

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Evidentiary Hearing  
March 19, 2010  
Jefferson City, Missouri  
Volume 28

In the Matter of Union Electric )  
Company d/b/a AmerenUE's Tariffs) )  
To Increase Its Annual Revenues )File No. ER-2010-0036  
For Electric Service )

MORRIS L. WOODRUFF, Presiding,  
CHIEF REGULATORY LAW JUDGE.

ROBERT M. CLAYTON III, Chairman,  
JEFF DAVIS,  
ROBERT S. KENNEY  
COMMISSIONERS.

REPORTED BY:  
PAMELA FICK, RMR, CCR # 447, CSR  
MIDWEST LITIGATION SERVICES

## 1 APPEARANCES:

2 THOMAS BYRNE, Attorney at Law  
3 WENDY K. TATRO, Attorney at Law  
4 P.O. Box 66149  
5 1901 Chouteau Avenue  
6 St. Louis, MO 63103  
7 (314)554-2237

8 JAMES B. LOWERY, Attorney at Law  
9 Smith Lewis, LLP  
10 111 South 9th Street, Suite 200  
11 P.O. Box 918  
12 Columbia, MO 65205-0918  
13 (573)443-3141  
14 lowery@smithlewis.com

15 JAMES M. FISCHER, Attorney at Law  
16 Fischer & Dority  
17 101 Madison, Suite 400  
18 Jefferson City, MO 65101  
19 (573)636-6758  
20 jfischerpc@aol.com

21 FOR: Union Electric Company,  
22 d/b/a AmerenUE.

23 MARK W. COMLEY, Attorney at Law  
24 Newman, Comley & Ruth  
25 601 Monroe, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
(573)634-2266  
comley@ncrpc.com

FOR: Charter Communications, Inc.

SHELLEY A. WOODS, Assistant Attorney  
General  
SARAH MANGELSDORF, Assistant Attorney  
General  
P.O. Box 899  
Supreme Court Building  
Jefferson City, MO 65102  
(573)751-3321  
shelley.woods@ago.mo.gov  
sarah.mangelsdorf@ago.mo.gov

FOR: Missouri Department of Natural

1 DIANA VUYLSTEKE, Attorney at Law  
2 MARK LEADLOVE, Attorney at Law  
3 BRENT ROAM, Attorney at Law  
4 CAROL ILES, Attorney at Law  
5 Bryan Cave, LLP  
6 211 North Broadway, Suite 3600  
7 St. Louis, MO 63102  
8 (314)259-2543  
9 dmvuyksteke@bryancave.com

6 EDWARD F. DOWNEY, Attorney at Law  
7 Bryan Cave, LLP  
8 221 Bolivar Street, Suite 101  
9 Jefferson City, MO 65101-1575  
10 (573)556-6622

9 FOR: Missouri Industrial Energy  
10 Consumers.

11 DAVID WOODSMALL, Attorney at Law  
12 Finnegan, Conrad & Peterson  
13 428 East Capitol, Suite 300  
14 Jefferson City, MO 65101  
15 (573) 635-2700  
16 dwoodsmall@fcplaw.com

14 FOR: MEUA.

16 LELAND B. CURTIS, Attorney at Law  
17 Curtis, Oetting, Heinz, Garrett &  
18 O'Keefe  
19 130 South Bemiston, Suite 200  
20 Clayton, MO 63105-1913  
21 (314)725-8788  
22 clumley@lawfirmemail.com

20 FOR: Municipal Group.

21 MICHAEL C. PENDERGAST, Attorney at Law  
22 Laclede Gas Company  
23 720 Olive Street  
24 St. Louis, MO 63101  
25 (314)342-0532

25 FOR: Laclede Gas Company.

1 LISA C. LANGENECKERT, Attorney at Law  
2 Sandberg, Phoenix & von Gontard  
3 515 North 6th Street  
4 St. Louis, MO 63101  
5 (314)641-5158  
6 Llangeneckert@sandbergphoenix.com

7 FOR: Missouri Energy Group.

8 JOHN COFFMAN, Attorney at Law  
9 871 Tuxedo Boulevard  
10 St. Louis, MO 63119  
11 (573)424-6779

12 FOR: AARP. Consumers Council.

13 DOUGLAS HEALY, Attorney at Law  
14 Healy & Healy  
15 939 Boonville, Suite A  
16 Springfield, MO 65802  
17 (417)864-8800

18 FOR: Missouri Joint Municipal Electric  
19 Utility Commission.

20 THOMAS R. SCHWARZ, JR., Attorney at Law  
21 Blitz, Bardgett & Deutsch  
22 308 East High Street, Suite 301  
23 Jefferson City, MO 65101-3237  
24 (573)634-2500

25 FOR: Missouri Retailers Association.

LEWIS R. MILLS, JR., Public Counsel  
Office of the Public Counsel  
P.O. Box 2230  
200 Madison Street, Suite 650  
Jefferson City, MO 65102-2230  
(573)751-4857

FOR: Office of the Public Counsel  
and the Public.

