

1 that. I don't personally keep any notes.

2 Q So you don't know for a fact that none of the senior  
3 team members ever take notes.

4 A No, I don't know.

5 Q In terms of the recent Illinois auctions, why did Union  
6 Electric decide not to bid into those auctions?

7 A My understanding is it was a question of the riskiness  
8 of that market and that there were other markets more appropriate  
9 for UE to sell its excess generation into when it had excess  
10 generation.

11 Q Which of the Ameren affiliate entities did decide to  
12 participate in those auctions?

13 A Ameren Energy Marketing.

14 Q Is that the only one?

15 A Yes, it is.

16 Q Who or what group at Union Electric analysis that  
17 resulted in the decision not to participate?

18 A It would have been done I think in Ameren Energy.

19 Q And so Ameren Energy did analysis that resulted in  
20 Union Electric's decision not to participate?

21 A I think that that's the case, Lewis, although it might  
22 have involved corporate planning as well.

23 Q I'm going to jump to another topic. In 2001 the  
24 headline of February Ameren Journal reads generator results  
25 generating business plan enter second year. Can you tell me at

1 that time what the Ameren Generating business plan was?

2 A In 2001 no, I can't recall but I would -- because I  
3 don't remember exact dates but that may have been at a time that  
4 we were planning the expansion of combustion turbine capacity and  
5 Ameren Generating because I think our turbines were built in 2001  
6 and 2002 primarily.

7 Q In general was the creation of the generating business  
8 plan related to the creation of the Ameren generation business  
9 line?

10 A No, I don't think that those are related. When you say  
11 generation plan what I relate that to is our unregulated  
12 generation business whereas the generation business line that  
13 refers to just how we manage the operation of the generating  
14 plants in the company and at that time or in recent years at  
15 least operation of the generating plants has been managed as a  
16 business plan.

17 That's one of the things that we changed effective the  
18 1st of January of this year because I felt it would be better to  
19 separate the regulated operations from the unregulated operations  
20 and to manage those separately to keep it a lot cleaner.

21 Q Okay. That brings another topic I want to discuss with  
22 you because this just came up with Mr. Naslund and I'm not sure I  
23 was clear on what the difference was. Are the business segments  
24 now referred to as business segments rather than business lines?

25 A The term business segment I think is really an

1 accounting term that is used by the SEC and that we now report  
2 financial results of our businesses in terms of three separate  
3 business segments, but the business segments are different than  
4 business lines as they were organized in the past. The business  
5 lines were energy delivery across the regulated and unregulated  
6 companies and generation across the regulated and unregulated  
7 companies and nuclear as a separate business line.

8 The business segments are Union Electric, our three  
9 Illinois distribution companies as a single business segment and  
10 our unregulated generation business as a business segment.

11 Q So the business lines and business segments are a way  
12 of dividing the whole into different subsets and there may be  
13 some overlap but they're not entire subsets.

14 A Yeah. They're different ways of managing and they're  
15 very different structures.

16 Q Okay. So those before January 1, 2007 and after  
17 January 1, 2007 the term business line is still valid although  
18 the business lines themselves have been redefined. Is that  
19 correct?

20 A Well, I don't even use the term business line anymore.  
21 I think of them as just businesses and when I think of them in  
22 terms of how we report to the SEC they're business segments.

23 Q Going back to the business lines in the past, is it  
24 correct that within a few years after completing the UE CIPS  
25 merger that Ameren was moving towards organizing its operations

1 along business lines structures?

2 A I'm sorry. Going back to when?

3 Q After the UE CIPS merger.

4 A That's about when it was done.

5 Q And what were the business lines that were part of the  
6 structure at that point?

7 A A generation business line, an energy delivery business  
8 line and a nuclear business line and the administrative side.  
9 Business and corporate service I guess would be considered a  
10 separate business line.

11 Q Would financial reporting be done by those business  
12 lines?

13 A Not any form of official financial reporting. There  
14 were some reports used internally within the company to simulate  
15 financial results if those business lines had been organized by  
16 businesses.

17 Q And did you review those internal reports?

18 A Yes, I did.

19 Q Was there a similar business line structure in place up  
20 to the end of 2006?

21 A Yes, there was.

22 Q Did it end when you did the reorganization that took  
23 effect at the end of 2006?

24 A Yes.

25 Q How was that decision made to end that structure?

1           A     Well, it was made by me based on my feeling that this  
2     would be a more effective way to manage the company. A similar  
3     way, a more focused way, a way that separates the regulated and  
4     unregulated interests more cleanly.

5           Q     Was there any sort of a quantitative cost benefit  
6     analysis done?

7           A     Not that I can recall. If there was one I didn't see  
8     it.

9           Q     In terms of the business line as it existed up until  
10    the end of last year, what was your role in the generation  
11    business line and if it changed through the years, please explain  
12    that to me.

13          A     Well, our chief operating officer Tom Voss managed the  
14    generation business line and reported to me. I guess though I  
15    wouldn't characterize my role any differently than it is now  
16    which is that I'm ultimately responsible for the operations of  
17    the whole company and for the results of the company.

18          Q     Up until the end of 2006, was there a vice president of  
19    generation for the Ameren Corporation?

20          A     Yes, there was. Alan Kelly was the senior vice  
21    president of generation for Ameren.

22          Q     Mr. Voss would have been president?

23          A     Well, Tom's title for Ameren was executive vice  
24    president and chief operating officer but he also served though  
25    as president of Ameren Energy Resources Company.

1 Q Is there still a vice president of generation?

2 A There is a vice president of generation for AmerenUE  
3 and there's a vice president of generation for the unregulated  
4 generating company.

5 Q Is there any longer a vice president of generation for  
6 Ameren Corporation?

7 A Not for Ameren overall, no.

8 Q Did Ameren generation business line ever crate  
9 generation expansion plans that considered the combined current  
10 and future loads of UE and CIPS and the combining existing  
11 generation facilities of UE and CIPS?

12 A No, not that I'm aware of.

13 Q In terms of the recent reorganization and then I'm  
14 speaking about the reorganization that took effect at the  
15 beginning of this month, does that lead to a greater autonomy in  
16 the decision making process at Union Electric?

