commission and any 2 appeals to that decision. 3 Q. Okay. The second example is -- that I was 4 asking about is if the Joppa plant was required by 5 environmental laws to have a bunch of pollution control 6 equipment, high cost pollution control equipment installed 7 and EEInc had the obligation to put that equipment on, 8 would AmerenUE, and through AmerenUE its ratepayers, be 9 required to pay the cost of that equipment? 10 A. I would reference the same paragraph in the 11 2004 FERC Form 1 for EEInc as saying that, according to 12 that description of the contract, that UE would be 13 required to pay those costs. 14 Q. And for both of those things, though, to 15 the extent there's not a contract anymore, to the extent 16 the contract has expired, there's nothing that makes UE 17 responsible for those costs, is there? 18 A. I wouldn't know without doing an extensive 19 review of the contract, and perhaps any other documents 20 that might pertain to the relationship between Union 21 Electric and EEInc. 22 Q. Okay. And the third situation was if the 23 plant -- there was a catastrophic explosion at the plant 24 and the plant was completely out of service, would 25 AmerenUE and its ratepayers have to pay the costs caused</p>

13 (Pages 46 to 49)

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1 by that catastrophic event?
 2 A. And it's my understanding that the contract
 3 required for UE to pay for output from the Joppa plant
 4 even if it was incapable of generating energy, which I
 5 guess that's not right. They would be required to pay for
 6 the energy that they've contracted for, even if the plant
 7 was not capable of generating any output.
 8 Q. So they would still have to pay costs,
 9 monthly charges and things to EEInc, even if the plant
 10 blew up and wasn't there anymore?
 11 A. That's how I recall the contract, yeah.
 12 Q. And again, to the extent there's no
 13 contract, then your other answer applies, you'd have to
 14 look at --
 15 A. That's right.
 16 Q. You're not sure; you'd have to look at
 17 other things.
 18 Okay. I think I want to ask you about some
 19 other aspects of your testimony besides EEInc. And one
 20 aspect is, you are proposing a disallowance with respect
 21 to the Peno Creek plant; is that correct?
 22 A. That is correct.
 23 Q. And could you just briefly explain your
 24 disallowance?
 25 A. Sure. That subject was addressed beginning

1 KW, you know, and the size of the plant based on some
 2 other information was 188 megawatts, I came up with an
 3 original cost of 103,400,000.
 4 BY MR. BYRNE:
 5 Q. Okay. And --
 6 A. I'm not sure after going through that
 7 exactly what your question was from the start.
 8 Q. It was just, was that -- was the \$550 per
 9 kilowatt the actual cost?
 10 A. That's the pre-adjustment, yeah. Uh-huh.
 11 Yeah.
 12 Q. And then you are proposing to adjust it,
 13 and can you just tell me why? I'm sure it's in your
 14 testimony, but just to remind me.
 15 A. Really, it's because of, you know, kind of
 16 the circumstances leading up to the construction of this
 17 cost as I described in my testimony. Union Electric had
 18 gotten themselves into a situation of having a large
 19 capacity deficit, and it appears that capacity deficit was
 20 related to some strategic objectives at the Ameren Holding
 21 Company level of trying to create an unregulated
 22 generation company that would be a major regional player.
 23 And it appeared that the holding company, we had hopes of
 24 getting what's been referred to as Genco legislation
 25 passed in Missouri that would permit them to shift UE's

1 on page 29 of my testimony, and as it -- as it states at
 2 the top of page 30, Public Counsel recommends that the
 3 gross value of the plant reflected in UE's revenue
 4 requirement be reduced from the gross plant amount
 5 associated with the \$550 per KW cost, which I think has
 6 been -- which I refer in here to an all-inclusive
 7 construction cost, and it be adjusted downward to a
 8 revenue requirement associated with a plant cost of \$390
 9 per KW.
 10 Q. And my understanding is the \$550 per
 11 kilowatt charge is the actual cost that AmerenUE incurred
 12 in constructing the plant; is that correct?
 13 A. Yeah. Or at least it's -- let's see. I've
 14 got a schedule that goes through the various plant costs
 15 and, of course, provided an electronic copy of that. It's
 16 Attachment 7, Peno Creek. Let's see.
 17 MR. MILLS: And I believe some of the
 18 information on this schedule is highly confidential.
 19 THE WITNESS: Yeah.
 20 MR. MILLS: So I don't know if you're going
 21 to get into that or if you want to do something different
 22 in the deposition.
 23 MR. BYRNE: I was just asking if --
 24 THE WITNESS: Yeah. Based on information
 25 that I obtained that it was -- that the cost was 550 per