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

KEVIN THOMPSON, Chief Staff Counsel  
STEVEN DOTTHEIM, Chief Deputy Counsel  
NATHAN WILLIAMS, Deputy Counsel/Electric  
JENNIFER HERNANDEZ, Legal Counsel  
SARAH KLIETHERMES, Legal Counsel  
JAIME OTT, Legal Counsel  
SAM RITCHIE, Legal Counsel  
ERIC DEARMONT, Legal Counsel  
Missouri Public Service Commission  
P.O. Box 360  
200 Madison Street  
Jefferson City, MO 65102  
(573)751-3234

FOR: Staff of the Missouri Public  
Service Commission.

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

2                   JUDGE WOODRUFF: Let's come to order,  
3 please. Good morning, everyone. Welcome to day five  
4 of the AmerenUE rate case hearing. We've got a lot  
5 of stuff to do today, so we want to get started.

6                   I believe the first thing we said we  
7 were going to do today was deal with a motion by AARP  
8 to ask the Commission to take administrative notice  
9 of some previous -- previously filed testimony from  
10 an earlier rate case for Ameren.

11                   There -- when they filed this testimony  
12 a few weeks ago, AARP asked the Commission to take  
13 notice of this, and then on March 8th, Ameren filed a  
14 motion to deny that request. So for purposes of  
15 argument today, I'm going to ask AARP to go first.  
16 We'll give the Company a chance to respond and  
17 anybody else that wants to chime in at that point,  
18 and then we'll give AARP the last word on that. And  
19 I do want to make this brief. Keep it to five  
20 minutes, Mr. Coffman.

21                   MR. COFFMAN: That shouldn't be a  
22 problem. Can I sit here or would you like --

23                   JUDGE WOODRUFF: You can sit there.

24                   MR. COFFMAN: Okay. When the Commission  
25 requested additional testimony on the issue of the  
26

1 fuel adjustment clause and its structure -- potential  
2 structure, AARP was very interested and did what it  
3 could to try to present some witnesses the -- but the  
4 difficulty with resources and with scheduling,  
5 frankly, was -- was an impediment to finding someone  
6 who could be available on these dates to be here in  
7 person. But we thought that at the least, we would  
8 request that the Commission acknowledge the  
9 testimonies that had been filed and accepted in a  
10 previous case on precisely those same issues.

11           And it appears that AmerenUE has also  
12 done a similar thing in that they are requesting or  
13 will be requesting admission of testimony of  
14 witnesses in a previous rate case on this very topic  
15 attached to the prefiled testimony of their  
16 witnesses.

17           And they, in response to the  
18 Commission's order, were -- were able to file  
19 testimony from, depending on how you count it, seven,  
20 eight or nine witnesses on the topic. And the -- and  
21 several previous testimonies are attached to their --  
22 to those testimonies from the previous 2008 case.

23           In five instances, they have request --  
24 they have attached to the prefiled testimony  
25 witnesses -- testimony from witnesses who will not be  
26

1 here and will not be subject to cross-examination.  
2 Those specifically, the testimony of Marty Lyons is  
3 attached to the prefiled testimony of Lynn Barnes.  
4 The testimony of a Mr. Schukar has been attached to  
5 the testimony of Jaime Haro. The testimony of Scott  
6 Glother is attached to the testimony of James  
7 Massmann. And then I think in three instances they  
8 have attached testimonies from the witness who's  
9 actually sponsoring the testimony.

10                   And my clients don't necessarily have a  
11 problem with that. We believe the Commission should  
12 have a full record and several options in front of us  
13 when it reviews this very important issue. We would  
14 simply ask that the Commission take administrative  
15 notice of testimonies that -- that -- that they had  
16 offered and had been admitted into evidence in  
17 previous cases.

18                   We believe that the Commission is  
19 permitted under statute to acknowledge that it take  
20 judicial notice or administrative notice of its own  
21 documents in its -- in its records, and it's  
22 particularly appropriate when it is essentially the  
23 same issue and the very same utility.

24                   As you know, these cases that we do, we  
25 open -- open up every issue each time we have a  
26



1 general rate case, but they do have an ongoing nature  
2 and they do -- you know, it's essential, or important  
3 at least, to look back at where we -- where we have  
4 come from. And I don't have citations with me, but I  
5 do recall several instances where the Commission has  
6 taken judicial notice of the filings and of the  
7 testimonies that have been made in previous cases for  
8 that particular utility, at least in merger cases and  
9 I believe a previous water case.

