

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS

7 Hearing

8 March 26, 2007  
9 Jefferson City, Missouri  
Volume 32

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11

12 In the Matter of Union Electric )  
Company d/b/a AmerenUE for )  
13 Authority to File Tariffs )  
Increasing Rates for Electric ) Case No. ER-2007-0002  
14 Service Provided to Customers in )  
the Company's Missouri Service )  
15 Area )

16 MORRIS L. WOODRUFF, Presiding,  
SENIOR REGULATORY LAW JUDGE.

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18 JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
19 STEVE GAW,  
ROBERT M. CLAYTON,  
20 COMMISSIONERS.

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REPORTED BY:

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Welcome back, everyone,  
3 for week three of the AmerenUE electric rate case hearing,  
4 and we'll begin this morning, I believe, with the SO2  
5 issues, and we'll start with openings. There's some other  
6 housekeeping matters we need to take care of. I believe  
7 Ameren has some documents they want to mark.

8 MR. LOWERY: Yes, your Honor. We have  
9 materials requested by the Commissioners when Mr. Mark  
10 appeared, I guess it was a week ago Friday. And this  
11 would be, I believe, Ameren 120, and I've given you your  
12 copies and also for the Commissioners. I'll give them to  
13 the other parties, and we'd like to go ahead and mark that  
14 and offer that into evidence per the Commissioner's  
15 request.

16 JUDGE WOODRUFF: Okay.

17 MR. LOWERY: One clarifying point. They  
18 asked -- the Commissioners asked for some energy  
19 efficiency reports, and those reports, there's three of  
20 them, they total I think in excess of 400 pages. And so  
21 what we did, we included the indices in this exhibit but  
22 not the actual reports. We have those available if the  
23 Commissioners really wanted them, but we weren't sure we  
24 wanted to put 400 pages into the record unless they really  
25 wanted all that paper.

1 JUDGE WOODRUFF: I appreciate that, and if  
2 they really want it, I'll let you know.

3 (EXHIBIT NO. 120 WAS MARKED FOR  
4 IDENTIFICATION BY THE REPORTER.)

5 MR. LOWERY: We'd offer 120 into evidence.

6 JUDGE WOODRUFF: 120 has been offered into  
7 evidence.

8 MR. MILLS: I haven't even looked at it  
9 yet. Can we have a little while?

10 JUDGE WOODRUFF: Yes. I'll defer ruling on  
11 it until after first break.

12 MR. MILLS: Thank you.

13 JUDGE WOODRUFF: All right. I also wanted  
14 to talk about the schedule for the rest of the week. I  
15 know we've got the SO2 issues today, depreciation  
16 tomorrow. Class cost of service issues are set for  
17 Wednesday and Thursday, and it looks like perhaps most of  
18 those issues have been settled, or is there any changes on  
19 the Stipulation & Agreement that was submitted last week?

20 MR. MICHEEL: Your Honor, with respect to  
21 the Stipulation & Agreement on rate design, the State and  
22 the Department of Economic Development are not going to  
23 sign, but we're not going to request a hearing on that.

24 JUDGE WOODRUFF: Okay. Any other parties  
25 having a position on that yet? I don't think the company

1 signed.

2 MR. BYRNE: Your Honor, we have not signed  
3 it. I guess, and I'm -- I certainly don't want people to  
4 unnecessarily have to bring witnesses to the hearing. I  
5 guess at this point we're not opposed to the settlement,  
6 with one caveat. The settlement is an incomplete  
7 settlement. It settles most rate design issues but not  
8 all of the rate design issues.

9 And so to the extent that the unresolved  
10 rate design issues which have to go to hearing, to the  
11 extent the Commission's decision in those unresolved rate  
12 design issues might require a reallocation of costs or  
13 might impact other things that are settled, you know,  
14 that's our only caveat.

15 We don't want to be precluded from -- we  
16 don't want the Commission to be precluded from making  
17 those changes when it deals with the unresolved rate  
18 design issues. I guess that's my caveat. With that  
19 caveat, we're not going to require all the witnesses to  
20 show up or have flights coming to St. Louis and drive to  
21 Jefferson City.

22 JUDGE WOODRUFF: All right. I understand  
23 there were, I believe, three particular issues that were  
24 specifically not resolved by the agreement. Is that  
25 correct, Mr. Conrad?

1                   MR. CONRAD: I don't know that I would be  
2 the expert on it, but I believe Mr. Coffman had an issue  
3 that I don't know that that's been resolved, but I don't  
4 know, can't speak for him. As far as anything else,  
5 Ms. Langeneckert's group, MEG, had an issue. Somebody  
6 else might help me as to the third one.

7                   MR. BYRNE: \$25 per customer issue, if  
8 I've --

9                   MR. CONRAD: I believe that's Mr. Coffman's  
10 issue.

11                  MR. BYRNE: Okay. Let's see. We've got  
12 economic development retention riders. That was one.  
13 Industrial response pilot, that's the interruptible. And  
14 then the safety net, which is the \$25 per day for outages.

15                  MR. COFFMAN: With regard to the safety net  
16 issue or customer credits for storm outage, that was not  
17 the subject of any prefiled testimony, and there's been  
18 cross-examination. I don't anticipate a need for any more  
19 testimony or cross-examination from my perspective on that  
20 issue.

21                  MR. BYRNE: Certainly. I guess my caveat  
22 in saying that we don't oppose the stipulation is our  
23 position, of course, would be, as Mr. Rainwater said the  
24 other day, if there is a \$25 credit, we believe those  
25 charges should be socialized to all the customer classes.



1 So we don't want to be prevented from making that argument  
2 by the settlement that the other parties have entered  
3 into.

4 JUDGE WOODRUFF: And did the company  
5 wish to present any evidence on that particular issue, the  
6 \$25 credit?

7 MR. BYRNE: Well, we've had --  
8 Mr. Rainwater's presented testimony. There wasn't any  
9 prefiled testimony by Mr. Coffman.

10 JUDGE WOODRUFF: Right. And I'd allow you  
11 to offer live testimony if you wished to.

12 MR. BYRNE: Your Honor, I'm not sure we've  
13 thought about it yet. I'm still worried about what's  
14 scheduled for today.

15 JUDGE WOODRUFF: I can imagine you've all  
16 been a little busy the last couple weeks.

17 MR. CONRAD: Resisting with some ferocity  
18 the temptation to note that the company is proposing a  
19 vestige of socialism, and as a died-in-the-wool  
20 Republican, it's very difficult for me to deal with that,  
21 but I would like a little bit of clarification, I guess,  
22 as to whether or not the stipulation as filed is going to  
23 be opposed by the company.

24 The stipulation does not settle issues that  
25 it does not settle, but the issues that it does settle,

1 including class cost of service, are addressed. So it  
2 seems to me one can't have their cake and eat it too on  
3 this one.

4 MR. BYRNE: Well, your Honor, it's a  
5 partial settlement. There's three issues that are left  
6 unresolved. The resolution of those three unresolved  
7 issues may require allocation of costs to other -- to  
8 different classes that slightly adjust what's been  
9 settled, and so to -- you know, I guess to -- with that  
10 caveat, we're willing to accept the settlement, but  
11 without that caveat, we're not willing to accept the  
12 settlement.

13 MR. CONRAD: So do we try the class cost of  
14 service, Mr. Byrne? Are you opposing it?

15 MR. BYRNE: You can do anything you want.  
16 I guess what I'm saying is to -- well, to the extent that  
17 resolution of the unresolved issues requires adjustment of  
18 the figures in that settlement, I am opposing it, yes.

19 MR. CONRAD: Very well.

20 JUDGE WOODRUFF: Well, perhaps you-all can  
21 work this out within the next couple days before we get to  
22 the point, and we'll decide later as we get later in the  
23 week.

24 MR. MILLS: Can I ask a procedural  
25 question? Is it -- is it your intention that an

1 opposition to that Nonunanimous Stipulation & Agreement  
2 would have to be filed to the hour on the seventh day or  
3 at the end of the seventh day? Because that means either  
4 the beginning of the day on Thursday or end of the day on  
5 Thursday is when we're going to finally know whether UE  
6 opposes it or not apparently.

7 JUDGE WOODRUFF: End of the day Thursday  
8 would be the time it would normally run.

9 MR. BYRNE: I guess, your Honor, I'm trying  
10 to -- I'm trying -- it may not sound like it, but I'm  
11 trying to be cooperative.

12 JUDGE WOODRUFF: I understand where you're  
13 coming from, yes.

14 MR. BYRNE: I'm trying to tell the parties  
15 my position now, and I don't think that requires them to  
16 fly all their witnesses in on all the issues in rate  
17 design. But at the same time, when we try these remaining  
18 issues, I don't want the other parties to say you can't --  
19 no costs associated with those issues can be allocated to  
20 any class because you signed onto the -- or you didn't  
21 oppose the rate design settlement.

22 That's our position, and I'm saying it now.  
23 I'm not sure -- you know, there's nothing that I'll file  
24 that's going to be in any way different from that, and I'm  
25 hopeful that will give the parties enough information that

1 they won't have to fly all their witnesses in.

2 MR. COFFMAN: Your Honor, for  
3 clarification, the safety net concept that my clients  
4 support in no way would require funds from consumers to be  
5 allocated to it. The very nature of that program is that  
6 it is cost that comes from shareholder funds for which the  
7 company is responsible, without which the program is  
8 meaningless. And I understand that AmerenUE's not willing  
9 to do that for its customers and has arguments that it may  
10 be unlawful or it doesn't want to do that, and I assume  
11 that it could brief that issue, but --

12 MR. BYRNE: It is, of course, unlawful  
13 unless the Commission allows us to recover the costs from  
14 other classes. Of course that's correct, but --

15 MR. COFFMAN: But from our perspective it  
16 really is not a rate design issue. I imagine this is  
17 something that could be briefed, but it's not something  
18 that I would imagine, you know, the record needs any more  
19 evidence on, as far as rate design goes.

20 JUDGE WOODRUFF: Well, certainly it's not  
21 something we have to resolve at this moment. I'll ask the  
22 parties to discuss this amongst themselves and -- if they  
23 reach any sort of resolution.

24 I also wanted to indicate that I was  
25 looking at possibly scheduling an on-the-record

1 presentation to discuss all the stipulations on Wednesday,  
2 probably Wednesday afternoon, although I've not cleared  
3 that with the Commissioners yet. So at that point we  
4 would hopefully know whether we needed to go forward with  
5 the class cost of service issues, but I'll leave that to  
6 your discussions.

7 Anything else anyone wants to bring up at  
8 the moment?

9 MS. VUYLSTEKE: Your Honor, while we're  
10 talking about the issues that remain unresolved, the EDR  
11 issue, we are -- we have an interest in that issue and we  
12 plan to brief on that issue, and we'd like to reserve the  
13 right to assert in our position or argument later, but we  
14 don't intend to do any cross-examination or present any  
15 additional evidence on that issue.

16 JUDGE WOODRUFF: Which issue is that?

17 MS. VUYLSTEKE: EDR, economic development  
18 rider. That's one of the three unresolved issues.

19 JUDGE WOODRUFF: Yes.

20 MS. VUYLSTEKE: And then also I just wanted  
21 to confirm, I think you mentioned that depreciation will  
22 start tomorrow. I have a witness that is coming down this  
23 afternoon just so we would be ready, in case we hit that  
24 issue today. Would I be safe in telling my witness to  
25 wait until tomorrow or should I go ahead and let him -- in

1 case -- is your plan to definitely reserve it for tomorrow  
2 or --

3 JUDGE WOODRUFF: If we can reach it today,  
4 that would be great. I don't know if that's a practical  
5 goal or not.

6 MS. VUYLSTEKE: I see Steve Dottheim  
7 shaking his head.

8 MR. MILLS: I'm not sure my witness would  
9 be here. I'm certainly not ready to move ahead with  
10 depreciation today.

11 MR. DOTTHEIM: I think there are parties  
12 other than the Office of Public Counsel that also were  
13 intending or were thinking that depreciation would start  
14 Tuesday morning, thinking that SO2/storm costs would be  
15 able to be completed in a day, and depreciation would  
16 start on Tuesday morning.

17 JUDGE WOODRUFF: All right.

18 MR. MICHEEL: Your Honor, just so you know,  
19 my client, DED, is interested in the EDR rider and I'm  
20 going to have some questions about that.

21 JUDGE WOODRUFF: Well, Ms. Vuylsteke, I  
22 guess you can tell your witness to wait 'til tomorrow  
23 then.

24 MS. VUYLSTEKE: Thank you.

25 JUDGE WOODRUFF: Mr. Dottheim, you have

1 something?

2 MR. DOTTHEIM: Judge, you've inquired on a  
3 number of occasions regarding another Stipulation &  
4 Agreement, which will be filed today. So I say that with  
5 some certainty.

6 JUDGE WOODRUFF: I appreciate that.

7 MR. DOTTHEIM: Thank you.

8 JUDGE WOODRUFF: Anything else?

9 MR. CONRAD: Since we're on the topic of  
10 certainty, I'm wondering if the Commission, which has  
11 great authority in incidental matters to its jurisdiction,  
12 could address the issue of the coffee service.

13 JUDGE WOODRUFF: Actually, I can. They set  
14 up a coffee pot across the hall over there in one of those  
15 conference rooms again and coffee should be ready shortly.  
16 So I can give some good news once in a while.

17 All right. There's one other matter I  
18 wanted to bring up. On Friday afternoon Public Counsel,  
19 supported by the State, made a motion to strike three  
20 portions of Richard Voytas' rebuttal testimony regarding  
21 Pinckneyville and Kinmundy. I initially ruled in favor of  
22 a portion of Public Counsel's motion, but after the  
23 hearing -- but after hearing additional arguments from the  
24 parties, I reconsidered that initial ruling and indicated  
25 that I would defer making a ruling until I had time to

1 give the matter further consideration. I have now done so  
2 and I'm ready to make my ruling.

3 First, Public Counsel asked the Commission  
4 to strike as hearsay the portion of Voytas' testimony that  
5 begins at page 15, line 15, continuing through page 19,  
6 line 4. Public Counsel also argues that Voytas is not an  
7 expert on electric transmission congestion issues and is  
8 not entitled to offer an expert opinion on that question.  
9 The challenged testimony concerns transmission constraints  
10 that repeatedly limit the operation of the Audrain CTG  
11 plant in 2002.

12 In discussing those transmission  
13 constraints, Voytas quotes the testimony filed by other  
14 experts in a case before the FERC. It is these quotes  
15 that Public Counsel contends should be struck as hearsay.  
16 Voytas discusses the question of transmission constraints  
17 only to rebut an allegation made in the direct testimony  
18 of Staff witness Steven Rackers that AmerenUE paid too  
19 much for the Pinckneyville and Kinmundy CTG plants because  
20 it could have obtained the same capacity at a lower price  
21 in 2002 if it had accepted an offer to buy the Audrain  
22 plant from its then owner.

23 Voytas' testimony contends that the Audrain  
24 plant was not worth the asking price in 2002 because of  
25 the existence of severe transmission constraints.



1 Therefore, the expert opinion that Voytas is offering  
2 relates to the appropriate market value of the Audrain  
3 plant and not to the particulars of transmission  
4 constraints.

5                   As an expert witness Voytas is entitled to  
6 rely on hearsay statements in formulating his expert  
7 opinion on evaluation of the Audrain plant. That means  
8 that his inclusion of statements from other witnesses that  
9 might otherwise be hearsay is acceptable as an explanation  
10 of the foundation of his expert opinion. Public Counsel's  
11 motion strike that portion of Voytas' testimony will be  
12 denied.

13                   Second, Public Counsel asked the  
14 Commission to strike quotations from a decision issued by  
15 a FERC ALJ that are found at pages 26, line 19 through 25,  
16 and page 27 line 12 through page 28, line 20. Public  
17 Counsel contends those quotations should be struck because  
18 they did not appear in the final order issued by the FERC.

19                   This portion of Public Counsel's motion  
20 will also be denied. The fact that the ALJ's statements  
21 were not adopted by the FERC may affect the weight to  
22 accord those statements, but it does not affect their  
23 admissibility.

24                   Third, Public Counsel asked the Commission  
25 to strike the section of Voytas' testimony that rebuts the

1 testimony of Staff's witness Steven Rackers relating to  
2 use of AmerenUE's Venice CTGs as a basis for determining  
3 the market price for CTGs. The challenged testimony  
4 begins at page 10, line 9 and continues through page 14,  
5 line 7. Public Counsel argues that Staff has abandoned  
6 Mr. Rackers' testimony and, therefore, Voytas' rebuttal of  
7 that testimony is improper.

8 Amerenue replied it intends to call  
9 Mr. Rackers to be cross-examined and that it will be  
10 offering his testimony into evidence. For that reason, it  
11 contends that Voytas' rebuttal should be allowed into  
12 evidence. Since Rackers' testimony will be submitted, the  
13 Commission agrees with AmerenUE that Voytas' rebuttal to  
14 that testimony should be also allowed into evidence.

15 The third part of the Public Counsel's  
16 motion to strike will be denied. Public Counsel's motion  
17 to strike portions of rebuttal testimony of Richard  
18 Voytas having been denied, Voytas' rebuttal testimony,  
19 Exhibits 60HC and NP, will be admitted into evidence.

20 (EXHIBIT NOS. 60NP AND HC WERE RECEIVED  
21 INTO EVIDENCE.)

22 JUDGE WOODRUFF: And with that out of the  
23 way --

24 MR. MICHEEL: Your Honor, can I -- now, am  
25 I to understand from that ruling that you've already made

1 a decision that you're going to admit the abandoned direct  
2 testimony of Mr. Rackers?

3 JUDGE WOODRUFF: I have not ruled on that.

4 MR. MICHEEL: Well, then I'm --

5 JUDGE WOODRUFF: That is implied, but it's  
6 not been offered yet, so I've not officially ruled on it.

7 MR. MICHEEL: But it's implied. Okay.

8 JUDGE WOODRUFF: And I may change that  
9 ruling as it comes forward, but at the moment, that is the  
10 ruling.

11 Okay. Then we're ready to move on to the  
12 SO2 issue, and I believe we're going to be opening with  
13 mini openings, beginning with Ameren.

14 MR. BYRNE: Thank you, your Honor. May it  
15 please the Commission and Judge Woodruff?

16 We are here this morning to begin our  
17 discussion of the appropriate treatment of sulfur  
18 dioxide or SO2 emissions allowance margins in this case.  
19 SO2 emission allowances are credits issued by the U.S.  
20 EPA to AmerenUE and other companies that allow the  
21 emission of a ton of sulfur dioxide for each allowance.  
22 The EPA began issuing SO2 emission allowances in the mid  
23 1990s as part of a cap and trade program to reduce overall  
24 SO2 emissions.

25 Under the program, the idea is that those

1 companies that can most efficiently reduce SO2 emissions  
2 to meet production targets will do so, while other  
3 companies can acquire emission allowances to delay their  
4 reduction of emissions through less efficient means. In  
5 other words, the program attempts to use the free market  
6 to achieve the most efficient overall reduction in SO2  
7 emissions. There's an active market for allowances where  
8 parties can buy, sell or swap allowances of different  
9 vintages.

10                   AmerenUE is in the enviable position of  
11 having a substantial bank of allowances, basically for two  
12 reasons. First, we were issued a lot of allowances when  
13 the program was first initiated, due to our early  
14 compliance with the emissions standards.

15                   Second, we have been very successful in  
16 actively managing our SO2 allowance bank over the years,  
17 primarily by swapping current excess allowances for  
18 allowances with future vintages. We have added over  
19 225,000 allowances to our bank, having a market value as  
20 of the date of the surrebuttal testimony filing of  
21 approximately \$93 million. These additional allowances  
22 permit us the luxury of proceeding deliberately in  
23 installing pollution control equipment so that we can  
24 learn from other utilities' experiences and take advantage  
25 of technological advantages.

1                   So why are we here today? We're here  
2   because AmerenUE sometimes sells excess emissions  
3   allowances, and the issue is how revenues from such sales  
4   should be treated for ratemaking purposes. Unfortunately,  
5   the level of SO2 allowance sales can vary substantially  
6   from period to period and it depends on a number of  
7   factors which can be very difficult to predict.

8                   First of all, in order to have the  
9   opportunity to make any sales of emissions allowances at  
10  all, the company has to determine that it has excess  
11  allowances based on its environmental compliance plans.  
12  If there are no excess allowances, there can be no sales  
13  at all. Then if there are excess allowances, a  
14  determination has to be made as to the timing of the sales  
15  based on market conditions.

16                  An overarching consideration is the very  
17  real possibility that the entire emissions allowance  
18  program could be ended at some point or regulations could  
19  become so stringent that allowances are effectively  
20  unusable and the entire bank of emissions allowances could  
21  become worthless.

22                  For example, if Al Gore had been elected  
23  president in 2004, and some people believe he actually was  
24  elected president in 2004, it is quite possible that the  
25  administration would have advocated mandatory pollution

1 control equipment rather than a cap and trade program.

2 In any event, AmerenUE's history of  
3 allowance sales is very inconsistent. For example, we  
4 sold \$3.9 million of excess allowances during the 12-month  
5 test year, and we sold approximately \$30 million of excess  
6 allowances in the six month update period for this case.

7 The reason for making the sales during the  
8 update period was to offset the cost of 2006 storms that  
9 otherwise would have been properly recovered in rates.  
10 But nonetheless, this illustrates the variability of  
11 allowance sales.

12 In this case, the company initially  
13 proposed the inclusion of the test year level of SO2  
14 allowance margins in rates, but we have since revised our  
15 position. We now basically support the Staff's position  
16 that SO2 allowances -- allowance margins from the  
17 beginning of the test year through January 1, 2007 should  
18 first be used to offset SO2 premiums paid to coal  
19 suppliers during that same period. Then the balance,  
20 which is approximately \$20 million in net revenues, should  
21 be used to offset a portion of the company's operations  
22 and maintenance costs associated with July and December  
23 2006 storms. The remaining portion of the storm costs  
24 would then be amortized over five years.

25 The only difference we have with Staff

1 regarding this historic treatment of storm cost and SO2  
2 allowance revenues is that, if an FAC is approved, the  
3 company believes that the recovery period for the  
4 remaining storm costs should be shortened to four years,  
5 which is the period between rate cases for the FAC, and in  
6 any event, the costs should be fully recovered.

7                   In the alternative to Staff's proposal, the  
8 company is still willing to accept its own proposal, which  
9 was simply to offset the SO2 margins with storm costs and  
10 have no adjustment for either. On a going-forward basis,  
11 we also support Staff's proposal to treat SO2 allowances,  
12 allowance revenues.

13                   Under the Staff's proposal beginning  
14 January 1, 2007, a regulatory liability account would be  
15 established in which post-January 1, 2007 allowance  
16 revenues and SO2 premiums paid to coal suppliers would be  
17 included. And if a fuel adjustment clause is approved in  
18 this case, the balance of that account would flow through  
19 the fuel adjustment clause. If a fuel adjustment clause  
20 is not approved, the balance in that account would be held  
21 and dealt with in a future rate case. So we support that  
22 aspect of Staff's proposal as well.

23                   We believe the Staff's proposed approach is  
24 preferable to the inclusion of a fixed amount of SO2  
25 allowance margins in the company's revenue requirement as

1 proposed by the Office of the Public Counsel and the State  
2 for a number of reasons.