1 generation over to this unregulated Genco subsidiary.
 2 And during -- so there were -- it seemed
 3 like there were a period of -- was a period of time there
 4 around the year 2000, 2001, 1999, where UE was just on
 5 purpose letting this capacity deficit occur and increase
 6 year by year, and as they continued to just -- you know,
 7 Ameren was building generation, but building it all within
 8 the Genco -- and the specifics of that are described in my
 9 testimony -- and got themselves then into a situation
 10 where -- I think it was in the spring of 2001 when Ameren
 11 failed to get the Genco legislation through the Missouri
 12 Legislature. Right around that time we had statements
 13 from senior executives at Ameren I quoted in my testimony,
 14 including one from Paul Agathen, stating that there just
 15 wasn't going to be any generated regulation built.
 16 And all of a sudden UE decided, it seemed
 17 like, after the Genco legislation failed that we'd better
 18 build some generation in a hurry, partly because we don't
 19 really even have a reliable way to import power to serve
 20 this load. And so it seemed like there was -- that 550
 21 per KW figure is a figure that was pretty high and, in my
 22 view, probably caused by the accelerated construction
 23 schedule. And it was higher than the 390 per KW figure
 24 that UE had presented to the Missouri Commission as a
 25 benchmark for the cost of constructing combustion turbine

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1 capacity just a year or two earlier.
 2 Q. And so just maybe I'm paraphrasing, but is
 3 your disallowance basically what you're saying the cost
 4 of -- the additional cost caused by having to expedite the
 5 construction schedule because of the factors you
 6 discussed?
 7 A. Having to expedite the construction
 8 schedule and expediting the acquisition of CTs because you
 9 couldn't necessarily buy the most optimal CT and get it
 10 put in, you know, prior to June of the following year.
 11 Q. Okay. And did you do any kind of a
 12 construction audit for the pro-- for the Peno Creek
 13 project where you -- did you do any kind of a construction
 14 audit?
 15 A. I am in the process of trying to obtain
 16 some additional information. I've got some Data Requests
 17 on that subject. I think some of them are probably
 18 overdue at this point in time on this subject.
 19 Q. But I mean, yes or no, have you done a
 20 construction audit?
 21 A. Well, I don't know how you -- tell me what
 22 you mean by construction audit. I'm looking for
 23 information that's pertinent to this subject that Union
 24 Electric would have in its possession.
 25 Q. Well, I'm not sure what exactly defines a

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1 construction audit. How about have you ever been out to
 2 the Peno Creek site?
 3 A. No, I have not.
 4 Q. Have you ever -- so you've never physically
 5 examined any components of the Peno Creek plant?
 6 A. Haven't been to the site.
 7 Q. Okay. Have you ever looked at any of the,
 8 oh, like the test results when they initially test the
 9 machines to put them in service, did you look at any of
 10 that material?
 11 A. No.
 12 Q. Did you look at any of the contracts
 13 between AmerenUE and the suppliers of the CTGs or any of
 14 the other components at the Peno Creek site?
 15 A. If they are things related to those
 16 contracts that indicate cost overruns, things like that, I
 17 would expect that they would be -- that information should
 18 be provided to me shortly from UE.
 19 Q. But you haven't looked at it yet at least?
 20 A. I think -- like I said, I think some of
 21 those DRs are overdue at this point in time, and I can't
 22 look at it when it's not in my possession.
 23 Q. Sure. Have you done any kind of a
 24 comparison that's specific to the Peno Creek facilities of
 25 what you think the cost would be for those particular

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1 facilities or that particular project had there not been
 2 any hurrying of the project?
 3 A. I have general knowledge of what other --
 4 the costs that other Missouri utilities have been paying
 5 to install CT capacity during this time period, and, you
 6 know, subsequent to that time, and have never seen another
 7 Missouri utility with CT costs that high.
 8 Q. And you're comparing it to a \$390 per
 9 kilowatt figure?
 10 A. That's a Union Electric figure that I'm
 11 comparing it to, yes.
 12 Q. And where did that come from?
 13 A. It's in my testimony, I think. I can help
 14 you find it in there.
 15 Q. I guess it's out of EA --
 16 A. What page?
 17 Q. Page 30.
 18 A. Oh, page 30. Yes. And there's an
 19 attachment, I guess, that actually -- Attachment 9
 20 actually has that -- an excerpt from Ameren's application
 21 in that case where you'll see that figure on the second
 22 page, page 2 of Attachment 9, third line from the bottom,
 23 page 2 of that attachment.
 24 Q. And do you have -- other than Ameren UE
 25 providing it in this context, do you know what underlies

