

FILED³
APR 16 2007
Missouri Public
Service Commission

Exhibit No:	103
Witness:	Robert Schallenberg
Sponsoring Party:	Union Electric Co.
Type of Exhibit:	Deposition
Case No:	ER-2007-0002
Date Testimony Prepared:	February 21, 2007

~~Amesent~~ Exhibit No. 103
Date 3-16-07 Case No. ER-2007-0002
Reporter HF

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

IN THE MATTER OF UNION ELECTRIC COMPANY D/B/A AMERENUE
FOR AUTHORITY TO FILE TARIFFS INCREASING RATES FOR
ELECTRIC SERVICE PROVIDED TO CUSTOMERS IN THE COMPANY'S
MISSOURI SERVICE AREA

Case No. ER-2007-0002

DEPOSITION OF ROBERT E. SCHALLENGER, CPA

TAKEN ON BEHALF OF AMERENUE

FEBRUARY 21, 2007

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<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 BEFORE THE PUBLIC SERVICE COMMISSION</p> <p>3 STATE OF MISSOURI</p> <p>4</p> <p>5 IN THE MATTER OF UNION ELECTRIC COMPANY D/B/A AMERENUE</p> <p>6 FOR AUTHORITY TO FILE TARIFFS INCREASING RATES FOR</p> <p>6 ELECTRIC SERVICE PROVIDED TO CUSTOMERS IN THE COMPANY'S</p> <p>7 MISSOURI SERVICE AREA</p> <p>8</p> <p>9 CASE NO.: ER-2007-0002</p> <p>10</p> <p>11 DEPOSITION OF ROBERT E. SCHALLENBERG, CPA,</p> <p>12 produced, sworn and examined on the 21st day of February,</p> <p>13 2007, between the hours of eight o'clock in the</p> <p>14 forenoon and six o'clock in the afternoon of that day,</p> <p>15 at the Missouri Public Service Commission, 200 Madison</p> <p>16 Street, Second Floor, Jefferson City, Missouri, before</p> <p>17 Patricia A. Stewart, a Certified Court Reporter in the</p> <p>18 State of Missouri, in a certain cause now pending before</p> <p>19 the Missouri Public Service Commission.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES (CONT'D):</p> <p>2 FOR THE COMMERCIAL GROUP (VIA TELEPHONE):</p> <p>3</p> <p>4 BEHRENS, TAYLOR, WHEELERS & CHAMBERLAIN</p> <p>5 6 NE 63rd, Suite 400</p> <p>6 Oklahoma City, Oklahoma 73105</p> <p>7 (405) 848-1014</p> <p>8 By: Mr. Rick Chamberlain</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11</p> <p>12 MIDWEST LITIGATION SERVICES</p> <p>13 3432 West Truman Boulevard, Suite 207</p> <p>14 Jefferson City, Missouri 65109</p> <p>15 By: Ms. Patricia A. Stewart, RMR, RPR, CCR 401</p> <p>16 (573) 636-7551</p> <p>17 Robert E. Schallenberg, CPA</p> <p>18 Ryan Kind, Office of the Public Counsel</p> <p>19 Maurice Brubaker, Brubaker & Associates, Inc.</p> <p>20 Michael Brosch (via telephone)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 (MR. RICK CHAMBERLAIN ENTERED HIS APPEARANCE
2 VIA TELEPHONE AND THEN EXCUSED HIMSELF FROM THE
3 DEPOSITION.)
4 IT IS HEREBY STIPULATED AND AGREED by and
5 between Counsel for AmerenUE, Counsel for the Missouri
6 Public Service Commission and Counsel for the State of
7 Missouri that this deposition may be taken by
8 Patricia A. Stewart, a Certified Court Reporter in the
9 State of Missouri, thereafter transcribed into
10 typewriting, with the signature of the witness being
11 expressly reserved.
12 ROBERT E. SCHALLENBERG, CPA,
13 of lawful age, having been produced, sworn to tell the
14 truth, and examined on the part of AmerenUE.
15 MR. CYNKAR: This is the deposition of
16 Robert Schallenberg in Case ER-2007-0002.
17 DIRECT EXAMINATION
18 BY MR. CYNKAR:
19 Q. Good morning, Mr. Schallenberg.
20 A. Good morning.
21 Q. I know you have been deposed before, so you
22 know the drill of speaking your answers and all of that.
23 I'm not going to go through that with you unless you want
24 me to refresh you on that.
25 If you have any questions about anything I

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1 say or any questions, if I'm unclear, you will, I'm sure,
2 ask me to clarify my question, will you not?
3 A. I will.
4 Q. All right. And the other proforma question
5 is you're not on any medication or in any way unable to
6 answer questions this morning, are you?
7 A. I am not.
8 Q. Okay. Now, we spoke with Mr. Dottheim also
9 before the deposition, and in response to the subpoena
10 you have produced four boxes of documents, and we will
11 make arrangements to review those at a later date.
12 Your testimony has obviously your extensive
13 experience and training set out in it, and I won't
14 recapitulate that here, but I do want to ask you: You,
15 of course, are not a lawyer, are you?
16 A. No, I am not.
17 Q. And you've not had any legal training?
18 A. I have not gone to law school, if that's
19 what you're asking.
20 Q. That's one question.
21 And you also, therefore, are not competent
22 to offer legal opinions. Correct?
23 A. That's -- that's -- not as an attorney,
24 that's correct.
25 Q. In any other way?

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1 A. Well, I get asked legal questions through my
2 career that I've been asked to answer and told to answer.
3 So that's where I'm having some trouble of knowing where
4 I draw the distinction.
5 Q. You have never been approved as an expert
6 witness testifying on legal subjects, have you?
7 A. I have never testified as an attorney or
8 represented myself to be an attorney.
9 Q. Have you ever been allowed to offer a legal
10 opinion in any Commission proceeding?
11 A. The reason I'm having difficulty answering
12 your question, I'd say, I guess, yes, because I know
13 people have asked me questions and people have objected
14 on the basis that they call for a legal conclusion and
15 I've been instructed to answer the question anyway.
16 So, I mean, that's happened to me several
17 times through my career, but I have never represented
18 that I am an attorney or am qualified to provide legal
19 opinions.
20 Q. Thank you.
21 Now, who made the decision that you were to
22 be a witness in this case?
23 A. Well, I'd say probably the decision came
24 up -- I guess it was myself upon a request. It wasn't on
25 my initiative.

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1 But I was requested to address the EEInc
2 issue I guess in part because I have developed a certain
3 amount of expertise regarding the affiliate issues in
4 CassTel -- that's Cass County Telephone -- and with the
5 pipelines. That's Missouri Pipeline Company and Missouri
6 Gas Company. And --
7 Q. I'm sorry.
8 A. And that request would have come from Greg
9 Meyer, who was the project coordinator for the AmerenUE
10 case.
11 Q. Okay. Now, before that decision was made
12 that you were to become a witness, were you involved in
13 this case in any way?
14 A. Yes.
15 Q. How?
16 A. In my job as a Director of Utility Services
17 Division, which has the Auditing Department and the
18 Financial Analysis Department, I am generally involved in
19 staffing -- or made aware of staffing decisions, resource
20 needs, major issues in all of the cases that we process.
21 Q. Were you involved in any substantive way
22 beyond resource needs in this case before your entry as a
23 witness?
24 A. I was involved in -- I think I can say
25 all, because I don't know if there was any of all of the

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1 pre-case meetings that took place.

2 The rate case actually evolved from a
3 Commission directive to the Staff to do an earnings
4 review, and I was -- I was a participant in trying to
5 complete that earnings review.

6 And in that earnings review the
7 resolution -- or the direction of the rate case was
8 discussed -- the rate case that we filed was discussed
9 several times.

10 Q. Would it be fair to say that you had a
11 leading role among the staff in that work?

12 A. In the earnings review that would be true.

13 Q. What about with respect to preparation of
14 the rate case itself?

15 A. No. The rate case was prepared by UE.

16 Q. I mean in terms of the Staff's positions on
17 the rate case.

18 A. I would have -- I guess I'd have to answer
19 it, I would have an involvement to the extent that I was
20 asked. I had no involvement in the case on my own
21 initiative.

22 Q. Were you asked to be involved in any of the
23 decision making on the positions the Staff has taken in
24 this case?

25 A. I'd answer yes to the extent that there were

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1 meetings regarding subjects like the fuel adjustment
2 clause and off-system sales.

3 I recall meetings that the Staff had to
4 discuss what its position would be regarding those two
5 topics, besides EEInc and the -- that 4 CSR 240-10.020
6 issue that the company has.

7 Q. Besides meetings were you involved in any
8 one-on-one discussions with other Staff members that
9 related to those positions?

10 A. I would have been involved with a one-on-one
11 discussion with Mr. Meyer on EEInc. I don't recall any
12 other one-on-one discussion on any of the issues in this
13 case.

14 Q. Have you discussed the issues of this case
15 with any of the witnesses from any of the other parties?

16 A. I've -- indirectly I have talked to Mr. Ryan
17 Kind of OPC in terms of acquiring the OPC data request
18 that I became aware of.

19 Let's see.

20 Q. When you say "indirectly," did you ask him
21 for that material?

22 A. I was trying to find it.

23 Q. All right.

24 A. In the process -- as you see in those boxes,
25 we attempt to collect all of the information that we have

1 before we issue data requests to avoid duplication or
2 anything like that.

3 And as I point out on EEInc, there is a long
4 history with this issue prior to the rate case. And I
5 was aware that Mr. Kind was knowledgeable about this
6 issue, and so I know I had a couple of discussions with
7 him, trying to locate some of the material that I would
8 see referenced.

9 And I don't believe -- I may have had a
10 question for Mr. Micheel for some information, where it
11 would be located, but that one I'm not sure of.

12 That's the full extent of what I recall.

13 Q. Okay. So besides Mr. Kind, then, you didn't
14 have any discussions with any witnesses for the other
15 parties with respect to this case?

16 A. That would be true, because the only
17 discussions I had with the company was -- was not with
18 the witnesses the company had.

19 Q. Now, with respect to -- you mentioned
20 Mr. Micheel. Besides Mr. Micheel, did you have
21 discussions with any representatives of the other
22 parties, except for AmerenUE, with respect to this case?

23 A. I had a discussion with Mr. Swogger from
24 Noranda, which was -- he was asking -- or talking to me
25 about -- he had to do a budget and needed to have a

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1 number to put into the case -- to his budget -- excuse
2 me -- relating to what the amount of rate increase or no
3 rate increase issue put in, and he asked me for -- we had
4 a discussion about what number he should use.

5 Q. And that was the substance of your
6 discussions with him?

7 A. That was the -- yes.

8 Q. Do you recall when that discussion took
9 place?

10 A. It was in 2006. Probably, I would say, in
11 the last quarter, because I suspect it was for his 2007
12 budget, but he didn't identify that.

13 Q. And with respect to the nature of those
14 discussions, were you suggesting what position on rates
15 that Noranda should take?

16 A. No.

17 Q. What were you -- what was the substance of
18 your communication to him?

19 A. What I -- what he asked is that he needed to
20 put in a number for his budget, and he asked if I had any
21 insight as to that, and I indicated not directly but
22 normally what I had seen done in other companies that
23 have had this type of an issue to do -- other than the
24 company itself. Sometimes the company itself has a
25 number. And I said you could ask the company and see if

4 (Pages 10 to 13)

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1 they'll give you the number.
 2 I think he said he had had some discussions,
 3 but he hadn't gotten any information that had been
 4 helpful.
 5 So I said I would just take the difference
 6 between what they asked for and zero and put in
 7 50 percent, and that was the extent of what our
 8 discussion -- well, I mean, that's what the content was
 9 of our discussion.
 10 Q. Did you review any of the Staff testimony
 11 before it was filed?
 12 A. I saw excerpts of Mr. Meyer's testimony on
 13 the EEInc issue. I don't recall seeing anyone else's
 14 testimony.
 15 Q. Did that testimony have to be approved by
 16 you in any way?
 17 A. No.
 18 Q. Did you make any suggestions for changes or
 19 additions --
 20 A. No.
 21 Q. -- to that draft?
 22 Did you review the testimony of any other
 23 witnesses from any other parties before they were filed?
 24 A. No.
 25 Q. Since the rebuttal testimony was filed, have

1 before I received it from counsel.
 2 Q. Who was the Staff counsel?
 3 A. Mr. Dottheim.
 4 Q. And did you read both of these documents in
 5 their entirety?
 6 A. I know I did in the 12,463 case. I'm not
 7 sure if I read every word of the 1977 case.
 8 Q. Now, during the course of this deposition
 9 I'm going to be referring to the 1987 Power Supply
 10 Agreement of AmerenUE and the other sponsoring companies
 11 with EEInc, and just for shorthand, as we go along, I'm
 12 going to refer to the Power Supply Agreement, and that's
 13 the one I'm referring to. Okay? Just so we're on the
 14 same page there.
 15 Now, again, referring to your testimony, on
 16 page 19, lines 10 to 12, you say the following, quote,
 17 The agreement expired by AmerenUE when not consistent
 18 with its rights and regulatory obligations to its
 19 customers, it chose not to seek the best terms for its
 20 system and customers, close quote.
 21 Now, I'm not going to be putting the Power
 22 Supply Agreement into evidence in this deposition, but I
 23 will be referring to it.
 24 And I want to refer you to Section 6.01 of
 25 the Power Supply Agreement, or PSA, as I may refer to it

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1 you talked with the representatives of any of the other
 2 parties other than AmerenUE about this case?
 3 A. Is this about the case in total or just
 4 about EEI?
 5 Q. The case in total, which would include EEI.
 6 A. I'm sure I have because the settlement
 7 conferences have been going on, and they're done in this
 8 room, and my office is just down the hall.
 9 So a lot of times people will stop by my
 10 office. And, plus, I have candy outside, so they get the
 11 candy.
 12 And I know -- I know there has been several
 13 discussions about how painstakingly long and tedious the
 14 discussions have been. So I -- I remember those.
 15 Q. Okay. I'm going to refer you to your
 16 rebuttal testimony. On pages 19 and 21 you refer to two
 17 filings, one in 1952, a filing of UE, and the other is a
 18 1977 Report and Order of the Commission.
 19 And you note on page 19, line 20, that
 20 counsel to the Staff advised you of these cases.
 21 A. Yes.
 22 Q. Were you aware of these particular documents
 23 before that counsel advised you of them?
 24 A. I was aware of the 1952 case. I was aware
 25 of the existence of the 1977 case, but I hadn't seen it

1 for short.
 2 And that section says, quote, This agreement
 3 shall continue --
 4 MR. CYNKAR: Steve, if you'd like another
 5 copy, I have this.
 6 MR. DOTTHEIM: Thank you, Bob.
 7 MR. CYNKAR: I do need this back.
 8 BY MR. CYNKAR:
 9 Q. Quote, This agreement shall continue in
 10 force through December 31, 2005, unless cancelled
 11 pursuant to the provisions of Section 6.02, close quote.
 12 Now, this provision in the contract
 13 terminated that contract, did it not?
 14 A. That and lack of action to do anything else,
 15 that would be true.
 16 Q. There is no other provision in the contract
 17 to revive the contract, is there?
 18 I think you're going to find that the pages
 19 in that copy are out of order. That's page 16, I
 20 believe.
 21 A. The reason I hesitate is in looking at this
 22 issue, contracts were modified during their term, and
 23 some contracts are extended by agreement of the parties,
 24 so --
 25 Q. Right.