3 First, it avoids the need to flow through  
4 most of the 2006 storm costs to customers. Second, it  
5 eliminates the need for the Commission to undertake what  
6 we think is the impossible task of attempting to predict  
7 what future allowance margins will be, and it eliminates  
8 any inappropriate incentive for the company to sell  
9 allowances in the future in order to meet an arbitrary  
10 target level of revenues.

11 Third, it guarantees that every penny of  
12 future allowance revenues will be credited to customers,  
13 and fourth, it treats AmerenUE's allowance margins and SO2  
14 premiums similar to the way the Commission has already  
15 required other electric utilities in Missouri to treat  
16 them.

17 In contrast, the State and the Office of  
18 Public Counsel recommend inclusion of a large amount of  
19 SO2 allowance revenues in excess of \$20 million per year  
20 in the company's base rates. We think such an approach  
21 would be a mistake because it would provide AmerenUE with  
22 an inappropriate incentive to sell that level of  
23 allowances in order to have a chance to meet its cost of  
24 service without regard for its need to use allowances for  
25 environmental compliance purposes.



1                   As a consequence, the Commission should  
2   reject this approach and adopt the recommendation of  
3   AmerenUE and the Staff. Thank you.

4                   JUDGE WOODRUFF: Thank you. Opening for  
5   Staff?

6                   MR. CONRAD: Your Honor?

7                   JUDGE WOODRUFF: Mr. Conrad?

8                   MR. CONRAD: Georgia Santiana made the  
9   statement one time that those who do not remember the past  
10   are condemned to repeat it, and unwilling to let that chad  
11   hang, I would note that Al Gore was a candidate in 2000,  
12   and I believe we were privileged to witness Mr. Kerry and  
13   John Edwards in 2004.

14                  MR. BYRNE: I stand corrected.

15                  JUDGE WOODRUFF: Thank you. Opening for  
16   Staff?

17                  MR. MEYER: Good morning. Staff strongly  
18   supports establishing the regulatory liability account on  
19   a going-forward basis for AmerenUE to book its gains from  
20   sales of emissions allowances to. Establishing a  
21   regulatory liability account to capture the proceeds from  
22   gains of sales of emissions allowance also captures all of  
23   the SO2 gains for ratepayer benefit, which is appropriate  
24   since the ratepayers paid for the coal that gave rise to  
25   the emissions allowances in the first place. It also

1 avoids the potential for the value of SO2 allowance assets  
2 going to the shareholders.

3 Mr. Cassidy and Mr. Meyer are here to  
4 explain their support of this position and will be happy  
5 to answer Commission questions on the topic.

6 Staff also recommends that the balance  
7 resulting from the netting of gains of sales of SO2  
8 emission allowances the company received during the test  
9 year and update periods against the SO2 premiums net of  
10 discounts the company paid for coal should be used to  
11 offset the post-test year July, November and December  
12 storm O&M expenses.

13 Staff believes that offsetting the  
14 pre-January 1st, 2007 SO2 emission allowances with the  
15 storm costs of the recent past is an excellent way of  
16 eliminating those storm costs that otherwise would be  
17 borne by ratepayers on a long-term basis and that way they  
18 would not be used in a multi-year averaging technique or  
19 considered to project a future level of storm expense.

20 Thank you.

21 JUDGE WOODRUFF: Thank you. Public  
22 Counsel?

23 MR. MILLS: Good morning. May it please  
24 the Commission?

25 At the risk of sounding repetitious, I'm

1 going to tell the Commission that this is another issue  
2 that's not that complicated. Public Counsel proposes that  
3 the Commission set rates based on a normalized five-year  
4 level of SO2 -- of revenues from the sale of SO2  
5 allowances.

6 Union Electric admits that the year-to-year  
7 level of SO2 allowance sales is uneven, and that's exactly  
8 the reason why the Commission traditionally normalizes  
9 items is because one particular period may not be  
10 representative.

11 In this case, the company's initial  
12 position is enlightening. When the test year level of  
13 off-system -- of SO2 allowance sales was under \$4 million,  
14 the company was strongly pushing to use the test year  
15 level. At that time Public Counsel thought the test year  
16 level was unrepresentative and in our direct testimony  
17 proposed a five-year normalization.

18 Well, come the end of the update period,  
19 that period's SO2 sales were over \$30 million, and the  
20 company quickly changed its tune about using a short  
21 period of time for setting rates based on sales of SO2  
22 allowances. Public Counsel's position didn't change.  
23 Public Counsel believes that that period is also  
24 unrepresentative because it's too high. We're not  
25 proposing to use that level. We think that the five-year

1 level is the best way to go.

2 Based on the company's approach, the  
3 Commission would be all over the board depending on which  
4 particular period is high and which particular period is  
5 low and that's exactly the reason why a five-year  
6 normalization is appropriate.

7 Public Counsel will be sponsoring the  
8 testimony of Ryan Kind on this issue, and I think you will  
9 find his evidence compelling. Thank you.

10 JUDGE WOODRUFF: Thank you. For the State?

11 MR. MICHEEL: May it please the Commission?  
12 Most of the facts with respect to SO2 allowances are not  
13 in dispute, and the key fact that's not in dispute is the  
14 fact that it's the ratepayers that are paying full boat  
15 for the coal, and the coal that the ratepayers are  
16 purchasing as part of running a plant are what generates  
17 the SO2 allowances, and therefore I think it's pretty  
18 clear and I don't think anyone really argues with the fact  
19 that the ratepayers should get the benefit with respect to  
20 the sale of these SO2 allowances.

21 Mr. Byrne in his opening unfortunately only  
22 got it part right with respect to the State's position,  
23 and he missed a very important part of the State position.  
24 It is correct that, much like the Office of Public  
25 Counsel, that the State has recommended a normalized level

1 of SO2 sales be placed as a revenue offset in this case,  
2 and that number is 20 million, \$20.3 million.

3 But the part that Mr. Byrne left out and  
4 the key part that Mr. Byrne left out is that the State is  
5 requesting that this Commission in setting base rates  
6 allow a regulatory asset or liability that would be  
7 recorded in each month, recognizing the fluctuations  
8 around the \$20.3 million level, because there's a lot of  
9 talk about how SO2 allowances go up and down, and by  
10 allowing that regulatory asset or liability to be recorded  
11 now on a going-forward basis, in the next rate case,  
12 adjustments to increase or decrease the ratemaking  
13 allowance can be made.

14 Essentially, the State's position is a  
15 symmetrical position that allows the company to remain  
16 whole if the \$20.3 million is too high and allows  
17 ratepayers to be made whole if the \$20.3 million is too  
18 low.

19 JUDGE WOODRUFF: Thank you. Does any other  
20 party wish to make an opening?

21 MR. COFFMAN: For the record, my clients  
22 defer to the State's position on this issue.

23 JUDGE WOODRUFF: Okay. All right. Then I  
24 believe that completes the openings, and the first witness  
25 on the list is Mr. Baxter for the company.

1 MR. BYRNE: Call Mr. Baxter.

2 JUDGE WOODRUFF: Is this Mr. Baxter's last  
3 appearance?

4 MR. BYRNE: Yes, your Honor.

5 MR. LOWERY: His testimony's already in,  
6 your Honor, I believe.

7 JUDGE WOODRUFF: Good morning, Mr. Baxter.  
8 You testified earlier in this case, so you're still under  
9 oath.

10 THE WITNESS: Thank you.

11 MR. BYRNE: Tender Mr. Baxter for  
12 cross-examination.

13 JUDGE WOODRUFF: All right. For  
14 cross-examination, then -- well, let me just ask, does any  
15 party wish to cross-examine Mr. Baxter?

16 Looks like the State would be the first on  
17 the list.

18 WARNER BAXTER testified as follows:

19 CROSS-EXAMINATION BY MR. CARLSON:

20 Q. How are you doing, Mr. Baxter?

21 A. Hi.

22 Q. My name is Bob Carlson. Do you have a copy  
23 of your rebuttal testimony with you?

24 A. I do indeed.

25 Q. Great. We'll get to that in a sec. Okay.

1 Now, general question. In your rebuttal you propose a  
2 bargain or offset between AmerenUE and its customers  
3 regarding SO2 allowances, correct?

4 A. I'm not sure what you mean by a bargain.

5 Q. A bargain or an offset. Some of the SO2  
6 allowances will be used to pay for a portion of storm  
7 costs, and then AmerenUE will agree not to seek recovery  
8 from its ratepayers remaining costs; is that correct?

9 A. That's correct. In my rebuttal testimony I  
10 state that we will take all the SO2 sales that we made  
11 during the second half of the year and offset that against  
12 the approximate \$34 million of storm costs that we did  
13 incur.

14 Q. The 34 million is about half of your  
15 estimated storm costs?

16 A. In what regard? Are you talking about the  
17 O&M portion or the capital portion?

18 Q. The O&M portion.

19 A. It is 100 percent of the O&M portion.

20 Q. Okay. Can you go to your rebuttal  
21 testimony for me?

22 A. Sure.

23 Q. By the way, this is marked HC; is that  
24 correct?

25 A. Yes, it is.

1 JUDGE WOODRUFF: Do we need to go  
2 in-camera?

3 MR. CARLSON: I hate to, but yes, please.

4 JUDGE WOODRUFF: At this point we will go  
5 in-camera.

6 MR. LOWERY: Your Honor, we can ask the  
7 witness, but I believe it was marked HC because that  
8 information had not been publicly disclosed yet, and it  
9 has been now, and so I don't believe -- Mr. Baxter can  
10 tell me if I'm wrong, but I don't believe it is any  
11 longer.

12 THE WITNESS: That's correct, your Honor.  
13 That was -- at the time of this testimony it needed to be  
14 HC, but it's fine to be not HC at this point.

15 JUDGE WOODRUFF: All right. We will not go  
16 in-camera.

17 BY MR. CARLSON:

18 Q. All right. If you go to line 6 on page 12  
19 of your rebuttal testimony, it says you're not going to  
20 recover 34 million in O&M costs?

21 Page 12, line 6.

22 A. I'm sorry. Excuse me. Page 12.

23 Q. And we're in your rebuttal.

24 A. That's correct.

25 Q. But you then also use 32 million -- you use



1 32 million -- you will recover 32 million in O&M costs  
2 from SO2 allowance sales, correct?

3 A. I will recover in what way?

4 Q. I'm sorry. They'll be offset. You offset  
5 32 million?

6 A. That's correct, we'll offset our  
7 \$32 million emissions sales against our \$34 million of O&M  
8 costs.

9 Q. Okay. By making this proposal, AmerenUE  
10 wants its customers to pay for a portion of the storm  
11 costs, correct?

12 A. No.

13 Q. Isn't that part of the cost of doing  
14 business, that the ratepayer should pay for it?

15 A. In this particular approach, what we have  
16 suggested is that we would offset the emission allowance  
17 sales against those storm costs, and we thought that was a  
18 balanced approach.

19 Q. Okay. So you're in effect saying that the  
20 customer should participate then in the SO2 allowance, the  
21 revenue from SO2 allowance sales?

22 A. I'm not sure I understand, they should  
23 participate in that.

24 Q. Well, I mean, the storm costs, they won't  
25 have to pay for it because you're using SO2 allowance

1 sales to pay for them, right?

2 A. We are proposing to offset our SO2  
3 allowance sales against those storm costs.

4 Q. As of right now, to your knowledge, do any  
5 special accounting orders or deferral obligations apply to  
6 those historical storm costs or historical SO2 allowance  
7 sales that preclude this Commission from accepting that  
8 offset that you've proposed?

9 A. I would say that would be a legal  
10 determination that I don't know.

11 Q. Okay. Now, changing gears a little bit, if  
12 that tradeoff is not accepted by the Commission or they  
13 don't like it for whatever reason, you propose the  
14 creation of a special regulatory asset account for the  
15 future four-year amortization?

16 A. Excuse me. With regard -- this is in my  
17 rebuttal. Mr. Byrne just stated that we accept the  
18 Staff's position with regard to the treatment of SO2  
19 allowances, and so our position as stated by Mr. Byrne is  
20 consistent with the Staff's position. This is what I said  
21 in my rebuttal testimony.

22 Q. So your position has changed?

23 A. It is -- our position is that we would  
24 accept the Staff's position with regard to the treatment  
25 of SO2 allowances or we would accept the offset, that's

1 correct.

2 Q. Okay. But the Staff position would create  
3 a regulatory asset account, correct?

4 A. Yes. In part for some of the storm costs,  
5 the Staff position would have approximately 14 million, I  
6 believe, of regulatory assets.

7 Q. Now, you disagree with the Staff at some  
8 point because you only want this to be prospective, right,  
9 in the future without any historical costs?

10 A. I'm not sure I understand the question.  
11 What are you referring to, I want this to be prospective?

12 Q. In your testimony, if you could go to  
13 page 13, line 10, there you seem to take issue with, how  
14 you define it, the Staff's position being retroactive.  
15 Specifically I'm looking at page 13, line 10. It says,  
16 the legal issues associated with retroactively moving, et  
17 cetera, et cetera. Would you explain what you mean by  
18 that?

19 A. Well, the Staff's position -- this is no  
20 longer the Staff's position.

21 Q. Okay. Let's move to the State's position.  
22 Do you understand that the State's position also has no  
23 retroactive creation of regulatory liability?

24 A. Could you explain to me what you mean by  
25 retroactive?

1           Q.       We're not trying to make you pay for any  
2       historical storm costs or emission allowance sales?

3           A.       I don't believe -- well, I guess with  
4       regard to that, I'm not sure if the State is suggesting  
5       that we don't -- are you saying the State is saying that  
6       we cannot recover our storm costs in the future? I'm just  
7       trying to make sure I understand your question.

8           Q.       Yes, that is it.

9           A.       Okay. Again, I don't believe the State has  
10       suggested that we are unable to recover our storm costs.

11          Q.       Okay. One of the concerns I've heard --  
12       this is just yes/no question -- is that you're really  
13       concerned about the ability of AmerenUE to estimate how  
14       much you can gain from future emission allowances, right?

15          A.       Yes.

16          Q.       How much of the revenue you'll be able to  
17       receive, but the regulatory liability treatment tracks the  
18       revenue from allowance sales above or below a base rate  
19       amount, right?

20          A.       Are you referring to the State's position?

21          Q.       The State and I believe the Staff as well,  
22       even though the base amounts are different, but the  
23       concept is the same, they want to track above or below a  
24       certain base amount?

25          A.       No, that's not true. The Staff's position

1 doesn't have a base amount in rates. The Staff's  
2 position --

3 Q. Yes. You're correct on that. But it would  
4 track the amount of revenue you received, correct?

5 A. It would track the amount of -- the Staff's  
6 position and the company's supports that position for  
7 prospective sales of future allowances, would be to  
8 reflect in a regulatory liability account SO2 credits that  
9 would be sold as well as premiums that we pay into our  
10 coal contracts for SO2s.

11 Q. And then with the State's position, it  
12 would also track those amounts, but in relation to a base  
13 amount, correct?

14 If you're not familiar with the State's  
15 position --

16 A. I am familiar with the State's position.  
17 I'm not sure if the -- the State's position, as I  
18 understand it, would put an amount which approximates  
19 \$20 million into base rates, and then any amount above or  
20 below that would be tracked in some regulatory asset or  
21 liability account that would be treated in the future. I  
22 don't believe the State has stated in its position what it  
23 would do with the premiums for SO2s, for SO2 premiums in  
24 the coal contracts.

25 Q. Okay. Now, we talked about track below the

1 level. If, say, it's 20.3 million, I think is the correct  
2 amount, and Ameren sold below that, wouldn't AmerenUE be  
3 given a credit for that amount?

4 A. What do you mean by a credit?

5 Q. They would receive a credit. In the next  
6 rate case, that amount would be credited to them?

7 A. Well, the State's position says it would be  
8 addressed in the next rate case. It's not clear exactly  
9 what would happen with that credit. And it wouldn't be a  
10 credit, frankly. I think in that particular position --

11 Q. I understand you understand this issue.  
12 Now, AmerenUE uses SO2 allowances revenues of 3.9 million  
13 in its current revenue requirements, correct?

14 A. In our original filed position, it was  
15 approximately \$4 million.

16 Q. Okay. Again, let me know if I'm not saying  
17 this correctly. Under the Staff's position, which you  
18 support, all of the revenue would be used for future  
19 environmental compliance, correct?

20 A. No.

21 Q. Okay. Would only a portion then be used  
22 for future environmental compliance?

23 A. The Staff's current position, are you  
24 talking about SO2 sales again?

25 Q. I certainly hope so.

1           A.       Well, SO2 sales would be reflected in a  
2     regulatory asset or liability account. It would be  
3     addressed in the next rate case as a component of fuel  
4     costs. That's the Staff's position.

5           Q.       Okay. Then -- and you do not completely  
6     agree with that?

7           A.       I do.

8           Q.       Okay. Wasn't your position at one time you  
9     wanted to bank that for capital investments for future  
10    environmental compliance?

11          A.       That was our position and, as we stated  
12    this morning, we agree with the Staff's position for the  
13    future treatment of that.

14          Q.       Couple mop-up questions here. To your  
15    knowledge, has AmerenUE waived any rights it may have to  
16    employ environmental cost rate adjustment mechanism in the  
17    future?

18          A.       I think to the extent that's a legal  
19    determination, I'm not aware of us waiving any rights.

20          Q.       Changing gears again, is UE seeking  
21    EIERA bonds for its pollution control?

22          A.       I'm not aware of that.

23          Q.       Okay. Were you aware of any plans to seek  
24    that in the future?

25          A.       At this point, no, I am not aware of that.

1 MR. CARLSON: No further questions.

2 JUDGE WOODRUFF: Thank you. For Public  
3 Counsel?

4 MR. MILLS: Yes, thank you.

5 CROSS-EXAMINATION BY MR. MILLS:

6 Q. Good morning, Mr. Baxter.

7 A. Mr. Mills, good morning.

8 Q. In your rebuttal testimony, I understand  
9 your position has changed again from the position you took  
10 in your rebuttal testimony, but when that position was --  
11 let me ask it this way: When was that position formulated  
12 that you set forth in your rebuttal testimony?

13 A. Prior to the time that I wrote my rebuttal  
14 testimony.

15 Q. About a month prior?

16 A. I don't recall, Mr. Mills.

17 Q. Was it before or after the huge sale of SO2  
18 allowances in the fourth quarter of 2006?

19 A. You're referring to the offset, is that  
20 what you're referring to?

21 Q. I'm referring, yeah, to the portion of your  
22 testimony in your rebuttal testimony.

23 A. Yes.

24 Q. The position you took then.

25 A. Uh-huh. It was -- it was -- that position



1 was taken really concurrently with the sale of that, we  
2 would take that position in the rate case.

3 Q. So as you were making the sale, you were  
4 thinking about how to treat it in the rate case; is that  
5 your testimony?

6 A. We thought at the time we made the decision  
7 to make those sales, we thought that we would have the  
8 opportunity in the rate case to present to the Commission  
9 to offset our SO2 allowance sales against the storm costs,  
10 that it would have no effect on ratepayers.

11 Q. Now, do you anticipate that you'll have  
12 another year like 2006 any time real soon in terms of  
13 storm costs?

14 A. I would hope not, but of course, as you  
15 know, Mr. Mills, we've incurred a storm here in early  
16 2007.

17 Q. And that's -- that's part of your current  
18 proposal to take that into effect, or is it not?

19 A. It is not. It's 2006 only.

20 Q. Just the 2006 storms. Okay. Do you  
21 anticipate that in the future UE will be selling emissions  
22 allowances?

23 A. It's possible.

24 MR. MILLS: Your Honor, I'd like to have an  
25 exhibit marked.

1 JUDGE WOODRUFF: All right. It will be  
2 444.

3 (EXHIBIT NO. 444 WAS MARKED FOR  
4 IDENTIFICATION BY THE REPORTER.)

5 JUDGE WOODRUFF: Mr. Mills, this is marked  
6 as highly confidential. Is this a highly confidential  
7 exhibit?

8 MR. MILLS: I don't think it is because  
9 I think this is the transaction that -- well, this has  
10 been -- this has been finalized, so I don't know if it is  
11 or not. I'll defer to the UE folks to let us know.

12 MR. BYRNE: We say no.

13 JUDGE WOODRUFF: No, it's not highly  
14 confidential?

15 MR. BYRNE: Correct.

16 JUDGE WOODRUFF: All right.

17 BY MR. MILLS:

18 Q. Mr. Baxter, I've handed what's been marked  
19 as Exhibit 444, and this, as you -- it's the company's  
20 response to OPC Data Request 2214, and essentially it's a  
21 copy of the document that was attached to Mr. Kind's  
22 rebuttal testimony, but the version that's been marked as  
23 444 has the actual signatures. The one attached to his  
24 testimony did not have the signatures filled in. Are you  
25 familiar with this document?

1           A.       I did not respond to this document.

2           Q.       Are you familiar with the transaction  
3 that's referred to, the transactions that are referred to  
4 in this document?

5           A.       Just a bit.

6           Q.       Okay. And this is related to a sale of SO2  
7 allowances to Dynegy toward the end of 2005; is that  
8 correct?

9           A.       Well, I'm not trying to play with words.  
10 It is a document that addresses the early exercise of  
11 outstanding SO2 call options with Dynegy.

12          Q.       And the date is December 21st, 2005?

13          A.       Yes, it is.

14          Q.       Now, were you -- were you at that time and  
15 are you now familiar with that transaction in general?

16          A.       At a very high level, I'm familiar with the  
17 transaction.

18          Q.       Let me ask you this: What sort of  
19 approvals -- well, does AFS generally, Ameren Fuels and  
20 Services, do the actual transactions on behalf of UE in  
21 terms of buying and selling allowances?

22          A.       Yes.

23          Q.       What sort of approvals does AFS need from  
24 AmerenUE to enter into transactions?

25          A.       I believe as part of risk management

1 policy, they need senior management approval of UE to  
2 transact.

3 Q. And do they need that in writing?

4 A. I'm not sure if the risk management policy  
5 specifies that it's needed in writing or not. I can't  
6 recall.

7 Q. Do you know whether AFS would undertake a  
8 large transaction on behalf of UE without some  
9 confirmation in writing?

10 A. I don't know. If the risk management  
11 policy would require confirmation in writing, then as long  
12 as they're in compliance, that's fine. If the risk  
13 management policy doesn't specify, but they have senior  
14 management approval, whatever form that may take, then  
15 they could exercise that transaction. I just don't know  
16 what the policy is, and I'm sure they follow the policy.

17 Q. Okay. So it wouldn't cause you any undue  
18 distress if AFS were to do a \$30 million transaction on  
19 the basis of a phone call rather than a written memo?

20 A. Generally speaking, that would -- I would  
21 suspect that it would probably be in writing, but again if  
22 the risk management policy, if it specifies that, as long  
23 as they're in compliance, that would be fine, if it was  
24 done from senior management of the company.

25 Q. So you're saying that it wouldn't cause you

1 any problem if it was done just based on a phone call, a  
2 transaction of that magnitude?

3 A. I think it's possible.

4 Q. It's possible that it wouldn't cause you  
5 any problems?

6 A. If it's consistent with the policy, I don't  
7 see that. Again, I just don't know if that is the  
8 specific policy. I don't think that would be a problem,  
9 no. If they spoke directly, for instance, with Mr. Voss  
10 or someone like that and he said to get the transaction  
11 done, that would be satisfactory, assuming that would be  
12 in compliance with the risk management policy.