17 A Yes, it does.

18 Q In what ways is there more autonomy at Union Electric  
19 as a result of that reorganization?

20 A Well, I think of it more in terms of focus in that one  
21 person is focused on the operations of Union Electric and solely  
22 on the operations of Union Electric and as an integrated company,  
23 that person has responsibility for all elements of the business  
24 and that's Tom Voss generation transmission and distribution and  
25 in the past when that was managed by business lines, then Tom

1 would have looked at it as a single business rather than looking  
2 at just Union Electric as just an integrated business.

3 So it results in a different way of looking at the  
4 business and again, I would characterize it more as more focused  
5 but more autonomous in some senses as well and for instance in a  
6 storm, Tom would not make the decision to draw on resources of  
7 the whole company. He would only draw on the resources of Union  
8 Electric Company and the other company would be highly encouraged  
9 to help in the storm but would not be under Tom's direct control.

10 Q Okay. I wanted in terms of generation resource  
11 acquisition. What sort of autonomy will Mr. Voss have with those  
12 decisions?

13 A Well, Tom would make recommendations to me and the  
14 process would work as we've described it earlier with analysis  
15 and recommendations developed by corporate planning and then  
16 discussed probably between corporate planning and Tom but also  
17 discussed at the senior level. Decisions that would be made  
18 would follow to the board of directors but that kind of decision  
19 though would be no different than it was before because even  
20 though generation was managed as a business line, we recognized  
21 there was a substantial difference between requirements for a  
22 regulating business and requirements for an unregulated business  
23 and the decision process was a separate process.

24 Q Now, Mr. Rainwater, I'm just going to one final series  
25 of questions. If you're okay to go without a break, I should be

1 done in just a couple of minutes.

2 A Okay. Let's go.

3 Q The questions I'm going to ask you have to do with the  
4 Missouri Public Service Commission affiliate transaction rules.

5 A Okay.

6 Q As president and CEO of UE up until the end of 2006,  
7 did you have a responsibility to make sure that UE operated in a  
8 manner that was consistent with those rules?

9 A Yes, I did.

10 Q Isn't it correct that the affiliate transaction rules  
11 do apply to Union Electric Company?

12 A Yes, they do.

13 Q Do you know what event and the time frame that caused  
14 Union Electric to be subject to those rules?

15 MR. LOWERY: Lewis, I'm just going to make a  
16 standing objection to the extent you're asking  
17 Mr. Rainwater to draw a legal conclusion about what the  
18 rules mean. He can express what he thinks he knows but  
19 he can't give an opinion about what the legal effect of  
20 those are. Subject to that, Gary, you can answer his  
21 question.

22 THE WITNESS: Sorry. What was the question again?

23 Q (By Mr. Mills) The question was do you  
24 know what event and the time frame that caused Union  
25 Electric to be subject to those rules.



1 A No, I don't.

2 Q Now when you were president and CEO of Union Electric,  
3 who of Union Electric was responsible for reporting to you about  
4 the compliance with the affiliate transactions?

5 A Lewis, I think that would have been our general  
6 counsel.

7 Q Okay. And who would have been responsible for the  
8 affiliate filings?

9 A I don't know. Didn't know there was an annual filing  
10 requirement.

11 Q Okay. Who had responsibility for education and  
12 training about the affiliate transaction rule?

13 A I don't know.

14 MR. MILLS: Those are all the questions that I  
15 have and I appreciate your patience. This went on  
16 longer than I thought it was going to and probably  
17 longer than you thought it was going to. Thank you  
18 very much.

19 THE WITNESS: Okay. Thank you.

20 MR. LOWERY: Do you have any estimate about how  
21 long, Doug?

22 MR. MICHEEL: I don't but I would just like to  
23 take a break for like five minutes just to use the  
24 facilities.

25 THE WITNESS: That would be great.

1 (A break was taken)

2 EXAMINATION

3 BY MR. MICHEEL:

4 Q Mr. Rainwater, my name is Doug Micheel. I'm from the  
5 Office of the Attorney General. I'm representing the State in  
6 this matter.

7 A Okay.

8 Q I've just got some questions for you. Early on in the  
9 deposition when Mr. Dottheim asked you about EE, Inc. policy I  
10 think you said back in the early '80s you were in the corporate  
11 planning department.

12 A That's correct.

13 Q And as part of your duties in the corporate planning  
14 department I believe you said that you helped negotiate some of  
15 the power agreements related to the Joppa plant, the EE, Inc.  
16 plant.

17 A Yes, I did.

18 Q And specifically did you help negotiate the 1997  
19 purchase power agreement?

20 A No. That would have been in probably the 1987  
21 modification No. 11 that goes back way before the '97 changes.

22 Q I'm sorry. If I said '97 I meant did you help  
23 negotiate the 1987 agreement.

24 A Yes, I did.

25 Q And so you're familiar with that agreement.

1           A     Yeah, although it was 20 years ago. I would say I was  
2 much more familiar with it 20 years ago than I am today.

3           Q     Well, let me ask you given the fact that you were one  
4 of the individuals at AmerenUE that worked on the 1987 purchase  
5 power agreement.

6           A     That's correct.

7           Q     And that's the agreement that recently expired here in  
8 2005.

9           A     That's correct.

10          Q     Can you explain to me why there was an 18 year term to  
11 that agreement?

12          A     That's the term that was granted by the Department of  
13 Energy so we really tailored the contract to the Department of  
14 Energy's desire to secure power for as long as possible.

15          Q     Let me hand you a copy of that power supply agreement  
16 and unfortunately I didn't think you had an answer to that  
17 question that you negotiated it so I don't have another copy with  
18 me, but let me ask you if you could turn to section 1.1 of that  
19 agreement.

20          A     Okay. 1.01?

21          Q     Yes. I'm sorry, sir. 1.01.

22          A     Okay.

23          Q     And there it seems to define the Joppa plant.

24          A     Yes, it does.

25          Q     What assets make up the Joppa plant, if you know?

1           A     Well, they're described in this section but generally  
2     it's the six generating units at Joppa plus the transmission  
3     facilities to get that power to the high voltage system.