5 (Pages 14 to 17)

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1 But as you sit here, you're not aware of any
 2 provision in that contract or any of its modifications
 3 which overrode Section 6.01. Correct?
 4 A. I -- I cannot recall as I sit here right now
 5 what provisions it has, if any, of modifications to the
 6 contract, if that's what the question is.
 7 Q. Have you ever read that contract in its
 8 entirety?
 9 A. Yes.
 10 Q. And the subsequent modifications?
 11 A. To the extent I had them, yes.
 12 Q. Okay. Given the position that you're taking
 13 in this case, if there were such an explicit provision
 14 allowing for an extension of the contract, do you think
 15 you would have found them?
 16 A. Yes. That's why I -- I was mentioning to
 17 you, I believe there is authority to modify this contract
 18 during -- during its term.
 19 Q. In the contract?
 20 A. I said -- I said I believe there is
 21 authority. Now, whether it's in the bylaws or it's in
 22 the contract, I don't recall at this time.
 23 Q. So as you sit here, though, you don't recall
 24 if there is a contract provision that would override
 25 6.01. Is that fair?

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1 A. I don't recall a contract provision, but I
 2 know the contract is modified. So, I mean, either it was
 3 modified by some other authority that is not in this
 4 contract or there is a provision in this contract that I
 5 don't recall right now.
 6 Q. Now, when you say the contract was
 7 modified -- and, actually, what do you mean?
 8 A. That there would be modifications to the
 9 contract.
 10 They -- they use the term, and you see it in
 11 the excerpts of the Board minutes that we were provided,
 12 what they call a mod, m-o-d --
 13 Q. Right.
 14 A. -- and they have numbers.
 15 Q. So the document you're reading from is
 16 Mod 12, I believe?
 17 A. Right. And I know we went to -- I saw all
 18 of the way up to a Mod 17. So there is mods --
 19 Q. Okay.
 20 A. -- after this.
 21 So that's what I'm saying. I know there is
 22 modifications to it. Now, can I tell you today exactly
 23 whether there is a provision in this contract that tells
 24 you where that is or whether there was some other
 25 authority that allowed it to be modified? I can't tell

Page 20

1 you that right now.
 2 Q. But with respect to those modifications,
 3 you're not aware of any of those modifications that
 4 modified or changed Section 6.01?
 5 A. That is correct.
 6 Q. Okay. Now, in your testimony in that
 7 sentence I read, you refer to the agreement -- again,
 8 that's the PSA -- expiring when Ameren didn't act
 9 consistently with its rights to extend the PSA.
 10 Am I understanding that correctly?
 11 A. It didn't exercise its rights, yes, that's
 12 correct.
 13 Q. Now, those rights, you mean the legal rights
 14 to extend the contract in your view. Is that correct?
 15 A. When, you say legal rights -- I know it had
 16 rights.
 17 Q. Well, what other kind of rights are there
 18 other than legal rights?
 19 A. I guess there is all kinds of rights,
 20 because there -- there is discretionary. It depends on
 21 what kind of term you put in front of rights.
 22 Q. Well, we here are talking about whether
 23 legally this contract expired, and in your testimony
 24 you're expressing the view that Ameren had a right to
 25 continue that contract.

Page 21

1 In your view that's not a legal right?
 2 A. I -- I believe it's a legal right. I
 3 believe they had a legal right, if that's what you're
 4 asking me.
 5 Q. All right. Now, isn't it also accurate to
 6 say that when someone has a legal right, someone else has
 7 a legal obligation corresponding to that right?
 8 A. I'd say yes as a general statement. There
 9 may be exceptions.
 10 Q. All right. Now, AmerenUE is a shareholder
 11 of EEInc. Correct?
 12 A. Yes.
 13 Q. Okay. And EEInc is an Illinois corporation?
 14 A. Yes.
 15 Q. Now as a separate corporation, EEInc has
 16 legal interests and rights that are distinct from those
 17 of AmerenUE. Is that correct?
 18 A. It's possible. It could be consistent
 19 though.
 20 Q. But they are distinct?
 21 A. Yes.
 22 Q. They're different corporations. Correct?
 23 A. Yes.
 24 Q. Okay. Now, as we were just talking a minute
 25 ago, the rights that you're referring to here is a legal

6 (Pages 18 to 21)

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1 right to require EEInc to sell its power at below fair
2 market rates. Correct?

3 A. Yes.

4 Q. Now, and that's -- as you said, you're
5 talking about legal rights. That's a legal opinion on
6 your part?

7 A. That's an accountant position.

8 Q. Well, you're testifying as to the legal
9 right of AmerenUE to require EEInc to sell its power at
10 below fair market rates. Correct?

11 A. I'm not talking about -- I'm not doing this
12 as an attorney. I'm doing this as a CPA.

13 Q. I know. Regardless of what you're doing it
14 as, though, in your testimony you're saying that there is
15 such a legal right on the part of Ameren. Correct?

16 A. There is a right of Ameren to have kept that
17 capacity and energy on a cost basis, that's correct.

18 Q. And that is a legal right. Correct?

19 A. Yes, I believe it's legal.

20 Q. Okay. Now, then, as a matter of law, since
21 we're talking about law, EEInc owns the Joppa plant --
22 plant power -- excuse me. I'm sorry.

23 MR. CYNKAR: As I mentioned earlier, I have
24 a cold. So for folks on the phone, too, if you can't
25 hear me -- I'm a little bit scratchy this morning -- just

1 entity that makes the decision at what price to sell that
2 power?

3 A. That would be true, yes.

4 Q. Now, as a matter of law, shareholders are
5 not entitled to manage a company in which they own stock.
6 Correct?

7 A. I don't know.

8 Q. As a matter of law, the directors manage the
9 company. Correct?

10 A. That wouldn't seem to be correct to me.

11 Q. Do you have any authority for your opinion
12 on that?

13 A. I see managers run companies that aren't
14 directors all of the time.

15 Q. Then it's not your testimony that directors
16 don't manage the company; it's just that other people
17 also do?

18 A. Yes.

19 I think your question asked do directors run
20 the company. I told you I wasn't sure of that.

21 Q. Okay.

22 A. Because I have personal experience where I
23 see managers run companies, and some of those are
24 shareholders. So there is -- there is a commingling
25 between a shareholder and director and an officer.

Page 23

Page 25

1 tell me to speak up.

2 BY MR. CYNKAR:

3 Q. Anyway, my question again was, as a matter
4 of law, EEInc owns the Joppa plant power. Correct?

5 A. EEInc is the corporation that owns the unit,
6 yes.

7 Q. And it owns the Joppa plant power. Correct?
8 If you don't know, you can say you don't
9 know.

10 A. Well, there isn't -- when -- your
11 question -- there is the power supply that goes to the
12 owners and to DOE, and I'm not sure when you keep using
13 the term "legal," whose rights to the power are at given
14 times.

15 Q. So is the answer, then, to my question of
16 whether EEInc owns the Joppa plant power is you don't
17 know?

18 A. Yes.

19 Q. Okay. Now, again, as a matter of law,
20 EEInc makes the decision as to the price of the Joppa
21 plant power. Is that correct?

22 A. When you're asking me that question, are you
23 referring to its decision of its Board and officers?

24 Q. I'm asking whether EEInc as the corporation
25 that owns the Joppa plant and produces that power is the

1 Sometimes they -- they over-- they overlap and sometimes
2 they're separate and distinct.

3 Q. But each of those statuses, director,
4 shareholder, employee, manager, officer, those are
5 distinct forms of status under the law, aren't they?

6 A. I know they're distinct -- they're distinct
7 classes or groups. Now, whether -- I couldn't tell you
8 whether there is a law that says -- that makes those
9 groups. I don't know that.

10 Q. Okay. And, also, each of those statuses, as
11 we're referring to them, has distinct obligations and
12 duties under the law. Correct?

13 A. I don't -- I don't -- I don't know.

14 As I said in my prior answer, I didn't know
15 the law broke down employees, management, all of that.
16 So I wouldn't know what -- I wouldn't know the law would
17 have -- states what their specific requirements are.

18 Q. That's fine. That's fine.

19 I want to refer to your testimony in two
20 places. On page 16, lines 21 to 23, I'm going to just
21 read part of this sentence. You claim, quote, AmerenUE
22 engaged in an imprudent decision to sell the power from
23 the capacity and energy associated with its 40 percent
24 ownership of EEInc into the open market, close quote.

25 A. I'm sorry. Could you tell me --

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 26</p> <p>1 Q. Page 16, lines 21 to 23. 2 A. Okay. 3 Q. You have a long sentence, and I read part of 4 it. 5 A. I see it. 6 Q. Okay. Now, you, then, a couple of pages 7 later, on page 19, lines 13 to 14, you say the following, 8 quote, AmerenUE had an ownership percentage significant 9 enough to effectively -- and I think there is a typo 10 there. It says extended but I think you meant extend -- 11 the contract on its existing terms, close quote. 12 A. Yes. 13 Q. Now, is it your testimony that AmerenUE 14 should have directed the EEInc Board of Directors to sell 15 power to AmerenUE at below fair market rates? 16 A. No. 17 Q. Then how was Ameren to decide to sell power 18 from the Joppa plant at any particular price? 19 A. AmerenUE was to direct its directors to vote 20 that way. 21 You asked me could Ameren tell all of the 22 directors. My answer would be no because they had no -- 23 but it could have told its directors to vote for this 24 arrangement that we're referring to in my testimony. 25 Q. And what is the legal basis for that power</p>	<p style="text-align: right;">Page 28</p> <p>1 question? 2 A. If you're just -- I guess what I don't 3 understand is are you saying it's just unique to EEInc or 4 every utility? 5 Q. Well, EEInc's Joppa plant produces power and 6 selling that power at fair market value is a corporate 7 opportunity of EEInc, isn't it? 8 A. Okay. I'll go back and say, are you asking 9 me, is that -- is that just for EEInc or every corporate 10 entity that owns power plants? 11 Q. Just exactly what I said, which is just 12 EEInc. 13 That's the corporate opportunity of EEInc to 14 sell power from its Joppa plant at fair market value? 15 A. I'd say, yes, it has that opportunity, as 16 does any other entity that has power to sell. 17 Q. So that corporate opportunity belongs to 18 EEInc. Correct? 19 A. I don't know if there is a property right or 20 something to it. I know it could make that decision, 21 just as Union Electric could make that decision. 22 Q. As a matter of law, the corporate 23 opportunity to sell the Joppa plant power at fair market 24 value does not belong to EEInc's shareholders in their 25 capacity as customers of EEInc. Correct?</p>
<p style="text-align: right;">Page 27</p> <p>1 in your view? 2 A. I saw it in the bylaws of EEInc that the 3 voting would be by the percentage of ownership, and 4 AmerenUE -- or Union Electric -- excuse me -- has 5 40 percent, and it has two Board members, I believe, at 6 the time this decision was made. 7 Q. Directors have legal duties and obligations 8 that arise from sources of law outside the corporation or 9 the documents creating the corporation. Isn't that true? 10 A. I don't know. 11 Q. And then you may not know the answer to this 12 question but just to be complete, and corporate bylaws 13 can't change those duties, can they? 14 A. I don't know. 15 Q. Okay. Now, as a matter of law, directors 16 are not entitled to defer to the wishes of control 17 shareholders to transfer corporate assets to those 18 shareholders at below fair market value. Correct? 19 A. I don't know. 20 Q. Okay. As a matter of law, selling its power 21 at fair market value is a corporate opportunity of 22 EEInc, isn't it? 23 A. Are you asking just exclusively of EEInc? 24 Q. Yes. 25 Do you want me to say it again, the</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Could you repeat that one? 2 Q. Sure. That's a long sentence. 3 As a matter of law, the corporate 4 opportunity to sell the Joppa plant power at fair market 5 value does not belong to EEInc's shareholders in their 6 capacity as customers of EEInc? 7 A. I don't know. 8 Q. As a matter of law, the corporate 9 opportunity to sell the Joppa plant power at fair market 10 value does not belong to EEInc's shareholders in their 11 capacity as shareholders of EEInc? 12 A. I don't know. 13 Q. Directors have fiduciary duties towards the 14 corporation on whose board they sit. Correct? 15 A. I would say I know that occurs in some 16 cases. Usually those are defined by the organization 17 documents as to what the responsibilities are of the 18 directors, but that's -- that's generally in most of 19 those documents. 20 Q. So is it your testimony that directors on 21 the board of a corporation don't have any fiduciary 22 duties that are defined by law outside the corporate 23 documents? 24 A. I don't know that. 25 Q. Okay. So then consistent with what you just</p>

8 (Pages 26 to 29)

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1 said, then, you wouldn't know, if there are such
2 fiduciary duties, what they are?