13 Q. Is it your experience that that is the way  
14 it's typically done with large SO2 allowance sales?

15 A. I don't recall if we've had that in  
16 writing, those sales or not honestly, Mr. Mills.

17 Q. What is your involvement in terms of  
18 deciding whether or not a particular SO2 allowance sale  
19 should go forward?

20 A. Generally, SO2 allowance sales are  
21 discussed with senior management, and those sales are  
22 discussed generally in the context, first and foremost, of  
23 whether we have excess emission allowance sales available.  
24 And to the extent that takes place, then there are  
25 discussions in terms of how we might best optimize the

1 emission allowance bank and be consistent with the  
2 Commission's policy. Then there are discussions in terms  
3 of what market conditions may be and what other items may  
4 affect the overall value of the emission allowances.

5 So those discussions, the part that I would  
6 be in, would have those levels of discussions with Staff  
7 people who would be knowledgeable about that.

8 MR. MILLS: I'd like to have another  
9 exhibit marked.

10 JUDGE WOODRUFF: All right. This will be  
11 445.

12 MR. MILLS: And this one is HC.

13 JUDGE WOODRUFF: It's 445HC, then.

14 (EXHIBIT NO. 445HC WAS MARKED FOR  
15 IDENTIFICATION BY THE REPORTER.)

16 BY MR. MILLS:

17 Q. Mr. Baxter, I've just handed you a copy of  
18 what's been marked as 445HC, which is the company's  
19 response to DR No. 2108 in this case, and essentially what  
20 the information provided is simply a response to Public  
21 Counsel Data Request No. 665 in the Metro East case. And  
22 the copy that we produced for an exhibit has got in the  
23 lower right-hand corner a series of sequential numbers so  
24 it's easier to refer to this document.

25 If I can get you to turn to page 17 of 23,

1 is the RMSC referred to at the top of this page the risk  
2 management steering committee?

3 MR. BYRNE: Your Honor, I'm going to object  
4 to him asking questions about this document. I don't  
5 think he's laid a foundation that the witness has ever  
6 seen this document before.

7 MR. MILLS: Well, my questions, I think,  
8 will establish that he has.

9 JUDGE WOODRUFF: I'll overrule the  
10 objection. You can answer.

11 THE WITNESS: I'm sorry, Mr. Mills. Could  
12 you ask the question again?

13 BY MR. MILLS:

14 Q. On page 17, does the acronym RMSC refer to  
15 risk management steering committee?

16 A. Yes, it does.

17 Q. And are you on the risk management steering  
18 committee?

19 A. I am.

20 Q. And do you generally attend the risk  
21 management steering committee meetings?

22 A. I generally do, yes.

23 Q. And is it your understanding that this  
24 memorandum talks about the proposed way to proceed --  
25 proposal to the risk management steering committee to

1 proceed with allowance sales for 2003?

2 A. It appears so.

3 Q. Okay. And does that proposal not say that  
4 finance has also directed AFS to accomplish roughly a  
5 third of transactions prior to the summer?

6 A. It does.

7 Q. And in 2003, would you have been chief  
8 financial officer for AmerenUE?

9 A. I would have been.

10 Q. So would such a direction have come from  
11 you or your office?

12 A. I presume it would.

13 Q. And did UE, in fact, follow this directive  
14 and accomplish roughly a third of the projected 2003 SO2  
15 allowance sales prior to the summer?

16 A. I don't recall.

17 Q. You don't recall. Okay. Now, further down  
18 on the page, the paragraph right below the bullet points,  
19 does this paragraph discuss the strategy of making a third  
20 of the sales before the summer?

21 A. It does.

22 Q. And do you agree that that's a sound  
23 strategy?

24 A. Mr. Mills, at the time that these analyses  
25 were done, it certainly could have been. I simply don't



1 recall what the essence of all these conversations were  
2 associated with this.

3 Q. Okay. Well, do you understand that part of  
4 the strategy was that following the summer a decision  
5 regarding further sales could be made depending on the  
6 summer financial results?

7 MR. MICHEEL: I think all of this stuff is  
8 HC, your Honor.

9 MR. MILLS: Well, I'm not sure that it --  
10 is it? I'm talking about a pretty high level here.

11 MR. BYRNE: Well, I don't really know.  
12 Mr. Baxter, I guess I'd ask if it gets to a point where  
13 you think it's highly confidential, then we'll go  
14 in-camera.

15 THE WITNESS: Of course this was done  
16 nearly four years ago, I guess, so I don't know if it's  
17 all that significant. I guess we do need to be careful if  
18 it gets into how we think about accessing the marketplace  
19 and strategies and those types of things. That could be a  
20 sensitive subject. I don't know if we've approached that  
21 yet, but I think we need to be careful.

22 BY MR. MILLS:

23 Q. And my question was, do you believe that  
24 that is a -- that was a sound strategy at the time?

25 A. Mr. Mills, I simply don't recall the

1 context of all the conversations that we had nearly three  
2 or four years ago.

3 Q. And if I were to ask you questions about  
4 your current strategy in relation to this, would that be  
5 highly confidential?

6 A. Yes.

7 MR. MILLS: Okay. Then I believe we need  
8 to go in-camera.

9 JUDGE WOODRUFF: At this point we will go  
10 in-camera.

11 (REPORTER'S NOTE: At this point, an  
12 in-camera session was held, which is contained in  
13 Volume 33, pages 3424 through 3436 of the transcript.)

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1 MR. MILLS:

2 Q. Now, with respect to Exhibit 444, which is  
3 the Public Counsel Data Request 2214, not highly  
4 confidential --

5 A. Is this the Dynegy?

6 Q. Yes. Exactly.

7 A. Okay.

8 Q. Is it your understanding as you testify  
9 today that the transaction reflected on this document was  
10 contingent upon considerations in a reactive power case  
11 Andy Serri is involved in?

12 A. I don't know.

13 Q. You don't know. Okay. Have you read the  
14 testimony of -- the surrebuttal testimony of Michael Moehn  
15 and Maureen Borkowski in this case?

16 A. I have not read the testimony of  
17 Ms. Borkowski, and I may have read pieces of Mr. Moehn's.  
18 I'm not sure I read the entire testimony of Mr. Moehn.

19 Q. But in any event, you're not familiar with  
20 that issue at all?

21 A. No.

22 Q. Okay. Now, we talked about this a little  
23 bit, and basically with respect to a couple of particular  
24 years, but let me just ask you if you -- does UE have a  
25 long-range plan that talks about levels of emission

1 allowances in particular years going forward, say, five,  
2 ten years or more in the future?

3 A. I believe -- well, we certainly have data,  
4 to the best of my knowledge, that shows what emission  
5 allowances we have for the various years.

6 Q. And is there a long-range strategy that  
7 ties that bank in with sales of allowances and  
8 installation of emission control equipment?

9 A. Certainly there is a strategy to ensure  
10 that we have sufficient emission allowances for  
11 environmental compliance purposes. It's part of our IRP  
12 plan. Those are things that we consider carefully.

13 Q. Okay. So do you have target dates for  
14 different pieces of emission control equipment to go in  
15 place at your different plants?

16 A. Not -- I wouldn't say we have them for all  
17 the plants, but certainly for some.

18 Q. For some. And do you have plans to draw  
19 down your emission allowance bank as those emissions  
20 control equipment gets installed.

21 A. Mr. Mills, what do you mean by draw down?

22 Q. Sell emissions allowances out of your bank.

23 A. To the best of my knowledge, I'm not sure  
24 if there's any plans to sell those emission allowances  
25 that would result from that.

1           Q.       Now, in your testimony you talk about the  
2   amortization that the Kansas City Power & Light Company  
3   got for the 2002 ice storms that hit the Kansas City area.  
4   Do you recall testifying about that?

5           A.       Yes.

6           Q.       Do you recall over what period of time  
7   Kansas City Power & Light amortized those costs?

8           A.       I do not recall.

9           Q.       But your proposal, at least in your  
10   rebuttal testimony, or I believe it was your direct  
11   testimony, was to amortize UE's storm costs over four  
12   years; is that correct?

13          A.       I believe -- I'm not sure -- I'm sorry.  
14   Did you say direct or rebuttal?

15          Q.       I thought it was rebuttal.

16          A.       Rebuttal. I'm sorry. I thought I heard  
17   you say direct. If you could give me a moment. Yes, on  
18   page 12 of my rebuttal testimony, I suggest that those  
19   costs be amortized over four years.

20          Q.       But that's not your proposal anymore, is  
21   it?

22          A.       No. Our proposal is consistent with the  
23   Staff's recommendation to have a portion of those  
24   amortized -- well, over five years, based upon the Staff's  
25   recommendation, but should we get an FAC, we would then

1 recommend that be over four years. Of course, we also  
2 offer the entire offset of emission sales against the  
3 storm costs.

4 Q. Now, are you looking at your rebuttal  
5 testimony now? Can I get you to turn to page 12, lines 21  
6 through page 13, lines 2. Is your current proposal to  
7 include the January 2007 ice storms in the offset?

8 A. No.

9 Q. Okay. What is that -- what is that  
10 question and answer that I just referred you to supposed  
11 to mean?

12 A. It really is an issue that has nothing to  
13 do with this rate case, frankly. It is an issue we said  
14 that should we have January 2007 storm costs in the  
15 future, consideration could be given to offset future  
16 sales, should there be any, against those storm costs.  
17 But that's not an issue in the rate case.

18 Q. Okay. Now, I believe your discussion on  
19 page 13, is it correct that this discussion is all in the  
20 context of UE having a FAC, or is this concept independent  
21 of whether or not there's an FAC?

22 A. Well, Mr. Mills, at this point in -- at the  
23 stage when I wrote this, it was really independent whether  
24 or not we had an FAC. Of course, your recommendation now  
25 is consistent with the Staff's, whereby any emission

1 allowance sales in the future would run directly through  
2 the FAC, as well as any SO2 premiums from coal contracts.

3 Q. Do you currently have a proposal on how to  
4 track SO2 allowance and/or storm costs if there is no FAC?

5 A. I'm sorry, Mr. Mills. Could you restate  
6 that question, please?

7 Q. Do you have -- the proposal that you laid  
8 out in your rebuttal testimony is no longer your current  
9 proposal; is that correct?

10 A. That's correct. Well, can I stipulate?  
11 With regard to the emission allowance sales, we said that  
12 we are still willing to offset our emission allowance  
13 sales against storm costs for 2006, or should the Staff  
14 have a slightly different approach that offsets in part  
15 some of those storm costs and would amortize the remainder  
16 over the next five years, if that's what you're referring  
17 to. Are you talking about prospective treatment?

18 Q. I'm trying to pin down your current  
19 position.

20 A. Let me be clear then what our current  
21 position is, as Mr. Byrne stated. With regard to  
22 prospectively, let me start there, our position is  
23 consistent with the Staff's. Prospective emission  
24 allowance sales, should we have an FAC, would run through  
25 the FAC as well as any SO2 premiums that we incur for our

1 coal contracts. They would run directly through an FAC.

2 Similarly, if we don't have an FAC, then  
3 those sales, as well as any costs that we incur for  
4 premiums, would be tracked in a regulatory liability  
5 account, and in the next rate case that would then be  
6 addressed as a portion of fuel costs.

7 With regard to the establishment of base  
8 rates, under the Staff's proposal what the Staff -- this  
9 is -- we can go -- we are comfortable with either way with  
10 regard to what the Commission would decide. Under the  
11 Staff's proposal, you would take our emission allowances,  
12 say, during the test year, including the test year update,  
13 of approximately \$36 million, and they would first be  
14 offset against SO2 premiums that were incurred during that  
15 same period of time, which is about \$16 million.

16 That remainder of \$20 million would then go  
17 to offset our storm costs of approximately \$34 million  
18 that we incurred during the test year, so this remaining  
19 \$14 million then would be amortized over the next five  
20 years. Or we are willing, as we stated in my surrebuttal  
21 testimony, to take all of our emission allowance sales of  
22 approximately \$32 million and offset those entirely  
23 against the \$34 million of storm costs and not seek any  
24 recovery of 2006 storm costs.

25 Q. Okay. Have you applied for any sort of



1 deferral accounting for the January 2007 storm costs?

2 A. We have not.

3 Q. So to the extent that what you've just  
4 described to me is inconsistent with your rebuttal  
5 testimony, does what you just described supersede and  
6 replace your rebuttal testimony?

7 A. It does.

8 Q. Okay. To the extent that your rebuttal  
9 testimony was different than your direct testimony, did  
10 your rebuttal testimony supersede and replace your direct  
11 testimony?

12 A. I'm not sure I direct all these -- I  
13 addressed all these issues in my direct testimony.

14 Q. Okay. Well, perhaps it wasn't your direct  
15 testimony, but was it not the position of UE in the filed  
16 direct testimony to use the test year level of SO2 sales?

17 A. Oh, yes. I'm sorry. Yes. So yes, the  
18 bottom line, Mr. Mills, as you know, as part of this  
19 proceeding when surrebuttal testimony is ultimately filed.  
20 That's the first time we have a chance to respond to that.  
21 So yes, my position that I think that just two or three  
22 minutes ago we talked about our current position  
23 supersedes all of our previous positions.

24 Q. Okay. Thank you. Now, have you had any  
25 discussion -- and I don't mean to talk about discussions

1     you've had with counsel that may be privileged, but have  
2     you had any discussion about whether or not the regulatory  
3     liability, regulatory asset concept has a problem with the  
4     concept of regulatory retroactive ratemaking?

5             A.       In what context are you referring,  
6     Mr. Mills?

7             Q.       Well, for example, if you track specific  
8     past costs or expenses and charge them directly to future  
9     ratepayers, whether or not that's a retroactive ratemaking  
10    problem.

11            A.       That's a legal determination and issue.

12            Q.       So that's -- you haven't worried about  
13    that?

14            A.       I wouldn't say I haven't worried about  
15    that. I think I talk about the retroactive ratemaking  
16    issue on page 13, but I'm not sure if that's the same  
17    context that you're referring to.

18            Q.       But you personally haven't taken a position  
19    as to whether or not that's a problem or not with your  
20    current proposal?

21            A.       I'll leave that to counsel whether we  
22    should take a position on that.

23            Q.       Now, and this may be a portion of your  
24    testimony that's no longer effective. Let me ask you  
25    anyway. On page 14 of your rebuttal testimony, the

1 sentence that runs from line 6 through lines 9 --

2 A. Yes.

3 Q. Is that --

4 A. That has since been superseded.

5 Q. So it's your position that some portion of

6 allowance revenues be reflected in base rates?

7 A. No.

8 Q. Okay. So this is still good. You do not

9 support any SO2 allowance revenues in base rates?

10 A. Well, that's correct. That is correct, in

11 that line, because what it went on to say was, in the

12 context of this other regulatory liability account, and so

13 that's why I was disagreeing. But yes, we do not support

14 any SO2 allowance revenues be reflected in base rates.

15 Q. Let me ask you a hypothetical question

16 about that. If SO2 revenues were level from year to year,

17 there wasn't the volatility that we've talked about and

18 there were no storm costs to worry about, do you have

19 those assumptions in mind?

20 A. Yes.

21 Q. If that were the case, do you believe that

22 SO2 allowance revenues should be used as a revenue source

23 in calculating rates?

24 A. If historically that they had been

25 levelized, I wouldn't -- I can't comment on that because

1 it would depend on what we believe may be happening in the  
2 future, just because even if you had \$20 million of SO2  
3 sales for the last three or four years, if there was a  
4 development, a changing development in terms of whether  
5 SO2 allowances would be available to you to sell in the  
6 future, that could change my opinion.

7 Q. Okay. So to bring us back to this case,  
8 it's your testimony that there is some likely development  
9 in the future that you will not -- that makes it more  
10 likely than not that UE will not sell any allowances?

11 A. I didn't say it was likely. I said there  
12 was a possibility.

13 Q. Now, returning to the concept of not  
14 including any level of SO2 allowances in base rates, under  
15 your proposal, if the company were to sell for the next  
16 four or five years \$25 million worth of allowances every  
17 year, what would happen? How would that work?

18 A. Do we have an FAC?

19 Q. No.

20 A. Then those allowances, sales, would be  
21 reflected in a regulatory liability account and would be  
22 reflected with potentially the SO2 premiums. Then  
23 whatever balance would be remaining in that account would  
24 be addressed in the next rate case, whenever that would  
25 take place.

1 Q. Okay.

2 A. And there would be a component of fuel  
3 costs. That would be addressed as a component of fuel  
4 costs in the next rate case.

5 Q. Okay. And if there is not another rate  
6 case for 10 or 20 years, same thing, those costs just --  
7 those revenues just accumulate in an account?

8 A. Well, are you -- you're asking whether I  
9 believe there won't be another rate case in 25 years?

10 Q. No. I'm asking if there is a long period  
11 of time before your next rate case, then this account will  
12 simply keep accruing, keep accruing; is that correct?

13 A. Well, I won't agree with your statement  
14 that it will be a long period of time before the next rate  
15 case, because I don't think that will be the case.

16 Q. My question is if.

17 A. But in terms of how this would work, it  
18 would accumulate in that account.

19 Q. And then in the next rate case, what will  
20 be done with the balance in that account?

21 A. It will be addressed as a component of fuel  
22 costs in that rate case, in that balance.

23 Q. And what do you mean addressed?

24 A. I think if there's a net liability or  
25 asset, then it will be reflected as a component of fuel

1 cost in the next rate case. It will be up to the  
2 Commission to make that decision.

3 Q. Okay. How will this account ever work to  
4 have ratepayers not owing money, as it were, for allowance  
5 sales? Can this account ever go negative?

6 A. I'm not -- what do you mean by negative,  
7 Mr. Mills?

8 Q. Well, if you have a zero amount of SO2  
9 allowance sales in base rates --

10 A. Yes.

11 Q. -- and you sell no allowances over the next  
12 period of time until the next rate case, then do  
13 ratepayers get any money back? Is there ever going to be  
14 a credit to -- I mean an offset to fuel expense?

15 A. Are you talking about in the context,  
16 Mr. Mills, of our current proposal?

17 Q. Yes.

18 A. Well, the ratepayers get a benefit because  
19 they're not having to pay for storm costs, they're not  
20 getting charged for storm costs.

21 Q. But that's not what I'm talking about. I'm  
22 talking about the balance in this account going forward.

23 A. Well, if there's no balance in this account  
24 going forward, then I assume that means there are no SO2  
25 premiums or SO2 sales. So ratepayers are whole.

1           Q.       Okay. And if there are sales and those are  
2 not reflected in base rates, then for whatever period of  
3 time until the next rate case, customers do not have their  
4 rates reduced by that amount as they would if there was  
5 SO2 allowances in base rates; is that correct?

6           A.       Customers' rates are being reduced under  
7 our proposal by reducing storm costs, Mr. Mills.

8           Q.       What is the level in this case that  
9 ratepayers will be paying for storm costs?

10          A.       Under our proposal?

11          Q.       If your proposal is not being accepted.

12          A.       In any regard, you mean that storm cost  
13 will not be recovered?

14          Q.       No. If your offset is not accepted in this  
15 case, what is the amount that rates will increase in this  
16 case due to the 2006 storms?

17          A.       Well, both our proposal has an offset  
18 component, whether you accept the Staff's view or our  
19 view, it depends on how much you're going to offset storm  
20 costs.

21          Q.       And if the Commission decides just, gosh,  
22 SO2 costs don't really have a whole lot to do with storm  
23 costs, we're not going to offset those?

24          A.       Okay.

25          Q.       Then in that instance, how much will rates

1 go up in this case because of the storm cost expenses?

2 A. I don't know. The Commission would have to  
3 decide, No. 1, if they're going to allow recovery of those  
4 costs and, No. 2, over what period of time.

5 Q. How much are you asking for recovery in  
6 this case?

7 A. In this case we asked for four years.

8 Q. How many dollars?

9 A. In my rebuttal testimony, if the offset  
10 position is not taken, we have asked for those to be  
11 recovered over four years, so that would be roughly  
12 \$8 million, 8 to \$10 million a year, 8 million.

13 Q. Okay. So that portion of your rebuttal  
14 testimony isn't superseded by your current position?

15 A. I guess our view is if the -- our view is  
16 that we should have recovery of our storm costs, and what  
17 we've reflected is a mechanism whereby those costs can be  
18 recovered and ratepayers are not impacted. And so either  
19 with the Staff's approach or our approach, we have an  
20 offset of the storm costs with SO2 sales.

21 But should the Commission decide that that  
22 is not an appropriate policy that they want to employ and  
23 they want to use another method, we believe we certainly  
24 want to have the ability to recover our storm costs.

25 Q. Okay. So under that scenario, your



1 proposal -- if there is no offset, you would propose that  
2 customers for the next four years pay about \$8 million a  
3 year for storm costs; is that correct?

4 A. Yes, I believe that would be correct.

5 Q. Okay. And do you understand that it's  
6 Public Counsel's position that over the next at least four  
7 years, that there ought to be a normalized level of about  
8 \$24 million of revenues from SO2 sales included in rates?

9 A. I do recall that.

10 Q. And that's a net of about 16 million?

11 A. So is it Public Counsel's position that  
12 storm costs are recoverable?

13 Q. Generally speaking, storm costs are  
14 recoverable.

15 A. Okay.

16 Q. We haven't contested that in this case. I  
17 don't think we contested it in the KCPL case either. But  
18 that's your understanding of the -- of the net of those  
19 two issues; is that correct?

20 A. Yes.

21 MR. MILLS: May I approach?

22 JUDGE WOODRUFF: You may.

23 MR. MILLS: Your Honor, I'm going to refer  
24 this witness to his testimony in the 2002-1 case, and I  
25 don't plan to offer this as an exhibit.

1 JUDGE WOODRUFF: Mr. Mills, before you get  
2 into another area, we're about due for a break. Are you  
3 nearly finished or should we take a break and come back?

4 MR. MILLS: I'm probably nearly finished.

5 JUDGE WOODRUFF: Let's go ahead and finish  
6 it, and then we'll take a break.

7 BY MR. MILLS:

8 Q. Mr. Baxter, I've just handed you a copy of  
9 your cross-surrebuttal testimony in EC-2002-1. Do you  
10 recognize that as your testimony?

11 A. Yes.

12 Q. And I flagged a page there, it's page 14,  
13 and there's an answer in the middle of the page where  
14 you're addressing a claim by Mr. Kind, and I really want  
15 to get you to focus on that second sentence in that answer  
16 that I've highlighted. And if I can -- first of all, if  
17 you can refamiliarize yourself with that testimony, and  
18 then second tell me if that is UE's current position with  
19 respect to the use of SO2 allowances.

20 A. I'm sorry. I took time to read the  
21 document. Could you ask your question again, please?

22 Q. My first questions is, is that second  
23 sentence there still what UE's primary concern is with  
24 respect to SO2 allowances? Is that whole sentence  
25 accurately the way you still feel about that?

1           A.     Are you referring to the sentence on  
2 lines 8 through --

3           Q.     12.

4           A.     12?

5           Q.     Uh-huh.

6           A.     Yes, I would say generally that is.

7           Q.     And can you read that sentence into the  
8 record, please?

9           A.     The company's first concern is to assure  
10 that its generation plant, both existing and future, have  
11 enough allowances to operate without having to go to an  
12 uncertain market someday in the future to purchase  
13 allowances or being required to make expensive capital  
14 expenditures for compliance purposes.