10           Often that has been a motion or an order  
11 from the Commission to take judicial notice of all  
12 the testimony on a particular issue or even all the  
13 testimony in a previous case that was related to  
14 the -- the current case. And that -- the -- the  
15 evidentiary status of something that was taken  
16 judicial notice of is, I think, a -- perhaps a  
17 different character than -- than the evidence that's  
18 taken of a witness who's live and subject to  
19 cross-examination.

20           But I think it's something that is  
21 available to an administrative agency and would ask  
22 the Commission to -- to take judicial notice of the  
23 testimony -- essentially, it was the testimony of  
24 Nancy Brockway. There was previous testimony from  
25 Ron Binz. He had to leave, and -- when he was

1 appointed to be Chairman of the Colorado Public  
2 Service Commission, and Nancy Brockway did adopt his  
3 testimony and so that's available.

4           And we would argue that the -- that  
5 there would be some injustice if we are not allowed  
6 to have those documents at least acknowledged or have  
7 notice taken of them in this case because the  
8 positions of our clients are not in the testimony or  
9 pleadings of any other party; that is, as I  
10 understand, no other party is arguing that there be  
11 no fuel adjustment clause or perhaps that's Public  
12 Counsel's position. But as to the sharing mechanism,  
13 there are parties who are arguing for an 80/20  
14 sharing and perhaps a 70/30 sharing.

15           Our position in this case is a 50/50  
16 sharing or some variation of that regard, and if our  
17 motion is denied, we feel as if we'll be somewhat  
18 prejudiced, given the fact that the other parties have  
19 something to support their -- their other positions.

20           JUDGE WOODRUFF: All right. Response  
21 from the Company?

22           MR. BYRNE: Yes, your Honor. I guess I  
23 have three points I'd like to make. First of all, as  
24 you can see from our pleading, we believe that,  
25 clearly, under administrative law and under Missouri

1 administrative law, you are entitled to take  
2 administrative notice of facts. You can take  
3 administrative notice that water freezes at  
4 32 degrees, you can take administrative notice of the  
5 fact that AmerenUE's headquarters is in St. Louis,  
6 but you can't take administrative notice of opinions.

7           And the testimony that's been offered by  
8 AARP is clearly opinions. It's Ms. Brockway and  
9 Mr. Binz's view of what is an appropriate FAC, what  
10 an appropriate sharing -- sharing mechanism is.  
11 Those are all opinions. They are not facts.  
12 Clearly, under Missouri law, you can't take  
13 administrative notice of that. And so that's the  
14 first reason. And then this Commission has applied  
15 that law in past cases and refused to take  
16 administrative notice of people's opinions who are  
17 not here.

18           I guess secondly, I would point out that  
19 there are good reasons for that -- for that rule.  
20 When a -- when a person is expressing their opinion,  
21 the credibility of that person is very important.  
22 It's difficult for the Commission to judge the  
23 credibility and your Honor to judge the credibility  
24 of a witness when they're -- when they're not here.

25           We -- you know, we were reluctant, as  
26

1 you may recall, to even have Mr. Lawton testify by  
2 video deposition, but a witness not showing up at all  
3 is much, much worse. You know, they -- they --  
4 their -- the veracity of their opinion can't be  
5 tested by cross-examination. For example, Mr. Binz,  
6 as -- as AARP's pleading mentioned, is the -- is  
7 the -- that he's the Chair of the Colorado  
8 Commission. Colorado has an FAC.

9           If he -- if he were to appear, I might  
10 ask him how his opinion may have changed after being  
11 in charge of a State Commission where there's FACs in  
12 effect. Well, we'll never know because he's not  
13 here. He may -- he may endorse FACs now that he's  
14 spent years on the Commission where they have FACs.  
15 Same with Ms. Brockway, she may have changed her  
16 opinion about FAC in the ensuing three years, but  
17 we'll never know because she hasn't -- she's not  
18 showing up.

19           I guess the third point I would make is  
20 these opinions are irrelevant, your Honor, because  
21 they are based on a fuel adjustment clause from three  
22 years ago that is different than the one that we have  
23 before us today. There wasn't a sharing mechanism,  
24 we didn't have any experience with a sharing  
25 mechanism, and so the opinions of those experts

1 expressed on that previous FAC three years ago are  
2 completely irrelevant to this case at this time.