3 A. No.

4 Q. Okay. I'm going to ask you a series of
5 questions, and, again, I don't want to belabor the point.
6 But in light of what you just said, I suspect you may not
7 know the answers to these, so just bear with me.

8 Would you say it's correct to say that a
9 fiduciary's use of corporate assets to further its own
10 goals is a violation of its fiduciary duties?

11 A. Not necessarily. I guess it depends on the
12 goals.

13 Q. And when in your view would the fiduciary's
14 use of corporate assets to further his own goals not be a
15 violation of his fiduciary duties?

16 A. When his goals were consistent with the
17 direction of the organization.

18 Q. Of the corporation, for example, which the
19 director sits?

20 A. Correct.

21 Q. Okay. Would you say it's also correct that
22 a director may not take the corporation's assets to help
23 another corporation in which he has an interest?

24 A. Could you repeat that one?

25 Q. A director may not take the corporation's

1 not take the corporation's assets to help another
2 corporation in which he has an interest, could you give
3 me an example of some of those situations where you see
4 it happening all of the time?

5 A. Well, I saw it in EEInc where you had the
6 two directors for Kentucky Utilities that voted against
7 the Power Supply Agreement, the new one, and that was in
8 the interest of Kentucky Utilities, and I saw nothing
9 improper regarding that.

10 I see it, like, with Ameren Services in
11 terms of the way that corporation operates in relation to
12 AmerenUE. I see it the way that Ameren Holding Company
13 acts in relation to Union Electric.

14 So, I mean, those are just examples within
15 Ameren -- I see it -- I see it almost all of the time
16 with affiliates.

17 Q. Now, with respect to those affiliate
18 transactions -- and let's put KU and EEInc aside for a
19 second, because that's where I certainly will be going
20 next.

21 Give me an example of one of those
22 transactions, in the Ameren ones you mentioned, the
23 substance of it.

24 A. For example, the Ameren -- Ameren Corp
25 defers -- I mean, actually takes over some of the

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1 assets to help another corporation in which he has an
2 interest?

3 A. No, I wouldn't agree with that.

4 Q. And could you explain how --

5 A. I see it all of the time in affiliate
6 transactions, where it's done all of the time in that
7 case. So -- and depending on the ownership arrangement.

8 So, I'd say, one, I couldn't agree with it
9 and, two, I see -- I see it done all of the time,
10 so...

11 Q. Let me ask you another question then.

12 Would you agree with this: A corporation's
13 fiduciary cannot take advantage of business opportunities
14 which are considered as belonging to the corporation?

15 A. Could you repeat that one too?

16 Q. Certainly. Excuse me.

17 A corporation's fiduciary cannot take
18 advantage of business opportunities which are considered
19 as belonging to the corporation?

20 A. I'm in between I don't know or no, so I -- I
21 don't really understand the question.

22 Q. All right. To go back to your earlier
23 answer, when you said you see these transactions
24 occurring between affiliates all of the time, and that,
25 again, was in response to my question that a director may

1 decisions that are made that are just Union Electric.

2 If you've had the opportunity to look at
3 Mr. Rainwater's deposition, I think he said the Ameren
4 Board was perfunctory and that most of the things he
5 would take up would go to Ameren Corporation because they
6 were the -- you know, that was in their interest, not
7 necessarily UE's.

8 Q. Now, let me -- I'm confused.

9 How does that -- remember, my question was
10 whether it was correct that a director may not take the
11 corporation's assets to help another corporation in which
12 he has an interest.

13 How is that an example of assets of one
14 corporation being taken and given to another?

15 A. To the extent that -- are we -- we're not
16 talking about EEInc?

17 Q. We're not talking EEInc.

18 You had a couple of Ameren examples, and so
19 pick one of those.

20 A. For example, the setting up of the service
21 corporation would be an example of -- or a transaction
22 that would be done.

23 I don't know how familiar you are with Union
24 Electric before the merger, but Union Electric had its
25 own group, had its own back office groups, own attorneys,

9 (Pages 30 to 33)

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1 its own accountants.

2 And in order to support the new entities,
3 especially Ameren Corporation, it's common to pull all of
4 those resources away from the utility, put them in a
5 service corporation and then share those back to, like, a
6 holding company or something, because it causes them to
7 avoid having to hire their own attorneys, their own
8 accountants and everything else.

9 And that decision is made because there is a
10 holding company up there that owns the utility that, in
11 essence, wants to avoid the expense of having its own
12 attorneys, its own accountants, its own support group,
13 keeping its own books and records and stuff.

14 So that's done for the benefit of the
15 holding company.

16 Q. I see.

17 And so in your view that's a pretty good
18 example of what you meant when you were saying that this
19 occurs all of the time among affiliates?

20 A. Yeah. It also happens to support
21 nonregulated. When you start-up nonregulated activities,
22 one of your big costs in any start-up business is the --
23 the overhead that has to come.

24 And if you can put that in a service
25 company, you can reduce that obligation to any new

1 Utilities?

2 A. Yes.

3 Q. Now, at the same time what relationship did
4 those directors have to KU?

5 A. The right to vote their -- the KU ownership
6 of EEInc.

7 Q. Were they KU employees?

8 A. I -- I know at -- at times they have been.
9 I -- I don't know the specific background of the actual
10 KU -- of the KU directors at the time this vote was
11 taken.

12 Q. Okay. And so as your testimony says, they
13 voted to direct EEInc to take its assets and sell them to
14 KU, another corporation, at less than fair market value.
15 Correct?

16 A. That's not what that says. It says they
17 voted against the new market-based rates Power Sales
18 Agreement.

19 Q. Sorry. Let me -- you're quite right.

20 Is it your position that in doing that, that
21 they would have voted for continuing a cost-based Power
22 Supply Agreement with KU?

23 A. It would be my -- my opinion that's true,
24 yes.

25 Q. Okay. So that from your perspective they

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1 nonregulated activity you get into. So that's what I
2 meant by -- by that.

3 Q. Okay. If you'd turn to page 17 of your
4 testimony, lines 16 to 18. You state, quote, It should
5 be noted that Kentucky Utilities, voted against the new
6 market based rates Power Sales Agreement between EEInc
7 and Ameren Energy Marketing (AEM), close quote.

8 Are you with me there?

9 A. Yes.

10 Q. Now, technically -- and in light of your
11 earlier questions, I -- I just want to make sure we're
12 clear here.

13 Kentucky Utilities didn't actually cast a
14 vote. Correct?

15 A. Well, I'd say, yes, it did. Its directors
16 voted on its behalf.

17 Q. When you state "its directors," you mean its
18 directors on EEInc's Board?

19 A. Yes.

20 Q. Okay. And when you say those individuals
21 were its directors, what do you mean?

22 A. That they were on the Board as
23 representatives of Kentucky Utilities.

24 Q. So is it your testimony that they were on
25 the Board to represent the interests of Kentucky

1 would have voted to direct EEInc to sell power to KU at
2 below fair market value?

3 A. To the extent that that -- that the cost is
4 below fair market value, that's correct.

5 Q. Well, in today's world, I mean, the reason
6 why we're here is because cost is below fair market
7 value. Isn't that correct?

8 A. Well, I -- I believe the reason we're here
9 is because Ameren believes that.

10 I can tell you that in my history, there is
11 no guarantee that fair market value is above cost all of
12 the time. I see people lose money all of the time on
13 that premise.

14 Q. That's not what I asked you.

15 In terms of the Staff's position in this
16 case, the Staff is imputing \$80 million a year to
17 Ameren's revenue because there is that significant a
18 difference between a market-based contract and a cost-
19 based contract for Joppa's power. Isn't that correct?

20 A. That's false.

21 Q. What is wrong with that?

22 A. Because the only thing Staff is removing is
23 the additional cost that AmerenUE incurred because it no
24 longer could acquire the Joppa energy at cost.

25 Now, if -- if you're -- you're trying to

10 (Pages 34 to 37)

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1 suggest in your question that that's fair market value
2 and AmerenUE had to go out and buy power. And you saw in
3 Kentucky Utilities, Kentucky Utilities bought energy to
4 substitute for this at less than the price of what EEInc
5 was going to sell it to them.

6 So when you say fair market value, fair
7 market value is the value that comes from a transaction.

8 Q. Is it -- when you talk about the cost -- the
9 added cost to AmerenUE, that cost isn't the price of
10 acquiring power in the wholesale market?

11 A. No. Actually, that's -- that's part of the
12 cost, but part of the cost would come from additional
13 sources of generation, some already under UE's control
14 that would now be used because they have higher costs,
15 that wouldn't have been used if the energy was being made
16 available out of the Joppa unit.

17 Q. So the Joppa unit's costs are lower than
18 those?

19 A. In some cases that would be true.

20 So when you're asking me about the value of
21 the adjustment, the value of the adjustment is the
22 replacement cost in the lost off-system sales to UE,
23 which would be different than the value that's in this
24 contract.

25 Q. Okay. Getting back to the discussion of

1 market values.

2 Q. Do you know if the cost of Joppa power is
3 below what the wholesale market is pricing power at now?

4 A. I -- yes, I know.

5 Q. And is it higher or lower?

6 A. At most times during the year its costs will
7 be lower, but not at all times during the year.

8 Q. Okay. Now, to go back to the question that
9 we were hung up on. Is it your opinion, then, that KU
10 would have had its directors on EEInc's Board vote to
11 have EEInc sell Joppa power to KU in a cost-based
12 contract?

13 A. Yes.

14 Q. And if that power -- if that price was below
15 fair market value, that would benefit KU at the expense
16 of EEInc, would it not?

17 A. That would be true if you assume fair market
18 value was above cost.

19 Q. And that was the assumption of that premise.

20 Now, again, staying with that premise that
21 fair market value is above cost.

22 The vote of the KU EEInc directors to do
23 that would have been a violation of their fiduciary duty
24 to EEInc. Correct?

25 A. No.

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1 KU's directors.

2 It was your opinion, as you said, that they
3 would have voted to direct EEInc to sell Joppa power to
4 KU at below fair market value. That's where we left off.
5 Correct?

6 A. I'm sorry. I was following until that last.
7 I didn't --

8 Q. Okay. It was your opinion that KU's
9 position was that they would direct their directors on
10 EEInc's Board to direct EEInc to sell power to KU at less
11 than fair market value. Correct?

12 A. And that's where we got -- that's the part
13 that you keep throwing in, that below fair market value.

14 And what I would say is I don't know what
15 the fair market value is to KU. Just as I said, there is
16 a contract -- this contract that is here --

17 Q. I see the problem.

18 A. -- has a price and that -- you could say
19 that's the fair market value between EEInc and Ameren
20 Energy Marketing, but the value to KU is something
21 different than that, just as the value to UE is
22 different.

23 So the fair market value is a term that is
24 defined by the value of the transaction and the parties
25 to the transaction, and parties can have different fair

1 Q. Well, earlier you testified that you didn't
2 know whether members of boards of directors had fiduciary
3 duties from other legal sources and you didn't know what
4 fiduciary duties were.

5 So I can understand you answering my
6 question with an "I don't know," but what is the basis
7 for you saying that the EEInc directors selling power to
8 KU at below fair market would not be a violation of their
9 fiduciary duties?

10 Again, the assumption is that costs are
11 below fair market.

12 A. You have a paragraph there you're asking me
13 about, so I'll break it down.

14 When you ask me those questions, you ask me,
15 like, legal rights, and I told you I'm not an attorney,
16 so I don't know.

17 Now, if you're asking me as an auditor
18 that's done this for, I guess, 30 years now, and being
19 familiar with the circumstances and looking at closed
20 corporations similar to what EEInc is, my answer is no.