15          Q.     Now, returning just for one final question  
16 to the Dynegy transaction, I believe Mr. Moehn testified  
17 that the payment to Dynegy to induce them to allow the  
18 early exercise of those options should not be charged to  
19 ratepayers. Is that your testimony as well?

20          A.     I didn't address that in my testimony.

21          Q.     Is that your position?

22          A.     I believe it's our position that any  
23 payment or -- or those payments made to Dynegy should not  
24 be -- should not be included in our revenue requirements.

25          Q.     Do you know whether they are included or

1 not in the current reconciliation, the March 14th  
2 reconciliation?

3 A. I do not.

4 Q. But if they haven't been taken out, it's  
5 UE's position that they should be?

6 A. Yes.

7 MR. MILLS: That's all. Thank you.

8 JUDGE WOODRUFF: All right. We're due for  
9 a break. We'll come back at 10:30.

10 (A BREAK WAS TAKEN.)

11 JUDGE WOODRUFF: All right. We're back  
12 from break, and before the break, Mr. Mills --

13 MR. MILLS: Fully finished.

14 JUDGE WOODRUFF: -- had finished his  
15 cross-examination, so now we'll go to Staff for additional  
16 cross.

17 CROSS-EXAMINATION BY MR. MEYER:

18 Q. Mr. Baxter, just as a point of  
19 clarification, several times along the way you've  
20 indicated that AmerenUE currently believes that the  
21 3.9 million test year emission allowance sales proceeds  
22 should not be in base rates; is that correct?

23 A. That's correct.

24 Q. Is there an adjustment in your work papers  
25 reflecting that position?

1           A.       I do not know that.

2           Q.       Do you plan on making such an adjustment at  
3   some point in the future if there is not such an  
4   adjustment now?

5           A.       Yes.

6                   MR. MEYER:  Thank you.  That's all I have.

7                   JUDGE WOODRUFF:  All right.  I believe  
8   that's all the cross, then, so we'll come up for questions  
9   from the Bench.  And I actually do have some general  
10   questions about how the SO2 allowance program works.

11   QUESTIONS BY JUDGE WOODRUFF:

12          Q.       Can you give me a very high level overview  
13   of how the whole trading program works?

14          A.       I will do my best, and there may be other  
15   witnesses who have a better sense of that.  But basically  
16   the SO2 allowances were granted to us as a part of the  
17   Clean Air Act, and because of our early compliance in  
18   meeting certain standards, we had certain allowances  
19   granted to us, and so basically would have a bank of  
20   allowances which gives us the ability or entities the  
21   ability to emit SO2 up to a certain level.  To the extent  
22   that they have excess emission allowances, that allows  
23   them still to be in compliance.  Then they have a program  
24   that's called -- I wouldn't say cap and trade.  It's a  
25   trade program.

1                   So there's an active market out there for  
2 companies should they have excess allowances to purchase  
3 themselves. There may be some, frankly, who are not  
4 meeting the standards and will then need to purchase  
5 emission allowances to bring their plants in compliance.

6           Q.       But Ameren's generally been on the side of  
7 being able to sell?

8           A.       Yes, we are long.

9           Q.       And do the admission -- or excuse --  
10 emission allowances expire if they're not used?

11          A.       My understanding is that emission  
12 allowances that were, say, 2005 allowances that you don't  
13 utilize, you can still utilize those in the future. They  
14 do not expire. Now, there's always a risk that changes in  
15 laws and regulations could basically take your emission  
16 allowances bank and wipe it out, and there have been  
17 discussions along the last several years that that could  
18 happen. That has -- to the best of my knowledge, that  
19 hasn't taken place. There may be other witnesses here in  
20 the case that can probably provide you more information on  
21 that, but that's my understanding.

22          Q.       So if Ameren still had the emissions left  
23 from -- allowances left from 2004, they could still use  
24 those?

25          A.       I believe that's correct, or to utilize

1 those for compliance purposes. We utilize the vast  
2 majority of our bank for compliance purposes.

3 Q. To the extent that Ameren has a somewhat  
4 cleaner coal plant than other utilities, is that why you  
5 have an excess of allowances?

6 A. I think it's in part because of that. I  
7 think it's in part because we shifted our compliance  
8 strategy to coal early on, so we're able to gain  
9 additional emission allowances as a result of that. So  
10 it's a combination of all those factors.

11 Q. Okay. So those allowances just float out  
12 there until they're either -- until they're used for  
13 compliance by someone; is that the way it works?

14 A. Ultimately. And they may -- as I said,  
15 they could go away depending upon changes in laws and  
16 regulations. That's the risk and the uncertainty  
17 associated with the emission allowance bank, one of the  
18 risks and uncertainties, I should say.

19 JUDGE WOODRUFF: Thank you. That helps me  
20 out.

21 THE WITNESS: You're welcome.

22 JUDGE WOODRUFF: At this time there's no  
23 other questions from the Bench, and so we'll go to recross  
24 based on questions from the Bench. Mr. Mills?

25 RECROSS-EXAMINATION BY MR. MILLS:

1           Q.       Mr. Baxter, I believe in response to one of  
2     Judge Woodruff's questions you said that you're long. Is  
3     that the answer that you gave?

4           A.       I said we generally have been long, so we  
5     have the ability to sell excess emission allowances.

6           Q.       Have there been occasions in the last  
7     several years in which you have sold more allowances than  
8     you had at the beginning of the year?

9           A.       I do not know that.

10          Q.       That's possible?

11          A.       I do not know.

12          Q.       Okay. Now, with respect to the active  
13     market that you referred to, does the EPA take steps to  
14     ensure that there is an active market for allowances?

15          A.       I don't know.

16          Q.       Okay. And finally, with respect to the  
17     sequence of events that caused you to be generally long in  
18     allowances, did the Clean Air Act itself that established  
19     the cap and trade program give UE relatively favorable  
20     treatment?

21          A.       I don't know if it's relatively favorable.  
22     We certainly received allowances as a result of the Clean  
23     Air Act.

24          Q.       And was not UE treated almost uniquely in  
25     that Act?



1           A.       We did receive favorable treatment. I will  
2 stipulate we did receive favorable treatment.

3           MR. MILLS: Thank you. No further  
4 questions.

5           JUDGE WOODRUFF: Any redirect?

6           MR. BYRNE: Yes, your Honor.

7 REDIRECT EXAMINATION BY MR. BYRNE:

8           Q.       Mr. Baxter, do you remember when Mr. Mills  
9 was asking you about the regulatory liability account,  
10 some questions about that?

11          A.       I do.

12          Q.       And one of the questions he asked you if  
13 there was no balance in that account, then ratepayers  
14 wouldn't benefit. Do you remember that?

15          A.       I do.

16          Q.       But isn't it true if there was no balance  
17 in the account, that would mean AmerenUE had made no sales  
18 of SO2 allowances; is that correct?

19          A.       That's correct.

20          Q.       And if AmerenUE made no sales of SO2  
21 allowances, could ratepayers benefit from that?

22          A.       Yes, because my sense is if we had sales of  
23 SO2 allowances, that would mean we utilize them for  
24 compliance purposes, and so by utilizing those for  
25 compliance purposes, would defer capital expenditures,

1     which would benefit ratepayers.

2                     MR. BYRNE:   Okay.   Thank you, Mr. Baxter.

3                     JUDGE WOODRUFF:   Thank you, Mr. Baxter.

4     You can step down.

5                     I believe the next witness is James Moore.

6     Good morning, sir.   I believe this is the first time  
7     you're here today.

8                     THE WITNESS:   Yes, sir.

9                     (Witness sworn.)

10                    JUDGE WOODRUFF:   You may be seated.

11                    THE WITNESS:   Thank you.

12     JAMES MOORE testified as follows:

13     DIRECT EXAMINATION BY MR. BYRNE:

14                    Q.     Mr. Moore, you've got rebuttal and  
15     surrebuttal testimony; is that correct?

16                    A.     Yes.

17                    Q.     Do you have any corrections to that  
18     testimony?

19                    A.     Yes, sir.   On my surrebuttal testimony, on  
20     page 5, there are two incorrect numbers on line 8.   The  
21     sentence reads, consequently AmerenUE received an auction  
22     premium of 55.26.   That 55.26 should be 27.06 per ton for  
23     the 2006 allowances.   And the next number is 65.81, and  
24     that number should be 22.45 per ton.

25                    Q.     Mr. Moore, could you just slowly say those

1 again?

2 A. The two numbers on line 8 of page 5 on the  
3 existing copy are 55.26 and 65.81. Those should read  
4 27.06, and the second number should read 22.45.

5 Q. Okay. Thank you. Any other changes?

6 A. No, sir.

7 MR. BYRNE: Tender the witness for  
8 cross-examination.

9 JUDGE WOODRUFF: Did you wish to offer his  
10 testimony at this time?

11 MR. BYRNE: Yes, your Honor.

12 JUDGE WOODRUFF: 62 and 63 Moore rebuttal  
13 and Moore surrebuttal, have been offered. Are there any  
14 objections to its receipt?

15 (No response.)

16 JUDGE WOODRUFF: Hearing none, they will be  
17 received into evidence.

18 (EXHIBIT NOS. 62 AND 63 WERE MARKED AND  
19 RECEIVED INTO EVIDENCE.)

20 JUDGE WOODRUFF: Does any party wish to  
21 cross-examine this witness? Begin with the State.

22 CROSS-EXAMINATION BY MR. CARLSON:

23 Q. Good morning, Mr. Moore.

24 A. Good morning.

25 Q. Do you have a copy of your rebuttal

1 testimony up there?

2 A. Yes.

3 Q. Cool. Keep it handy. Are you familiar  
4 with the SO2 allowance sale tracking proposed by State  
5 witness Brosch?

6 A. Meaning the EPA tracking system, is that  
7 what you're referring to?

8 Q. The regulatory tracking proposed by my  
9 witness, Michael Brosch.

10 A. No, I'm not familiar with it. I've heard  
11 about it, but I'm not familiar with it.

12 Q. But you do address it in your rebuttal  
13 testimony, don't you?

14 A. I might, if you want to point that out.

15 Q. Yeah. Go to page 5.

16 A. Which line?

17 Q. Actually, I want -- you first address it on  
18 page 4, line 9.

19 A. Oh, okay. Do you have a question along  
20 those lines or was there a previous question?

21 Q. I guess my general question, you did review  
22 his testimony, right?

23 A. I skimmed his testimony, read it, and there  
24 are some numbers that we had issues with.

25 Q. Then you responded to your rebuttal, right?

1 A. Correct.

2 Q. Now, if you could go to -- now, this time  
3 actually go to page 5, line 9, and in there you say  
4 something along the lines of forcing allowance sales,  
5 correct?

6 A. Yes, sir.

7 Q. Okay. But where in Brosch's testimony does  
8 he force AmerenUE to make sales?

9 A. I don't have a copy of Mr. Brosch's  
10 testimony in front of me.

11 Q. I've got it. I can give you a copy. You  
12 have Michael Brosch's surrebuttal testimony in front of  
13 you, right?

14 A. Yes, I do.

15 Q. Okay. And if you could just go ahead and  
16 look at page 15, should be already there, line 18 through  
17 16, line 2.

18 A. Starting at line 18?

19 Q. Yeah, 18, starting with his answer. You  
20 might want to review the question, too.

21 A. Okay.

22 Q. Okay. And that summarizes the State's  
23 position, correct?

24 A. I have not been involved with all of the  
25 discussions and settlement on what was proposed by the

1 State.

2 Q. Where in there does it say we are forcing  
3 AmerenUE to sell emission allowances?

4 A. I do not know if it says anywhere in his  
5 testimony whether it forces or not.

6 Q. Certainly not in the portion you just  
7 reviewed?

8 A. Correct, this sentence.

9 MR. CARLSON: I have no further questions.

10 JUDGE WOODRUFF: All right. Public Counsel  
11 wish to cross?

12 MR. MILLS: Yes, I do. Thank you.

13 CROSS-EXAMINATION BY MR. MILLS:

14 Q. Good morning, Mr. Moore. My name's Lewis  
15 Mills. I represent the Public Counsel in this matter.

16 A. Good morning, Mr. Mills.

17 Q. Now, Mr. Moore, are you familiar with the  
18 concepts of SO2 premiums?

19 A. In regard to options or in regard to --

20 Q. In regard to coal contracts --

21 A. Yes, sir.

22 Q. -- and the price paid.

23 Okay. Are SO2 premiums related to the  
24 difference between the SO2 contents of coal agreed upon in  
25 the contracts and the SO2 content in the coal actually

1 received?

2 A. It's a -- it's a dollar amount associated  
3 with the differences in the pounds per million Btu  
4 inherent in the coal that we purchase.

5 Q. And it's the difference between what you  
6 contract for and what's actually delivered?

7 A. Yes, sir.

8 Q. Now, does AFS utilize hedging to try to  
9 minimize the volatility of SO2 premiums charged by coal  
10 suppliers to UE?

11 A. We have.

12 Q. And how is that working out?

13 A. It's -- year to year it's different. Some  
14 years it just behaves differently. Our purpose in that is  
15 to gain certainty in our budget amount of SO2 premiums  
16 that we pay.

17 Q. And with respect to that goal, how is it  
18 working out?

19 A. I do not have the results in front of me.  
20 I'd have to get documents to show me that.

21 Q. And how long have you been trying this  
22 hedging?

23 A. I don't recall when we started it, but it's  
24 only been a few years.

25 Q. Has there been any analysis to show whether

1 it's a worthwhile exercise?

2 A. I'd have to review my files to see if we've  
3 done a documented analysis of the program.

4 Q. Are you planning to continue that in the  
5 future?

6 A. We currently have hedged '07. We have not  
7 put anything in place for '08.

8 Q. And in the past, how far out have your  
9 hedges gone?

10 A. We hedged '07 I believe in the fall of '06.

11 Q. Okay. So you're hedged out about as far  
12 now as you have been in the past?

13 A. Correct.

14 Q. What -- and tell me if this is highly  
15 confidential, but what is the annual cost for this hedging  
16 program?

17 A. I think the exact number would be highly  
18 confidential, but I don't know it off the top of my head.

19 Q. Okay. So it's highly confidential, but you  
20 don't know what it is anyway?

21 A. Correct.

22 Q. Okay. Is it -- I mean, can you give me an  
23 order of magnitude? Are we talking --

24 MR. BYRNE: Do we need to go in-camera even  
25 for an order of magnitude?



1                   THE WITNESS: Yes. I can give you the idea  
2 of the ballpark, but it would be highly confidential.

3                   MR. MILLS: Okay. Let me see if I have --  
4 I'm not sure that I have anything else that's going to be  
5 highly confidential specifically for this witness, so we  
6 may as well go in-camera just for this response.

7                   JUDGE WOODRUFF: We'll go in-camera at this  
8 time.

9                   (REPORTER'S NOTE: At this point, an  
10 in-camera session was held, which is contained in  
11 Volume 33, pages 3468 through 3470 of the transcript.)

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1 JUDGE WOODRUFF: Back to regular session.

2 BY MR. MILLS:

3 Q. Now, when AFS entered into coal contracts  
4 on behalf of UE, were the -- was the whole concept of SO2  
5 premiums explicitly set forth in those contracts?

6 A. The contracts have an SO2 component in  
7 them. I'm not the coal trader, but I believe they do have  
8 a component in pounds per million Btu.

9 Q. And does the volatility of SO2 allowance  
10 prices impact the ability of coal suppliers to get SO2  
11 premiums?

12 A. I don't work for the mines, but it does  
13 impact the price of the coal.

14 Q. Okay. Has AFS attempted to structure new  
15 coal contracts in order to change how SO2 premiums result  
16 from coal contracts?

17 A. I'm not the -- historically, I was not the  
18 person that bought coal, so I don't know if I'd be capable  
19 of answering that question. Could you restate it again?

20 Q. Yeah. Has AFS -- and you understand when I  
21 say AFS, I mean Ameren Fuels and Services. I know you do,  
22 but just so the record's clear -- attempted to structure  
23 new coal contracts in order to change how SO2 premiums  
24 result?

25 A. Every year we go -- we procure coal. I

1 don't think -- that's perhaps one aspect of what they look  
2 at, but I'm not familiar with all the aspects of the coal  
3 procurement over the past three years.

4 Q. Okay. So you yourself don't know whether  
5 that's something that AFS is trying to change?

6 A. I don't think we're trying to change it.  
7 We have -- the mines have -- the SO2 is inherent in the  
8 coal that's in the ground, and when you mine it, it comes  
9 out. They can't change it per se. We do have an idea  
10 that as the mines go west, the SO2 inherent in the coal  
11 will continue to reduce by small amounts. Did I answer  
12 your question?

13 Q. Not entirely, but I'm going to chew on that  
14 for a while and maybe come back to it.

15 And so what -- from UE's perspective, what  
16 are the benefits from attempting to hedge the SO2 premium  
17 cost?

18 A. It allows us to have certainty of the  
19 budget for the next year, how much coal we're going to  
20 burn. The SO2 market has shown to be extremely volatile,  
21 and it can go up, it can go down. And by setting a fixed  
22 for floating swap allows us to fix the price and have  
23 relative certainty as to how much money we're going to  
24 spend on coal for the next year.

25 Q. Now, let's -- let's go back to the question

1 of new contracts that AFS is negotiating. Is there any  
2 change in strategy by AFS with how it's attempting to  
3 address SO2 premiums in coal contracts?

4 A. Not to my knowledge, but I believe Mr. Neff  
5 was on the stand previously. He would be able to address  
6 that.

7 Q. You don't know?

8 A. No, sir.

9 Q. Now, with respect to -- and I'm moving on  
10 to a new topic now. With respect to the Dynegy  
11 transaction we referred to, are you familiar with that  
12 topic?

13 A. Yes.

14 Q. In fact, you're the one that answered the  
15 DR that's been marked as 444, which is the signed version?

16 A. Yes, I did answer that.

17 Q. Now, there are six signatures on that  
18 document; is that correct?

19 A. I don't have it in front of me, but --

20 Q. Let me grab you a copy.

21 A. Thank you. Yes, there's six signatures.

22 Q. And it may be obvious to you. Would it be  
23 obvious to someone outside of the company which of those  
24 signatures was affixed thereto on behalf of Union  
25 Electric?

1           A.       From outside the company, doubtful that  
2 they would know who is in charge of what.

3           Q.       So if we asked you a Data Request that said  
4 tell us who signed on behalf of UE and your response was  
5 to see the document itself, would that be a helpful  
6 response?

7           A.       To somebody outside, probably not.

8           Q.       Okay. So let me ask you the question now.  
9 Who of those six signatures is signing on behalf of UE?

10          A.       This document wasn't designed to get  
11 approval from UE. What it is is a document for dollar  
12 authority. I don't have signature authority to do a  
13 transaction for \$634,000, and neither do some of my  
14 bosses, and what this was getting was approval to go ahead  
15 and do a dollar transaction that was more than my  
16 authority.

17          Q.       Okay. And so these signatures approve that  
18 transaction; is that correct?

19          A.       For my chain of command, yes.

20          Q.       And are you saying that none of these  
21 signatures authorize AFS to do this transaction from UE,  
22 that this is all sort of intra-AFS line of authority?

23          A.       Well, Mr. Mike Miller is the next to last  
24 signature. He's my president of AFS. So everything up to  
25 that point are AFS employees. Mr. Voss, to who Mr. Miller

1 reported to at the time, was the -- I believe at the time  
2 was over Union Electric, but I don't know that for a fact.

3 Q. Okay. So you don't know whether any of  
4 these signatures are on behalf of UE?

5 A. No, I do not.

6 Q. Okay.

7 A. At that point in time. The management has  
8 changed since then.

9 Q. Okay. Well, then, let me follow up on  
10 that. How -- how do you at AFS know when you're  
11 authorized to do a transaction on behalf of UE?

12 A. I get direction from Mr. Michael Miller,  
13 the president of AFS.

14 Q. Okay. And how does he know?

15 A. I don't know. He interacts with his  
16 superiors, I guess.

17 Q. Do you know whether there's a protocol  
18 where he's notified in writing?

19 A. I do not know if that's the case or not.

20 Q. Do you think it should be?

21 A. That's for my management to decide how they  
22 approve transactions. I don't know how they do that.

23 Q. You don't have an opinion?

24 A. No, sir.

25 Q. Now, do you recall Data Requests that you

1     responded to in this case about the emission strategy  
2     team?

3             A.       Vaguely.  I don't have it in front of me.

4             Q.       I can show you a copy of that.

5                     MR. MILLS:  May I approach?

6                     JUDGE WOODRUFF:  You may.

7                     THE WITNESS:  Thank you.

8     BY MR. MILLS:

9             Q.       Mr. Moore, I just handed you OPC DR 2143  
10     that you responded to.

11            A.       Yes.

12            Q.       Does that refresh your recollection about  
13     the emission strategy team?

14            A.       Yes, it does.

15            Q.       And was it your response there that there  
16     is no formal team, it's an ad hoc group of lower level  
17     employees that meet occasionally?

18            A.       That's -- this is what I say in the  
19     response, correct.

20            Q.       And is that response correct?

21            A.       Yes, sir.  For this particular team, the  
22     emission strategy team as it's quoted.

23            Q.       Okay.  If there is no emission strategy  
24     team --

25            A.       I didn't say there was none.  This

1 particular group is an ad hoc group.

2 Q. If there's an ad hoc group of lower level  
3 employees, is it your testimony that that's the group that  
4 makes long-term emissions allowance sales strategy  
5 decisions?

6 A. We do not make decisions. We make  
7 recommendations. We talk amongst ourselves about what's  
8 going on with compliance and scrubbers and various other  
9 activities.

10 Q. And who do you make recommendations to?

11 A. To my bosses, and they make recommendations  
12 to their bosses.

13 Q. And who ultimately makes the call on what  
14 the long-term or short-term strategy should be?

15 A. Depending on the expenditure levels, it can  
16 be senior executives or the risk management steering  
17 committee.

18 Q. Okay. And which levels are which?

19 A. Like this particular transaction, we went  
20 through Mr. Voss. I don't believe we approached RMSC on  
21 this particular one, for long-term strategies. If we have  
22 a new strategy that we'd like to implement, we do a  
23 presentation in front of the risk management steering  
24 committee.

25 Q. And have you done any such presentations in



1 the last couple of years?

2 A. I don't recall the last time I was in front  
3 of them with a different SO2 strategy. I think it's been  
4 over a couple of years.

5 Q. More than two years ago?

6 A. I believe so.

7 Q. So as far as -- are you a member of the  
8 emission strategy team?

9 A. It's not a team. It's just informal, like  
10 we talked to. Yes, I am.

11 Q. You're one of the informal members of this  
12 informal group?

13 A. Correct.

14 Q. Okay. And this is the group that would  
15 make recommendations on changes in strategy; is that  
16 correct?

17 A. It's not the only people, but the  
18 environmental department, corporate planning department  
19 and the fuels department tend to be involved in these  
20 issues, along with the generation people.

21 Q. Would any of those people independently of  
22 this group or independently of your knowledge make  
23 proposed changes in strategy for emissions?

24 A. Oh, yes, definitely.

25 Q. And do you know if they have in the last

1     few years?

2             A.       Yes.  In regards to scrubbers, I believe  
3     we've announced the Sioux scrubber, and that was not part  
4     of this ad hoc group of people.