4           Q     Going further down on section 1.02, there's a section  
5     entitled Facilities to be Provided by Sponsoring Companies and my  
6     question to you is what facilities did Union Electric provide?

7           A     Union Electric provided an interconnection point to tie  
8     the Joppa transmission system, the Joppa plant into the high  
9     voltage transmission system.

10          Q     And where was that interconnection point?

11          A     My recall is that it was a -- well, it's a number of  
12     points. It's a connection on a 345 CV line that joins near the  
13     Joppa plant as well as connections at other voltages.

14          Q     And was that interconnection point in Union Electric's  
15     rate base?

16          A     Yes, it would have been.

17          Q     Other than that interconnection point, were there any  
18     other facilities provided by Union Electric?

19          A     Not that I can recall.

20          Q     Was that interconnection point or is that  
21     interconnection point still an asset on UE books as plant and  
22     service?

23          A     Yes, it would be.

24          Q     Is that interconnection point necessary for energy to  
25     flow out of the Joppa plant?

1           A     Yes, it would -- well, that interconnection point as  
2     well as interconnection points with other companies. You have to  
3     get the power to the transmission system in order to get the  
4     power to customers.

5           Q     Section 1.3 talks about additional transmission  
6     facilities provided by the companies. Are those additional  
7     facilities listed in section 1.03 different from the facilities  
8     listed in section 1.02?

9           A     Well, let me compare. I'll tell you if I can see a  
10    difference. It looks like 1.03 refers to additional transmission  
11    provided over time.

12          Q     Was any of that additional transmission provided over  
13    time provided by Union Electric?

14          A     Anything owned by Union Electric would have been  
15    provided by Union Electric.

16          Q     If you go to Page 5 of that agreement section 2.03  
17    sponsoring participants ratios. It indicates there that UE and  
18    I'm assuming that's Union electric has a 40 percent share and if  
19    you know, have those been consistent? Has UE had a consistent  
20    40 percent share since 1950?

21          A     A 40 percent share of the power supply. Union Electric  
22    had owned 40 percent of the EE, Inc. since 1950 and under this  
23    contract had rights to buy 40 percent of the capacity and had  
24    separate rights in this contract to buy various amounts of  
25    energy. Options included in this contract allowed UE to

1 gradually increase its energy take over to determine the  
2 contract.

3 Q Did UE do that, increase its take?

4 A Yes, it did.

5 Q And was that increase take proportionate to the  
6 reduction in energy taken by I'll just say the Department of  
7 Energy but it may have been some different incarnations over the  
8 years.

9 A Yes.

10 Q Section 2.04 as I read it is what we were talking  
11 about. It defines the sponsors capacity ratios and it indicates  
12 there that those capacity ratios may be different then the  
13 ownership ratios. Could you just explain that to me because I  
14 read it and I have a hard time understanding.

15 A Since this is 20 years old, I don't remember all the  
16 terms in the contract but what I recall is that the sponsors had  
17 the right to take increasing amounts of energy over the term of  
18 the contract and that was expressed in terms of capacity ratio.  
19 Unless I go back and study and review this whole contract, I  
20 can't tell you for sure what it means but that's what I recall 20  
21 years ago.

22 Q Well, let me ask you this. If you know, did the  
23 Department of Energy take over the years approximately  
24 73.5 percent of the capacity for 1987 through 1989?

25 A That was the starting point in this contract.

1 Q And then over -- did that hold constant for a number of  
2 years and then change?

3 A Yes, that is generally true when what I recall that it  
4 was fixed at 73.5 percent until the sponsors right to taking  
5 increasing capacity started and I don't recall when that was. On  
6 the order of ten years ago and then it was reduced.

7 Q And why did the sponsors want rights to take increasing  
8 capacity?

9 A Because it had value or might have had value and any  
10 option is a good option. If we wanted to use that power for our  
11 own system we would have the right to do so.

12 Q And when you say your own system, are you referring to  
13 UE's regulated system?

14 A Yes.

15 Q So that would be an above the line system?

16 A UE buys power into the market and it sells power to its  
17 regulated customers. All of UE's costs are above the line.  
18 Costs that it charges its regulated customers are above the line.

19 Q And as part of this contract, Union Electric had a  
20 right to get 40 percent of that power.

21 A Yes, it did.

22 Q And that increased over the years.

23 A Yes, it did.

24 Q And that right for power was power that was going to be  
25 utilized by Union Electric for what I'll call it's native load

1 customers. Is that correct?

2 A That's correct.

3 Q And so is it your understanding and we went through a  
4 bunch of numbers earlier. In recent years Union Electric has  
5 been entitled to about 400 megawatts of the Joppa plant power?

6 A That's right.

7 Q And that results from both the 40 percent capacity  
8 portions of this contract and the declining portions or the  
9 declining part that the Department of Energy has and UE's rights  
10 to, if you will, take more of that power. Is that correct?

11 A That's correct and as I'm remembering a little bit more  
12 of the contract now. UE had the right to buy 400 megawatts or  
13 more precisely about 405 megawatts of power but was limited in  
14 the number of months that it could take the power and over time  
15 the number of months that Union Electric could take the power  
16 increased so that it was able to use the power more effectively  
17 over the course of a year.

18 Q Give me a magnitude of the number of months just so I  
19 can understand what you're saying.

20 A Well, initially was told we would not have needed the  
21 power during the other times of the year but over time it has a  
22 greater need for base load capacity in those off peak periods and  
23 that's what we envisioned when we wrote the draft in 1987 is that  
24 would change over time and it would be good to have an option to  
25 be able to make more power for other times of the year.



1 Q So initially just to make sure I understand because  
2 that's what I'm trying to do. Initially UE viewed this contract  
3 as a peaking type contract and then over the years it evolved  
4 into perhaps a base load or shoulder type contract where you  
5 could call in the energy year around.

6 A Yes, that's a fair description.

7 Q And I'm assuming UE contract like that in '87 because  
8 it realized that its native load customers would have growing  
9 demand and this was a reasonably cost generating option.

10 A Uh-huh. That's true.

11 Q And so when Union Electric was negotiating this  
12 contract or this purchase power agreement, they had an eye  
13 towards the needs of their native load customer.