21 Q. Well, are you saying that the concept of
22 fiduciary duty is not a legal concept?

23 A. I can say it's part. I mean, we're -- we're
24 governed by law, so everything we do has a legal aspect
25 to it.

11 (Pages 38 to 41)

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1 Q. What are the sources of the fiduciary duties
2 of a board of director's member to his or her
3 corporation?
4 A. That would be defined by the organizational
5 documents formed by the owners when the corporation is
6 formed or modified during the corporation's life.
7 Q. Are those fiduciary duties defined by any
8 other sources of law outside those corporate documents?
9 A. I would say they're -- they're done under --
10 as a subset to overriding guiding laws that would be
11 there if there is disputes and things in terms of the way
12 the organization operates.
13 Q. What are the sources of law outside the
14 corporate documents that define fiduciary duties?
15 A. There would be the contract or the legal
16 designation of, like, bylaws, articles of incorporation,
17 prior case law on similar matters, you know, when
18 disputes arise.
19 Q. What are the fiduciary duties of board
20 members to their corporation?
21 A. It would be whatever is defined as their --
22 as the board's functioning responsibility in, like, the
23 articles of incorporation or the bylaws.
24 Q. Well, then, in your view, getting back to my
25 original question -- and our example is the KU EEI

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1 directors directing EEInc to sell power to KU at cost,
2 which we are assuming for our purposes in this question
3 is below fair market value.
4 A. And are we -- and I'm assuming that's at
5 today's market?
6 Q. It doesn't matter. Just for purposes of my
7 question, assume that the cost of Joppa power is below
8 fair market for my question.
9 A. Okay.
10 And right now?
11 Q. Yes.
12 A. Because board members --
13 Q. Well, it doesn't have to be right now.
14 My question is, is that -- in my
15 hypothetical the KU directors on EEInc's Board directed
16 EEInc to sell power to KU at a time when the cost of
17 Joppa's power is below fair market. Okay?
18 A. Right now?
19 Q. Why do you ask me "right now"? What's
20 the --
21 A. Well, the reason I said that is when we had
22 our prior discussion, I told you I know fair market value
23 can be below cost. I've seen it.
24 So when you say that -- like, when you
25 say -- you're taking a snapshot at the relationship of

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1 fair market value and cost, and they will change over
2 time.
3 And so when -- I'm asking you in your
4 assumption -- you're asking about this fiduciary
5 responsibility to a board.
6 Q. Right.
7 A. I'm asking, do you mean right now? If
8 you're saying yes, a director could see that in the short
9 run, that that is not in the corporation's best long-term
10 interests. It may give a short-term gain but may
11 actually end up worse than we would be if we stayed with
12 the arrangement -- the cost-based arrangement now that
13 would, in essence, buffer the corporation at a time when
14 fair market values retreat and they are not as good as
15 the organization's costs.
16 Q. If AmerenUE's directors on EEInc's Board
17 acted as you had testified earlier, that Ameren directed
18 its representatives, to use your expression, on EEInc's
19 Board to sell power at a cost-based rate --
20 A. You used two different entities. You used
21 Ameren and you used AmerenUE.
22 Q. AmerenUE. I'm sorry.
23 A. So Ameren in your question is AmerenUE?
24 Q. Yes. Yes. Thank you.
25 If they did that and they did that in a

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1 long-term power contract, and if -- right now costs were
2 below fair market value, but, as you said, in year two
3 fair market value took a nose dive and those costs were
4 above what fair market value was, would Ameren have had a
5 responsibility in that situation to terminate the
6 contract?
7 A. I -- I'd say I -- I need more facts to know
8 the answer to that question.
9 Q. What kind of facts do you need?
10 A. You would need to know in terms of the
11 long-run -- the long-run analysis of the consequences
12 of -- of your choice to make your decision.
13 Utilities aren't run on short-term day or
14 year decisions. We make a lot of decisions that, in
15 essence, have upfront costs but long-run benefits.
16 So you'd have to look at the -- I'd need
17 more facts about the circumstances to know what would be
18 the proper decision to make and then, two, you'd have to
19 look at what would be the means of which you would
20 implement that decision.
21 Q. It is your testimony that AmerenUE had a
22 right and an obligation to continue this Power Supply
23 Agreement. Correct?
24 A. I would say -- I would probably add another
25 thing. I think they had an obligation to actually study

12 (Pages 42 to 45)

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1 and see if it was prudent for them to actually allow the
2 contract to expire and find alternative -- that it was
3 cheaper for AmerenUE -- it was in AmerenUE's best
4 interest to allow the contract to expire and explore
5 alternative means.

6 Q. So it is your testimony that the AmerenUE --
7 again, using your term -- representatives on EEInc's
8 Board should have taken AmerenUE's best interest to
9 govern their actions with respect to the sale of power
10 from Joppa?

11 A. Well, yes. I mean, that's -- they've done
12 it throughout the history of EEInc.

13 Q. Can you give me an example of that?

14 A. If you look at the -- the support that was
15 done in terms of supporting the development of EEInc,
16 that in those cases they, in essence, made an investment,
17 mostly it's debt, but they made a minimal investment in
18 terms of equity in order to acquire the rights to this
19 unit in excess of what was going to be provided to DOE,
20 because they believed that that was in UE's best
21 interest.

22 And if you look at the IRP process, I've
23 never seen that in the long run that wasn't true.

24 Q. Is it your testimony that that was contrary
25 to EEInc's interests?

1 A. -- that that's not the fair market value to
2 KU, that what it was offered to them in the EEInc.

3 Q. No. But pick any other -- you alluded to
4 other possible contracts and those contracts all be
5 higher than the cost-based rate from Joppa. Fair?

6 A. Yes. Yes.

7 Q. Okay. Great.

8 Now, if that had prevailed, the difference
9 between that cost-based price and the fair market price
10 would be considered a constructive dividend to KU.
11 Correct?

12 A. Are you asking me assuming that KU doesn't
13 get the cost-based contract and it's sold under this fair
14 market above cost?

15 Q. No. Exactly what the hypothetical is, that
16 KU gets the power at cost --

17 A. Okay.

18 Q. -- from EEInc --

19 A. Okay.

20 Q. -- and that power is below whatever fair
21 market price is out there.

22 That amounts to a constructive dividend to
23 KU. Correct?

24 A. No.

25 Q. No. What is the basis for your view that it

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1 A. No, not as EE-- excuse me -- EEInc's
2 interests were defined at the time.

3 Q. Going back to the discussion of KU and
4 assuming that -- to use your expression right now -- the
5 sale of Joppa power to KU, the cost rate would have
6 been -- the cost-based rate would have been below fair
7 market value and KU's directors on the EEInc Board have
8 voted to sell power at the cost-based rate to KU.

9 Are you with me?

10 A. No.

11 Q. Okay. The hypothetical is the one we were
12 talking about before.

13 KU's representatives on EEInc's Board have
14 voted to sell Joppa power to KU on a cost-based rate.

15 Okay?

16 A. Okay.

17 Q. Let's say that position prevails and that
18 sale occurs.

19 A. Okay.

20 Q. Okay?

21 Now, so KU has gotten power at a cost-based
22 rate that is below what a fair market price would be in
23 my hypothetical. Correct? With me?

24 A. With my caveat that --

25 Q. Right now, yes.

1 doesn't?

2 A. Because they're just receiving power.

3 They're just -- in fact -- well, it would
4 basically almost make no difference, because if you take
5 that they were to sell it -- because I guess to say it's
6 a constructive dividend, you have to say that there was
7 some money coming the other way.

8 They'll still have entitlements if you mark
9 the energy up and sell it to another one. They still
10 have 20 percent rights to that markup.

11 Q. So in your view, then -- because this is not
12 a constructive dividend, in your view, that the IRS would
13 not attribute income to EEInc in the amount of that
14 constructive dividend. Correct?

15 That's your view?

16 A. Well, you're getting into -- I don't know
17 what you're defining as a constructive dividend.

18 I know that over the -- over the terms of
19 the Power Supply contract, there was no imputed revenue
20 or this problem that you're talking about, when they were
21 selling it at cost-based rates.

22 Q. When they were selling at cost-based rates,
23 there was no market for wholesale power. Correct?

24 A. That's false.

25 Q. That is false?

13 (Pages 46 to 49)

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1 A. I said that is false.
 2 Q. So when was there a market price for the
 3 EE-- the Joppa power?
 4 A. There has been a market to sell power before
 5 I even became working for the Commission. I've seen
 6 power sales all over the place.
 7 Q. Is it your testimony that before the early
 8 1990s, when the wholesale market for power was basically
 9 created after the Energy Policy Act, that isn't it true
 10 that in that period before the '90s most wholesale
 11 contracts were cost-based contracts?
 12 A. That's false too.
 13 Q. You don't -- you say that's not true?
 14 A. Oh, false is not true, isn't it?
 15 Q. And what's the basis for your view?
 16 A. Because I -- I saw capacity sales and energy
 17 sales from our utilities since the late '70s, '80s, since
 18 I started working with energy, and they were not -- they
 19 were, in essence, negotiated deals where -- in fact, in
 20 the late '70s and early '80s, capacity sales were below
 21 costs because there was a glut of capacity in this
 22 region. So -- so they wouldn't be cost based.
 23 Q. Is it your view, then, that the wholesale
 24 sales were market based before the 1990s?
 25 A. It would be what the market would bear, if

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1 that's what you call market based.
 2 Q. Okay. To get back to how we got on to this
 3 line of questioning, I was asking you about a
 4 constructive dividend in the case of KU getting power
 5 below fair market, and you initially said that that
 6 wasn't a constructive dividend, and then you expressed
 7 some concern about what I meant by constructive dividend.
 8 I just want to be clear on your answer.
 9 Is your answer that that would not amount to
 10 a constructive dividend to KU?
 11 A. Well, first of all, you asked me about
 12 constructive dividend and I gave you one answer and then
 13 you took constructive dividend and you added the IRS. I
 14 told you that's a different -- you've added a different
 15 element to your question.
 16 Q. Well, that's true, but a constructive
 17 dividend in that context would be a constructive dividend
 18 from EEInc to KU.
 19 My question, after you said that it wouldn't
 20 be a constructive dividend, I asked you, then, based on
 21 that answer, the constructive dividend would not also
 22 create income that would be taxable to EEInc?
 23 A. Yes.
 24 (OFF THE RECORD.)
 25 BY MR. CYNKAR:

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1 Q. If you'd turn to page 21 of your testimony,
 2 and this is -- you have earlier in your testimony
 3 referred to the bylaws, and this, I believe, is where in
 4 your written testimony that you refer to the bylaws.
 5 If you'd go to page 21, lines 22 to 23. You
 6 say, quote, AmerenUE because of it's 40 percent ownership
 7 share of EEInc could continue to purchase its
 8 proportionate share of Joppa Station output, close quote.
 9 Now, you then go on to reference a bylaw
 10 section.
 11 Is it fair to say that this conclusion that
 12 I just read is based on the bylaw provision that you then
 13 cite on the next page?
 14 A. Yes.
 15 Q. Okay. Now, what -- that bylaw provision
 16 quote on page 22, line 6 to line 24 of your testimony,
 17 what in that passage refers to the price to be set for
 18 Joppa plant power?
 19 A. It doesn't.
 20 Q. And how does AmerenUE then -- well, let me
 21 back up.
 22 What is the significance of this bylaw
 23 provision from your perspective then?
 24 A. The significance is that this bylaw
 25 provision protects the individual owners, that absent a

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1 vote of more than 75 percent of the owners, that the
 2 sponsoring companies, or the owners, were entitled to
 3 their ownership share of the energy from the Joppa unit.
 4 Q. And that ownership share does not in any way
 5 imply energy from the Joppa unit at a particular price.
 6 Correct?
 7 A. That's correct.
 8 Other than you'd have to get approved if you
 9 wanted -- whatever price you wanted to sell it.
 10 Q. Approved by whom?
 11 A. The Board.
 12 Q. Would you agree that the word "risk" is used
 13 generally to describe the uncertainty of future events?
 14 A. No. I would agree that that is one use of
 15 the term, but the term "risk" has other --
 16 Q. What are some other meanings of risk in your
 17 view?
 18 A. I think people use risk to describe almost
 19 every action one takes or changes in an external
 20 environment, if I had to come up with a definition.
 21 Q. Do you think that all of those meanings
 22 inherently refer to some uncertainty?
 23 A. They could, but it would depend on the user.
 24 I -- I would not agree that if you used the
 25 term "risk," everybody would have that definition that

14 (Pages 50 to 53)

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1 you gave me attached to it.

2 Q. When would you use the word "risk" in a way
3 that doesn't involve some notion of the uncertainty of
4 events?

5 A. I can't -- I can't think of one right now.

6 Q. I mean, for example, just in common
7 parlance, since I am an inept skier, if I'm at the top of
8 a hill at one of our local places in Virginia, I can say
9 there is a risk that I'm going to ski down and fall and
10 break my leg, and that talks about the uncertainty of
11 whether I may fall and break my leg.

12 Is that a pretty common understanding of the
13 word "risk"?

14 A. I mean, if you have that type of an
15 attitude. I could see --

16 Q. Trust me. I do.

17 A. Then I don't know why you're skiing.

18 But what I'm saying is, to take your example
19 is, a person who was doing that and probably felt that
20 breaking their leg was something that -- they wouldn't
21 want to do an activity that did that, probably wouldn't
22 even be thinking about that.

23 Q. Let's take a simple example. I leave this
24 deposition and I'm walking. I walk across Madison
25 Street. There is a risk that I could get hit by a car.

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1 Correct?

2 A. There is that risk.

3 Q. Okay. And once I've gotten to the other
4 side, the risk is gone because I didn't get hit by a car.
5 Right?

6 A. That particular risk is true.

7 Q. Okay.

8 A. But to give you -- to follow up on what you
9 told me about my example --

10 Q. Sure.

11 A. -- is I have high blood pressure and I'm
12 trying to manage it, so stress is one of those things I'm
13 not supposed to do.

14 And one of the things I'm taught is not to
15 worry about your examples that don't really have much
16 true probability of happening because it would raise my
17 blood pressure.

18 So what I'm trying to get at is, I have a
19 risk of high blood pressure, so I take a lot of that term
20 as meaning it's probably like beauty. It's in the eye of
21 the beholder. And I don't think everybody uses that term
22 the way that you want to define it.

23 Now, I can accept under general terms that
24 there is -- there is an uncertainty, but not everybody
25 recognizes that uncertainty.

1 Q. Correspondingly, since I also suffer from
2 high blood pressure, another example would be that I
3 shouldn't have my blood pressure go up because I have the
4 responsibility of asking questions of a smart person who
5 may make it difficult for me to get answers to my
6 questions. So it's the same sort of proposition, I
7 suspect.