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1 that calculation, that \$390 per kilowatt calculation?
 2 A. I know that there is a DR response from
 3 Ameren -- or from Union Electric, rather, that states the
 4 basis for that.
 5 Q. But it's nothing -- as I understand it, and
 6 correct me if I'm wrong, the basis of it is nothing
 7 specific to the Peno Creek project, is it?
 8 A. Oh, no. It's just kind of like for this
 9 period of time, here's a good baseline for what you can
 10 install CT capacity for.
 11 Q. Can you tell me what specific aspects of
 12 the construction project were more costly because AmerenUE
 13 had to hurry the project?
 14 A. Well, first of all, Arrow derivatives are
 15 generally more costly than large-frame CTs. And it
 16 appears that the choice was made for that particular type
 17 of capacity because it's a type of capacity that can be
 18 installed quickly.
 19 Q. Okay. To your knowledge, there weren't
 20 other reasons for picking that kind of capacity, it was
 21 related to the needing to hurry the project?
 22 A. Yes.
 23 Q. Okay.
 24 A. Yeah.
 25 Q. And are you -- you're not a -- you're not

15 (Pages 54 to 57)

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<p style="text-align: right;">Page 58</p> <p>1 an engineer, are you? 2 A. No. 3 Q. Okay. And you haven't -- you've never 4 yourself participated in constructing a generating plant, 5 have you? 6 A. No. 7 Q. Okay. I'd like to also talk a little bit 8 about Pinckneyville and Kinmundy, which is also in that 9 piece of testimony starting on page 33. 10 A. 29, I guess that issue starts. But I might 11 have something on 33 that you want to talk about. 12 Q. 29's Peno, right? 13 A. I'm sorry. Okay. I'm sorry about that. 14 You're right. It is 33, yeah. 15 Q. My understanding is AmerenUE acquired 16 Pinckneyville and Kinmundy plants from AEG, its affiliate 17 and -- 18 A. Right. I think it states that in line 15, 19 page 33. 20 Q. Yep. And again, you're recommending a 21 disallowance of a portion of the cost of those facilities; 22 is that correct? 23 A. That's correct. 24 Q. And the cost that was actually paid by 25 UE to its affiliate, it looks like -- I'm looking on</p>	<p style="text-align: right;">Page 60</p> <p>1 checked market prices to, you know, actually put out an 2 RFP to see what they could buy capacity for from others. 3 Just those are, you know, especially if you 4 compare them to the recent acquisitions of the energy, the 5 facility at Audrain and the equivalent facilities at Goose 6 Creek and Raccoon Creek, they're obviously -- you know, 7 they're numbers that are at least twice as high as that 8 capacity that was acquired just, you know, a few years 9 later. 10 Q. But you would agree there are some 11 differences between Pinckneyville and Kinmundy and those 12 other plants in terms of where they're located on the 13 system, in some cases access to transmission, things like 14 that, there are differences amongst those plants, are 15 there not? 16 A. Well, there's concern with Pinckneyville 17 and Kinmundy, especially being in Illinois, now that UE 18 has sold off the Illinois side of its business. 19 Q. And there are also differences in the time 20 that the transaction was consummated, isn't that fair to 21 say, even if it's only a couple of years? 22 A. Well, there is a difference, but we know 23 that the owner of the Audrain plant offered to sell the 24 plant to Ameren at that time for a considerably lower 25 price than it was paying for Pinckneyville and Kinmundy.</p>
<p style="text-align: right;">Page 59</p> <p>1 page 35. It looks like the cost that you show is \$502 a 2 kilowatt for Pinckneyville and \$412 a kilowatt for 3 Kinmundy? 4 A. That's right. I think the sources of those 5 figures are documented on Attachment 7. 6 Q. Okay. And you know, what makes you think 7 that those prices are not appropriate? 8 A. Well, first of all, it is an affiliate 9 transaction, so it obviously is deserving of a higher 10 level of scrutiny because some, you know, one would 11 expect that especially where you have this background of 12 Ameren -- as I discussed with relation to the Peno Creek 13 situation, Ameren having this strategic initiative in the 14 late '90s, 2000 and 2001 to try and set up an unregulated 15 Genco and building quite a bit of capacity very quickly in 16 that Genco in an effort to try to be a regional player, 17 you know, apparently they overbuilt and had some capacity 18 to get rid of. 19 And so in that type of situation you want 20 to make sure that they're not selling that capacity, you 21 know, from a non-regulated affiliate to a regulated 22 affiliate at a price that's higher than what they could 23 have sold it in the market. And I don't think we got the 24 documentation that's required pursuant to the affiliate 25 rule to see that UE had searched out other capacity and</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. And are you aware of whether there were 2 transmission issues with NRG plants? 3 A. There have been some raised by UE. I don't 4 know that any, you know, persisted, were serious 5 considerations at the time the deal was actually closed. 6 And of course, even if there are transmission issues, part 7 of what that means is that if you think there's a year or 8 two delay being able to effectively utilize some capacity, 9 then you ought to be assessing the cost of some short-term 10 power supplies in order to use as a bridge to -- when 11 you -- a new asset might be fully capable of serving a 12 load. 13 And again, it's just these affiliate 14 issues. I don't think there's been any -- you know, I 15 just don't think there was compliance. I've reviewed, you 16 know, the CAM filings that have been made by Union 17 Electric and, as my testimony states, the documentation 18 that's required for this kind of transaction just wasn't 19 provided. So it's sort of incumbent on me trying to make 20 sure that the -- trying to make sure that the Commission 21 has the information they need to make decisions that are 22 consistent with the public interest that I provide some 23 information to them to allow them to do that. 24 Q. But it's difficult, is it not, given that 25 there's relatively few comparable and maybe no exactly</p>