14 A Yes.

15 Q I've got a question about section 2.12 of the contract.  
16 Purchases of firm additional power for resale to the Department  
17 of Energy. Could you explain why the Department of -- if you  
18 know, why the Department of Energy needed that power at that  
19 time, that increased power?

20 A Well, the power that the Department of Energy purchased  
21 was for uranium enrichment and if you give me a second to read  
22 the paragraph, maybe I can recall why we did this. A basic  
23 concept when we developed this contract was so the Department of  
24 Energy would be able to vary the load at its uranium enrichment  
25 plant and tailor that load somewhat to match the needs of the

1 sponsoring companies. The sponsors needed the power program  
2 primarily for the uranium and so we constructed the contract to  
3 allow them to use the power in the summertime but the Department  
4 of Energy would not reduce the load of its plant below  
5 approximately 450 megawatts and so we agreed that the sponsors  
6 would supply what we called firm additional power to guarantee  
7 DOE that there would also be at least 450 megawatts available.

8 Q There is a letter of understanding, a December 5th  
9 letter of understanding attached 1988. Are you familiar with  
10 that letter?

11 A Well.

12 Q Are you looking at it right now?

13 A I'm not sure. I have found a letter dated December  
14 5th, 1988.

15 Q Why don't you take a second and read that letter and  
16 I'll ask some questions about it.

17 A This is the one -- it's in section four of the  
18 contract. I just want to be sure I'm on the right page here.

19 Q Yes.

20 A Okay.

21 Q Let me just ask is it your understanding that it  
22 appears to define that term firm additional power and the  
23 participants obligation to provide the same that we were talking  
24 about earlier?

25 A Section 2.12 of the letter seems to refer to the

1 additional power requirement that we talked about earlier.

2 Q And did EE, Inc. receive and accept bids for additional  
3 power from UE as one of the participants?

4 A I think we were obligated. I'm not sure. Now you're  
5 talking about recalling things from 20 years ago but I believe  
6 that we did.

7 Q Did UE invest in any additional transmission facilities  
8 as that letter suggests?

9 A I don't remember but to characterize the transmission  
10 facilities, that portion of the contract really is what we could  
11 term an interconnection agreement and we have interconnection  
12 agreements with probably 25 other utility companies and the terms  
13 of those arrangements were standard terms in the industry where  
14 each company provides facilities up to the point of  
15 interconnection and each company owns those facilities off the  
16 point of interconnection and from there the other company owns  
17 the facilities. That's all it does is defines the terms of the  
18 interconnection.

19 Q And in this case the interconnection was built and  
20 owned by UE.

21 A Uh-huh, yeah and the consideration for that or part of  
22 it was that EE, Inc. then was able to tie in and affectively UE  
23 facilities and UE was able to tie in to EE, Inc.'s facility and  
24 use those facilities.

25 Q Right.

1 A Yes.

2 Q And EE, Inc. had transmissions to transmit its energy  
3 but if you had a generator that had transmission that's really  
4 not a good thing.

5 A That's true although it goes a step beyond that in that  
6 EE, Inc. transmission tied into three other companies or four  
7 other companies as well. CIPS, IP, Kentucky Utilities and TVA  
8 and we shared reciprocal rights over transmission facilities and  
9 part of the interconnection. So it wasn't solely to provide  
10 transmission for EE, Inc. It was to provide transmission for UE  
11 as two each other companies.

12 Q So that would allow Union Electric power further out of  
13 its control zone, if you will.

14 A Yeah, using the EE, Inc. facilities.

15 Q Let me ask you some questions about Article three which  
16 is on Page 11 of that contract, sir. It's the rate section. Let  
17 me start with this and if you know, does that Article three  
18 basically set forth a formula and definitions through which its  
19 Joppa plant covers its actual cost plus 15 percent after tax  
20 return?

21 A Yes, it does.

22 Q And that's I think set out in section 3.04A, the annual  
23 adjustment charge part.

24 A I don't recall what that section does but yeah, this  
25 generally provides a formula for cost recovery for EE, Inc.

1 Q And it's my understanding that it allows recovery of  
2 all the actual costs plus a 15 percent after tax equity return.  
3 Is that your understanding?

4 A Yes, it does.

5 Q There was a modification No. 17 to this contract that  
6 appears to extend the term of the contract beyond the 2005 time  
7 frame to December 31, 2006 with the Department of Energy. Are  
8 you familiar with that modification?

9 A No, I'm not.

10 Q There's cancellation provisions in this contract if I  
11 understand that in section six. I think it's .02 and do you  
12 know, did Union Electric ever consider cancelling on the five  
13 years notice?

14 A When you say Union Electric, I guess the thought  
15 crossed my mind that we might cancel the contract under these  
16 provisions but I didn't think it was the right thing to do. We  
17 committed to the contract and we should honor the contract.

18 Q And why did the thought cross your mind to cancel the  
19 contract?

20 A Because markets were changing over the period of this  
21 contract and there would have been the opportunity for EE, Inc.  
22 to use this power to earn a higher return by selling it in the  
23 unregulated market and that occurred before the end of the  
24 contract, but the contract was in place and it's what we agreed  
25 to and I felt we should honor the contract and stick to the

1 contract through the term of the contract. Once the contract  
2 expired then there was no longer any commitment or obligation on  
3 the part of either party and that was the proper time for us then  
4 to recognize the changes taking place in the market.

5 Q But at that time didn't you have a fiduciary duty to  
6 the shareholders to get as much value from the EE, Inc. asset as  
7 you could?

8 A Yes. I've always had that fiduciary duty.

9 Q And yet if I understand --

10 A And maybe I made a mistake. Maybe I made a mistake and  
11 should have cancelled. Maybe we should have cancelled the  
12 contract, but my judgment was a contract is a contract and the  
13 right thing to do is to honor the contract.

14 Q Even if at some point it hurts the shareholders.

15 A Let me read the cancellation provision.

16 Q Sure.

17 A The cancellation provision requires a five year  
18 cancellation which I guess means we could have cancelled the  
19 contract so that it would have terminated prior to the end of  
20 2005. That would have meant making a decision some time in the  
21 1990's.