8 So if we both end up leaving this room
9 without extra high blood pressure, we have avoided that
10 risk?

11 A. That's a choice. I mean, I'm taught in my
12 blood pressure management that that's a choice whether I
13 put myself in that situation or not, and both of us are
14 here today because we made choices --

15 Q. True.

16 A. -- to do that.

17 Q. Would you agree that risk in investment
18 means that future returns are unpredictable?

19 A. I would -- I would agree in part, because I
20 also believe there is a risk in investment. You may lose
21 the investment. You may not even have a return.

22 Q. Okay. And unpacking the notion of risk in
23 investment, there is -- one type of risk is business
24 risk. Correct?

25 A. I'm familiar with the term "business risk"

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1 in terms of financial analysis.

2 Q. Would it be fair to say that business risk
3 describes sort of all of the operating factors that may
4 cause hoped-for income not to be realized?

5 A. I -- I think that's part of it. I think it
6 also looks at threats, external threats, global in the --
7 you know, it could be national global that could impact
8 the -- the enterprise that is being examined.

9 Q. So if, for example, for a utility, one form
10 of business risk is the failure of the physical plant or
11 the generators, the turbines, what have you. Is that
12 fair?

13 A. That would -- that would be one.

14 Q. Yeah. So --

15 A. As is the makeup of its customers.

16 I mean, if its customers choose to leave its
17 service territory because of its rates, that would be a
18 part of its business risk.

19 I know one element of business risk is the
20 makeup of residential, commercial and industrial, with
21 the element is, the more residential you have, because
22 they're less mobile to leave, it reduces your business
23 risk. Whereas the industry piece is considered to be a
24 higher business risk because they are -- are more likely
25 because of rates to leave and shut down and go other

15 (Pages 54 to 57)

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1 places. So that's an element of business risk as well.
 2 Q. Right. And another element might be
 3 unexpected labor costs, such as from strikes or something
 4 like that. Is that fair?
 5 A. That's -- that's true.
 6 Q. Or unexpected accidents. Is that another
 7 example of a business risk?
 8 A. That could be one.
 9 Q. Okay. Now, with respect to another category
 10 of risk, financial risk, would -- is it accurate to call
 11 financial risk the uncertainty of income available to
 12 common shareholders due to fixed-cost financing? By that
 13 I mean debt or preferred stock.
 14 A. I need to -- that last one, where you're in
 15 business risk --
 16 Q. Yes.
 17 A. -- risk is also a product of the degree that
 18 you manage risk and the risk that you leave unmanaged.
 19 So risk increases or decreases depending on
 20 management. So I needed to add that answer. I'm sorry.
 21 Q. Do you want me to ask the question again?
 22 A. Yes, if you would.
 23 Q. I was talking about financial risk.
 24 A. Yes.
 25 Q. I was wondering if this was accurate in your

1 Q. We were talking about business risk,
 2 financial risk and now I was describing regulatory risk.
 3 A. Okay. I'm familiar with the distinction of
 4 breaking the risk for utility between business risk and
 5 financial risk, and in business risk I see regulatory
 6 decisions pro and con mentioned in business risk.
 7 And as I mentioned earlier, I also see
 8 within the last five years the discussion of managing
 9 regulatory risk and the relationship with regulators.
 10 Q. That's fine. That's fine.
 11 And some of the types of regulatory risk,
 12 again, within the world of business risk, to use your
 13 view, like changes in environmental laws can affect a
 14 utility and its income and its expenses?
 15 A. It can -- it can -- yes, or it can provide
 16 opportunities.
 17 Q. Okay. And similarly, again, for the
 18 utility, rate cases and the decision that a Commission
 19 may make about the level of rates is a regulatory risk?
 20 A. Yes, but there is two parts.
 21 When you say rate cases, so we're on the
 22 same, I'm using rate cases as one initiated by the
 23 company.
 24 Q. I'm sorry. I was using it in terms of just
 25 setting rates. I wasn't trying to use a term of art.

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1 view.
 2 That financial risk is uncertainty of income
 3 available to common shareholders due to fixed-cost
 4 financing? And by fixed-cost financing I mean debt or
 5 preferred stock.
 6 A. I am familiar with the general concept of
 7 financial risk and using debt as an element of financial
 8 risk.
 9 I've seen in the rate-of-return areas
 10 descriptions of financial risk similar to that, that
 11 phrase that you have.
 12 Q. So would you know, for example, that if the
 13 larger the debt, the larger the financial risk?
 14 A. In relation to the total capital structure,
 15 that's true.
 16 Q. Okay. And, again, for a utility, another
 17 form of risk is regulatory risk, which is the -- would
 18 you agree with me that one fair description of that might
 19 be uncertainty of income available to common shareholders
 20 due to regulation and legislation?
 21 A. That's -- that's an element of -- you said
 22 business risk?
 23 Q. Yeah. Regulatory risk is an element of
 24 business -- of all risks.
 25 A. Well --

1 A. Okay. Because in a rate case a company
 2 would have already assessed that before they initiated
 3 it.
 4 Q. I understand. Let me be more specific.
 5 You're quite right.
 6 The decision of a Public Service Commission
 7 as to the proper level of rates, that embodies a
 8 regulatory risk for a utility?
 9 A. There is -- there is an element there, but
 10 these cases that we were talking about are the ones that
 11 actually puts that risk into play.
 12 Q. Right.
 13 A. I mean, if you file a rate case, you've
 14 already decided to put your rates into play, which now
 15 makes it a more definite risk than if you took no action.
 16 Q. Right. It's still a risk?
 17 A. Yeah. I mean, yeah, because anything that
 18 has a probability greater than zero is a risk.
 19 Q. Now, in terms of a Public Service Commission
 20 determining the reasonableness of a rate award, one of
 21 the judgments that a PSC has to make in that context is
 22 whether a particular expense of a utility was prudent.
 23 Correct?
 24 A. That's one of the elements that goes into a
 25 cost-of-service rate determination.

16 (Pages 58 to 61)

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1 Q. Okay. Now, would you think it's fair to say
2 that that judgment about whether an expense was prudent
3 is important because a regulated utility's behavior is
4 not disciplined by market competition in the Public
5 Service Commission and that process is essentially
6 standing in the stead of a competitive market?

7 A. I don't -- could you repeat that one?

8 Q. Sure.

9 We were talking about the judgment of a
10 Public Service Commission, of whether an expense was
11 prudent or not, and all I was asking is that that
12 judgment with respect to the prudence of expenses is
13 important because by definition a regulated utility is
14 not operating in a competitive market where there are
15 market pressures that discipline what a regulated company
16 does and that the Public Service Commission is
17 essentially standing in the stead of the marketplace and
18 ensuring that expenses are prudent?

19 A. Well, there is a lot of interpretation in
20 that question.

21 I mean, you have a certificate. By virtue
22 of that certificate you have certain statutory -- there
23 are certain statutes and agency rules that govern and you
24 must comply with.

25 In terms of this prudence thing, that comes

1 whether an expense is prudent. Is that fair?

2 A. Well, I know it's there because the
3 Commission has in the statutes the authority to set just
4 and reasonable rates.

5 Now, if all of that market -- I don't --
6 when that statute was done and put just and reasonable as
7 the standard for setting rates, you know, I don't know
8 what everybody was thinking at that time, if they have
9 that standing in stead of the market. I don't know that.

10 Q. So from your perspective you don't know
11 whether the fact that the Commission has the authority to
12 set rates isn't done because we don't allow competitive
13 market for utilities?

14 A. The answer is, I know what the statute says.
15 I haven't seen anything in the statute that says that
16 other language.

17 I know there are people who write thesis and
18 externals that view the utility industry write things
19 about, like, Regulatory Compact and things like that.

20 Q. But I wasn't actually trying to drive at
21 that. I was actually just going for a simpler
22 proposition.

23 I mean, the reason we have a Public Service
24 Commission set rates is because the market doesn't set
25 rates like it does in other industries where prices are

1 into play when you make -- well, when there is a rate
2 ca-- when your rates are before the Commission for a
3 decision as to change, but there is a lot of other
4 elements to the agency's regulation that is by virtue of
5 your certificate beyond just rates and prudence
6 decisions.

7 Q. Right. I know. I was just focusing on the
8 prudence question. I'm not at all trying to exclude all
9 of that.

10 A. And usually the only time prudence comes
11 into play would be in a rate case, if you -- when you say
12 prudent expenses, I could see where if there is a
13 complaint about quality of service, there may be some
14 element of prudence, like tree trimming or something, if
15 they're looking at outages or something.

16 I'm not -- I'm not -- so I can see where
17 that may be an element that may come up. But you say
18 prudent expenses. So that only comes into play when the
19 rates are a matter before the Commission.

20 Q. Right.

21 And so you agree that that is the Public
22 Service Commission's standing in the stead of the market
23 because the regulated utility is a monopolise; it doesn't
24 participate in a market to that extent; and that's why
25 the Public Service Commission can make that evaluation on

1 set as a matter of competition. It was a pretty simple
2 point.

3 A. I guess the thing is, it seems to me from my
4 perspective, that's by virtue of you being granted a
5 certificate to serve or provide a utility service to a
6 designated area, and by virtue of that certificate, that
7 is part of the obligations that come from that.

8 Q. Right. And part of the obligations is that
9 your prices are not set by market but set by the Public
10 Service Commission?

11 A. Your prices are set by the Public Service
12 Commission by virtue of that certificate, yes.

13 Q. And not by -- not by the market. Correct?

14 A. Yes. I mean, the Commission sets it.

15 Q. Right.

16 Okay. When you buy a commodity, a car,
17 whatever, you're not assuming any investment risk by
18 buying a car, are you?

19 A. Yes.

20 Q. Really?

21 What investment risk are you assuming?

22 A. When I buy a car, I'm making an investment
23 in a car because in your example I'm buying it.

24 Q. Okay.

25 A. So I've made an investment in an automobile.

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1 And in terms of that, the value of that investment,
2 especially from taking out any type of a loan to make
3 part of the payments, there is an investment risk.

4 In fact, a lot of times in automobiles,
5 you'll find where the loan will end up being greater than
6 what the automobile is worth.

7 Q. But when you're buying a car, you're not
8 assuming any investment risk in the car company?

9 A. No, I wouldn't agree with that either.
10 Because if I -- if I bought -- and I bought a Gremlin
11 once in my lifetime.

12 Q. I'm sorry to hear that.

13 A. Well, but as you can see in terms of your
14 example, the manufacturer and the name of the
15 manufacturer and the support of the car had a lot to do
16 with my -- the value of that car in the open market.

17 So, no. I mean, I know from that example --
18 and there have been other cars that have been lemons --
19 that the brand name, the manufacturer support can affect
20 my investment and my resell value in my investment.

21 Q. When you buy a car, you pay money and you
22 hopefully get something of value for that money.
23 Correct?

24 A. Yes.

25 Q. Okay. You're not assuming any of the debts

1 assurance to the lenders that they can make the loans on
2 the terms and conditions being offered.

3 Q. I'm not sure I completely understand your
4 answer.

5 In that context it is still true, though,
6 that the buyer is paying money to the seller and the
7 seller is correspondingly giving power, energy, to the
8 buyer for that money. Correct?

9 A. Under the terms. I mean, we have --

10 Q. Whatever the pricing terms are.

11 A. Well, because the reason you say that is
12 we're talking in this case -- the reason I'm here -- is
13 we're talking about a power supply agreement that only
14 specifies -- most purchase power supply agreements would
15 dictate that the buyer would be entitled to a specified
16 amount of capacity and a specified amount of energy.

17 But there is a power supply agreement, the
18 one we're talking about here, where the buyer is, in
19 essence, committing to take as a standby energy that some
20 other buyer is not going to take.

21 That doesn't make it -- that doesn't mean
22 it's not a purchase supply agreement, but it is unique in
23 that feature. That's not common.

24 Q. If you'd turn to page 18 of your testimony.

25 On page 18 you quote some of Mr. Moehn's testimony, and

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1 of the auto company when you do that?

2 A. That is true.

3 Q. Now, in a purchase power contract, the
4 purchaser is similarly getting something of value, power,
5 and paying money for it. Correct?

6 A. This is in the contract that I don't -- with
7 an entity I don't own?

8 Q. Well, let's start with an entity that you
9 don't own, yes.

10 A. That would be true.

11 Q. And how does the answer change if you own
12 the entity?

13 Excuse me. Could you explain what you mean
14 by "own the entity" first?

15 A. Well, if the entity that I'm buying the
16 power from, there is, in terms of the debt on the
17 entity -- most lenders -- especially going back when
18 you're talking about financial risk.

19 If the entity has a high financial risk, the
20 lenders will want to know, in essence, in terms of
21 operation in the power supply contract, how that affects
22 the quality of the repayment capability of the entity.

23 And the purchase power contract can be -- in
24 fact, a lot of times will be -- done in conjunction with
25 the amount of financial risk the entity will have and the

1 later on you disagree in part with pieces of it, and I
2 just want to be clear about what you agree with and what
3 you don't agree with.

4 On page 18, lines 7 to 8, you say, quote,
5 AmerenUE's stock in EEInc was purchased with shareholder,
6 not ratepayer funds, close quote.

7 That's true, isn't it?

8 A. Yes.

9 Q. Okay. And then if you go down to
10 lines 11 -- actually, I guess it starts at lines 10 to
11 12. And you say, Ameren-- you're quoting Mr. Moehn
12 again.

13 AmerenUE's, quote, investment in the
14 stock -- that's the EEInc stock -- is not and has never
15 been on AmerenUE's book as an asset on which a return is
16 figured in calculating the rates paid by AmerenUE's
17 Missouri ratepayers, close quote.