5             Q.       And did the -- and what did you announce  
6     with respect to the Sioux scrubber?

7             A.       My announce -- personally, I did no  
8     announcement.

9             Q.       Announce.  I thought you said you had an  
10    announcement?

11            A.       The corporation announced it.  I don't know  
12    the exact date of when that announcement was.

13            Q.       And what did they announce?

14            A.       They announced we will install a scrubber  
15    at Sioux power plant in the 2009 time frame, roughly.

16            Q.       Okay.  And does that have any impact on the  
17    sale of allowances between now and 2009?

18            A.       Well, there's many things that go into  
19    whether our allowance compliance program -- the number one  
20    goal is to be in compliance, and putting a scrubber in  
21    place, of course, is going to allow us to comply easier  
22    and free up allowances, and therefore, you know, it's not  
23    my decision.  At higher levels, I couldn't say whether  
24    they would or they wouldn't sell allowances.  There are no  
25    plans at this time.

1           Q.       But to the extent that the scrubber at  
2       Sioux will reduce UE's overall emissions, will that free  
3       up more allowances when the scrubber's in place?

4           A.       It could, but with the Clean Air Interstate  
5       rule that has been promulgated by EPA, the requirements to  
6       comply with emissions standards are being tightened  
7       starting in 2010. So pretty much you had to do something  
8       to stay in compliance as we move forward. Did that answer  
9       your question?

10          Q.       It may have. So do you think that the  
11       clean air interstate rules will change the number of  
12       allowances that UE is entitled to?

13          A.       Not entitled to, but the number that we're  
14       required to comply with. There's a two for -- I don't  
15       know how familiar you are with that, but there's a two for  
16       one requirement, where every SO2 that goes up our stacks,  
17       we have to comply with two allowances instead of one  
18       starting in 2010, and it moves to 2.86 allowances per ton  
19       starting in 2015. So we're tightening the standards.

20          Q.       But the installation of the scrubber at  
21       Sioux will not change that?

22          A.       It will not change how -- the law.

23          Q.       Won't change the rules?

24          A.       The rule.

25          Q.       It will change the number of SO2 tons that

1 you emit?

2           A.       The numbers of it change the -- the  
3 scrubber will change the number of tons we emit, but the  
4 program changes the number of allowances required to  
5 comply.

6 Q. Okay. Now, is it your testimony that as of  
7 now, UE has no plans to sell any specific number of  
8 allowances in any given year?

9           A.       To my knowledge, nobody has directed me to  
10   sell any allowances.

11 Q. That wasn't exactly my question.

12           A.       Could you restate it, please?

13 Q. As you sit there today, is it your  
14 testimony that UE has no plans to sell any particular  
15 numbers of allowances in any particular years?

16           A.       I do not know of any plans to sell  
17 allowances for UE.

18 Q. Has that changed in the last year or so?

19           A.       We did sell some in 2006.

20 Q. And did you plan to sell those in 2006  
21 years before that?

22           A.       I was given the direction to sell those in  
23   roughly August of '06, so we had -- to my knowledge, up to  
24   that point, I had no plans to sell.

25 MR. MILLS: I'd like to mark an exhibit,

1 please.

2 JUDGE WOODRUFF: Okay. We're up to 446.

3 (EXHIBIT NO. 446 WAS MARKED FOR  
4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. MILLS:

6 Q. Mr. Moore, I just handed you two things.  
7 One is a single sheet marked Exhibit 446, and the other is  
8 a volume of the transcript from the Metro East case. Do  
9 you recall testifying in this case?

10 A. Yes, sir.

11 Q. And does that appear to be a transcript  
12 from Case No. EO-2004-0108?

13 A. Yes.

14 Q. And that's what we commonly refer to as the  
15 Metro East case?

16 A. Yes, sir.

17 Q. Can you take a look through that transcript  
18 and confirm for me that at page 891 of the transcript  
19 that's you testifying?

20 A. Does it say somewhere where --

21 Q. May I approach?

22 A. It's here on the previous page, James Moore  
23 testified, on page 885.

24 Q. Okay. And so by the time we get to about  
25 891, which I'm going to have you look at, that's still you

1     testifying; is that correct?

2             A.       Yes.

3             Q.       And did you not testify in the Metro East  
4     case that -- and here I'm reading from page 891 on what's  
5     been marked as Exhibit 446, at lines 7 through 10, did you  
6     not testify, currently my direction is that we would do  
7     30 million this year, 30 million in 2005 and 30 million in  
8     2006?

9             A.       That's what it says, yes.

10            MR. MILLS: Your Honor, I'd like to offer  
11     Exhibit 446.

12            JUDGE WOODRUFF: 446 has been offered. Any  
13     objections to its receipt?

14            MR. BYRNE: No, your Honor.

15            JUDGE WOODRUFF: Hearing no objection, it  
16     will be received.

17                     (EXHIBIT NO. 446 WAS RECEIVED INTO  
18     EVIDENCE.)

19     BY MR. MILLS:

20            Q.       Now, with respect to emission sales in  
21     2007, and stop me if this is highly confidential, has UE  
22     sold any allowances so far in 2007?

23            A.       I'm just thinking what's highly  
24     confidential. We have sold some in 2007, I believe.

25            Q.       Is the amount highly confidential?

1           A.       I would think that would be, but I'm  
2   checking to see if I actually have the numbers here with  
3   me, and I do not. No, I can't tell you that number.

4           MR. BYRNE: Which would be highly  
5   confidential.

6           THE WITNESS: Correct.

7           MR. MILLS: Then I guess can we go back  
8   in-camera?

9           JUDGE WOODRUFF: We can go back in camera.

10           (REPORTER'S NOTE: At this point, an  
11   in-camera session was held, which is contained in  
12   Volume 33, page 3485 of the transcript.)

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1 JUDGE WOODRUFF: We're back in regular  
2 session then.

3 BY MR. MILLS:

4 Q. Do you need written approval to enter into  
5 a small transaction, a medium transaction? Is there some  
6 level at which you need written approval?

7 A. Not written approval. I am authorized for  
8 \$10,000. That's my spending authority on matters at  
9 Ameren. So I need approvals from higher levels to do --  
10 and SO2 transactions are always higher than that. The  
11 risk management policy and procedures allow me some  
12 latitude to do transactions, but -- up to a certain point,  
13 but I don't need written authority. I just need somebody  
14 like Mike Miller, my president, to direct me to do a sale,  
15 sales in particular. For other transactions, we have  
16 authority to proceed within the guidelines of the risk  
17 management policy.

18 Q. So even for large transactions you don't  
19 necessarily need written approval?

20 A. No, sir.

21 Q. Okay. Now, do you have a copy there of  
22 Exhibit 444 that was the Dynegy reference?

23 A. With the signatures on it?

24 Q. Yes.

25 A. Yes, sir.



1           Q.       Did you write up this sheet that those  
2 folks signed?

3           A.       Yes, I did.

4           Q.       Okay. When you wrote that, what was your  
5 understanding about the sentence, this transaction is also  
6 contingent upon considerations in the reactive power case  
7 Andy Serri is involved in?

8           A.       At the time I believe that was the case.

9           Q.       And how did you come to that belief?

10          A.       This was December 21st, December of '05,  
11 and I don't recall how I came up with that sentence. I  
12 wouldn't have put it in there if I didn't believe it at  
13 the time.

14          Q.       And at that time, who did Andy Serri work  
15 for?

16          A.       I do not know. I mean, he was working for  
17 Ameren, but I don't know which division or part of Ameren.

18          Q.       Did you think that he was working for UE?

19          A.       He was involved with marketing. I don't  
20 know which entity.

21          Q.       At that time, the end of December 2005, was  
22 UE doing any of its own marketing?

23          A.       I am not involved in power transactions at  
24 all. I really can't answer that.

25          Q.       So you just knew he was involved in

1 marketing, but you had no idea which Ameren entity he  
2 worked for?

3 A. Correct.

4 Q. Okay. Did it raise any flags with you that  
5 this transaction is contingent upon considerations in a  
6 case that somebody that you didn't know who he worked for  
7 was involved in?

8 A. It didn't at the time.

9 Q. Do you as an Ameren employee get any  
10 training on the Missouri affiliate transaction rule?

11 A. Yes, about once a year I believe we take a  
12 course.

13 Q. When was the last time you took that  
14 course?

15 A. I don't know when that was last.

16 Q. Was it within the last year?

17 A. I believe we have to every year, so I'm  
18 sure it was in the past year.

19 Q. And who gives those courses?

20 A. It's computerized on the -- on the  
21 corporation's computers, you take a little course.

22 Q. And how long does that take?

23 A. Oh, 20 minutes, half hour or an hour. I'm  
24 not sure exactly.

25 Q. Now, is it your understanding that perhaps

1 the sentence that I just referred you to on Exhibit 444 is  
2 not correct?

3 A. It's my under -- I know for a fact it's not  
4 true anymore. I've been told that it's not the case.

5 Q. But at the time you thought it was?

6 A. I thought it was at the time.

7 Q. And is that your signature on the upper  
8 left of the signature block?

9 A. Yeah, under general executive, that's my  
10 signature.

11 Q. And then below that, who is the manager of  
12 coal supply and business development?

13 A. At that time, Dan Ladiski (phonetic) was my  
14 manager.

15 Q. Okay. And how would he have known about  
16 the fact that this transaction is contingent upon  
17 considerations in a reactive power case Andy Serri's  
18 involved in?

19 A. I don't know if he knew or didn't know at  
20 the time. I don't know what his thinking was.

21 Q. Okay. But he signed the document?

22 A. He did.

23 Q. Okay. And then is that Mike Miller at the  
24 bottom, president of AFS?

25 A. Yes, it is.

1           Q.       And would he have been involved in the  
2   reactive power case Andy Serri's involved in?

3           A.       I doubt it, but I don't know that for a  
4   fact.

5           Q.       So you have no way of knowing how or if he  
6   knew anything about the sentence about the transaction is  
7   contingent on the other case?

8           A.       Correct.

9           Q.       Okay. And then who is -- who signed as the  
10   managing executive coal supply and emissions?

11          A.       At that time, my supervisor was Bill  
12   McNally.

13          Q.       So that's Bill McNally's signature. And  
14   same questions about his knowledge and understanding of  
15   the reactive power case.

16          A.       He would not have known, I don't believe,  
17   but I can't tell you that without talking to him.

18          Q.       And then that's Bob Neff under vice  
19   president of coal supply; is that correct?

20          A.       Correct.

21          Q.       Same question with him, would he have been  
22   involved or known about this reactive power case that Andy  
23   Serri was involved in?

24          A.       I don't believe so, but I don't know.

25          Q.       How about Tom Voss?

1           A.       He might have, but I don't know.

2           Q.       So it's your testimony that you thought  
3   that there was some sort of a contingent consideration of  
4   a reactive power case that Andy Serri was involved in, and  
5   you don't know whether any of these people knew anything  
6   about that or not?

7           A.       I do not know.

8           Q.       But they all signed the document?

9           A.       Yes, they did.

10          Q.       Wouldn't that -- wouldn't you assume that  
11   means they knew something about what they were signing?

12                   MR. BYRNE:  I'm going to object on the  
13   grounds it's been asked and answered.  He says he doesn't  
14   know, and it calls for speculation.

15                   JUDGE WOODRUFF:  I'll sustain that  
16   objection.

17   BY MR. MILLS:

18          Q.       Tell me at that time what your knowledge  
19   was of the reactive power case.

20          A.       I knew nothing about the reactive power  
21   case.  I must have -- I don't know how I found out about  
22   this, but somebody must have mentioned it to me in some  
23   regard, and I obviously got it wrong, but the purpose of  
24   this document wasn't that line.  The purpose was to get  
25   approval for the expenditure of the money.

1 Q. Do you know what the word contingent means?

2 A. Not a Webster's definition.

3 Q. Well, what's your understanding of what it  
4 means?

5 A. That something is -- that you would have to  
6 have a consideration to do -- one transaction might be  
7 hinged on another transaction.

8 Q. So when you -- when you wrote this  
9 sentence, it was your understanding that the early -- the  
10 early exercise of the call option with Dynegy was  
11 contingent upon settling a different case?

12 A. It doesn't say settling, but it was my  
13 understanding at the time that I believed that it was  
14 contingent on considerations. Not particularly  
15 settlement, but considerations.

16 Q. How do you use considerations there?

17 A. Well, as I've stated, I was wrong in this  
18 statement, so it's kind of in my opinion irrelevant at  
19 this time, but would you repeat your question?

20 Q. What did you mean by considerations in that  
21 statement?

22 A. It was my belief at the time, and this was  
23 a year and a half ago, that there was a -- other parts of  
24 our company were dealing with some kind of a case and  
25 Dynegy wanted to work that out in some regard.

1 Q. Okay. And what do you mean by other parts  
2 of your company?

3 A. There are other people obviously talking to  
4 Dynegy about some kind of case.

5 Q. The Illinois companies?

6 A. I don't know who or what at the time. I  
7 thought it was Andy Serri, and as I said, we've -- I've  
8 since found out that's not true.

9 Q. Now, still on Exhibit 444, where on this  
10 document does it make clear that these are Union Electric  
11 allowances?

12 A. Well, you're not familiar with our trade  
13 ticket numbering system. Up at the top it says FUS14R,  
14 and that nomenclature identifies it as Union Electric  
15 trade. FU, the U is Union Electric. The S is sulfur.  
16 The F means AFS transaction.

17 Q. Okay. So to somebody that knew the  
18 nomenclature, those acronyms at the top would make clear  
19 whose --

20 A. Yes.

21 Q. -- SO2 allowances they are?

22 Okay. Now, in response to one of our data  
23 requests, you said that after 1/1/07 Tom Voss would be  
24 responsible for communicating to AFS on behalf of UE what  
25 allowances to sell; is that correct?

1           A.       Do you have -- was it my Data Request? I  
2     don't have it in front of me.

3           Q.       Well, was that your understanding of who  
4     gives approval from UE to AFS as of 1/1/07?

5           A.       It was a change in management. He was put  
6     over Union Electric at that time.

7           Q.       Okay. So what is your understanding as you  
8     sit here today after 1/1/07 who is responsible for Union  
9     Electric?

10          A.       He's ultimately responsible for Union  
11     Electric, but I receive direction through my management,  
12     Michael Miller in particular.

13          Q.       And you don't really know who he gets  
14     direction from?

15          A.       No, sir.

16          Q.       Okay.

17          A.       At this time he reports to Mr. Warner  
18     Baxter.

19          Q.       So are you saying that Warner Baxter can  
20     authorize AFS to sell?

21          A.       I don't know if he can or he can't.

22                   MR. MILLS: Okay. Your Honor, I'd like to  
23     mark another exhibit.

24                   JUDGE WOODRUFF: All right.

25                   MR. MILLS: And this will be highly



1 confidential.

2 JUDGE WOODRUFF: Be 447HC.

3 (EXHIBIT NO. 447HC WAS MARKED FOR

4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. MILLS:

6 Q. Now, Mr. Moore, I've just handed you a copy  
7 of what's been marked as 447HC. Can you identify that as  
8 Public Counsel DR 2222 and your response?

9 A. It is.

10 Q. Now, the first page of the response to this  
11 DR is an e-mail from the president of your company to you,  
12 among others; is that correct?

13 A. Yes, sir.

14 Q. And, Mr. Moore, I don't believe the  
15 questions I'm going to ask you about this are highly  
16 confidential, and we may have some further discussion  
17 about whether the entire exhibit needs to be highly  
18 confidential, but at least the questions should not be. I  
19 checked with your attorney.

20 The e-mail from Mr. Miller to you, among  
21 others, talks about getting our approval memo authorized.  
22 Do you see that?

23 A. Yes, sir.

24 Q. What sort of approval memo is that?

25 A. We put together a similar document to this

1 to get signatures for a large transaction.

2 Q. And you always do that?

3 A. Not historically, but when I started  
4 reporting to Mr. Neff, he had a practice with all coal  
5 transactions to put together a signature page for  
6 transactions of large amounts, and we started doing that.

7 Q. So then because Mr. Neff was doing that for  
8 coal contracts, you started doing that for SO2 allowance  
9 sales?

10 A. Yes, we did.

11 Q. And is the transaction that's being  
12 discussed in this Data Request the one that actually  
13 eventually did take place in the fourth quarter of 2006?

14 A. It wasn't one transaction. It was several  
15 transactions put together were approved.

16 Q. Right. But that's what we're talking  
17 about, the fairly significant number of allowances that  
18 were sold in the fourth quarter of 2006?

19 A. Correct.

20 Q. Towards the end of December of 2006; is  
21 that correct?

22 A. I don't have the facts in front of me, but  
23 it was towards the end of the year.

24 Q. Was it in December?

25 A. I couldn't tell you that without looking at

1 my records.

2 Q. Okay. And was there, in fact, an approval  
3 memo for those transactions?

4 A. I don't recall if we ever had -- I don't  
5 have one in my possession. I don't know if we finalized  
6 it or not. According to this e-mail, there was an  
7 approval memo at one time, but I never received a signed  
8 copy of an approval memo.

9 Q. Okay. And as of the time that you adopted  
10 this practice from Mr. Neff, how many times did you not  
11 get an approval memo?

12 A. Depends on the -- we don't do a whole lot  
13 of transactions for AmerenUE. They don't happen very  
14 often at all. To my knowledge, I think that was the first  
15 time we put together a memo for a UE transaction.

16 Q. Okay. So you did put together a memo?

17 A. At this initially, but I never -- I don't  
18 have a -- I did not get back a signed copy like the  
19 previous one you gave me.

20 MR. MILLS: Okay. Your Honor, I'd like to  
21 mark two more exhibits.

22 JUDGE WOODRUFF: Okay.

23 MR. MILLS: I might as well just go ahead  
24 and mark them both.

25 JUDGE WOODRUFF: Are these going to be HC?

1                   MR. MILLS: I don't think so, but let me  
2 check. These are not highly confidential.

3                   JUDGE WOODRUFF: All right. Be 448 and  
4 449.

5                   (EXHIBIT NOS. 448 AND 449 WERE MARKED FOR  
6 IDENTIFICATION BY THE REPORTER.)

7                   MR. MILLS: Your Honor, just so I'm  
8 referring to the right document, was 2221 marked 448 and  
9 2223 marked as 449?

10                  JUDGE WOODRUFF: That is correct.

11 BY MR. MILLS:

12                  Q.       Now, Mr. Moore, in response to one of your  
13 Data Requests, 2221, which has just been marked as 448,  
14 Michael Moehn stated that there were no documents created  
15 by or for UE or its affiliates that contains instruction  
16 or guidance on the amount of SO2 allowances to sell during  
17 the third and fourth quarter of 2006. Is that consistent  
18 with your understanding?

19                  A.       I don't know what Michael Moehn -- I don't  
20 work for him, but that's what it says on the document.

21                  Q.       Do you know of any documents created by or  
22 for UE or its affiliates that contain instructions or  
23 guidance on the amount of UE SO2 allowances to sell during  
24 the third and fourth quarter of 2006?

25                  A.       The two e-mails that I received from

1 Mr. Mike Miller are the documents that I attached to the  
2 next exhibit, 449.

3 Q. And I believe you testified that you never  
4 got back a signed copy of the approval memo that you  
5 drafted?

6 A. I don't believe I have a -- if I had one, I  
7 would have included it with the documentation in response  
8 to the DRs to Mr. Kind.

9 Q. So as far as you know, the only documents  
10 you have are these three e-mails?

11 A. I thought there was two. Is there three?

12 Q. Well, the second one has --

13 A. My original one.

14 Q. -- two e-mails together.

15 A. My original one.

16 Q. So depending, two or three. These e-mails  
17 that are collectively Exhibit 447.

18 A. This is the direction -- how I was given  
19 authority to proceed.

20 Q. And that's the only direction you had, the  
21 only documentation?

22 A. Yes, sir.

23 Q. And, in fact, you answered Data Request  
24 No. 2223, which has been marked as Exhibit 449, in which  
25 you referred back to the one we just talked about, which

1 is Exhibit 447HC; is that correct?

2 A. Yes, I did.

3 MR. MILLS: Okay. Your Honor, I'd like to  
4 offer Exhibits 448 and 449.

5 JUDGE WOODRUFF: 448 and 449 have been  
6 offered. Any objections to their receipt?

7 MR. BYRNE: No objection.

8 JUDGE WOODRUFF: Hearing none, they will be  
9 received.

10 (EXHIBIT NOS. 448 AND 449 WERE RECEIVED  
11 INTO EVIDENCE.)

12 JUDGE WOODRUFF: Did you offer 447 yet or  
13 are you going to?

14 MR. MILLS: I had hoped to get a little  
15 more clarification about whether it was HC or not, but  
16 just so I don't forget, I'll go ahead and offer it as  
17 447HC, and if we can impose upon UE to check to make sure  
18 that it really still is HC at some point, they can clarify  
19 it.

20 MR. BYRNE: Perhaps we can clarify that  
21 right now. Is there -- Mr. Moore, is there any reason  
22 this needs to be HC anymore?

23 THE WITNESS: Well, some of the information  
24 on the second page refers in particular to a broker and  
25 some -- that I would not want the market to know.

1 MR. BYRNE: Then it still needs to be HC.

2 MR. MILLS: Then I'll offer it as 447HC.

3 JUDGE WOODRUFF: All right. 447HC has been  
4 offered. Any objections to its receipt?

5 MR. CONRAD: Just one question, your Honor.

6 JUDGE WOODRUFF: Mr. Conrad?

7 MR. CONRAD: The copy that I have on I  
8 guess it would be the second and third page, there is a  
9 redaction at the very top. I'm just curious what that is.

10 MR. MILLS: And, Mr. Conrad, I cannot  
11 enlighten you on that. That's the way we received these  
12 documents.

13 MR. CONRAD: Is that -- is there any clue?

14 MR. MILLS: Mr. Moore, can you explain that  
15 to us, what's black?

16 THE WITNESS: I don't know. I submitted an  
17 e-mail to our legal department, and they submitted to you,  
18 and they must have done the redaction. So I don't recall  
19 or know what that is.

20 MR. BYRNE: I'm not sure, but I think it  
21 may be the fact that the e-mails were forwarded and it  
22 deletes the forwarded address.

23 THE WITNESS: I actually forwarded these  
24 e-mails to a person in our legal department, and maybe  
25 that's that person's name, but I don't know.

1                   MR. MILLS: I'm not sure that was Stu's  
2     objection.

3                   JUDGE WOODRUFF: 447HC will be received.

4                   (EXHIBIT NO. 447HC WAS RECEIVED INTO  
5     EVIDENCE.)

6     BY MR. MILLS:

7                   Q.       Now, Mr. Moore, did you -- did you keep a  
8     copy of the draft unsigned approval memo that you never  
9     got back?

10                  A.       No. I would have submitted it to Mr. Kind  
11     if I had that draft.

12                  Q.       Okay.

13                  A.       I submitted everything on my G drive to him  
14     in regards to SO2 for UE.

15                  Q.       Now, I think you stated that you don't need  
16     written approval for any level of transaction; is that  
17     correct?

18                  A.       Historically, sometimes I have gotten  
19     written approval from a superior. Other times I've  
20     received e-mail. Other times it's just been word of  
21     mouth.