22 Q And you told me you thought about cancelling that  
23 contract. When did you think about that?

24 A It would have been some time in the late 1990's.

25 Q Let me ask you this. When this contract was signed and

1 Ameren or EE, Inc. was guaranteed a 15 percent return of its  
2 equity after taxes, did you feel that was a pretty good return?

3 A It was a fair return at the time.

4 Q And you felt like you were meeting your fiduciary  
5 duties?

6 A Yeah, although at the time I probably wouldn't have  
7 understood what a fiduciary duty was. I was an engineer and the  
8 question of fiduciary duty would have been something considered  
9 by the CEO of the company.

10 Q But the CEO would have known about fiduciary duties and  
11 would have made that judgment.

12 A That's right.

13 Q Let me just ask you generally do you think as a  
14 director when you're able to negotiate a contract that guarantees  
15 a 15 percent return on equity that's a pretty good job of meeting  
16 your fiduciary duties?

17 A It depends on the contract and the risk and if a  
18 15 percent return is appropriate given the business risks, then I  
19 would think it would meet the fiduciary duty requirement.

20 Q In an unregulated market, is there any sort of  
21 guarantee that that business is going to earn a return?

22 A No.

23 Q If I understood your testimony earlier today, this  
24 purchase power agreement guaranteed EE, Inc. a 15 percent return.

25 A That's correct provided it delivered the power.

1 Q Even if it didn't deliver the power.

2 A Well, that may have been the terms of the contract but  
3 if it didn't deliver the power my guess is the company would have  
4 just simply gone out of business and the stockholders would have  
5 lost their money and debt holders would have lost their money and  
6 that would have been the end of it.

7 Q But your understanding of the contract is?

8 A That's what the contract called for.

9 Q And I'm not asking you a legal question but contracts  
10 are legally binding.

11 A That's correct.

12 Q And you felt that your corporation should live up to  
13 its contractual agreements even though it had a legitimate  
14 contractual right to cancel the contract. You have to rely  
15 strictly --

16 A Yeah. That's correct.

17 Q Also in response to Mr. Dottheim you had indicated that  
18 earlier in your tenure with Union Electric that you were a board  
19 member of EE, Inc. and that prior to the board meetings that you  
20 attended on behalf of Union Electric that you would talk to the  
21 UE directors in advance of those meetings. Could you elaborate  
22 on the items that you would talk about?

23 A We might have talked about whatever it was on the  
24 agenda at EE, Inc.

25 Q And that's just you wanted as the board representative



1 for Union Electric, EE Inc., you just wanted to inform the Union  
2 Electric board what was going on and get their input on how you  
3 should vote, what you should do.

4 A For our company, yes.

5 Q Now currently Union Electric or AmerenUE which they're  
6 one in the same has board members on the EE Inc. board. I  
7 believe it's Mr. Naslund and Mr. Whiteley. Is that your  
8 understanding?

9 A I think that's right.

10 Q And do they meet with the either the Ameren board or  
11 the Union Electric board prior to the EE, Inc. meetings to  
12 discuss what they're going to do or what Union Electric wants  
13 them to do at the board meetings?

14 A I don't know.

15 Q So you don't know if that policy has continued?

16 A It was never a policy.

17 Q Let me ask it this way. Have you ever discussed with  
18 Ms. Naslund or Mr. Whiteley anything regarding Union Electric and  
19 how it should vote its shares at an EE, Inc. board meeting?

20 A Not that I can recall.

21 Q Did you ever discuss with UE directors the termination  
22 of the purchase power agreement?

23 A I probably did.

24 Q Well, I'm trying to just understand how Mr. Naslund  
25 knew to go and vote to discontinue the purchase power agreement.

1 MR. LOWERY: Object to the form of the question.

2 It suggests that Mr. Naslund voted to discontinue a  
3 power agreement that expired on its own terms.

4 Q (By Mr. Micheel) To let it expire and not  
5 renegotiate a purchase power agreement.

6 A You would have to ask Mr. Naslund that.

7 Q Okay. In response to Mr. Dottheim's questions  
8 regarding this, I think you indicated that Ameren affiliates also  
9 vote together at EE, Inc. Do you recall that answer?

10 A Yes, I do.

11 Q Do you view AmerenUE which is a regulated utility its  
12 interest the same as the unregulated interest of Ameren Energy  
13 Generating?

14 A I view AmerenUE and its rate based company differently  
15 than I view the unregulated part of Ameren. My view of EE, Inc.  
16 is as an unregulated part of Ameren. It's a below the line  
17 asset. It's always been a below the line asset and still is a  
18 below the line asset.

19 Q Could you explain the differences in duties that Union  
20 electric regulated corporation has vis a vie the unregulated  
21 generating unit?

22 MR. LOWERY: Object to the extent it calls for  
23 Mr. Rainwater to state what legal duties do or do not  
24 as a matter of law.

25 Q (By Mr. Micheel) I'm not asking for legal

1 duties, sir. You said there was a difference.

2 A A difference in what?

3 Q Well, what difference were you talking about when you  
4 said I view Union Electric as different than nonrate?

5 A Okay. I view the way that we use our assets of Union  
6 Electric differently than how we would use or can use or should  
7 use, properly should use the assets of an unregulated business  
8 and EE, Inc. I believe is an unregulated company, a below the  
9 line company that owns assets that are below the line and clearly  
10 different.

11 So when I think of a decision involving EE, Inc. I  
12 think of that decision purely in terms of the stockholders of  
13 Ameren Company, Ameren Corporation and it makes no difference in  
14 my view if it's the stock or that's the portion of EE, Inc. owned  
15 by UE or the portion of EE, Inc. owned by Ameren Energy  
16 Resources. It is a below the line ownership in either case.  
17 That's different than how I would view an asset owned by Union  
18 electric.

19 For instance, when Union Electric's power contracts  
20 with wholesale customers expire, we do not renew those contracts.  
21 We use that generating capacity to serve UE's retail customers  
22 because that is a decision that is in the interest of UE's retail  
23 customers and that allows us to minimize the cost for UE's retail  
24 customer. Keep our rates low and in turn our hope is that we  
25 will get fair treatment in the regulatory process. I don't view

1 a decision about Joppa in the same way. I don't view that plant  
2 should be dedicated to UE retail customers. That plant has  
3 always been owned separately from Union Electric. It's always  
4 been below the line. Its costs have always been separate and its  
5 ownership has always been separate.