18 That also is true. Correct?

19 A. Yes.

20 Q. Okay. And AmerenUE's ratepayers are not
21 owners of EEInc. Correct?

22 A. Yes, that's true.

23 Q. I want to use another hypothetical to sort
24 of explore your thoughts on another area of your
25 testimony.

18 (Pages 66 to 69)

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1 This hypothetical moves away from cars but
2 to a different vehicle, bikes, bicycles.

3 Let's say someone wants to -- has a bright
4 idea for a bicycle company and wants to start a company
5 but doesn't have enough money to build the plant to make
6 his particular bike, and so he borrows money and,
7 therefore, has a debt that he's incurred.

8 A. Okay.

9 Q. Are you with me?

10 And there are lots of costs to producing the
11 bikes, but one of those costs is the principal and
12 interest on the debt that that person has undertaken.
13 Correct?

14 A. I would say correct to the extent that you
15 define the cost of the bike to be the choice to bring in
16 debt. I mean, the bike can be produced without debt.

17 That's -- so when you do your analysis,
18 you've now brought in the way the money is to be raised
19 as being a part of the cost to produce the bike, but the
20 bike just needs labor and parts and stuff. I mean, how
21 you get the money is separate and distinct to the
22 production of the bike.

23 Q. But the cost of getting the money is a cost
24 in that situation, isn't it, the cost of producing the
25 bike?

1 could use the definition that just says it's the labor
2 and materials to produce the bike.

3 So I guess what I'm asking you is in your
4 example what definition of cost are you using?

5 Q. Let me ask you this: In my example, if
6 someone could not produce the bike without building a
7 plant to do it, the cost of that plant is part of the
8 cost of producing the bike. Correct?

9 A. The number of bikes that you're talking
10 about. Because when you say a plant, in your bike, in
11 your example, you're talking about a number of bikes. If
12 I was just going to make one bike --

13 Q. Right.

14 A. -- I don't know that you would need a plant.

15 Q. My hypothetical is a business.

16 So to go into the business of making bikes,
17 someone needs a plant. The cost of that plant, the
18 machinery in the plant, is part of the cost of each bike.
19 Correct?

20 A. Given the number of bikes that's implicit in
21 your assumption.

22 Q. Whatever. Correct? That is a cost of
23 producing the bike?

24 A. Yes. But I'm saying, it's a cost of the
25 number of bikes that you plan to produce.

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1 A. It could be.

2 I mean, for example -- in fact, I've seen
3 people that are skilled enough that they can manufacture
4 the pieces and do the labor themselves.

5 And so the, quote, costs would be just their
6 own personal time, which wouldn't mean I'd have to go to
7 a bank.

8 Q. Right. But that also means that -- for
9 example, material for my hypothetical of a bike, wanting
10 to choose between two different types of materials, one
11 being more costly than the other, and whichever one you
12 chose, the cost of that material is a cost of producing
13 the bike?

14 A. The cost to produce the bike, yes.

15 Q. Okay. And the cost -- the cost of debt in
16 the example I gave is part of a cost of producing the
17 bike. Correct?

18 A. Well, as I said, depending on how you --
19 where you define costs.

20 I mean, one can say the cost to produce the
21 bike is the labor and materials to make up the bike, and
22 one can say that the cost to acquire the money to produce
23 the bike is in their definition of cost.

24 If you're -- if your example wants to use
25 that definition, I can use that, but I'm saying is you

1 Q. Right.

2 Now, the way those costs are paid off is by
3 revenue from the sales of the bikes. Correct?

4 A. I'm sorry?

5 Q. The costs of producing the bike are
6 compensated by the revenue from the sales of the bike.
7 Correct?

8 A. If the business is going to be successful.

9 Q. Okay. So that was a yes?

10 A. Well, I mean, with that qualifier. Because
11 before you -- you get a bike out of your hypothetical
12 plant, you won't have revenues, because people won't buy
13 a bike that isn't finished and ready to be ridden.

14 So those types of costs is going to be paid
15 by alternative means other than revenues.

16 Q. Right. But once the company is producing
17 bikes, the plan is to sell the bikes and the money that
18 people pay to buy the bikes is what pays for the costs of
19 the bikes. Correct?

20 A. Well, yes. I mean, but your hypothetical
21 assumes that the business is successful and people buy
22 all of the products of this bike, and you don't have any
23 certainty in your example so far that when you produce
24 any of these bikes, that anybody is going to buy any of
25 them.

19 (Pages 70 to 73)

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1 But the costs of the bikes are going to be
2 paid for depending on the vendors and the people you line
3 up to get it produced.

4 Q. Well, if, as I think your observation
5 implies, if people don't buy the bikes, you can't pay for
6 the costs of the bikes, correct, the producer can't, and
7 it goes out of business, it goes bankrupt?

8 A. Well, I mean, it will eventually.

9 Using your example, you got debt, and I
10 can't pay the debt for whatever reason -- because I've
11 seen debt not paid even though you have plenty of
12 revenue.

13 So if you don't pay debt, you're going to --
14 you're going to go bankrupt. Now, you can, in essence,
15 fund the business -- and we were talking earlier about
16 this service company.

17 Q. Right.

18 A. You could start a business and pay for --
19 have working capital or funds available to pay those
20 expenses that are coming from the investor, that will pay
21 those expenses for an indefinite time, as long as the
22 investors are willing to put their money into the
23 business.

24 Q. So when a customer buys a bike, the customer
25 is paying a prorata share of the cost of producing that

1 successful and whether you're going to get enough revenue
2 to pay for your costs.

3 Q. Right. And as we said earlier, call this
4 fellow Mr. Schwinn, he's going into the bike business,
5 and he borrows money to build a plant, and that's one of
6 the costs of producing bikes, which to make a go of it,
7 the fair market value of those bikes have to cover those
8 costs. Correct?

9 A. Over the term that he's going to want to
10 stay in business, yes.

11 Q. And so customers in that situation, assuming
12 he's successful, paying fair market value are helping to
13 pay off the debt of that plant. Correct?

14 A. Not necessarily.

15 Q. How not?

16 A. You could get -- taking Mr. Schwinn. If my
17 business was now successful, I have enough revenues
18 paying my costs, that I can actually pay off that debt by
19 getting Mrs. Schwinn to put in some of her money to pay
20 off my debt and just increase my equity.

21 So I'm 100 percent equity financed, so I
22 don't have to deal with bankers anymore.

23 In that example I don't need revenues to pay
24 the debt. I can get -- I can get ownership, equity
25 ownership, if I don't want to have that debt cost in

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1 particular bike. Correct?

2 A. Actually, they'll pay the market value of
3 that bike.

4 Q. Right.

5 But if the -- as you said, the company is to
6 make a go of it and not go under, that the customer is
7 paying for the costs of the bike. Correct?

8 A. No. My customer is going to pay the market
9 value of the bike.

10 Q. And that market value, if the company is not
11 to go out of business, must cover the costs of the bike.
12 Correct?

13 A. Getting back to what I said. To be
14 successful in the long run, that will be true.

15 Q. Okay. Now, in the hypothetical we've been
16 using, where the fellow had the bright idea to
17 manufacture bikes, had to borrow money to build the
18 plant, is it your view that the customers were supporting
19 the debt of that manufacturer?

20 A. No. That's why I said it was market value,
21 and as you said, because in your example you had to have
22 a plant, because you made a decision that you had to
23 produce a high number of bikes instead of just building a
24 few bikes in your basement, those are all of the things
25 that go into whether this business is going to be

1 my -- against my cash flow. I can get another investor
2 to pay off my debt.

3 Q. And why would an investor put money into the
4 business?

5 A. Well, the investor would put money for --
6 because they chose to put their money in the business.

7 Q. Is it your testimony that the investor would
8 put money in the business not to make more money?

9 A. As a general rule of thumb, I think
10 investors put money into business to, in essence, grow
11 that amount of their investment.

12 Q. Okay. And in my hypothetical, if -- if --
13 to pick up on your example of Mr. Schwinn gets someone
14 else to put more money into the business as an owner.
15 Where does the money come from to grow that person's
16 investment?

17 A. In your example is my stock publicly traded?

18 Q. No.

19 A. Okay. Then my money would come from
20 whatever distributions I would get from the Schwinn bike
21 example, or I could hold it and sell it at some later
22 time, consistent with whatever the organization laws give
23 me the rights to do, and I could realize cash that way.

24 Q. Where does the money come from that
25 distribution you referred to?

20 (Pages 74 to 77)

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1 A. Well, it would be under the -- the
2 organizational's covenants as to what conditions it could
3 distribute money, but not all organizations do that
4 though.

5 Q. I wasn't asking about the conditions.
6 Isn't it a fact, though, that that
7 distribution would have to come from the company's
8 revenues?

9 A. That would be the -- I mean, assuming in
10 your line that's its only source of cash coming in, that
11 would be true in relation to cost. I mean, cost would be
12 a drain on that cash.

13 Q. On page 6 of your testimony, on lines 19 to
14 21, you say that EEInc's, quote, debt was primarily
15 supported by the purchase power payments paid by Union
16 Electric and its customers, close quote.

17 Now, measured in dollars, Union Electric
18 bought an average of 16.1 percent of Joppa's power
19 between 1954 and 2005. Isn't that correct?

20 A. I know -- I know Mr. Moehn in his rebuttal
21 has some schedule. I really haven't had a chance -- for
22 some reason I thought someone said it was 18 percent, but
23 I haven't actually gone through it in detail yet.

24 Q. Whether it's 18 percent or 16 percent, is it
25 your opinion that that amount for these purchases

1 Q. When you say UE's share of the debt, what do
2 you mean?

3 A. UE -- UE doesn't own all of EEInc. So UE
4 would have -- I think it's 40 percent from beginning to
5 end. UE would be responsible for 40 percent of those
6 obligations. UE would have paid -- of the debt, or the
7 debt cost, UE would have been responsible for 40 percent
8 of those payments.

9 Q. Did UE make payments to EEInc other than
10 under this purchase power agreement?

11 A. No. The payments UE would have made would
12 have been through this purchase power agreement. There
13 would have only been -- I think it's five -- at one time
14 I think there was five sponsoring companies. It's down
15 to four. And then there is the Department of Energy
16 payments. That would have been the cash that would have
17 come in to make all of -- all of the expense payments,
18 including debt.

19 Q. And over the period 1954 to 2005, on average
20 the cash payments by UE did not amount to 40 percent of
21 the revenue coming in from the Joppa plant power.
22 Correct?

23 A. That would -- that's probably -- that's
24 true, because -- and you wouldn't expect that since you
25 have a customer who is not an owner.

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1 constitutes primarily supporting EEInc's debt?

2 A. That -- that example would have nothing to
3 do with that statement.

4 Q. Well, your statement says that purchase
5 power payments paid by Union Electric and its customers
6 primarily supported EEInc's debt. Correct?

7 A. Yes.

8 Q. Okay. UE paid 16 percent on average of the
9 money being paid for Joppa power plant over the period I
10 mentioned?

11 A. I thought you said that is how much energy
12 it got.

13 Q. No. I said measured in dollars.

14 A. Okay. I don't -- I don't know that.

15 Q. You don't know what?

16 A. I don't know the percentage of what UE's
17 payments were in terms of the total.

18 Q. Does that -- in your view does that matter
19 to your characterization of whether UE's ratepayers
20 primarily supported EEInc's debt?

21 A. No.

22 Q. Why not?

23 A. Because the payments that UE's ratepayers
24 would have paid would have been for UE's share of their
25 support of the debt.

1 Q. And UE didn't buy on average over that
2 period 40 percent of Joppa's power. Correct?

3 A. I'm sure of that, yes.

4 Q. So I am confused about your reference to the
5 40 percent figure. Where is there any kind of 40 percent
6 payment going to EEInc from UE?

7 A. There isn't a 40 percent payment. There is
8 a payment for their share of the -- if you take the DOE
9 cash that would come in, that would pay a portion of
10 EEI's expenses and would also pay a portion of UE -- of
11 EEI's debt.

12 Now, the remainder that is not being paid
13 for by DOE would then be the obligation of the sponsoring
14 companies, of which UE would be one.

15 So they would be responsible for 40 percent
16 of the EEI expenses that were not covered by the DOE
17 payments.

18 So by definition, since EEI is total and
19 you're going to take some monies coming from DOE and UE
20 is only going to pay 40 percent of the total less DOE, UE
21 will not pay 40 percent of the total.