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1 comparable facilities?

2 A. Well, you know, if that's an argument the

3 utility wanted to make, then they should have requested,

4 of course, a waiver from the affiliate transaction rule so

5 that they don't have to comply with certain parts of it,

6 and I am not a -- I'm pretty certain there have been no

7 waiver requests made by Union Electric.

8 Q. But the Commission would have the power to

9 authorize AmerenUE to acquire facilities from its

10 affiliate at net book value, would it not?

11 A. Have the power to authorize them? I don't

12 know what you mean by authorize them. You mean include in

13 rates for ratepayers, that kind of authorization?

14 Q. Both. They could authorize AmerenUE to do

15 it, and they could authorize to be included in rates,

16 could they not? Don't they have that power?

17 A. I'm --

18 Q. If they choose to exercise it?

19 A. I just am not familiar with cases where

20 they've -- I guess where they authorize you to -- a

21 company to buy something from their affiliates.

22 Q. I mean, don't they have the power to do

23 that?

24 A. Well, I think if they do have the power to

25 do that, which I'm not sure, you'd have to reference to me

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1 exactly how you mean that, but if they do have the power

2 to do that, they have a framework set up under the

3 affiliate transaction rule that -- where they would get

4 information that would be useful in making at least a

5 decision about the ratemaking aspects of a transaction

6 like this.

7 Q. Well, one way that they have the power to

8 do it, I think -- correct me if you disagree -- is they

9 can issue a waiver under the affiliate transaction rule.

10 Don't they have the power to do that?

11 A. I don't know they have the power to issue a

12 waiver of their own initiation. I think there would have

13 to be some application for it from the utility at least.

14 I don't know. Am I missing something? Has there been

15 some application for a waiver made by UE that you're aware

16 of? Is that what you're getting at?

17 Q. No, that isn't what I'm getting at.

18 A. Okay.

19 Q. Have you done any analysis of the

20 differences between the plants that you looked at, meaning

21 Raccoon Creek, Goose Creek and NRG and the Pinckneyville

22 and Kimmunity units, have you done any examination, made a

23 list of any differences there might be amongst those

24 plants?

25 A. No. I -- I mean, other than looking at

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1 just the costs per KW of some different acquisition

2 prices, I'm --

3 Q. Let me ask you, I mean, isn't it true --

4 maybe I'm going over ground we already covered, but isn't

5 it true they're in different geographic areas? I mean,

6 that's a difference between all these plants, right?

7 A. Whether that, you know, has a substantial

8 impact or not, you've got to look at it, I think, in light

9 of just how UE operates its system under the MISO Day 2

10 markets.

11 Q. Let me ask you first, is it a difference?

12 Would you agree it's a difference that they're all located

13 in geographically different areas?

14 A. They're not all stacked on top of each

15 other, so in that sense, they're -- they've got different

16 longitude and latitude, yes.

17 Q. And some of them are kind of far apart,

18 aren't they? I mean, what are the farthest apart ones?

19 Raccoon and Goose Creek are in the middle of Illinois; is

20 that right?

21 A. Yeah. I mean --

22 Q. NRG's --

23 A. I'm assuming it's not such a big difference

24 that it was, you know, an imprudent decision by UE to

25 acquire those plants, if that's what you're implying.