22                  Q.       So you don't need written approval?

23                  A.       I don't believe our risk policy requires  
24     that.

25                  Q.       When you receive verbal approval for a



1 transaction, do you yourself create a written record  
2 verifying that the transaction was approved and who it was  
3 approved by?

4 A. No, I have not, historically, and that's  
5 why when I started working for Mr. Neff, he asked us to  
6 start documenting things.

7 MR. MILLS: Your Honor, if I can confer for  
8 a moment on whether this is highly confidential. May I  
9 approach?

10 BY MR. MILLS:

11 Q. Mr. Moore, can you tell me whether that's  
12 highly confidential or not? It's not marked as such.

13 A. The counterparty names I would be  
14 uncomfortable and our contracts preclude us from giving  
15 out those names, but other than that, this is historical  
16 information.

17 MR. MILLS: I believe I'd like to mark  
18 this, and I believe it will have to be highly  
19 confidential.

20 JUDGE WOODRUFF: It will be 450HC.

21 (EXHIBIT NO. 450HC WAS MARKED FOR  
22 IDENTIFICATION BY THE REPORTER.)

23 BY MR. MILLS:

24 Q. Now, Mr. Moore, I'm just going to -- I  
25 believe you said that the numbers are historical and so

1 they're not highly confidential. It's really just the  
2 counterparties?

3 A. Yes.

4 Q. So I'm going to ask you some questions  
5 about the numbers. I don't think there's any need to get  
6 into the counterparties. In general, we asked the  
7 question about what the SO2 allowance sale number is for  
8 2006, and you referred us to the number 31,822,000, which  
9 Mr. Baxter rounded to 32 million in his testimony; is that  
10 correct?

11 A. That is what I stated.

12 Q. Now, if we look -- this has been reproduced  
13 as a two-sided exhibit. So if we look at the back side,  
14 there's part of a spreadsheet that's labeled SO2 sales,  
15 UE XLS 2006?

16 A. Correct.

17 Q. And sort of toward the middle of that page  
18 is where that 822,000 number comes in?

19 A. Yes, sir.

20 Q. And my question is, if you're talking about  
21 the number of allowance sales for 2006, why would you not  
22 take into account the EPA auction sales?

23 A. That document's a work paper that I used.  
24 I was given direction to sell roughly 30 million tons --  
25 \$30 million worth of allowances, so I was keeping track of

1 the transactions on the spreadsheet as I went through time  
2 to check on where that number ended up. This wasn't an  
3 audited document that the accountants used for the number  
4 of sales.

5 Q. Okay. I'm not sure that answers my  
6 question. Was the actual number of allowance sales,  
7 taking into account EPA auctions, actually over 33 million  
8 rather than \$32 million for 2006?

9 A. I don't know if this 1.2 million, I don't  
10 recall what the '06 auction proceeds were, but if they  
11 were 1.2 million, yes, it would be around 33.

12 Q. Did you produce this spreadsheet?

13 A. Yes, I did.

14 Q. And what do you think that 1.2 million  
15 under the EPA auction section is?

16 A. I'm assuming that it is. Without checking,  
17 I'd have to -- this is just a work paper that I used, and  
18 the goal was to figure out how many allowances we'd need  
19 to get to 30 million.

20 Q. Okay. But if there were, in fact, EPA  
21 auction sales in 2006 made on behalf of UE, should that  
22 not be considered in the total of 2006 revenues from SO2  
23 allowance sales?

24 A. Yes, I believe it would, but I'm not  
25 responsible for the EPA sales. I only handle transactions

1 from the UE bank.

2 Q. Now, with respect to the Dynegy deal, the  
3 memo that you prepared with all those signatures I believe  
4 shows the actual amount that was paid in order to induce  
5 Dynegy to allow early exercise; is that correct?

6 A. Yes, it does.

7 Q. And did you yourself do anything with  
8 respect to determining whether that amount was a  
9 reasonable amount or the best deal or anything along those  
10 lines?

11 A. I prepared a spreadsheet that analyzed the  
12 time value of the option that was left to expire. I don't  
13 think you want to get into a treatise on option value, but  
14 I looked at what I thought it was worth.

15 Q. Okay. So are you the one that calculated  
16 the 459,919 for their cost of capital?

17 A. I would have made that calculation, because  
18 this is my document.

19 Q. Did you say you would have or wouldn't  
20 have?

21 A. Yes, I did.

22 Q. Okay.

23 A. I did.

24 Q. So it's your testimony that the 634,919 was  
25 based on your calculations?

1           A.       No, that was not my -- I was not involved  
2     in determining what price would induce Dynegy to early  
3     exercise. That was not in my purview.

4           Q.       But you did calculate the 459,919?

5           A.       I looked at what I thought the option was  
6     worth.

7           Q.       Okay.

8           A.       And then I did the math and subtracted it  
9     out and said this is extra, over and above what the actual  
10    value of the option was at that time.

11          Q.       And your calculation led to the 634,919?

12          A.       No. The 634,919 was given to me, and then  
13    I did the math. I thought the option was worth  
14    200-something-thousand dollars, so I did the math to get  
15    the 459.

16          Q.       So you didn't calculate the 459 and add it  
17    to the 2 million to get to the 6 -- never mind. I thought  
18    you did it the other way around. You were given the  
19    634,919 and from that you derived the 459,919?

20          A.       Correct.

21          Q.       And you don't know how the payment of  
22    634,919 was derived?

23          A.       I was not involved with the discussions on  
24    Dynegy.

25          Q.       Okay. Now, were you here this morning when

1 I asked Mr. Baxter some questions about reverse swaps?

2 A. Yes, I was.

3 Q. Can you tell me what your understanding of  
4 a reverse swap is?

5 A. Yes. That's actually my term, and I didn't  
6 think it was correct for me to stand up at the time. But  
7 a vintage swap, a regular vintage swap is what we  
8 primarily bid on behalf of UE where we had extra  
9 allowances that we did not need for compliance in, say,  
10 year 1999, and rather than leave those sitting there not  
11 earning a return, we turn those in through a vintage swap  
12 into future allowances. So say we had an extra 10,000 in  
13 '99. We turned those into -- I don't know the exact  
14 numbers, but say 12,000 2006 allowances that we could use,  
15 thereby increase the size of our bank.

16 Q. So the counterparty that had the 2006  
17 allowances would give you more 2006 allowances for the  
18 benefit of receiving the 1999 allowances?

19 A. Correct.

20 Q. And the other way around, from your  
21 perspective, from UE's perspective would be what you call  
22 a reverse swap?

23 A. I call it a reverse swap whereby if I  
24 needed some 2006s for compliance, I could go take some of  
25 my 8s and turn them into 6s through a reverse swap, is

1     what I call that.

2             Q.       And in that instance, you would get less in  
3     return?

4             A.       Correct.

5             Q.       Okay. And did UE, in fact, do some of  
6     those deals?

7             A.       Yes, we did.

8             Q.       And did you do some in 2003?

9             A.       Can I look and see in my papers?

10            Q.       Please.

11            A.       I didn't bring that. Yes, we did.

12            Q.       And in 2003, do you recall why UE did that?

13            A.       We would have forecasted that we were going  
14     to be a little tight on allowances for compliance, and our  
15     No. 1 objective is to make sure we comply with the law,  
16     the rule that EPA lays out. And as soon as we forecasted  
17     that we were going to be a little short, we wanted to add  
18     some more allowances of that vintage so we made sure we  
19     were in compliance. Does that answer your question?

20            Q.       I think so. This may actually answer  
21     better.

22                    MR. MILLS: I'd like to mark another  
23     exhibit.

24                    JUDGE WOODRUFF: 451.

25                    MR. MILLS: And this will also be -- I

1 believe it's been marked as proprietary, so at least until  
2 UE tells me different, I'll go ahead and mark it as  
3 proprietary, so it will be 451P.

4 (EXHIBIT NO. 451P WAS MARKED FOR  
5 IDENTIFICATION BY THE REPORTER.)  
6 BY MR. MILLS:

7 Q. Mr. Moore, I just handed you what's been  
8 marked as Exhibit 451P, which is a response to Data  
9 Request 2080. In this case, which asked for a copy of DR  
10 503 in the Metro East case and you provided that response  
11 in the Metro East case; is that correct?

12 A. Yes, sir.

13 Q. And now, the information that you provided  
14 in the Metro East case, which makes up the bulk of  
15 Exhibit 451P, is a couple different documents. And I'm  
16 looking particularly at the first one after the page that  
17 UE checked to show that it was proprietary.

18 A. Starts with Jim at the top?

19 Q. Starts with Jim, yes.

20 A. Okay.

21 Q. Jim in that instance, is that you?

22 A. I'm sure it is.

23 Q. And Ken there is Ken Rudder?

24 A. Yes, it would be.

25 Q. Okay. And in this document, is this Ken



1 Rudder giving you his thoughts about a proposal for SO2  
2 sales strategies?

3 A. I'm skimming through it. It appears to be  
4 that. There was another individual, Randy Katz, that  
5 reported to him that might have been involved, but I don't  
6 know the timing when this document was created.

7 Q. But at least from the top of this document,  
8 it appears to be Ken giving you some comments?

9 A. Correct.

10 Q. Okay. And the first paragraph below the  
11 bold section on that page?

12 A. Uh-huh.

13 Q. And this part may be proprietary, but is  
14 this where you were talking about doing a reverse swap  
15 because of a short fall in 2003?

16 A. Let me read through this, please. In the  
17 first -- the first star right below the bold?

18 Q. Yeah. I'm not sure that's -- that was my  
19 question, but I think you're going to tell me no, it's  
20 not.

21 A. I don't see it addressed there. Down lower  
22 it gets to reverse swaps. The large paragraph, is that  
23 where you're referring to?

24 Q. Yes, thank you.

25 A. Is there a question I need to answer?

1           Q.       Well, is this discussion of the reverse  
2 swaps that you talked about making in 2003?

3           A.       Yeah. I don't remember the date of this  
4 document, but it could be.

5           Q.       Well, in that paragraph, doesn't it talk  
6 about the 2003 vintage allowances?

7           A.       Yeah, it does in the following sentence.  
8 You're correct.

9           Q.       Okay. And there does not in the memo  
10 discuss the operational drawbacks to using reverse swaps?

11          A.       It discusses it in that paragraph, yes.

12          Q.       And do you agree that there are operational  
13 drawbacks?

14          A.       Can I read that?

15          Q.       Oh, sure.

16          A.       I don't necessarily agree with it because  
17 we talked about that, as I recall, at the time and decided  
18 that the lowest cost alternative at that time to comply  
19 would be to go ahead and do those reverse swaps.

20          Q.       After roughly the middle of 2003, has UE  
21 done any reverse swaps?

22          A.       I show in 2004 that we brought back  
23 899 allowances. I don't have the details of that.

24          Q.       That's a fairly small amount in UE's  
25 portfolio of allowances, is it not?

1           A.       It is.

2           Q.       Almost de minimis?

3           A.       Yeah.

4           Q.       So other than that, since the middle of

5 2003 has UE done any reverse swaps?

6           A.       No.

7                   MR. MILLS: Your Honor, I'd like to offer

8 Exhibit 451P.

9                   MR. MILLS: 451P has been offered into

10 evidence. Are there any objections to its receipt?

11                  MR. BYRNE: No, your Honor.

12                  MR. MILLS: Hearing none, it will be

13 received.

14                   (EXHIBIT NO. 451P WAS RECEIVED INTO

15 EVIDENCE.)

16                  MR. MILLS: Your Honor, if I could have

17 just a minute.

18                  Your Honor, I think that's all I have for

19 this witness.

20                  JUDGE WOODRUFF: I show 444 and 450HC as

21 marked but not offered. Did you wish to offer them at

22 this time?

23                  MR. MILLS: Yes, please.

24                  JUDGE WOODRUFF: 444, DR response to 2214

25 has been offered. Are there any objections to its

1 receipt?

2 MR. BYRNE: No.

3 JUDGE WOODRUFF: It will be received.

4 (EXHIBIT NO. 444 WAS RECEIVED INTO

5 EVIDENCE.)

6 MR. MILLS: 450HC has been offered. Any

7 objection to its receipt?

8 MR. BYRNE: No.

9 JUDGE WOODRUFF: It will be received.

10 (EXHIBIT NO. 450HC WAS RECEIVED INTO

11 EVIDENCE.)

12 JUDGE WOODRUFF: Does Staff wish to cross?

13 MR. MEYER: No, thank you.

14 JUDGE WOODRUFF: Commissioner Clayton?

15 COMMISSIONER CLAYTON: No questions.

16 JUDGE WOODRUFF: Chairman Davis?

17 QUESTIONS BY CHAIRMAN DAVIS:

18 Q. Just to follow up on a couple of Mr. Mills'

19 questions, so you're the guy that does this stuff on a

20 daily basis, correct? You're the guy that trades the SO2

21 credits?

22 A. Yes, sir.

23 Q. Okay. And when you -- I notice when you

24 were asked -- you were responding to some of Mr. Mills'

25 questions, you would say, well, to the best of my

1 knowledge. Who gives you directions about when to sell,  
2 when to hold? Who do you take your orders from?

3 A. Mike Miller is my president, and my  
4 manager, Dan Ladiski, my supervisor, Tony Caskey, we  
5 discuss these things, we make recommendations.

6 Q. You discuss these things, you make -- you  
7 make recommendations and they say yea or nay?

8 A. On the day-to-day management of the  
9 allowances, yes.

10 Q. Okay. On the day-to-day management. Now,  
11 what about the, quote, big picture?

12 A. When there's a big -- big transaction will  
13 come from -- any sales transaction will come from senior  
14 management through Mike Voss, Mike Miller. Big picture --

15 Q. Does it come to him through osmosis or --

16 A. You'd have to ask Mr. Miller where he  
17 receives his direction from, but I would imagine from the  
18 senior executive team.

19 Q. Okay. So does the senior executive team,  
20 do they have any specialized knowledge of the SO2 market  
21 or do they sit there and watch the SO2 market and say,  
22 well, prices are up, we should sell, prices are low, we  
23 need to hold, or, you know, do they sit there and say,  
24 well, you know, need to make a little more money this  
25 month, so go sell some? Tell me how this thing works.

1           A.       I don't know how the senior management  
2 determines when to sell or not to sell. They don't  
3 consult with me. They do consult with me sometimes and  
4 some of them will ask me what are prices doing and that  
5 kind of thing, but they don't ask me when to --

6           Q.       And when you say senior management, who is  
7 senior management above Mike Miller?

8           A.       Mike Miller reports to Warner Baxter at  
9 this time. Previous, when a lot of this happened, it was  
10 Mr. Voss.

11                   CHAIRMAN DAVIS: Okay. All right. No  
12 further questions. Thank you.

13                   THE WITNESS: Thank you.

14                   JUDGE WOODRUFF: Any recross based on those  
15 questions?

16                   Any redirect?

17                   MR. BYRNE: Just a little, your Honor.

18 REDIRECT EXAMINATION BY MR. BYRNE:

19           Q.       Just to clarify one thing I think you might  
20 have said in response to a question from Mr. Mills, were  
21 you here earlier when Mr. Baxter testified?

22           A.       Yes.

23           Q.       And do you recall Mr. Baxter saying that  
24 there are no emission allowance sales currently budgeted?

25           A.       He did say that.

1 Q. And do you disagree with that?

2 A. No, I do not.

3 Q. When you were -- again in response to some  
4 questions earlier from Mr. Mills, you were talking about  
5 sulfur hedges. Do you remember that?

6 A. For the coal, yes.

7 Q. And you were saying that gives some  
8 certainty regarding coal prices. Do you remember that  
9 discussion?

10 A. Yes.

11 Q. Would you agree that that only gives you  
12 certainty with regard to the sulfur piece of coal price?

13 A. Yes.

14 Q. So if there's not -- it's not the  
15 underlying price of the coal that it gives you any  
16 certainty on that; is that true?

17 A. That is correct.

18 Q. If there's Btu adjustments, it doesn't give  
19 you any certainty if you do sulfur hedges?

20 A. No.

21 Q. Doesn't give you any certainty on any other  
22 kind of adjustments there might be?

23 A. No.

24 Q. Doesn't give you any certainty on coal  
25 transportation costs?

1           A.       Definitely no.

2           Q.       You may recall the approval document with  
3 the six signatures. I don't remember what --

4           A.       On the Dynegy transaction?

5           Q.       Yes.

6           A.       Yes.

7           Q.       And one of the signatories was Tom Voss;  
8 isn't that right?

9           A.       Correct.

10          Q.       And if Mr. Voss was the chief operating  
11 officer of AmerenUE at that time, would that not be  
12 approval from an officer of AmerenUE?

13          A.       Yes, it would.

14          Q.       Okay. Again, in response to a question  
15 from Mr. Mills, he showed you part of the transcript from  
16 the Metro East case. Do you remember that?

17          A.       Yes, he did.

18          Q.       And do you remember when that case went to  
19 hearing?

20          A.       If it was this document (indicating), it  
21 was March 1st, 2004.

22          Q.       Okay. And so any testimony on SO2 plans  
23 that you may have given at that point in time could have  
24 changed after that date?

25          A.       Oh, it changed.



1 MR. BYRNE: Thank you. That's all I have.

2 JUDGE WOODRUFF: All right. Mr. Moore, you  
3 can step down.

4 THE WITNESS: Thank you, sir.

5 JUDGE WOODRUFF: And it's time for lunch.  
6 We'll break now. We'll come back at one o'clock.

7 (A BREAK WAS TAKEN.)

8 (EXHIBIT NOS. 121, 122 AND 123 WERE MARKED  
9 FOR IDENTIFICATION BY THE REPORTER.)

10 JUDGE WOODRUFF: Welcome back from lunch.  
11 I believe there's some housekeeping matters need to be  
12 taken care of before we start with the next witness.  
13 Mr. Lowery?

14 MR. LOWERY: Yes, your Honor. We marked  
15 during the break Exhibit 121, 122 and 123, which are the  
16 deposition exhibits to Mr. Rackers', Dr. Proctor's and  
17 Mr. Rahrer's depositions respectively. In the case of  
18 Dr. Proctor's Deposition Exhibit 1, I omitted from  
19 Exhibit 122 because it's just a copy of his direct  
20 testimony, which is either in evidence or will be.

21 And so at this time to go with the  
22 depositions that have already been admitted, I will offer  
23 121 through 123.

24 JUDGE WOODRUFF: All right. 121, 122 and  
25 123 have been offered into evidence. Are there any

1 objections to their receipt?

2 (No response.)

3 JUDGE WOODRUFF: Hearing none, they will be  
4 received into evidence.

5 (EXHIBIT NOS. 121, 122 AND 123 WERE  
6 RECEIVED INTO EVIDENCE.)

7 JUDGE WOODRUFF: Any other matters anyone  
8 wants to bring up?

9 MR. BYRNE: Your Honor, I do have a witness  
10 conflict issue that's arisen. Mr. Naslund, who appeared  
11 here last week, is scheduled to be one of the depreciation  
12 witnesses, and he can't be here until Thursday. I think  
13 he's probably currently scheduled to be here tomorrow.

14 JUDGE WOODRUFF: Okay. Anyone else want to  
15 comment on that?

16 MR. MICHEEL: However we can work with  
17 Mr. Naslund is fine with the State. He's very busy.

18 MR. BYRNE: Thank you, Mr. Micheel.

19 MR. MEYER: Your Honor, regarding this  
20 issue, I tried to catch everybody that I could about  
21 switching the order of witnesses for Ryan Kind to the end.  
22 I don't think it's raised any objections to any of the  
23 parties.

24 JUDGE WOODRUFF: So Mr. Kind would testify  
25 after Mr. Brosch?

1 MR. MEYER: Correct.

2 JUDGE WOODRUFF: Any other preliminary  
3 matters?

4 MR. CONRAD: Judge, I've been able to  
5 pretty much close the loop. I'm just fumbling here for my  
6 list. And I believe I have been able to speak to everyone  
7 other than Laclede, the union, the social welfare group  
8 and I haven't heard definitively from the utility as to  
9 the three Noranda witnesses. Everybody else has indicated  
10 that they did not have questions for them. My question, I  
11 guess, to the Bench is if your Honor has yet been able to  
12 find out from the Commission.

13 JUDGE WOODRUFF: I believe I have now been  
14 able to speak with all the Commissioners or by e-mail, and  
15 none of them have indicated any need to question your  
16 witnesses.

17 MR. CONRAD: Okay. Great. I'll try to  
18 pursue those remaining loose ends then and assume that at  
19 the appropriate point that their witness -- that their  
20 testimony would be spread of record without the necessity  
21 for them appearing and standing for cross.

22 JUDGE WOODRUFF: And that would be part of  
23 the Stipulation & Agreement also, would it not?

24 MR. CONRAD: It would be if it's approved.  
25 They were listed.

1 JUDGE WOODRUFF: All right. Let's go ahead  
2 and get started with the next witness, which I believe is  
3 Ms. Borkowski.

4 MR. BYRNE: Call Ms. Borkowski to the  
5 stand.

6 (Witness sworn.)

7 JUDGE WOODRUFF: You may be seated. And  
8 you are Maureen Borkowski?

9 THE WITNESS: Yes.

10 MR. BYRNE: You don't have any corrections,  
11 do you, Ms. Borkowski?

12 THE WITNESS: No, I do not.

13 MR. BYRNE: I tender the witness for  
14 cross-examination.

15 JUDGE WOODRUFF: All right. Does any party  
16 wish to cross Ms. Borkowski? Looks like Public Counsel's  
17 first, then.

18 (EXHIBIT NOS. 64 AND 65NP AND HC WERE  
19 MARKED FOR IDENTIFICATION BY THE REPORTER.)

20 MAUREEN BORKOWSKI testified as follows:

21 CROSS-EXAMINATION BY MR. MILLS:

22 Q. Good morning, Ms. Borkowski. I'm Lewis  
23 Mills. I represent the Public Counsel in this proceeding.

24 Now, is it correct that the only testimony  
25 you have that addresses the SO2 allowance is your

1 surrebuttal testimony?

2 A. That's correct.

3 Q. Now, with respect to the issues that are  
4 discussed in the highly confidential attachment to your  
5 testimony, and I'm not going to -- I'm going to try not to  
6 get into the details, but if anything I ask leads you to  
7 want to talk about highly confidential information, just  
8 stop and we can go in-camera. That's okay.

9 What was your role? What were you doing  
10 when these negotiations were going on that led to this  
11 agreement?

12 A. I had been contacted by Mr. Moehn at my  
13 home. It was over the Christmas holidays, so the -- well,  
14 right before the Christmas holiday, so the contact was by  
15 phone. And he approached me and said that Dynegy had --  
16 as a course of discussion about an emissions allowance  
17 transaction, had raised some other cases which other  
18 Ameren companies were involved in that they were hoping  
19 that they might be able to settle, as well as whatever the  
20 arrangements were for the emissions allowance transaction.  
21 And I was responsible for those other cases in my role as  
22 vice president of transmission. They were FERC cases.

23 Q. So you were already involved in those two  
24 FERC cases?

25 A. Yes. And, in fact, we had already been

1 involved in settlement discussions with Dynegy personnel  
2 with regard to those cases.

3 Q. Okay. And those two cases were settled,  
4 and the first memorialization of that settlement is in the  
5 attachment to your testimony; is that correct?

6 A. Yes.

7 Q. And is the amount that you settled those  
8 cases for highly confidential?

9 A. Yes.

10 Q. Without talking about the specific amount,  
11 how did you go about determining that that was the best --  
12 the best deal you could get for settling those two cases?