6 Q The bylaws that existed for EE, Inc. prior to 2005, my  
7 understanding is those bylaws guaranteed that Union Electric  
8 would have close to 40 percent output of the Joppa plant. Is  
9 that your understanding?

10 A I do recall that was in the bylaws.

11 Q And those bylaws couldn't be changed unless directors  
12 voted to change that. Is that right?

13 A Yeah, and I don't know if it's been changed or not.

14 Q Explain to me -- well, is it important for a regulated  
15 utility like Union Electric or AmerenUE, I just prefer to call  
16 them Union Electric having low cost generation?

17 A Yes, it is and we do.

18 Q I didn't think you didn't.

19 A Yeah.

20 Q Is it important for a regulated utility like Union  
21 Electric to get the best purchase power deals available?

22 A Yes, it is.

23 Q With that why would a regulated utility that had  
24 40 percent right to the output of a low cost plant like Joppa,  
25 why would it vote or change that given the fact it has the

1 obligations to get low generation costs and good purchase power  
2 contracts?

3 MR. LOWERY: Object to the form of the question.  
4 It assumes it's got the same amount it does from the  
5 regulated asset. You can answer the question.

6 THE WITNESS: Will you restate the question,  
7 please?

8 MR. MICHEEL: Could you just read it back.

9 (The record was read as requested)

10 THE WITNESS: Well, it's the same point I've just  
11 made is that there is a distinction between regulated  
12 rate based above the line assets and nonregulated below  
13 the lines assets and EE, Inc. is a below the line asset  
14 and the decision process on what to do with that is  
15 fundamentally different than it is with a regulated  
16 asset.

17 Q (By Mr. Micheel) Was Union Electric  
18 unhappy with the 15 percent guaranteed return it was  
19 getting from EE, Inc.?

20 A At the time the contract was entered into I think that  
21 was a reasonable return. If you go back to 1987 even regulated  
22 returns were probably in that order of magnitude. I would say  
23 that after the wholesale markets developed to the point that we  
24 could have sold that power to the wholesale markets at a higher  
25 price we were or let's say that I was disappointed that we

1 weren't able to use that power in the wholesale markets but  
2 again, the contract obligated us through 2005 and so we continued  
3 through 2005.

4 Q Unless you gave the notice.

5 A Until we gave a notice which would have required a  
6 notice to be required five years ahead so it would have required  
7 a forward view of the market which given the uncertainty, it was  
8 reasonable to simply run the contract out.

9 Q What return is Union Electric expecting from EE, Inc.  
10 now that it's in the unregulated market?

11 A I don't know what the return would be.

12 Q What analysis did Union Electric undertake to determine  
13 what return it would get?

14 A I don't know what analysis was done. I don't believe  
15 an analysis was done in terms of calculating a return.

16 Q So how did Union Electric know it was going to be  
17 better than 15 percent?

18 A Well, we don't actually but there's an assumption  
19 that -- a presumption that market prices will be sufficient to  
20 earn a higher total return by selling power in the unregulated  
21 markets and that certainly is true today at current prices. It  
22 may not be true a year from now.

23 Q Do you know if -- so you're not certain what return  
24 Union Electric is going to be getting in the wholesale market?

25 A Not for the long term, no.

1 Q Prior to 2005 was EE, Inc. profitable for its  
2 shareholders?

3 A Yes.

4 Q During your time at Union Electric, are you aware of  
5 any time when EE, Inc. wasn't profitable for Union Electric?

6 A No.

7 Q In fact, that purchase power contract that you helped  
8 negotiate guaranteed Union Electric a 15 percent return at least  
9 from '87 to 2005.

10 A Yes, it did.

11 Q In responses to one of the questions, it may have been  
12 Mr. Dottheim or Mr. Mills about EE, Inc., you said that because  
13 EE, Inc. was below the line it obligated the shareholders to  
14 shoulder the entire risks and given the fact that at least from  
15 '87 to 2005 Union Electric had a contract that guaranteed a  
16 15 percent return on equity, could you describe the risks that  
17 you're talking about that shareholders took?

18 A A risk for instance if a power plant had blown up and  
19 burned down so that it could not operate while Union Electric was  
20 obligated under the contract to continue paying for the cost of  
21 power, it would have been virtually impossible for Union Electric  
22 to recover that cost in its retail rights. So the stockholders  
23 of Union Electric would have born the loss of that event.

24 Q Other than a plant blowing up, any other risks?

25 A Well, it's almost any kind of risk that you could think

1 of. If environmental requirements had changed to the point the  
2 plant would not have been able to operate, I think the same kind  
3 of risk would have been effective.

4 Q Each answer you give on the plants is not able to  
5 operate but is it your understanding of that purchase power  
6 agreement that if it was a length cost of the plan it wasn't into  
7 the course. Is that correct?

8 A Yeah. If it was a length cost of the plant, length  
9 cost over the plant provided the power, then customers would pay  
10 for the power under the terms of the contract.

11 Q So the only risk that the EE shareholders have I'm  
12 understanding is if the plant blows up or stops operating for  
13 some reason.

14 A Well, I'm not sure if that's the only risk. That's the  
15 only one I can think of right now.

16 Q But those are the only ones you can think of right now?

17 A Well, in thinking about it the risk is probably broader  
18 than that. If cost increased to the point that it wasn't a cost  
19 effective asset for UE, the cost certainly would have been  
20 challenged by Mr. Dottheim and the Missouri Commission staff and  
21 may or may not have been included in UE's retail rates in which  
22 case the stockholders would bear the risk.

23 Q Do you know if power plants have insurance against  
24 losses?

25 A Yeah. Most power plants do.



1 Q So for example when let's say a dam breaks and dumps a  
2 billion gallons, you know, does that utility have insurance that  
3 may cover that loss?