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1 Q. No, I just -- I guess I'm asking you if you

2 agree that that's a difference, and then if you examined

3 that difference to see how it might affect your comparison

4 of the cost per kilowatt amongst the plants?

5 A. Okay. I actually didn't approach it so

6 much from that point of view. I approached it from that

7 the affiliate rule requires a utility, when it makes

8 transactions like this, you know, to go out and document

9 the fair market price of the -- of the units that it's

10 acquiring, and that wasn't done in this situation. And so

11 I am trying to basically provide the Commission with some

12 information to utilize to make up for Union Electric's

13 failure to provide the information that it's required to

14 provide under the affiliate transaction rule.

15 Q. And so because of that, it would be fair to

16 say you did not take a look at all the differences amongst

17 the plants and try to figure out what, if any, impact

18 those differences might have on the cost per kilowatt for

19 each plant?

20 A. No. Because, I mean, from my point of

21 view, that's what's written in the affiliate transaction

22 rule, is that there is a -- there's a requirement for the

23 utility, they have the burden of getting that information

24 under the rule. They're required to provide it to the

25 Commission. For instance, if you'll look at Sections

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 3A and 3B of 2 4 CSR 240-20.015, you've got Section A saying that when a 3 regulated electrical corporation purchases information or 4 assets, goods or services from an affiliated entity 5 regulated like a corporation, shall obtain competitive 6 bids for such information, assets, goods or services or 7 demonstrate why competitive bids were neither necessary 8 nor appropriate. 9 Now, as part of Union Electric's affiliate 10 transaction filing with this Commission, we don't have 11 them providing either competitive bids or an explanation 12 of why those bids weren't necessary or appropriate. 13 That's the point on Subsection A there. 14 And B, in transactions involving the 15 receipt -- the purchase or receipt of information, assets, 16 goods or services by a regulated electrical corporation 17 from an affiliated entity, the regulated electrical 18 corporation shall document both the fair market price of 19 such information, assets, goods and services and the fully 20 distributed cost to the regulated electrical corporation 21 to produce those goods or services for itself. 22 So that provision there, Subsection B, says 23 that, you know, Union Electric in association with this 24 transaction, in order to comply with the affiliate rule 25 should have documented the fair market price of these</p>	<p style="text-align: right;">Page 68</p> <p>1 in the summer of 2002. 2 And so I -- I view their letter as just 3 sort of being an initial offer to start negotiations. It 4 wasn't like their lowest price that they'd sell it at, 5 it doesn't seem, and they made this offer of \$200 million 6 on August 15th, 2002, and take \$200 million divided by 7 640 megawatts and you get 312.50 per KW. 8 Q. And back to my question, beyond those three 9 plants, and I understand you looked two ways at the NRG 10 plant, but you didn't look at any other plants? 11 A. Well, other than that, it's just my general 12 knowledge of what, as I mentioned, I think, with respect 13 to Penon Creek, what other Missouri utilities have been 14 building and acquiring CT capacity for. And these 15 purchase prices are generally, you know, if not above the 16 range of any others, they're -- I guess I'm not aware of 17 any off the top of my head that are as high as, for 18 instance, the price associated with Pinckneyville, 502. 19 Q. Okay. Let me ask just a couple of 20 questions about the FAC. I don't have much on this. I'll 21 tell you what, first, before I do, let me look on page 9 22 of that same piece of testimony that we've been talking 23 about. Back to the other one. Sorry. 24 A. That's all right. 25 Q. And this is the Metro East compliance</p>
<p style="text-align: right;">Page 67</p> <p>1 assets. And again, I've examined Union Electric's 2 filings. It wasn't there. And Union Electric also should 3 have documented the fully distributed cost for Union 4 Electric to construct the asset itself. And again, that, 5 you know, that information has not been provided. 6 Q. Okay. And that's why -- and you didn't 7 feel it was incumbent on you to be doing this examination 8 of different characteristics of different plants. In your 9 view it was incumbent on AmerenUE to do that; is that 10 correct? 11 A. No question about that. 12 Q. Okay. Did you look at any other plants 13 besides those three, the Raccoon Creek, Goose Creek and 14 NRG at all? 15 A. I just -- I think referenced the -- oh, you 16 already -- let's see. I reference NRG in two ways, both 17 in terms of the actual price that Union Electric 18 ultimately purchased those plants for, and also in terms 19 of the offer price that NRG made for selling those -- the 20 Audrain plant to Union Electric at an earlier date. And I 21 think attached to my testimony is a -- is the offer letter 22 from NRG that's Attachment 8 to my testimony. It's a 23 six-page attachment that includes their -- you know, 24 evidently they made an offer at the request of Union 25 Electric to provide a price that they'd sell the asset for</p>	<p style="text-align: right;">Page 69</p> <p>1 issue. 2 A. Okay. 3 Q. And I guess my question to you is -- and I 4 know you've alleged that UE -- you believe that UE did not 5 satisfy certain conditions in the Metro East case, but let 6 me ask you, are you aware of any assets or liabilities 7 that AmerenUE was supposed to transfer with the Metro East 8 transfer that it did not transfer? Are you aware of any? 9 A. No. But, you know, I guess as I've stated 10 in my testimony, UE's response to Data Requests leaves 11 some doubt in my mind as to whether they're confident that 12 they've identified every asset that should have been 13 transferred. 14 Q. Okay. That's what I thought. I just 15 wanted to verify. Couple quick ones on the FAC. Let me 16 ask a general question. I mean, my understanding is that 17 in general the Office of Public Counsel in general and you 18 in particular are not big fans of fuel adjustment clauses; 19 is that fair to say? 20 A. I think, you know, it would take -- they're 21 really only suitable under some rather unique 22 circumstances. 23 Q. I mean, one of those circumstances that's 24 in your testimony -- I'm looking at page 7 of the FAC 25 testimony.</p>