22 MR. CYNKAR: Okay. Why don't we take a
23 five-minute break. We've been going at it for two hours.
24 Is that okay?

25 MR. DOTTHEIM: Sure.

21 (Pages 78 to 81)

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1 (A RECESS WAS TAKEN.)
 2 MR. CYNKAR: We're starting again, folks.
 3 BY MR. CYNKAR:
 4 Q. Would you agree with this statement, that
 5 the price -- well, the price in a wholesale power
 6 contract usually includes a demand or capacity charge and
 7 an energy charge. Right?
 8 A. If you're buying capacity.
 9 Q. Well, in most wholesale power contracts is
 10 it common to buy capacity and energy?
 11 A. It depend on the buyer's need. I mean, if I
 12 need capacity for -- I've seen capacity deals when I
 13 either need the capacity to meet my peak demand
 14 requirements or I've seen capacity or demand charges when
 15 there is an economical source of energy, where the seller
 16 is willing to commit but they want a commitment of fixed
 17 monies.
 18 Q. Right.
 19 A. And I've seen demand charges or a demand-
 20 like charge in either one of those circumstances.
 21 Q. In a firm power, permanent power context,
 22 though, would you say there is both the capacity and the
 23 demand charge?
 24 A. Yes, because by your definition of firm
 25 means that it's going to be available on the buyer's

1 So if the unit isn't operating, I get
 2 nothing. If the unit has a restriction on it that limits
 3 it 50 percent, my rights to the unit would be 50 percent,
 4 but that's the typical unit participation.
 5 Q. Now, the energy charge covers the seller's
 6 variable costs. Correct?
 7 A. When you say variable costs --
 8 Q. Like primarily fuel costs.
 9 A. Well, there is -- there is an operations and
 10 maintenance on power plants, especially a coal plant, and
 11 I've seen those done two ways. Sometimes that's added to
 12 fuel. Sometimes that's covered in the demand. Sometimes
 13 there is a component for both.
 14 So fuel is normally always in the energy
 15 charge, but sometimes there is adders for variable O&M
 16 and other variable expenses and sometimes there is not.
 17 Q. But consistent with that, the energy charge,
 18 conceptually it covers the variable costs. Correct?
 19 A. It should.
 20 Q. Okay. And similarly the capacity or the
 21 demand charges cover the fixed costs. Correct?
 22 A. Yes.
 23 Q. Okay.
 24 A. With the understanding that in real life
 25 fixed and variable isn't as easy to define as -- all

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1 demand.
 2 Q. Right. Okay.
 3 Now, the Power Supply Agreement, the PSA
 4 that we've been talking about, that was a unit power
 5 sale. Correct?
 6 The power was being sold from a particular
 7 unit?
 8 A. It would not be a typical unit power sale,
 9 if that's what you're asking. It is designated out of a
 10 specific unit, but that's not -- if you were to discuss
 11 unit power sales, that's not a typical. In fact, it's
 12 very unique.
 13 Q. What is unique about it in that respect?
 14 A. In a typical unit sale you would have a
 15 right to a certain percentage that would be predetermined
 16 upfront. This -- this arrangement in the EEInc one is
 17 one that you, in essence, are in a secondary role, that
 18 there is a primary -- there is a primary customer that
 19 gets first claim to the unit.
 20 Q. I see.
 21 A. And that's not typical in terms of a unit
 22 power sale deal. Usually I am entitled -- in a typical
 23 one I am entitled to a fixed percentage or a certain
 24 amount of capacity on the unit, and that is only
 25 restricted if the unit is restricted.

1 costs over time are variable. So --
 2 Q. Right.
 3 A. -- in real practice when you're doing that,
 4 you have to make specific decisions on how you're going
 5 to recover all of those costs.
 6 And usually fuel is an energy cost. Your
 7 fixed costs are in the demand costs, but the in-between
 8 costs can be in either one of those.
 9 Q. Fixed O&M and salaries and benefits, for
 10 example, is often a fixed cost. Correct?
 11 A. It could be or it's a markup on energy,
 12 where the energy costs can be, like, energy costs plus
 13 10 percent or something like that.
 14 Q. And the return on and return of capital is a
 15 fixed cost. Correct?
 16 A. Yes.
 17 Q. Now, is it fair to say that the cost of a
 18 prudently incurred firm power purchase entered into to
 19 serve native load customers would be recovered in the
 20 utility's retail rates?
 21 A. Yes.
 22 Q. And no one has ever claimed that the Power
 23 Supply Agreement between AmerenUE and EEInc was
 24 imprudent. Correct?
 25 A. That's correct. Nobody has made that claim.

22 (Pages 82 to 85)

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1 Q. Would you say that it was a very good deal
2 for AmerenUE's ratepayers?
3 A. I would say at first the answer would be
4 probably not, which is typical for almost any investment
5 in a generation unit, especially a base load unit.
6 I would say over time in the long run it has
7 been -- it has been a good investment.
8 Q. We were talking earlier about the KU
9 representatives on the EEInc Board and their vote, and
10 you were talking about various possibilities of the way
11 the fair market price could fluctuate and cost price, one
12 could be up or one could be down and that could happen
13 over a period of time.
14 You have no knowledge of what was in the
15 minds of the EEInc directors from KU when they cast the
16 vote you described. Correct?
17 A. That's -- I've never talked -- I have not
18 talked or had contact with KU.
19 Q. Okay. Now, in the Power Supply Agreement,
20 the pricing, there is an ROE component. Correct?
21 A. I'm sorry.
22 Q. In the pricing for the power supply
23 agreement that we've been talking about --
24 A. Right.
25 Q. -- there is an ROE component. Correct?

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1 A. Yes.
2 Q. And that component was not in any way
3 imprudent?
4 A. There has been no claim that it was
5 imprudent.
6 Q. So the answer is yes to my question; it was
7 not imprudent?
8 A. Like I said, I don't know that I remember
9 any specific examination of it as to make a decision --
10 an overt decision or explicit decision.
11 Q. There is no evidence that that was in any
12 way out of line with ROEs at the time or anything like
13 that. Correct?
14 A. If that's your question, there is no
15 evidence -- no, that wouldn't be true.
16 Q. What evidence do you have that that ROE was
17 out of line with other ROEs at the time?
18 A. Well, you said at the time in 1987 --
19 Q. Correct --
20 A. -- or through the entire --
21 Q. -- 1987 when it was entered into.
22 A. I'd have to look at -- I don't -- I think it
23 would still be high in 1987.
24 Q. Have you looked?
25 A. I'm only going by there was rate cases here.

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1 So when you were asking -- you asked me the
2 question, there are no evidence, I'm saying is, I'm sure
3 there is evidence out there. I just haven't pulled
4 together what all the rate of returns were or what was
5 being authorized at the time or through the life of that
6 contract.
7 Q. But you're not suggesting that that was
8 imprudent ROE?
9 A. Well, that's already put been in rates, so
10 that would be -- that might be a nice exercise, but it
11 would have no purpose at this point.
12 Q. Okay. Now, when someone purchases power
13 from a utility and buys that service, that purchase in no
14 way conveys an ownership interest in the facilities used
15 to provide the service. Correct?
16 A. Is this an example where the buyer has no
17 ownership arrangement in the enterprise?
18 Q. Why would that matter?
19 A. Well, if -- if the purchase agreement -- or
20 a purchase agreement can be done in the context of an
21 ownership arrangement in order that there is a
22 relationship between the two; whereas, if you're asking
23 me if I just made a purchase arrangement with something
24 have no ownership in, there is a different answer.
25 Q. You're misunderstanding my question.

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1 In the way you were just setting out the two
2 situations, you were assuming a prior existing ownership
3 arrangement. I'm asking if whether the fact of a
4 purchase power agreement conveys an ownership interest in
5 itself?
6 A. No.
7 Q. Are you familiar with the term "exempt
8 wholesale generator"?
9 A. Yes.
10 Q. What is your understanding of an EWG?
11 A. Those -- that was a classification that
12 someone can get from the Federal Energy Regulatory
13 Commission for a certain type of generation.
14 Q. And when you say "a certain type of
15 generation," what type are you referring to?
16 A. I don't remember all of the criteria that
17 you had to have. I know you could go to FERC and ask for
18 FERC to give you the -- I mean, the acronym is EWG
19 status.
20 Q. And what does that EWG status entitle you to
21 do?
22 A. Whatever. I don't know -- I don't know the
23 full extent of what it allows you to do or what it
24 doesn't allow you to do.
25 Q. I'm going to ask you -- the next group of

23 (Pages 86 to 89)

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1 questions I have is about EWGs, and so if you don't know
2 or don't have an opinion on this, that's fine.

3 Would you agree that a goal of the Energy
4 Policy Act was to promote greater competition in bulk
5 power markets by encouraging the entrance of EWGs?

6 A. I don't know that as of today. I mean, I'm
7 sure I could read the act and research it, but I don't
8 know that as of today.

9 Q. Would you agree that the FERC has
10 aggressively implemented the Energy Policy Act in order
11 to promote competitive markets?

12 A. I don't have that opinion, which seems to be
13 more of an opinion than a fact. But I -- I don't have an
14 opinion one way or the other on that.

15 Q. Okay. Now, EEInc sought EWG status from the
16 FERC in 2000. Correct?

17 A. I remember it seeking EWG status. I don't
18 recall right now the exact date.

19 Q. And the Missouri Public Service Commission
20 did not oppose EEInc's application for EWG status.
21 Correct?

22 A. Not that -- no, I don't have -- I don't have
23 any knowledge of any opposition of that.

24 Q. Okay. And FERC did grant that status to
25 EEInc in 2000?

1 You said you weren't certain about the date,
2 but you do that know that EEInc is an EWG?

3 A. I have read that it has -- has been granted
4 EWG status.

5 Q. Okay. Consistent with the EWG status, in
6 2005 EEInc applied for permission from FERC to sell
7 energy at market-based rates. Correct?

8 A. I know -- I know it has that -- I know it
9 had a filing to sell market-based rates. I'm not sure of
10 the direct relationship between that and its EWG status.

11 Q. Okay. And the Missouri Public Service
12 Commission did not protest that application. Correct?

13 A. I thought I saw some mention in a FERC -- in
14 some FERC proceedings regarding the Commission's
15 involvement in EEInc FERC proceedings.

16 Because, as I recall, I saw some language
17 regarding that this was a State matter as to retail rates
18 and how it's treated on the State level. I saw that in
19 some FERC filings. So I'm not sure whether the
20 Commission was in that --

21 Q. I'm actually not trying to sandbag you on
22 that. Actually, the FERC in its order granting that
23 market-based rate power to EEInc explicitly says that the
24 Missouri Public Service Commission did not participate in
25 the application.

1 A. The thing will say whatever it says.

2 Q. Okay. And based on your answers and the
3 limits of your knowledge, you don't have any knowledge as
4 to why the Commission didn't protest at that time?

5 A. No. I mean, I -- I have access -- I mean,
6 I'm asked at times by the Commission, but most of that
7 FERC stuff is done outside of the State work.

8 So other than ask for advice and assistance,
9 I don't have any direct involvement in their
10 participation at FERC.

11 Q. Okay. Then you may not know the answer to
12 this question either, but let me ask you.

13 Do you know whether EEInc as an EWG is
14 within the exclusive jurisdiction of FERC?

15 A. I -- I don't know that.

16 Q. Okay.

17 A. I know it's not under the jurisdiction of
18 setting retail rates in Missouri.

19 Q. Okay. And FERC has approved EEInc selling
20 its power at market rates. Correct?

21 A. It has market-based authority, if that's the
22 same thing, yes.

23 Q. Yes.

24 Do you know whether the Missouri Public
25 Service Commission has any authority to exact a penalty

1 for EEInc exercising its right to sell at market rates?

2 A. I don't know.

3 Q. Okay. Do you know if FERC has ever
4 expressed concern that giving a preference to affiliates
5 through cost-based rates could cause harm to the
6 wholesale competitive market?

7 A. Could you ask me that one again?

8 Q. Sure.

9 Do you know if FERC has ever expressed
10 concern that giving a preference to affiliates through
11 cost-based rates could cause harm to the wholesale
12 competitive market?

13 A. Yes, with the qualifier that -- depending on
14 the nature of who the affiliate is.

15 Q. Okay. Do you recall where they expressed
16 that concern?

17 A. Where did I see it?

18 I saw it in -- when we were doing research
19 on the joint dispatch agreement. People would send me
20 FERC materials from that.

21 And I remember we had two FERC
22 representatives that visited us. I think they worked for
23 MISO, or they interact and watch, MISO, which is Midwest
24 Independent Service Organization, Inc.

25 I know it's called -- I'm not sure of the

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1 meaning of the acronym. And I know there was discussion
2 with them about -- in a sale of a -- of the energy at
3 cost-based, if that's a concern to FERC to a regulated
4 utility.

5 And that was not -- that was not brought up
6 as -- as an issue in your question, but I am aware that
7 if -- if the energy was sold, say, to AEM, that -- that
8 could be a concern.

9 Q. Okay. I want to direct your attention back
10 to your testimony, and this is more of a point of
11 clarification.

12 On pages 20 to 21, starting on -- on page 20
13 over to page 21, this is the discussion of that guarantee
14 for air pollution control equipment in the 1977 case.

15 A. Yes.

16 Q. And you refer to this question on those
17 pages, but you make that point concerning the guarantee
18 of bonds for EEInc in answer to a question that is set
19 out on page 19.

20 And the question is -- on lines 8 to 9 on
21 Page 19. And the question is, quote, do you agree with
22 Mr. Moehn's testimony on page 10, lines 14 to 15, where
23 he states, this agreement expired by its own terms on
24 December 31, 2005, close quote.

25 And what I'm confused about, I am not sure

these bonds. That would come from the customers.

2 Q. You earlier in our discussion were talking
3 about -- I believe -- did you use the phrase "backstop,"
4 did I understand correctly, concerning the sponsor's
5 relationship to EEInc?

6 A. I don't remember using that term, but I
7 can -- I can agree that they have that role in terms of
8 EEInc.

9 Q. And how do you understand that role?

10 A. That the purchase agreement specifies
11 that -- and it's been there from the beginning in terms
12 of the sponsors take up the obligation to the extent that
13 the power can't be sold, capacity can't be sold, they
14 will buy the capacity, unsold capacity and energy that
15 the Department of Energy doesn't take, that they will buy
16 it in proportionate shares of their ownership.

17 Q. Now, if that purchase were to be
18 uneconomical at that point --

19 A. That's an assumption.

20 Q. Okay. That is an assumption.

21 If that purchase were to be uneconomical, UE
22 has said -- and I know you know this -- that the EEInc is
23 a below-the-line investment, and it is UE's view that
24 UE's shareholders would have to eat the uneconomical
25 costs of that power in that hypothetical.

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1 what your point is with respect to this guarantee and how
2 did it prevent the expiration of the Power Supply
3 Agreement by its own terms?

4 A. No. That -- that should have been put in
5 terms of above-the-line or below-the-line section, not in
6 terms of the expir-- it would not -- the guarantee in the
7 '77 case --

8 Q. Okay.

9 A. -- would have nothing to do with the term of
10 the expiration of -- I think we said it was Mod 12. It
11 would go to the ratemaking treatment or the above- and
12 below-the-line treatment. That's what that would be
13 relevant to.