13 A. Well, prior to the discussions I had with  
14 Mr. Moehn, we had been in discussions with Dynegy in  
15 settlement on each of those cases. So we were aware of  
16 what their position was and what our position was, and  
17 just in general terms, the one case was a case wherein  
18 Dynegy was claiming that AmerenIP should owe them money.  
19 The other was AmerenIP claiming that Dynegy owed them  
20 money, and the amounts were not identical, but they were  
21 similar in magnitude of what the positions were of each of  
22 the party on the dollars in dispute.

23 So by virtue of bringing the two cases  
24 together, there was some ability to say -- to assess your  
25 risk on either winning one, losing the other, vice versa,

1 and the amount that we settled on we believe was a -- was  
2 a fair settlement taking into account the risk of both of  
3 the cases.

4 Q. Okay. Now, other than just the timing, did  
5 those -- did those two cases at FERC have anything in  
6 common, other than the timing I guess and the parties?  
7 Were the issues similar?

8 A. No. The issues were not similar, other  
9 than that they both involved MISO.

10 Q. Okay. Now, had you settled those two cases  
11 separately, is it your testimony that you believe that the  
12 net result of those two settlements would have been the  
13 same number that you got to by settling them together?

14 A. I don't know that we would have been able  
15 to achieve settling those two cases -- separate from each  
16 other, I assume you're saying?

17 Q. That's what I mean, yes.

18 A. I don't know that we would have been able  
19 to achieve settlement. In fact, prior to Mr. Moehn  
20 contacting me, we had two different legal firms  
21 representing us on those two cases. So I had spoken with  
22 our own other Ameren personnel internally about the  
23 possibility of, what if we start thinking about trying to  
24 settle these together rather than separately, might we be  
25 able to achieve settlement if we do it that way.

1                   So we had already been contemplating that  
2     in order to move this whole process forward when Mr. Moehn  
3     contacted me. That basically said that Dynegy was  
4     thinking the same way, because they were the one that  
5     brought up the issue.

6           Q.       So is it your understanding that, as  
7     Dynegy's position was communicated to you, that Dynegy  
8     needed to settle those two cases and the emission  
9     allowance early exercise?

10          A.       The way it was brought up to me was that  
11     someone at Ameren, and it wasn't clear to me who was  
12     involved other than Mr. Moehn, was discussing with Dynegy  
13     something about emission allowance transaction, and that  
14     Dynegy had indicated that they would also be interested in  
15     discussing settling these other cases with Ameren as well.

16                   So I was going on what Mr. Moehn told me,  
17     which he made the phone call apparently pursuant to what  
18     Dynegy had told him. I never had any firsthand contact  
19     with Dynegy over this time frame.

20          Q.       Okay. But in any event, the document that  
21     you ultimately ended up with and attached to your  
22     testimony has all -- the two FERC cases and the emission  
23     transaction all rolled into one document; is that correct?

24          A.       No, that's not correct. The document  
25     that's attached to my testimony only addresses the two



1 FERC cases. It does reference that this was a -- the  
2 remaining steps to be taken to implement the parties'  
3 agreement.

4 Q. And now with respect to the -- well, with  
5 respect to the emissions allowance transaction with  
6 Dynegy, were you -- were you involved in the settlement of  
7 that portion of it?

8 A. No, other than the discussions of settling  
9 the two FERC cases.

10 Q. Were you involved with any discussions with  
11 other Ameren people about settling it as a package?

12 A. Just my boss, David Whitely.

13 Q. Okay. And so you had discussions with  
14 Mr. Whitely about settling all three matters together?

15 A. My discussions with Mr. Whitely were really  
16 in regard to what I was proposing in terms of the terms of  
17 settlement of the two FERC cases to make sure that he  
18 agreed with what I was proposing to communicate to  
19 Mr. Moehn.

20 Q. Now, do you have any knowledge about how  
21 the whole idea of the reactive power case that Andy Serri  
22 is involved in crept into the discussion?

23 A. I do. And first of all, Andy Serri isn't  
24 involved in any reactive power case. I don't know how  
25 Mr. Serri's name became involved, but I however was

1 involved in a reactive power case with Dynegy. In fact,  
2 that case is still ongoing. We have an initial decision  
3 from the ALJ, but we do not yet have a final order.

4 At the point in time when this conversation  
5 with Mr. Moehn took place, I believe that we had already  
6 filed our testimony in that case, and I think that Staff  
7 and Dynegy had just filed their testimony in that case.  
8 When the Dynegy person, who I assume was Mr. Watts -- I  
9 didn't know that at the time -- contacted Mr. Moehn about  
10 maybe we can settle these other cases, too, he apparently  
11 mentioned the two cases we settled and the reactive power  
12 case. When Mr. Moehn brought that to my attention, I  
13 said, no, I wasn't interested in settling the reactive  
14 power case, there were too many dollars at stake, and I  
15 thought at that point in time our position at FERC was  
16 fairly good, that I wasn't interested in settling it.  
17 So we limited the discussion to the two cases that we  
18 ultimately settled.

19 MR. MILLS: Okay. No further questions.  
20 Thank you.

21 JUDGE WOODRUFF: Anyone else wish to cross  
22 this witness?

23 (No response.)

24 JUDGE WOODRUFF: All right. I have no  
25 questions from the Bench, so there's no need for recross.

1 Any redirect?

2 MR. BYRNE: No, your Honor.

3 JUDGE WOODRUFF: Ms. Borkowski, you can  
4 step down. Is this the only time she's going to testify?

5 MR. BYRNE: Yes, ma'am -- yes, sir. I'd  
6 like that stricken from the record, please.

7 JUDGE WOODRUFF: That's why I grew the  
8 beard.

9 MR. LOWERY: Don't hold that against the  
10 rest of the counsel for the company, would you?

11 MR. BYRNE: Yes, I would like to offer Ms.  
12 Borkowski's testimony, which is Exhibit 64, 65HC and 65NP.

13 JUDGE WOODRUFF: All right. 64 and 65HC  
14 and NP have been offered. Are there any objections to  
15 their receipt?

16 (No response.)

17 JUDGE WOODRUFF: Hearing none, they will be  
18 received into evidence.

19 (EXHIBIT NOS. 64 AND 65NP AND HC WERE  
20 RECEIVED INTO EVIDENCE.)

21 JUDGE WOODRUFF: And I believe the next  
22 witness is Mr. Zdellar.

23 MR. BYRNE: Call Mr. Zdellar.

24 JUDGE WOODRUFF: Good afternoon. I believe  
25 this is your first time also.

1 (Witness sworn.)

2 JUDGE WOODRUFF: Be seated. And are you

3 Ron Zdellar?

4 THE WITNESS: Yes, I am.

5 JUDGE WOODRUFF: Would you spell your last

6 name for the court reporter.

7 THE WITNESS: Z-d, like in David,

8 e-l-l-a-r.

9 JUDGE WOODRUFF: Thank you.

10 RON ZDELLAR testified as follows:

11 DIRECT EXAMINATION BY MR. BYRNE:

12 Q. Do you have any corrections for your

13 testimony, Mr. Zdellar?

14 A. No.

15 MR. BYRNE: Okay. I tender Mr. Zdellar for

16 cross.

17 JUDGE WOODRUFF: All right. Does anyone

18 wish to cross Mr. Zdellar?

19 I don't see anyone. I don't have any

20 questions from the Bench, so there's no need for recross

21 or redirect. And, Mr. Zdellar, you can step down.

22 Do you want to offer his testimony at this

23 point, or will he be back?

24 MR. BYRNE: He will not be back. I would

25 offer Exhibit 66HC, 66NP, 67HC, 67NP, 68, and that's it.

1 JUDGE WOODRUFF: 66HC and NP, 67HC and NP  
2 and 68 have been offered into evidence. Are there any  
3 objections to their receipt?

4 (No response.)

5 JUDGE WOODRUFF: Hearing none, they will be  
6 received into evidence.

7 (EXHIBIT NOS. 66HC AND NP, 67NP AND HC, AND  
8 68 WERE MARKED FOR IDENTIFICATION AND RECEIVED INTO  
9 EVIDENCE.)

10 JUDGE WOODRUFF: And the next witness then,  
11 we indicated Mr. Kind would go last, so it would be John  
12 Cassidy for the Staff.

13 Please raise your right hand.

14 (Witness sworn.)

15 JUDGE WOODRUFF: You may be seated. And  
16 are you John Cassidy?

17 THE WITNESS: Yes.

18 (EXHIBIT NOS. 207NP AND HC, 208NP AND HC  
19 AND 209NP AND HC WERE MARKED FOR IDENTIFICATION BY THE  
20 REPORTER.)

21 JOHN CASSIDY testified as follows:

22 DIRECT EXAMINATION BY MR. MEYER:

23 Q. Mr. Cassidy, do you have any changes to  
24 your prefiled testimony?

25 A. I don't.

1                   MR. MEYER: With that, we would tender  
2 Mr. Cassidy.

3                   JUDGE WOODRUFF: Okay. Do any parties wish  
4 to cross-examine Mr. Cassidy? For the State.

5 CROSS-EXAMINATION BY MR. MICHEEL:

6           Q.       Hello, Mr. Cassidy.

7           A.       Hello, Mr. Micheel.

8           Q.       Do you have a copy of your surrebuttal  
9 testimony there with you, sir?

10          A.       I do.

11          Q.       Ask you some questions there. Focusing on  
12 page 12 of your surrebuttal testimony, specifically at  
13 line 12, is that where you describe a netting of emission  
14 allowance sales against SO2 premiums?

15          A.       Yes.

16          Q.       And then at line 19 you reference Staff  
17 witness Meyer; is that correct?

18          A.       That's correct.

19          Q.       And you note there that he's the individual  
20 to discuss the process and how it would be used as it  
21 related to the storm costs; is that correct?

22          A.       That's correct.

23          Q.       So if I have questions about that, I should  
24 direct those to Mr. Meyer?

25          A.       Storm cost questions should be directed

1     towards him, yes.

2             Q.       Do you rely on any Commission orders for  
3     your historical netting during the test year and through  
4     the January '07 cutoff date that you proposed?

5             A.       I don't believe I looked at any past  
6     orders.

7             Q.       Well, let me ask you this:  Is there an  
8     Accounting Authority Order in place related to storm  
9     costs?

10            A.       Not that I'm aware of.  I don't know.

11            Q.       Is there a Commission Report and Order  
12     that's been issued relating to storm costs?

13            A.       Not that I'm aware of.

14            Q.       Do you have any understanding of the  
15     concept sometimes referred to as retroactive ratemaking?

16            A.       Yes.

17            Q.       Enlighten me as to your understanding.

18            A.       My understanding of retroactive ratemaking  
19     would be if, for example, an amount was placed in rates  
20     for an expense item and -- in years past and over the  
21     course of time, if the expenses turned out to be higher  
22     than what was placed in rates, the company could not come  
23     back in a case and seek recovery for amounts that was  
24     higher than what was placed in rates.  Similarly, the  
25     Staff could not -- if expense came in lower, the Staff

1     could not come in and seek that recovery as well.

2             Q.     And so essentially we don't look back and  
3     reach back for costs or expenses or revenues; isn't that  
4     correct?

5             A.     Generally, yes.

6             Q.     Now, at line 21 there on page 12, you  
7     appear to recommend a new Accounting Authority Order for  
8     deferral accounting for SO2 allowance sales and SO2  
9     premiums net of any discounts; is that correct?

10            A.     I'm sorry. Where are you at?

11            Q.     I'm on page 12 of your surrebuttal  
12     testimony, sir, starting at line 12, the Staff proposes.

13            A.     Okay. I'm there.

14            Q.     And that's where you recommend a new  
15     accounting authority for -- deferral accounting for SO2  
16     allowance sales and SO2 premiums net of discounts; is that  
17     correct?

18            A.     That's correct.

19            Q.     Has such a recommendation been made in  
20     prior cases for UE, if you know?

21            A.     Not specifically for this item, but I think  
22     it has been recommended at Kansas City Power & Light.

23            Q.     That wasn't my question, and listen real  
24     carefully now when I ask the question. I asked about  
25     Union Electric.



1 A. No.

2 Q. Okay. There we go. On page 13, line 9,  
3 again on your surrebuttal testimony, is it correct that  
4 SO2 premiums are paid by UE to its coal suppliers?

5 A. That's correct.

6 Q. And is this charge part of what is  
7 negotiated within the coal contracts?

8 A. Yes, to the extent the quality, the SO2  
9 quality is lower than what's contracted, they pay premium.

10 Q. And that would be one of the terms  
11 negotiated in the coal contract; isn't that correct?

12 A. That's correct.

13 Q. I want you to assume for me that Union  
14 Electric does not get a fuel adjustment clause. Would the  
15 Staff's proposal allow for deferral accounting for SO2  
16 premium portion of coal prices?

17 A. To the extent that there is a fuel  
18 adjustment clause?

19 Q. No. Assume that UE does not get a fuel  
20 adjustment clause. Can you make that assumption?

21 A. Okay. And?

22 Q. Would the Staff's proposal allow for  
23 deferral accounting for the SO2 premium portion of coal  
24 prices while the rest of the coal costs would be fixed in  
25 base rates?

1           A.       That's correct.

2           Q.       Now, could you agree hypothetically --  
3   well, let me give you this hypothetical.   Could Union  
4   Electric agree with the coal vendor in the future to pay a  
5   higher SO2 premium in order to get a lower base rate base  
6   coal price?

7           A.       I'm not sure I caught the question.   Could  
8   you restate it, please?

9           Q.       This is a hypothetical.

10          A.       Okay.

11          Q.       In negotiating Union Electric's coal  
12   contracts, okay, could UE agree with the coal vendor in  
13   the future to pay a higher SO2 premium in order to get a  
14   lower base coal price?

15          A.       That possibility exists, yes.

16          Q.       Is there any language in the Staff proposal  
17   for future SO2 premiums that would protect against  
18   contractual gaining of coal price terms within the future  
19   new coal contracts?

20          A.       To the extent that they change, they'll be  
21   captured in our tracker.   That's the only --

22          Q.       So in other words, you would be giving a  
23   premium -- or not a premium, an incentive for them perhaps  
24   to monkey with the premium and get a lower base coal  
25   price, correct?

1           A.       I don't know that I'd characterize it as  
2     monkey with the price, but I mean, if changes occur, then  
3     that would occur.

4           Q.       Okay. On page 12 again, line 21, why is  
5     the Staff proposing the new accounting beginning on  
6     January 1, 2007? What's the magic of that date?

7           A.       I guess because we have used all of the  
8     SO<sub>2</sub>, the gains on the sale of SO<sub>2</sub> emission allowances and  
9     the related premiums for the test period and the update  
10    period, and so going forward, we're saying let's capture  
11    them in this regulatory liability account.

12          Q.       Is it correct that new rates in this rate  
13    case were not effective on 1/1/07?

14          A.       It is the cutoff point for our true-up.

15          Q.       That wasn't my question, and listen really,  
16    really close to me now again, sir. New rates for this  
17    case were not effective 1/1/07; isn't that correct?

18          A.       That's correct.

19          Q.       And the effective date of those rates is  
20    sometime in the future; isn't that correct?

21          A.       Correct.

22          Q.       Would you agree with me that the 1/1/07 is  
23    an arbitrary starting date presented by the Staff?

24          A.       I wouldn't say that it's arbitrary. I  
25    think it just happens to coincide with the cutoff date for

1 the true-up period.

2 Q. So in Staff arriving at the 1/1/07 date,  
3 you arrived at that because it's the cutoff of the true-up  
4 period?

5 A. That's basically it, yes.

6 Q. And the significance of the cutoff of the  
7 true-up period, the date is what?

8 A. That we've given treatment, we've provided  
9 treatment for all of the SO2 gains and the SO2 premiums  
10 that occurred in the test year in the true-up, and then  
11 we're trying to capture all of them from that point going  
12 forward.

13 Q. Even though rates aren't going to be  
14 effective until sometime in June; is that correct?

15 A. That's correct.

16 Q. So you're retroactively going back and  
17 trying to capture those?

18 A. I don't believe that's retroactive  
19 treatment.

20 MR. MICHEEL: Thank you very much.

21 JUDGE WOODRUFF: Thank you. Ameren wish to  
22 cross?

23 MR. BYRNE: Yes, your Honor. Just briefly.

24 CROSS-EXAMINATION BY MR. BYRNE:

25 Q. Good afternoon, Mr. Cassidy.

1           A.       Good afternoon.

2           Q.       I'd like to first ask a question about  
3 something Mr. Micheel was asking you about, and that is  
4 the company's ability to, I think he referred to it as  
5 monkey with the SO2 premiums. And my question is, if the  
6 company did monkey with the SO2 premiums, under your  
7 proposal wouldn't the Commission have the authority to  
8 disallow the costs associated with that monkeying once the  
9 rate case came along?

10          A.       I believe that could occur, yes.

11          Q.       Let me ask you, why does the Staff believe  
12 it's better to have a regulatory liability account than to  
13 just put a flat amount of SO2 revenues in base rates?

14          A.       I think it ensures that all of the gains on  
15 emission allowance sales will be captured by the  
16 ratepayers, and it avoids trying to set some level in base  
17 rates for this significantly volatile item. And if you  
18 put that amount in base rates, it thereby forces the  
19 company to sell to that level, and that may or may not be  
20 a good strategy on a going-forward basis.

21          Q.       Well, it wouldn't literally force them to  
22 do it, would it? It would give them maybe the wrong  
23 incentive to do that?

24          A.       That's correct.

25          Q.       Okay. And might it be a measure that

1     would -- if the company -- well, if the company didn't  
2     have excess allowances because it needed -- it needed  
3     those allowances for environmental compliance, might your  
4     proposal, you know, ensure that it could still collect its  
5     cost of service?

6                     MR. MILLS: Your Honor, I'm going to object  
7     here. This is friendly cross. These two parties are  
8     allied. I understand you've allowed some friendly cross  
9     in the past, but this is purely designed to bolster the  
10    Staff's case and, by inference, UE's case, and it comes  
11    after I have no chance to cross-examine this witness any  
12    more. So it gives the company an unfair advantage to be  
13    able to bolster their case at a point where I can't rebut  
14    it.

15                    MR. BYRNE: I would have agreed with  
16    Mr. Mills prior to the point where my objection over  
17    friendly cross was overruled early in the case. My  
18    understanding was there was no agreement that friendly  
19    cross wouldn't be allowed.

20                    JUDGE WOODRUFF: It is clearly friendly  
21    cross. I'm going to allow you to question the witness,  
22    but I will ask you not to lead the witness.

23                    MR. BYRNE: Okay. Thank you, your Honor.

24    BY MR. BYRNE:

25                    Q.     Mr. Cassidy, do you know how your proposal

1 in this case compares with how the treatment of the same  
2 issue for Kansas City Power & Light and Empire has been?

3 MR. MICHEEL: Objection, irrelevant.

4 JUDGE WOODRUFF: What would be the  
5 relevance?

6 MR. BYRNE: I think it is relevant how the  
7 Commission has treated this issue and for other utilities  
8 in Missouri. I mean, isn't that a relevant consideration  
9 as to how it should be treated in AmerenUE's case?

10 JUDGE WOODRUFF: I'll overrule the  
11 objection.

12 THE WITNESS: I'm aware that Kansas City  
13 Power & Light, the treatment there is to place the gains  
14 on sale of emission allowances and to net them with their  
15 premiums net of their discounts in a regulatory tracker.  
16 And I think that this is a similar proposal, similar  
17 treatment is being proposed as part of this case for  
18 AmerenUE.

19 BY MR. BYRNE:

20 Q. And do you know about Empire or not?

21 A. I think at Empire they placed just the  
22 gains on the sale of emission allowances into that  
23 regulatory liability account.

24 MR. BYRNE: Okay. Thank you very much,  
25 Mr. Cassidy.

1 JUDGE WOODRUFF: All right. I have no  
2 questions from the Bench. There's no need for recross.  
3 Any redirect?

4 MR. MEYER: Very briefly.

5 REDIRECT EXAMINATION BY MR. MEYER:

6 Q. Mr. Cassidy, you were asked some questions  
7 under a hypothetical of no FAC. In that scenario, do you  
8 know how much coal has the company hedged for 2007?

9 A. I believe it has 100 percent of its coal  
10 needs for 2007 hedged.

11 Q. What about 2008?

12 A. It has approximately 97, 98 percent of its  
13 coal needs for 2008 hedged.

14 Q. And do you know for 2009?

15 A. I believe it's approximately 60 percent.

16 Q. Do you believe that Staff's treatment for  
17 the SO2 premiums and sales is retroactive ratemaking?

18 A. I do not.

19 MR. MICHEEL: Objection, calls for a legal  
20 conclusion.

21 JUDGE WOODRUFF: Sustained.

22 MR. MEYER: That's all I have. Thank you.

23 JUDGE WOODRUFF: And did you wish to offer  
24 Mr. Cassidy's testimony at this point?

25 MR. MEYER: I don't believe he's appearing



1 again. Yes, therefore, I would like to go ahead and offer  
2 John Cassidy direct, previously marked as 207HC and 207NP,  
3 John Cassidy rebuttal, 208HC and 208NP, and John Cassidy  
4 surrebuttal, previously marked as 209HC and NP.

5 JUDGE WOODRUFF: 207, 208 and 209, all both  
6 HC and NP, have been offered. Any objection to their  
7 receipt?

8 MR. BYRNE: No, your Honor.

9 JUDGE WOODRUFF: Hearing no objection, they  
10 will be received.

11 (EXHIBIT NOS. 207HC AND NP, 208HC AND NP,  
12 AND 209HC AND NP WERE RECEIVED INTO EVIDENCE.)

13 JUDGE WOODRUFF: And, Mr. Cassidy, you can  
14 step down.

15 MR. MICHEEL: Your Honor, I just have a  
16 point.

17 JUDGE WOODRUFF: You need to use your  
18 microphone.

19 MR. MICHEEL: I guess I was asleep at the  
20 switch with this witness, but it seems to me that  
21 Mr. Byrne should be cross-examining first since the  
22 company is in the same position as the Staff, and I think  
23 some of our rights were trampled on this when he didn't  
24 raise his hand that he had questions. So if we could cut  
25 it off with Mr. Meyer here and have the company go first,

1 I would greatly appreciate it. I think it's appropriate.

2 JUDGE WOODRUFF: I think that is  
3 appropriate.

4 MR. MEYER: Our next witness is Mr. Meyer,  
5 who has some changes to his testimony which he's going to  
6 retrieve and will be back in a minute.

7 JUDGE WOODRUFF: Let's go off the record.  
8 We'll take about a five-minute break and come back at  
9 1:40.

10 (A BREAK WAS TAKEN.)

11 (EXHIBIT NO. 226NP AND HC WAS MARKED FOR  
12 IDENTIFICATION BY THE REPORTER.)

13 JUDGE WOODRUFF: Let's come back to order,  
14 and Mr. Meyer has now taken the stand. Mr. Meyer, I  
15 believe you testified earlier; is that correct?

16 THE WITNESS: Yes, I have.

17 JUDGE WOODRUFF: So you're still under  
18 oath.

19 THE WITNESS: Yes.

20 GREG MEYER testified as follows:

21 DIRECT EXAMINATION BY MR. MEYER:

22 Q. Mr. Meyer, do you have any changes to your  
23 prefiled testimony?

24 A. Yes, I do. In my direct, on page 2, line  
25 15, where it says based on a return of, the word of should

1 be deleted and the word on, o-n, should be inserted.