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1 A. Okay.

2 Q. And you talk about -- and I know I've heard
3 this in other contexts, too. And I'm looking at the
4 second bullet in that -- in those bullets, and you talk
5 about in a situation where the public utility has some
6 financial vulnerability, in other words, its financial
7 health is at risk, that might be an appropriate use of a
8 fuel adjustment clause. Is that a fair summary or --

9 A. Well, that's -- that's looking at it sort
10 of at a one unique circumstance by one unique
11 circumstance, and so in terms of just -- I think it's
12 probably more important, my general recommendation really
13 is more laid out on page 9 where I talk about you need to
14 assess the combined impact of a number of factors. And
15 it's -- so I think it's the combined impact of those
16 factors, and then the unique circumstances that might --
17 you know, of a particular utility or particular market
18 situation.

19 Q. Do you think financially healthy utilities
20 should be able to get fuel adjustment clauses?

21 A. Well, I think whether or not they should be
22 able to get one, I guess I would think that they are --
23 it's less likely to be consistent with the public interest
24 for a financially healthy utility to get one, especially
25 if they don't have a really large vulnerability to some of

1 adjustment clause to electric utilities or for that matter
2 any kind of utility?

3 A. Well, I think it really needs to be looked
4 at on a case-by-case situation as to whether or not it's
5 going to be really consistent with the public interest,
6 and part of that is, like in this particular case, I'd say
7 look and see, is the utility offering any explicit
8 downward adjustment to their return on equity if they do
9 get the fuel adjustment clause versus the ROE that they
10 should get without one.

11 And we haven't seen Union Electric come in
12 with that kind of a proposal that would make you want to
13 give it some -- a little bit closer scrutiny of saying,
14 well, is one of these factors that you want to weigh
15 perhaps, you know, that could be favorable to ratepayers
16 going to be enough to offset these perverse incentives
17 that go along with a fuel adjustment clause. And maybe
18 also look at, is there some sort of, you know, incentive
19 regulation part of a proposal that's going to be where the
20 utility would still, to some extent, retain the incentive
21 that they have under regulatory lag to try and minimize
22 fuel costs?

23 I mean, it's just sort of a -- you have to
24 look at the unique circumstances of the utility, and I
25 think you need to look at the specifics of the proposal to

1 the costs that are flowing through a fuel adjustment
2 clause.

3 But again, whether or not even a
4 financially healthy one should get one, I think if you
5 look at the balance of different factors that I highlight
6 there on page 9, such as just what's the decreased ROE,
7 that might be somehow a way for ratepayers to share in,
8 you know, the results of the utility having a fuel
9 adjustment clause.

10 And really -- a really important thing is
11 just, you know, sort of assess the tradeoffs between then,
12 okay, maybe ratepayers are going to be paying a lower ROE,
13 but what's the risk or the likelihood that the fuel costs
14 that get passed through are going to be higher than the
15 fuel costs would be absent the regulatory lag incentive to
16 minimize costs, you know, sort of netting those things out
17 to see whether this sort of thing is in the public
18 interest.