4 A A portion of it.

5 Q Okay. So that may mean in your example that if Joppa  
6 blows up the shareholder is covered?

7 A No. A portion of the shareholders would be partially  
8 covered but the shareholders would certainly take a loss in those  
9 events.

10 Q I think you talked with both Mr. Dottheim and Mr. Mills  
11 about items that you had to take I guess to the Ameren Board of  
12 Directors and my question is and you said there may be a bright  
13 line but you don't know what it is. Is the relicensing of the  
14 Callaway plant, is that one of the items that will have to be  
15 taken to the board of directors?

16 A Well, it is something that I would take to the board of  
17 directors if I were making that decision. I'll probably be  
18 retired before that decision goes to the board.

19 Q And it's my understanding that the board has a nuclear  
20 oversight committee. Is that correct?

21 A Yes, we do.

22 Q And part of that committee is to advise and assist the  
23 board in developing and implementing long-term strategies and  
24 plans relating to Callaway's nuclear power program.

25 A Yes, it is.

1 Q Do you know if that committee has given any study to  
2 the extension of the Callaway license?

3 A No, it has not.

4 Q Has it given any study to the construction of a  
5 different nuclear generating unit?

6 A Yes, it has.

7 Q And could you explain if it's beyond what you've talked  
8 about with Mr. Mills what that study is, has been.

9 A It's been a study of available technologies and  
10 comparing the technologies because to begin an application  
11 process for a combined construction, an operating license, it's  
12 necessary to select a technology before you begin that process.  
13 So we have selected the technology and the technology we've  
14 chosen is the EPR technology or the enhanced pressurized water  
15 reactor.

16 Q So you've selected the technology for that.

17 A (Witness nodded head)

18 Q Okay. Let me go back to EE, Inc. I forgot a couple of  
19 questions that I had. Do you know if Union Electric had ever  
20 been asked to make or needed to make any additional equity  
21 capital infusions in EE, Inc.?

22 A No, I don't know.

23 Q Are you aware if EE, Inc. has been able to finance any  
24 needs it's had for capital improvements with its own internal  
25 cash flow?

1           A     Well, I don't recall but I do believe that EE, Inc. has  
2     had to borrow money.

3           Q     You just don't recall though from your days as  
4     director?

5           A     Nope. Don't recall.

6           Q     It's my understanding that the Callaway plant is  
7     generating capacity at 10 percent.

8           A     That's about right from a capacity point of view. It  
9     generates about 20 percent of Union Electric's energy.

10          Q     And so are there any plans afoot if that's not  
11     relicensed, how are you going to replace that energy? That's a  
12     lot.

13          A     Uh-huh. We would replace it with other generation and  
14     I don't know how far out our resource plan goes.

15          Q     But generally though resource plans go out at least a  
16     decade.

17          A     Yeah.

18          Q     And it takes some time to base load plants by they  
19     coal-fired or nuclear. Is that?

20          A     Yes, it does.

21          Q     Approximately how long does it take, if you know?

22          A     I don't know exactly but on the order of five to ten  
23     years.

24          Q     And for a nuc it might take longer?

25          A     More like ten and five would be already like what's

1 required for a coal plant.

2 Q In the next five years does AmerenUE have any plans to  
3 build a coal-fired base load plant?

4 A No, we don't.

5 Q In the next ten years does AmerenUE have any plans to  
6 build a coal-fired base plant?

7 A We don't have any current plans to build any plants.

8 Q Let me ask you this. Why did not Union Electric at  
9 least discuss the option of continuing a purchase power agreement  
10 that would guarantee it 15 percent after tax return like the  
11 agreement that you negotiated in 1987?

12 A Because we felt, I felt that we could sell the power  
13 for a better price in the wholesale market.

14 Q Okay. And you didn't do any quantitative analysis  
15 about that. When I say you, Union Electric.

16 A I'm not aware of any quantitative analysis. There may  
17 have been an analysis done.

18 Q But you as CEO of Union electric were unaware of that.

19 A That's right.

20 Q As the CEO and it's my understanding that you were the  
21 CEO of Union Electric up until the first of this year and you're  
22 still the CEO of Ameren which is the parent of Union Electric.

23 A That's correct.

24 Q Have you been called on to give presentations to for  
25 example the Edison Institute or investors and things like that?

1 A Yes, I am.

2 Q And have you given those type presentations?

3 A Yes.

4 Q And I've looked at some of those presentations and in  
5 there you've talked about full adjustment clause at least that  
6 was recently passed here in Missouri. Are you familiar with  
7 that?

8 A Yes, I am.

9 Q And when I look at those presentations, you indicate  
10 that that legislation was enabling legislation.

11 A That's correct.

12 Q And when you use the term enabling, what do you mean by  
13 enable legislation?

14 A It enables the Missouri Public Service Commission to  
15 implement a fuel adjustment provision.

16 Q Does it require them in your view?

17 A No.

18 Q Ameren has on its web site, a pretty good web site, I  
19 think its missions and values and one of the things it says is  
20 that we will behave in a way that earns the trust and enhance the  
21 representation of our company. Are you familiar with that?

22 A Yes, I am.

23 Q And my question is who are the shareholders?

24 A It's a combination of our customers, our stockholders,  
25 our employees and our regulators.

1 Q And let's just go through those. First one are  
2 customers. Explain your view as CEO of what their stake is and  
3 what your obligation is? When I say yours, I mean what your  
4 corporation's obligation is.

5 A Okay. It's different somewhat in Missouri and Illinois  
6 because we have different regulations.

7 Q Let's talk about Missouri.

8 MR. LOWERY: Doug, what company are you talking  
9 about, a company regulated or nonregulated?

10 Q (By Mr. Micheel) I mean we can backtrack  
11 that if you want, Jim, but let me ask you this. You  
12 told me that at the end of the day or I think you  
13 testified at the end of the day that the AmerenUE  
14 board just does perfunctory things and it all  
15 reports up to AmerenUE. Let me just ask this. Do  
16 the mission and value statements contained also  
17 apply to Union Electric?