2 On line -- or I'm sorry. On page 5, line  
3 6, there's a word there that is thy, t-h-y, and it should  
4 be they, t-h-e-y.

5 On page 8, line 11, the word fund should be  
6 funding.

7 On page 9, line 14, I think the case number  
8 should be EM-96-149 instead of 14.

9 And page 10, line 10, the 7.7 million  
10 should be 2.7 million. I believe that's all I have.

11 Q. Do you have any changes to any of your  
12 other filings?

13 A. No.

14 MR. MEYER: We'd tender Mr. Meyer.

15 JUDGE WOODRUFF: Does any party wish to  
16 cross?

17 Seeing no one, then. I'm sorry?

18 MR. MICHEEL: I was watching Mr. Byrne this  
19 time. Fool me once.

20 JUDGE WOODRUFF: And you're hiding behind  
21 the box there. From the State then?

22 MR. MICHEEL: I don't want to disappoint  
23 Mr. Meyer. He should get at least a couple questions.

24 CROSS-EXAMINATION BY MR. MICHEEL:

25 Q. Good afternoon, Mr. Meyer.

1           A.       Mr. Micheel.

2           Q.       Mr. Cassidy has proposed that gains on  
3 allowances for sales of SO2 for a period of time be  
4 accumulated and netted against SO2 premiums; is that  
5 correct?

6           A.       That's correct.

7           Q.       And I wanted to talk to you about the  
8 period of July 1, 2005 through December 31, 2006. Okay?

9           A.       Okay.

10          Q.       Let me ask you this: Was Union Electric  
11 authorized to defer on its books any SO2 premiums it paid  
12 from July 1st, 2005 through December 31st, 2006?

13          A.       Was it allowed to defer those?

14          Q.       Was it authorized?

15          A.       Not to my knowledge.

16          Q.       Were there any PSC orders requiring  
17 deferral accounting?

18          A.       Not that I'm aware of.

19          Q.       What about allowance sales, was UE  
20 obligated to defer gains on allowance sales that occurred  
21 from July 1, 2005 to December 31st, 2006?

22          A.       I'm not aware of any authorization to defer  
23 those either.

24          Q.       Any prior PSC orders requiring deferral on  
25 the books for allowable sales gains during that time

1 period?

2 A. For UE?

3 Q. Yes, sir.

4 A. No.

5 Q. And all my questions are going to be about  
6 Union Electric because that's the case we're in. So put  
7 that confusion aside.

8 Is it possible that imposing an  
9 accumulation of prior transactions without an accounting  
10 order in place may be viewed as retroactive ratemaking?

11 A. In the context of a test year, an update?

12 Q. In the context of a rate case.

13 A. Well, I think you need to give me a time  
14 period, Mr. Micheel.

15 Q. In the context of this rate case.

16 A. And I need a time period within that.

17 Q. Let's go for the time period of July 1, '05  
18 through 12/31/06.

19 MR. BYRNE: Your Honor, I'm going to object  
20 to the question because it calls for a legal conclusion.

21 JUDGE WOODRUFF: Can you repeat the  
22 question?

23 MR. MICHEEL: Kellene, could you just read  
24 it back?

25 THE REPORTER: "Question: Is it possible

1     that imposing an accumulation of prior transactions  
2     without an accounting order in place may be viewed as  
3     retroactive ratemaking?"

4                   JUDGE WOODRUFF:  The objection was that  
5     that was calling for a legal conclusion.

6                   MR. BYRNE:  Yes, your Honor.  Didn't you  
7     just sustain the same objection?

8                   JUDGE WOODRUFF:  I did, and I believe this  
9     is essentially the same type of question, so I will again  
10    sustain the objection.

11  BY MR. MICHEEL:

12               Q.     Let me ask you this:  Why shouldn't we go  
13    back to January 1, '04 or to the last UE rate case?

14               A.     This type of treatment would be outside --  
15    the Staff's proposed treatment would be outside of a  
16    current test year and update period, so it would have been  
17    inappropriate.

18               Q.     So the important demarcation that you make  
19    in this case is the test year and update period; is that  
20    correct?

21               A.     That's correct.

22               Q.     And so you think there's something that --  
23    why don't you explain to me what makes that different.  
24    Enlighten me.  Or why is that important?

25               A.     The period of 2004 is not a period that the

1 Staff or the parties studied to develop the proper  
2 relationship for revenues, expenses and rate base to  
3 determine the company's cost of service.

4 Q. Are there any other revenues that we should  
5 reach back into to the 2005 time period and capture or any  
6 other costs?

7 A. 2005?

8 Q. Yeah.

9 A. Well, part of 2005's in the test year,  
10 Mr. Micheel.

11 Q. Should we specifically give recovery for  
12 those?

13 A. 2005 is part of the analysis period to  
14 establish the relationship.

15 Q. And I'm asking you about specific costs,  
16 Mr. Meyer. Are there specific costs after July 1, 2005  
17 that we should recover?

18 A. I believe that becomes a basis for our --

19 Q. That wasn't my question. My question is,  
20 are there specific costs that we should recover?

21 A. Would you like to give me an example?

22 Q. Sure. Should we recover the specific costs  
23 for SO2 emission allowances?

24 A. I wasn't aware there were any costs.

25 Q. Let me ask you this: Do you know of any

1 reason why UE has failed to recover through existing  
2 electric rates the SO2 premiums it paid as part of coal  
3 prices from July 1st, 2005 to December 31st, 2006?

4 A. I did not do an analysis for that.

5 Q. Well, let me ask you this: As long as  
6 rates are in place, would you agree with me, as a matter  
7 of regulatory practice, it's assumed that the company is  
8 meeting its costs and expenses?

9 A. Could you repeat that question?

10 Q. Sure. Let me ask you this: As long as  
11 rates are in place, isn't it assumed that the company's  
12 meeting all of its costs and expenses and getting an  
13 opportunity to earn a return?

14 A. I wouldn't agree with that.

15 Q. You wouldn't agree with that?

16 A. No.

17 Q. Okay. So you think it means that the  
18 company's not meeting its reasonable expenses or getting a  
19 reasonable return?

20 A. I thought your question asked me that  
21 unless the company has made a specific action, that it's  
22 earning its authorized return, and I don't agree with  
23 that.

24 Q. No. My question was, as long as the  
25 company doesn't come in for a rate increase, it's assumed



1 it's covering its expenses and getting an opportunity to  
2 earn a reasonable return; isn't that correct?

3 A. It's getting an opportunity to earn a  
4 reasonable return. I'll agree with that.

5 Q. And that's all rates are authorized to do  
6 is give them an opportunity to earn a reasonable return.  
7 It's not a guarantee; is that correct?

8 A. I would agree with that.

9 Q. Now, your netting process that you talk  
10 about on page 3, line 8 of your surrebuttal testimony for  
11 the historical period July 1, '05 through December 31st,  
12 '06 yields, and let me -- we may have to go in-camera  
13 here. Is that number still HC, sir, the number there that  
14 appears on line 8?

15 A. I can't make that determination.

16 MR. BYRNE: Which testimony, Mr. Micheel?

17 MR. MICHEEL: I am in his surrebuttal  
18 testimony, and let me just show you this number.

19 Okay. I've been told by the company that  
20 the 20.4 million and 13.6 million are no longer highly  
21 confidential; is that correct?

22 MR. BYRNE: Correct.

23 THE WITNESS: Okay. I'll agree with you.

24 BY MR. MICHEEL:

25 Q. Your netting process for historical period

1 July 1st, '05 through December 31st, '06 yields 20.4  
2 million in net allowance sales gains; is that correct?

3 A. That's correct.

4 Q. What was the gross amount of allowance  
5 sales? I think to speed things along, if you look at  
6 Mr. Cassidy's testimony, he indicates -- and I'm assuming  
7 that Mr. Cassidy's numbers are no longer HC?

8 A. I don't know. I don't know that either.

9 MR. MICHEEL: Are Cassidy's numbers HC,  
10 Mr. Byrne, on this issue?

11 MR. BYRNE: If they're historic, they  
12 should not be.

13 THE WITNESS: Mr. Micheel, I don't have a  
14 copy of Mr. Cassidy's testimony.

15 MR. BYRNE: The historic numbers are not  
16 HC.

17 MR. MICHEEL: Thank you. May I approach  
18 the witness?

19 JUDGE WOODRUFF: You may.

20 BY MR. MICHEEL:

21 Q. Let me ask you this: Have you reviewed  
22 Mr. Cassidy's testimony?

23 A. It's been a while.

24 Q. Well, you both are on this issue, correct?  
25 Let me ask you this: What's the gross amount of allowance

1 sales in Mr. Cassidy's testimony appearing on page 12,  
2 line 12? Is it 35.8 million?

3 A. That's what it says, Mr. Micheel.

4 Q. Do you have any reason to doubt the  
5 accuracy of Mr. Cassidy's testimony?

6 A. I do not.

7 Q. What was the amount of SO2 premiums  
8 detracted from allowance sales to get to the net amount at  
9 line 11 on your testimony?

10 A. 15.4.

11 Q. At line 13 on page 3 of your testimony, you  
12 say that the Staff would use the net allowance gain to  
13 help pay for storm costs shown at line 14, leaving  
14 \$13.6 million amount of remaining costs.

15 A. I'm sorry. I thought you asked me what the  
16 premiums were.

17 Q. I did. I did. And you said 15.4, correct?

18 A. Which leaves 20.4.

19 Q. Okay. And now I moved on to another  
20 question. I'm just trying to speed this along. We've  
21 been here a long time.

22 A. I sure have.

23 Q. Now I'm back on page 3, line 13 of your  
24 surrebuttal testimony. You tell me when you're there,  
25 sir.

1           A.       I'm here.

2           Q.       Okay. You say that the Staff would use the  
3 net an lungs gains to help pay for the storm costs shown  
4 at line 14, leaving 13.6 million of the remaining cost to  
5 be amortized over five years; is that correct?

6           A.       That's correct.

7           Q.       Did you read Mr. Baxter's rebuttal  
8 testimony?

9           A.       I did.

10          Q.       Did you note where he offered to offset all  
11 of the expenses for the 2006 storms with allowance sales,  
12 leaving no residual amount to be amortized?

13          A.       I did, and we would -- if I could expound.

14          Q.       No. I just want to know if you read that.  
15 Isn't Mr. Baxter's rebuttal offer with the full offset  
16 much cheaper for customers than your approach leaving  
17 dollars to be amortized?

18          A.       It is, and we would accept the company's  
19 proposal for that portion.

20          Q.       Does it surprise you that Ameren now likes  
21 Staff's approach which produces higher revenue  
22 requirements?

23          A.       I think you should ask the company that.

24          Q.       No. I'm asking you, are you surprised?

25          A.       I'm not going to speculate about the

1 company's strategy.

2 Q. I'm not asking about the company's  
3 strategy. I'm asking you, are you surprised that UE now  
4 likes your approach which produces higher revenue  
5 requirements?

6 A. Mr. Micheel, what I think I said is I also  
7 heard them say they would use the SO2 premiums against all  
8 storm costs in 2006, and we've accepted that.

9 Q. Let me ask you this: Does the Staff's  
10 approach vis-a-vis the approach that Mr. Baxter talked  
11 about in his rebuttal testimony, does that produce higher  
12 revenue requirements than the company's approach?

13 A. I think I already answered that,  
14 Mr. Micheel.

15 Q. Why don't you do it one more time just for  
16 me?

17 A. Yes.

18 MR. MICHEEL: Thank you.

19 JUDGE WOODRUFF: Thank you, Mr. Micheel. I  
20 have no questions from the Bench, so there's no need for  
21 recross. Any redirect?

22 MR. MEYER: Nothing, your Honor.

23 JUDGE WOODRUFF: All right. Mr. Meyer, you  
24 can step down. I believe the next witness is --

25 MR. MEYER: Actually, at this point, I

1 don't believe Mr. Meyer is testifying again either, so  
2 we'd like to go ahead and offer Greg Meyer's direct  
3 previously marked as 225 and surrebuttal 226HC.

4 JUDGE WOODRUFF: 225 and 226HC, and I  
5 assume there's an NP of surrebuttal as well, is there not?

6 MR. MEYER: I assume so. It's not on this  
7 list.

8 JUDGE WOODRUFF: 225 and 226 have been  
9 offered. Any objection to their receipt?

10 (No response.)

11 JUDGE WOODRUFF: Hearing none, they will be  
12 received.

13 (EXHIBIT NOS. 225 AND 226NP AND HC WERE  
14 RECEIVED INTO EVIDENCE.)

15 JUDGE WOODRUFF: And Mr. Brosch is coming  
16 back to the stand.

17 MR. MICHEEL: Yes. State would call  
18 Mr. Brosch on the issue of SO2 allowances and tender him  
19 for cross.

20 JUDGE WOODRUFF: Thank you. Does any party  
21 wish to cross Mr. Brosch?

22 I see AmerenUE.

23 MR. BYRNE: Just me. I'm the only one.

24 JUDGE WOODRUFF: Appears to be.

25 MR. BYRNE: The only one who hasn't

1 learned.

2 MICHAEL BROSCHE testified as follows:

3 CROSS-EXAMINATION BY MR. BYRNE:

4 Q. Good afternoon, Mr. Brosch.

5 A. Good afternoon.

6 Q. I only have a couple of questions. My  
7 understanding of your proposal is you are proposing to  
8 include an amount of SO2 revenues in base rates; is that  
9 correct?

10 A. That's correct. The amount is shown on  
11 State Joint Accounting Schedule C-8, and then there's some  
12 accounting that goes with that.

13 Q. Okay. What's the amount, if you don't mind  
14 telling me?

15 A. Sure.

16 Q. I just didn't bring it up here.

17 A. I have an average prior year emission  
18 allowance sales of 20,653,000 that I compare to the amount  
19 included in the company's filing of, call it 3.9 million  
20 for an adjustment of 16.7 million, which allocates  
21 jurisdictionally to 16.5 Missouri retail.

22 Q. Is that taking out the transmission, the  
23 FERC jurisdiction?

24 A. The FERC requirements customers, yeah.

25 Q. And I just have a couple questions. One

1 is, have you done any analysis of AmerenUE's need to use  
2 emission allowances for environmental compliance purposes  
3 in the future?

4 A. I have reviewed materials prepared by the  
5 company, but I've not conducted any independent analysis  
6 of that. The adjustment that I sponsor looks to the  
7 historical actual sales experience.

8 Q. So having not done any analysis, is it  
9 possible that in future years AmerenUE might not be able  
10 to sell that amount of allowances because it might need  
11 them for environmental compliance purposes?

12 A. That's possible. In fact, I expect some  
13 variation and have recommended deferral accounting to  
14 track actual against the level I recommend.

15 Q. Okay. And did you do any analysis to  
16 examine how AmerenUE's SO2 allowance inventory compares  
17 with the amount of SO2 allowances it's permitted to sell  
18 by the Commission's order? Did you do any analysis that  
19 shows, here's how many they've got left, here's how many  
20 they can still sell under the Commission's order?

21 A. No. I was aware generally of the  
22 Commission's order, and conducted a review of historical  
23 sales levels, but I wouldn't call what I did an analysis.  
24 I didn't put pen to paper and calculate a percentage sold,  
25 for example.



1           Q.       So for all you know, we may not be able to  
2     sell any or hardly any allowances in the future under the  
3     Commission's order? Is that fair to say, you don't know?

4           A.       It's my understanding that there have been  
5     some continuing sales, but I've not conducted a  
6     prospective analysis to know what the capabilities are in  
7     the future.

8           Q.       So you don't know in the future; is that  
9     fair to say?

10          A.       Certainly not with any precision, which is  
11     why the accounting tracking was recommended.

12                   MR. BYRNE: Thank you, Mr. Brosch.

13                   JUDGE WOODRUFF: Thank you. I have no  
14     questions from the Bench, so no need for recross. Any  
15     redirect?

16                   MR. MICHEEL: Just a little bit.

17     REDIRECT EXAMINATION BY MR. MICHEEL:

18          Q.       Mr. Byrne asked you some questions about  
19     future SO2 sales. Do you recall those questions?

20          A.       I do.

21          Q.       Could you explain the purpose for the  
22     regulatory tracking that we have and what the result would  
23     be if we had a regulatory tracking and the company sold  
24     less than the amount built into rates or more than the  
25     amount built into rates?

3560

9                               On the other hand, if actual sales turn out  
10   to be less than the 20 million recommended level, there  
11   would be a regulatory asset balance created that the  
12   company could and I expect would assert a right to --  
13   opportunity, right to recover, and rightfully so.

14 Q. So your proposal attempts essentially to  
15 hold Union Electric harmless, if you will, and the  
16 ratepayers harmless, if you will?

17                    A.        It does, yes.

18 MR. MICHEEL: That's all I have. Thank  
19 you.

20 JUDGE WOODRUFF: Thank you. Mr. Brosch,  
21 you can step down.

22 THE WITNESS: Thank you.

23 JUDGE WOODRUFF: The next witness then I  
24 believe is Mr. Kind.

25 JUDGE WOODRUFF: Welcome back, Mr. Kind.

1 You are still under oath as well.

2 MR. KIND: Thank you.

3 MR. MILLS: I believe Mr. Kind does have  
4 some corrections to his testimony.

5 RYAN KIND testified as follows:

6 MR. KIND: Yes. I have just two minor  
7 corrections to my direct testimony that was filed on  
8 December 15th, 2006. They're both in the area concerning  
9 SO2 allowances. The first one appears on page 19 at  
10 line 18. The second word in that line result should be  
11 deleted, so that it would read just could occur because  
12 instead of could result occur.

13 And the other correction that I have is on  
14 page 20, at line 16, and there the fifth word in that line  
15 is may, and the sixth word in that line is depleting, and  
16 an additional word, the word be should be inserted between  
17 the fifth and sixth words so that it would read, another  
18 indication that UE may be depleting. Those are all the  
19 corrections.

20 JUDGE WOODRUFF: Okay. Does anyone wish to  
21 cross-examine this witness?

22 I don't see any hands going up. I don't  
23 have any questions from the Bench, so no need for recross  
24 or redirect.

25 And, Mr. Kind, you can step down.

1 THE WITNESS: Thank you.

2 JUDGE WOODRUFF: And I believe Mr. Kind was  
3 the last witness on the SO2 issues. Anything else anyone  
4 wants to bring up before we finish for the day?  
5 Mr. Mills?

6 MR. MILLS: Really just one sort of  
7 housekeeping matter. When Mr. Voytas left the stand,  
8 there was an issue that he took up subject to check and we  
9 never heard back from him on that issue.

10 JUDGE WOODRUFF: Do you recall precisely  
11 which that was?

12 MR. MILLS: It had to do with the Metro  
13 East case, and Mr. Voytas testified that he recalled,  
14 subject to check, that Mr. Kind testified to a certain  
15 position in this case, and he has never come back to tell  
16 us whether or not that was, in fact, the case.

17 JUDGE WOODRUFF: Any response from Ameren?

18 MR. BYRNE: No.

19 JUDGE WOODRUFF: Mr. Mills, do you seek  
20 some sort of relief or --

21 MR. MILLS: Well, I think either the answer  
22 that says I think he said this subject to check should be  
23 stricken or he should be -- I don't -- it can be done in  
24 writing or something, but something needs to clear up the  
25 record as to whether or not he was right, because he

1 indicated on the record that he wasn't sure and he was  
2 supposed to be checking. And so far as we know, we  
3 haven't seen the results of that check.

4 JUDGE WOODRUFF: Is Ameren going to be  
5 providing anything else?

6 MR. LOWERY: I guess the answer I have is,  
7 I don't know for sure. Mr. Mills asked the questions.  
8 The witness gave an answer. The witness either was right  
9 or wrong about that answer, but I'm just not sure that  
10 there's any procedural mechanism that says a witness has  
11 to go do research later. The witness recalled what he  
12 recalled at the time.

13 MR. MILLS: The whole subject to check  
14 thing is kind of problematic because it implies that a  
15 check will be done and that somehow the record will be  
16 cleared up with the results of that check. Otherwise the  
17 question -- I mean, the answer really boils down to, I  
18 don't really know, and it appears to have a degree of  
19 confidence that it really shouldn't have, because, you  
20 know, it should have been checked on, and I may be -- I  
21 may not be recalling this correctly, but I don't think it  
22 was one of my questions. I thought it was on redirect.

23 JUDGE WOODRUFF: I don't recall the  
24 particulars of it.

25 MR. MILLS: Either his answer was clearly

1 said subject to check and we talked about it on the record  
2 at the time that he was going to check over the lunch hour  
3 and I don't think we ever heard back from him.

4 MR. BYRNE: Your Honor, seems like in these  
5 cases, years ago there used to be constant answers that  
6 were subject to check and eventually the Commission just  
7 said, we don't want to --

8 JUDGE WOODRUFF: Yes. You are exactly  
9 right. As Mr. Mills will recall there was a great deal of  
10 discussion up on the ninth floor about that at certain  
11 times, and I've kind of let it go in this case, and  
12 perhaps I shouldn't have.

13 Mr. Mills, in this particular case, once  
14 the transcript comes out, and it may already be out -- I'm  
15 not sure which day that was. Several more transcripts  
16 have come out today. If you wish to identify the specific  
17 question and answer and bring them back to the  
18 Commission's attention, I'll allow you to do that.

19 MR. MILLS: Okay. I will do so.

20 JUDGE WOODRUFF: All right. Anything else  
21 anyone wants to bring up?

22 I will tell you that I think I mentioned it  
23 this morning that the Commission has looked at the  
24 possibility of having an on-the-record presentation on  
25 Wednesday, and I anticipate issuing an Order to schedule

1     that at the specific time on Wednesday to deal with all  
2     the stipulations that have been filed, and I understand  
3     there's likely to be another one filed today.

4                   MR. BYRNE: Your Honor, there is. Staff  
5     has circulated what's been referred to as a Tier 2  
6     settlement. I guess I would encourage the parties, since  
7     we're breaking early today, maybe to take a few minutes  
8     and see if we can get that signed and filed, since we have  
9     a little extra time today.

10                  JUDGE WOODRUFF: I'm sure that would be  
11     helpful. Anything else?

12                   (No response.)

13                  JUDGE WOODRUFF: Then we are adjourned  
14     until 8:30 tomorrow morning.

15                   WHEREUPON, the hearing of this case was  
16     adjourned until March 27, 2007.

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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
 ) ss.  
3 COUNTY OF COLE )

4 I, Kellene K. Feddersen, Certified  
5 Shorthand Reporter with the firm of Midwest Litigation  
6 Services, and Notary Public within and for the State of  
7 Missouri, do hereby certify that I was personally present  
8 at the proceedings had in the above-entitled cause at the  
9 time and place set forth in the caption sheet thereof;  
10 that I then and there took down in Stenotype the  
11 proceedings had; and that the foregoing is a full, true  
12 and correct transcript of such Stenotype notes so made at  
13 such time and place.

14 Given at my office in the City of  
15 Jefferson, County of Cole, State of Missouri.

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17 Kellene K. Feddersen, RPR, CSR, CCR  
Notary Public (County of Cole)  
18 My commission expires March 28, 2009.

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