19 Q. Would it be fair to say that you don't
20 think, in the normal course of events, fuel adjustment
21 clauses should be ordered sort of as a matter of course
22 for utilities, it would have to be some sort of unique or
23 unusual circumstances that would justify having them, and
24 some of them you've just talked about, as opposed to just
25 in the ordinary course of business providing a fuel

1 see how -- what the net impact is likely to be for
2 consumers.

3 Q. And I guess for AmerenUE, you're saying
4 neither apply, there are neither the unique circumstances
5 for -- that would justify an FAC nor are there provisions
6 within the FAC that you think would make it acceptable?

7 A. Yeah, I think that's a fair
8 characterization.

9 Q. Are there any -- I guess there's four
10 electric utilities in Missouri. Are there any of the four
11 electric utilities in Missouri that you think should have
12 a fuel adjustment clause?

13 A. Again, you know, I mean, I could say
14 whether or not they might be better candidates for a fuel
15 adjustment clause in terms of the public interest
16 implications. I could say that, just perhaps based on
17 their -- some of them their financial situations and their
18 fuel mix for -- you know, for generation. But I wouldn't
19 want to make an assessment just on that alone. I would
20 want to look at the specifics of a proposed fuel clause.

21 Q. And you've never recommended a fuel
22 adjustment clause for any of them, have you?

23 A. I've never had an opportunity to make a
24 recommendation one way or the other prior to the testimony
25 that we're discussing here today.

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1 Q. Okay. And was the Office of Public Counsel
2 supportive of Senate Bill 179, the statute that created
3 opportunity for fuel adjustment clauses?
4 A. I don't know how you gauge support. It's
5 my understanding that the Office of Public Counsel did not
6 testify against the bill.
7 Q. They didn't testify for it, though, either?
8 A. They didn't testify about it. Yeah, did
9 not testify.
10 Q. Were you personally in favor of Senate
11 Bill 179 or against it? Do you think it's a good piece of
12 legislation or bad piece of legislation?
13 A. I guess as a whole, you know, if you're
14 going to include the environmental riders and also the
15 special weather and conservation adjustments for gas
16 utilities, I mean, I specifically found this conservation
17 adjustment for gas utilities to be objectionable, I think,
18 as did many of the legislators after they realized what
19 they passed.
20 I wasn't really involved in the debate,
21 though, Tom. I was never -- I understand that your
22 company was probably consistently at the table in terms of
23 negotiator and a proponent of this, and my understanding
24 is that our office wasn't really invited to be at the
25 table, and so --

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1 Q. Didn't have an opportunity to weigh in?
2 A. -- people weren't really asking me my views
3 because it didn't seem like anybody really cared about our
4 input at the time.
5 Q. Sure. And you haven't -- to your
6 knowledge, there's no -- you guys haven't gone on record
7 since then against or in favor of it?
8 A. Nothing that comes to mind. It could be
9 that we have, but I don't know.
10 Q. Okay.
11 A. Nothing that comes to mind.
12 MR. BYRNE: Fair enough. I don't think I
13 have any additional questions. Thank you very much,
14 Mr. Kind.
15 MR. MILLS: I'm just going to ask you one
16 clarifying question.
17 CROSS-EXAMINATION BY MR. MILLS:
18 Q. You were talking about a quote from Paul
19 Agathen on page 33 of your testimony. You used the phrase
20 generated regulation. Is it possible that you meant to
21 say regulated generation?
22 A. I would suspect that's right. What line
23 was that on?
24 Q. That phrase is not actually in there, but
25 you were referring to the --

Page 76

1 A. Oh, yes.
2 Q. You used the phrase generated regulation,
3 and I believe you meant to say regulated generation.
4 A. Yeah, I definitely did, if that's what I
5 stated here, yes.
6 MR. MILLS: That's all I have.
7 (PRESENTMENT WAIVED; SIGNATURE REQUESTED.)
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Page 77

1 CERTIFICATE OF REPORTER
2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)
5
6 I, KELLENE K. FEDDERSEN, RPR, CSR, CCR, and
7 Notary Public within and for the State of Missouri, do
8 hereby certify that the witness whose testimony appears in
9 the foregoing deposition was duly sworn by me; that the
10 testimony of said witness was taken by me to the best of
11 my ability and thereafter reduced to typewriting under my
12 direction; that I am neither counsel for, related to, nor
13 employed by any of the parties to the action to which this
14 deposition was taken, and further that I am not a relative
15 or employee of any attorney or counsel employed by the
16 parties thereto, nor financially or otherwise interested
17 in the outcome of the action.
18
19 KELLENE K. FEDDERSEN, RPR, CSR, CCR
20 Notary Public, State of Missouri
21 (Commissioned in Cole County)
22 My commission expires 3/28/09.
23
24
25