18 A Yes, they do.

19 Q So they apply corporate wise to all of your subs?

20 A Yes.

21 Q So there's no distinction that we need to make.

22 A No, there is not.

23 Q And Ameren doesn't have any rate payers. That would  
24 just be your regulated companies.

25 A Yeah. Ameren is a holding company.

1           Q     Go on. I just wanted to make that point. So tell me  
2     about the customers.

3           A     What was your original question again?

4           Q     Well, we're talking what are your obligations. You  
5     said customers, shareholders, what you view as your corporate.

6           A     Our customers to provide the best service we can at the  
7     best price we can and achieve the right balance of those. There  
8     are also questions of quality and cost but I believe we've done a  
9     very good job of that. We've provided better service than most  
10    utility companies at a far less cost than most utility companies.

11          Q     And when you say most, what's your -- what do you use  
12    as a peer group?

13          A     Just looking at the norms for the industry. You know,  
14    the industry average.

15          Q     And how do you go about getting the best price for the  
16    customers?

17          A     By managing the company well. By managing efficiency  
18    productively. By making good decisions about resources for  
19    instance power plants, future power plants. If we make the right  
20    choices our prices will be far less than if we make the wrong  
21    choices and when we have to buy material supplies, equipment,  
22    anything that we purchase for the company to get the best price  
23    we can.

24          Q     And does that include purchase power agreements?

25          A     Yes, it does.

1 Q Tell me your view for the stockholders, please.

2 A To deliver the best value for the stockholders and most  
3 of our stockholders purchase our stock for dividends. To provide  
4 secure dividends to grow the dividends. To grow the earnings of  
5 the company and to grow the value of the company for the  
6 stockholders.

7 Q So would you say in general your stockholders are who  
8 typically buy and hold stockholders?

9 A The retail stockholders are. The institutional  
10 stockholders are to some degree because they're also looking for  
11 a value kind of stock and a relatively low risk kind of stock so  
12 that's fair.

13 Q Do you view Ameren stock as relatively low risk?

14 A It's not as low risk today as it was five years ago  
15 because the business has changed but we try to manage the  
16 business to be a low risk investment.

17 Q And do you think it is a low risk investment?

18 A It's a relatively low risk investment.

19 Q Duties to employees?

20 A To provide security. To provide good jobs. To provide  
21 good benefits. To provide a good place to work, a safe place to  
22 work. To provide career opportunities.

23 Q And to regulators?

24 A To run our business in an ethical way and very much the  
25 same as the interest of the customers. To provide low cost, good



1 service.

2 Q Would you agree with me that public utility, now I'm  
3 talking about AmerenUE, has a performance obligation to  
4 shareholders, employees and customers be carefully balanced?

5 A Yes.

6 Q And the goal -- the public utility AmerenUE, is its  
7 goal merely profit at all costs or does it have -- because it's a  
8 public utility, is there some different obligations that come  
9 with it because it's a public utility?

10 A Yes, it is different because it's a public utility. It  
11 has an obligation to its customers that goes beyond an ordinary  
12 obligation and that's because it has no autonomy and that's a  
13 part of the framework. It's simply a little bit different and  
14 the way I interpret is the way I have explained it for the last  
15 couple of hours that I believe that our regulated assets should  
16 be dedicated to our regulated customers and we've made decisions  
17 over a long period of time that has enhanced the value to our  
18 Missouri regulated customers and I mentioned the wholesale  
19 contracts that have expired and we use generating capacity to  
20 serve regulated customers and the same is true with our transfer  
21 of Illinois service territory. We have chosen to use that  
22 differently but we chose it to serve our regulated customers to  
23 reduce cost for the regulated customers in the hope that  
24 stockholders would be treated fairly as well. I don't extend  
25 that logic to our ownership of an unregulated below the line

1     asset. I view that as clearly distinct from the regulated  
2     business.

3             Q     And would you agree with me that the shareholders of a  
4     public utility recognize that a public utility has different  
5     obligations than an unregulated or nonpublic utility?

6             A     Well, I don't know if the shareholder does or not. I  
7     think most shareholders purchase stock in a company with the  
8     expectation of earning money and it's more a management concern  
9     to find the balance between the shareholder and customer  
10    interest, but the shareholders are interested in making money and  
11    growing their investment.

12            Q     And has Union Electric been able to do that, meet that  
13    obligation?

14            A     To our shareholders and to our customers that I believe  
15    we have.

16                   MR. MICHEEL: I think that's all I have. Thank  
17    you, Mr. Rainwater.

18                   THE WITNESS: Are we done?

19                   MR. LOWERY: I think we are. Stu, are you still  
20    there? I take it he's not. We'd like to read and  
21    sign. We will waive presentment and I don't have any  
22    questions.

23  
24  
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Phone (314) 644-2191 \* Fax (314) 644-1334  
January 29, 2007

Smith Lewis, LLP  
111 S. Ninth Street, Suite 200  
Columbia, MO 65201  
Attn: Mr. James B. Lowery

In Re: ER2007-0002

Dear Mr. Lowery:

Please find enclosed your copy of the deposition of GARY RAINWATER taken on January 25, 2007 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page to Mr. Dottheim for filing prior to trial date. Thank you for your attention to this matter.

Sincerely,

Jacquelyn S. Williams

Encl:

## WITNESS ERRATA SHEET

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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, GARY RAINWATER, do hereby certify:

That I have read the foregoing deposition;

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

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 2007, at

\_\_\_\_\_.

\_\_\_\_\_  
GARY RAINWATER

My Commission Expires: \_\_\_\_\_

Notary Public: \_\_\_\_\_

Signature Page James Lowery, 1/29/07  
JSW/Gary Rainwater, 1/29/07

CERTIFICATE OF REPORTER

I, Jacquelyn S. Williams, Registered Professional Reporter  
and Notary Public within and for the State of Missouri, do hereby  
certify that the witness whose testimony appears in the foregoing  
deposition was duly sworn by me; that the testimony of said  
witness was taken by me to the best of my ability and thereafter  
reduced to typewriting under my direction; that I am neither  
counsel for, related to, nor employed by any of the parties to  
the action in which this deposition was taken, and further that I  
am not a relative or employee of any attorney or counsel employed  
by the parties thereto, nor financially or otherwise interested  
in the outcome of the action.

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Jacquelyn S. Williams, CCR No. 870