14 Q. That guarantee that you were referring to
15 there, do you think it benefited UE's ratepayers?

16 A. I would say yes under the understanding
17 that -- this is in '77. Under the understanding of how
18 EEI and the Joppa unit is to be used for the UE system.

19 Q. And those bonds were paid off. Correct?

20 A. Yes.

21 Q. And so the guaranty was never in force.
22 Correct?

23 A. Yes. But, I mean, that's also because of
24 the payments that were made by the customers of EEInc,
25 which would include UE. That gave it the cash to pay off

1 Do you understand my question, my point --

2 A. In your hypothetical when you say
3 uneconomic, is that because the Commission has decided
4 that it was uneconomic?

5 Q. Well, insofar as -- let's say -- let's make
6 it a simpler hypothetical.

7 Let's say the Joppa plant blows up. Under
8 the contract UE still has some responsibilities to make
9 payments to EEInc even if it's not receiving power in
10 return. Correct?

11 A. Yes. The contract specifies that they would
12 still have to pay their power supply obligations
13 regardless of whether they have power or not.

14 Q. Right.

15 And UE has said that consistent with its
16 below-the-line status, in that situation UE shareholders
17 would have to eat those costs and that those could not be
18 put in UE's cost of service.

19 Are you familiar with that?

20 A. I'm familiar that in Mr. Rainwater's
21 deposition he made that statement, which is after he's
22 already made the decision to transfer the energy from
23 Joppa away from that.

24 I'm not aware that at any time during the
25 prior period that Union Electric has in advance of such a

25 (Pages 94 to 97)

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1 catastrophe. And we have another example in terms of
2 Taum Sauk.

3 I've never heard a utility, including UE,
4 say that in advance of a disaster to one of our units, we
5 will not seek recovery of that.

6 But the first time I heard it -- and if
7 you're referring to something other than Mr. Rainwater's
8 deposition, I'm not aware there was any representation of
9 that prior to Mr. Rainwater's deposition, and as I said
10 is that's already after Mr. Rainwater made the decision
11 to transfer Joppa away from UE.

12 Q. Taum Sauk isn't rate based. Correct?

13 A. Yes, it is.

14 Q. Okay. And you certainly understand that UE
15 has understood the investment in EEInc as a below-the-
16 line investment. Correct?

17 A. Well, that below-the-line one keeps throwing
18 me, you know, because if you say below the line, I
19 understand what below the line is.

20 And Taum Sauk has a lot of its -- at least
21 in its initial stages, most of its costs were below the
22 line.

23 So I -- I never -- this is a UE -- or
24 Ameren -- I think it's more Ameren than UE -- creation
25 after the regulatory deal.

1 Because below the line is net operating
2 expenses, and interest -- interest expense and profit is
3 below the line.

4 But there is no suggestion in any case I've
5 ever seen where utilities don't get interest expense and
6 profit on their investment, including Taum Sauk.

7 So I never -- I never -- this is a UE
8 creation for this issue. This is not consistent with my
9 understanding of below the line. And below the line
10 normally means the customers haven't paid for it.

11 Q. The customers did not pay for the stock of
12 EEInc. Correct?

13 A. Nor did they pay for the stock that was
14 invested to make Taum Sauk's investment either.

15 I mean, all of the plant -- all of the
16 equity investment comes from investment from shareholders
17 as equity supports, Callaway and all of the units.

18 So I don't -- I've never been able to figure
19 out this unique UE interpretation of that. So I don't
20 know.

21 Q. So the notion of above and below the line in
22 your view is a unique point of view from UE?

23 A. The notion, the way it's applied to EEInc,
24 is a unique situation.

25 Above or below the line, as I understand it,

1 is whether you put the item in rates or not. And I know
2 for a while -- I mean, anybody who does what I do -- I
3 can put a unit in rates in many different ways.

4 You don't have to use -- in fact, in the
5 ancient times when I first learned how to do cost of
6 service, I didn't have a rate base, because all of the
7 reason you do rate base is to put interest expense and
8 profit in it, because all of the other expenses are
9 already above the line.

10 Q. When you say "item," what are you referring
11 to, where you put the item in rate base? What item are
12 you talking about?

13 A. If you want to -- what you're really doing
14 is when you put an item in rate base, you can use -- we
15 talked about the Taum Sauk. You could put in -- you
16 could put in Joppa. You can put in Callaway. You can
17 put in computers. Usually it's any -- any cost that
18 you've not putting into expense.

19 What you're really trying to get at is in
20 the way cost of service is done, all of the expenses are
21 normally above the line unless you make an adjustment to
22 move them below the line.

23 Most of this below-the-line stuff came from
24 making disallowances for imprudent expenses. You were
25 taking them from above the line and pushing them below

1 the line.

2 Or we've had some examples of, like,
3 advertising and some things that were taken -- or
4 airplane expenses that were taken from above the line and
5 put below the line.

6 But what you're really trying to do with
7 rate base is you're really trying to allocate into cost
8 of service, interest and profit. And that's all below
9 the line because it's below net operating income.

10 So this distinction about above or below the
11 line is -- normally that's meant to be is it in rates or
12 is it not in rates?

13 Q. The investment in EEInc stock is not in
14 rates. Correct?

15 A. That's correct. Nor is the investment in
16 Taum Sauk. The equity investment in Taum Sauk is not
17 in -- not in rate base either.

18 Q. And so the item from EEInc that is in rate
19 base, is in cost of service, is in your view the Power
20 Supply Agreement expenses?

21 A. Yes. I mean, I can take the entire
22 rate base and put it into expenses. And the same way
23 that the Power Supply Agreement takes the EEI. You
24 could do Callaway and put Callaway into expenses and
25 cost of service the same way that EEInc is in cost of

1 service.
2 So that's just a -- you know, do you put the
3 dollars through rate base and apply a return to it and
4 allow that calculation?
5 It's, like, do you want to do three plus two
6 to get the five or do you want to do two plus three to
7 get the five? You still have five.
8 The EEInc investment is just a rate base
9 item that has been translated into an expense item to put
10 it in.
11 Now, as you pointed out earlier, the one
12 advantage to the EEInc situation was it was able to
13 impute into its cost of service a rate of return that is
14 independent of the rate of return that the Commission
15 would have determined on all of the rate base.
16 MR. CYNKAR: Okay. That's all I have.
17 Does anybody else have any questions?
18 MR. DOTTHEIM: Yes, I do.
19 MR. CYNKAR: Why don't you go ahead since
20 you're representing the witness.
21 MR. BROSCHE: I don't plan to ask any
22 questions.
23 MR. MICHEEL: Steve, I don't have any
24 questions.
25 MR. CYNKAR: Bless both of you.

1 Q. In your work at the Commission, have you
2 been involved in the Commission's legislative activities?
3 A. The answer is, yes, but I -- I have a
4 limited involvement in legislative. Most of mine is the
5 process of fiscal notes now, but if there is a matter of
6 some financial impact, I'm occasionally asked about it.
7 Q. Have you reviewed proposed legislation on
8 behalf of the Commission?
9 A. Yes.
10 Q. I think you've indicated that in your work
11 at the Commission you have on various occasions reviewed
12 power supply agreements?
13 A. Yes.
14 Q. In your work in performing audits of
15 electric companies in rate cases, have you routinely
16 reviewed power supply agreements?
17 A. Yes. All of the significant power supply
18 agreements that affected the cost of service that was
19 under examination would have been reviewed.
20 Q. Okay. Have power supply agreements on prior
21 occasions been issues before the Commission?
22 A. Yes.
23 Q. Have you testified before the Commission
24 respecting power supply agreements?
25 A. Yes.

1 CROSS-EXAMINATION
2 BY MR. DOTTHEIM:
3 Q. Mr. Schallenberg, in your work at the
4 Commission, are you required to work with the
5 Commission's rules?
6 A. Yes.
7 Q. You're required to interpret the
8 Commission's rules on a daily basis?
9 A. I'm required to interpret. I don't -- I
10 don't have to do it every day, but I do it on a regular
11 basis.
12 Q. In your work at the Commission have you been
13 involved with Commission rulemaking?
14 A. Yes.
15 Q. What has been the nature of your involvement
16 in Commission rulemaking?
17 A. Well, now that I'm a Division Director, and
18 have been one since October 1st of 1977, most
19 rulemakings, not all of them, but most rulemakings go to
20 the Division Directors for evaluation and comment before
21 the Staff will make a presentation or initiate a
22 rulemaking.
23 Q. In your work at the Commission, are you
24 required to refer to Commission statutes?
25 A. Yes.

1 Q. I think in response to a question from
2 Mr. Cynkar you referred to Mr. Rainwater's deposition,
3 and I think, if I heard correctly, you referred to
4 Mr. Rainwater commenting that the Ameren Board's
5 activities were perfunctory.
6 Did I hear that correctly? Do you recall in
7 Mr. Rainwater's deposition -- did he say that the Ameren
8 Board's activities were perfunctory?
9 A. The AmerenUE, yes.
10 Q. If I understand your response, were you
11 indicating that Mr. Rainwater in his deposition referred
12 to the AmerenUE Board's activities were perfunctory?
13 A. Yes.
14 Q. Okay. And so it was the AmerenUE Board and
15 not the Ameren Board?
16 A. That's correct.
17 MR. DOTTHEIM: That's all I have.
18 MR. CYNKAR: That's great.
19 Waive presentment.
20 (OBTAIN SIGNATURE; WAIVE PRESENTMENT.)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Patricia A. Stewart, RMR, RPR, CCR, a
 Certified Court Reporter in 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.

Patricia A. Stewart
 CCR 401

February 21, 2007

Public Service Commission
 State of Missouri
 Governor Office Building, Suite 800
 200 Madison Street

Jefferson City, Missouri 65101

Attn: Steven Dottheim

In Re: Union Electric Company d/b/a AmerenUE
 Case No. ER-2007-0002

Dear Mr. Dottheim:

Please find enclosed a copy of the deposition of
 ROBERT E. SCHALLENBERG, CPA, taken on February 21, 2007
 in the above-referenced case. Also enclosed is the
 original signature page and errata sheet.
 Please have the witness read your copy of the transcript,
 indicate any changes and/or corrections desired on the
 errata sheet, and sign the signature page before a notary
 public.

Thank you for your attention to this matter.

Sincerely,

Patricia A. Stewart

Encl:

CC: Robert J. Cynkar
 Rick Chamberlain

STATE OF _____

COUNTY OF _____

I, ROBERT E. SCHALLENBERG, CPA, 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 _____.

Notary Public

My commission expires: _____

ROBERT E. SCHALLENBERG, CPA

Signature page to Steven Dottheim

PAS/ROBERT E. SCHALLENBERG, CPA, 02/21/07

Union Electric Company d/b/a AmerenUE

Case No. ER-2007-0002

WITNESS ERRATA SHEET

Witness Name: ROBERT E. SCHALLENBERG, CPA
 Case Name: Union Electric Company d/b/a AmerenUE
 Case No. ER-2007-0002

Date Taken: 02/21/07

Page # _____ Line # _____

Should read: _____

Reason for change: _____

Page # _____ Line # _____

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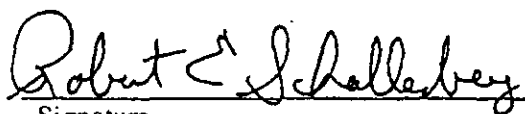
Reason for change: _____

Witness signature: _____

ERRATA SHEET

Deposition of: Robert E. Schallenberg
Case Caption: ER-2007-0002
Date Taken: 02/21/2007

Page	Line	Correction	Reason
12	11	...sure of. I had a discussion with Don Johnstone regarding his view that Joppa was part of the UE system when he worked at UE.	I remembered this discussion after deposition.
12	16	that would be true for witnesses on EEInc. because the only	I remembered this discussion after deposition.
12	18	the company had. I had a discussion with Don Johnstone.	Recalled conversation after deposition.
30	3	I don't understand the question	Wrong answer
33	3	he said the AmerenUE	Misspoke
38	22	replacement cost and the lost off-system	Wrong word
57	7	It could be National or global	Missing word
80	15	to "three" instead of "four"	Mistake
92	17	I know it's not under FERC jurisdiction for	Wrong words
94	3	a concern at FERC regarding sale to a regulated	Missing words
94	5	and there was not	Wrong word
97	25	Union has made such a commitment in advance	Missing words
98	13	Yes it is rate based	Missing words
100	6	because the only	Wrong words
102	10	it in cost of service	Missing words


Signature

STATE OF MISSOURI)
)
COUNTY OF COLE)

In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs
Increasing Rates for Electric Service Provided to Customers in the Company's Missouri
Service Area.

Missouri Public Service Commission Case no. ER-2007-0002

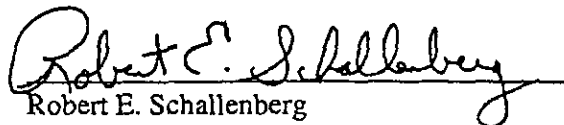
I, Robert E. Schallenberg, do hereby certify:

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;

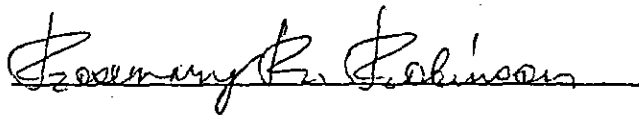
That having made such changes thereon, I hereby subscribe my name to the
deposition.

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


Robert E. Schallenberg

Executed this 7th day of March, 2007.

Notary Public



My commission Expires:

9-23-2008