20 (Pages 74 to 77)

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1 SIGNATURE PAGE
2 STATE OF MISSOURI)
) ss.
3 COUNTY OF COLE)
4
5 I, Ryan Kind, do hereby certify:
6 That I have read the foregoing deposition;
7 That I have made such changes in form and/or
8 substance to the deposition as might be necessary to
9 render the same true and correct;
10 That having made such changes thereon, I hereby
11 subscribe my name to the deposition.
12 I declare under penalty of perjury that the
13 foregoing is true and correct.
14 Executed the ____ day of _____, 2007, at
15 _____
16
17 _____
 RYAN KIND
18
19 Notary Public:
20 My commission expires:
21 _____
22
23 KF/Ryan Kind
24 Re: AmerenUE
25

Page 80

1 Midwest Litigation Services
2 3432 West Truman Boulevard, Suite 207
3 Jefferson City, MO 65109
4 Phone (573)636-7551 * Fax (573)636-9055
5 January 14, 2007
6 Lewis Mills
7 Public Counsel
8 P.O. Box 2230
9 200 Madison Street, Suite 650
10 Jefferson City, MO 65102-2230
11 In Re: AmerenUE
12 Dear Mr. Mills:
13 Please find enclosed your copy of the deposition of Ryan
14 Kind taken on January 11, 2007, in the above-referenced
15 case. Also enclosed is the original signature page and
16 errata sheet.
17 Please have the witness read your copy of the transcript,
18 indicate any changes and/or corrections desired on the
19 errata sheet and sign the signature page before a notary
20 public.
21 Please return the errata sheet and notarized signature
22 page to Mr. Byrne for filing prior to trial date.
23 Thank you for your attention to this matter.
24 Sincerely,
25 Kellene K. Feddersen, RPR, CSR, CCR

Enclosure
cc: Thomas Byrne
Rick Chamberlain

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1 ERRATA SHEET
2 Witness: Ryan Kind
3 In Re: AmerenUE
4
5 Upon reading the deposition and before subscribing
6 thereto, the deponent indicated the following changes
7 should be made:
8
9 Page Line Should read:
10 Reason assigned for change:
11 Page Line Should read:
12 Reason assigned for change:
13 Page Line Should read:
14 Reason assigned for change:
15 Page Line Should read:
16 Reason assigned for change:
17 Page Line Should read:
18 Reason assigned for change:
19 Page Line Should read:
20 Reason assigned for change:
21 Page Line Should read:
22 Reason assigned for change:
23 Page Line Should read:
24 Reason assigned for change:
25 Reporter: Kellene K. Feddersen, RPR, CSR, CCR

21 (Pages 78 to 80)

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1 SIGNATURE PAGE

2 STATE OF MISSOURI)
) ss.

3 COUNTY OF COLE)

4

5 I, Ryan Kind, do hereby certify:

6 That I have read the foregoing deposition;

7 That I have made such changes in form and/or
8 substance to the deposition as might be necessary to
9 render the same true and correct;


10 That having made such changes thereon, I hereby
11 subscribe my name to the deposition.

12 I declare under penalty of perjury that the
13 foregoing is true and correct.

14 Executed the 6th day of March, 2007, at
15 4:45 p.m.

16 
17 RYAN KIND

18

19 Notary Public:

My commission expires:
20 8/10/2009



JERENE A. BUCKMAN
My Commission Expires
August 10, 2009
Cole County
Commission #05754038

21

22

23

KF/Ryan Kind

24 Re: AmerenUE

25

1 ERRATA SHEET

2 Witness: Ryan Kind
 3 In Re: AmerenUE

4 Upon reading the deposition and before subscribing
 5 thereto, the deponent indicated the following changes
 6 should be made:

7 Page 40 Line 3 Should read: operations

8 Reason assigned for change: typo

9 Page 53 Line 15 Should read: regulated generation

10 Reason assigned for change: typo

11 Page 57 Line 14 Should read: aero

12 Reason assigned for change: typo

13 Page Line Should read:

14 Reason assigned for change:

15 Page Line Should read:

16 Reason assigned for change:

17 Page Line Should read:

18 Reason assigned for change:

19 Page Line Should read:

20 Reason assigned for change:

21 Page Line Should read:

22 Reason assigned for change:

23 Page Line Should read:

24 Reason assigned for change:

25 Page Line Should read:

Reporter: Kellene K. Feddersen, RPR, CSR, CCR