3 I would note with respect to the -- we  
4 do have some testimony, as Mr. Coffman pointed out,  
5 that's attached to other witnesses' testimony, but  
6 all that testimony is being adopted by a witness.  
7 There will be a witness here that can be  
8 cross-examined about any of it.

9 Some of the witnesses are the same as  
10 the ones that filed testimony before, but in any  
11 event, they're -- if -- if not, it's the person who  
12 took their -- the job of that witness and they will  
13 be sponsoring that testimony and they will stand for  
14 cross-examination on that testimony. Thank you.

15 JUDGE WOODRUFF: Thank you. Anyone else  
16 want to respond? Mr. Mills?

17 MR. MILLS: Just briefly. Judge, the  
18 issue came up in this case in a somewhat unusual way.  
19 It was raised by the Commission rather than the  
20 parties, and it was raised relatively late in the  
21 proceeding. And because of that, the procedure has  
22 given an advantage to a party such as UE who can  
23 quickly call upon a stable of seven or eight people,  
24 or -- or more than that if you count the people who  
25 originally filed the testimony and the people who  
26

1 have now adopted it, and get testimony in on a matter  
2 of a few weeks' notice.

3                   And I think by -- by virtue of the  
4 Commission having put the parties in that position,  
5 that the Commission ought to allow some leeway for  
6 parties who don't have that luxury, who don't have  
7 the resources to simply say to seven or eight  
8 employees, you know, drop what you're doing, get some  
9 testimony ready in the next couple of weeks on this  
10 issue.

11                   And with respect to the question of, you  
12 know, judging the credibility of the witness -- and  
13 I'm going to discount what -- what -- what Mr. Byrne  
14 said about Ms. Brockway adopting Mr. Binz's testimony  
15 because I think that -- I think he's doing the exact  
16 same thing. So I don't know that we really need to  
17 care so much about what Mr. Binz said because  
18 Ms. Brockway adopted his testimony in all aspects.

19                   And the important thing is that  
20 Ms. Brockway was here. Ms. Brockway was before the  
21 Commission, Ms. Brockway was subject to  
22 cross-examination by the Company to -- to a great  
23 extent. Ms. Brockway stood for a lot of questions  
24 from the bench in the case before this. And I think  
25 that counts for a lot to counter Mr. Byrne's argument  
26

1 about judging the credibility of a witness. Thank  
2 you.

3 JUDGE WOODRUFF: Staff want to jump in?

4 MR. WILLIAMS: Judge, I think the other  
5 parties have squarely put the issue before you and  
6 Staff doesn't have anything to add to the argument at  
7 this time.

8 JUDGE WOODRUFF: Mr. Coffman, any  
9 response?

10 MR. COFFMAN: Yes, I would agree with  
11 Public Counsel's comments, and I would just add if  
12 the Commission is struggling with this or looking for  
13 some way to find some middle ground here, I think we  
14 would be agreeable to the Commission acknowledging  
15 that judicial notice is not exactly the same thing as  
16 other evidence.

17 We would also be willing to see -- and  
18 I'm -- I'm not sure if it would be possible to get  
19 perhaps an affidavit from Ms. Brockway, contemporary  
20 affidavit stating that -- acknowledging what portions  
21 of the testimony she still agrees with. I don't  
22 think she can't be here -- or I know she can't be  
23 here, but I think that might be a possibility.

24 And then lastly, I would just urge that  
25 the Commission be consistent in this -- in this  
26

1 decision on this with regard to the five witnesses  
2 that AmerenUE is attempting to get in previous  
3 testimonies for as attached to other prefiled  
4 testimonies.

5 JUDGE WOODRUFF: All right.

6 MR. BYRNE: Can I respond to Mr. Mills?

7 JUDGE WOODRUFF: Briefly.

8 MR. BYRNE: Briefly. First of all, I  
9 strongly disagree with Mr. Mills implying that the  
10 fact that this FAC issue was raised late in the case  
11 gave AmerenUE an advantage. I assure you we do not  
12 believe that it -- that it did put us -- we felt at  
13 a -- at a big disadvantage when we thought there was  
14 no FAC issue in the case and then all of a sudden at  
15 the 12th hour it was and we had four days to respond  
16 to testimony. So I disagree with that.

17 And I guess secondly, I would just say  
18 you shouldn't be struggling with this issue. It's  
19 black letter Missouri law that opinion testimony is  
20 not allowed.

21 JUDGE WOODRUFF: Mr. Coffman, last word?

22 MR. COFFMAN: Two last words. You know,  
23 this is rather an unusual thing where the Commission  
24 has solicited something from the parties at such a  
25 late date, and -- and I would argue that it is - it  
26



1 does put parties at an unfair advantage who are not  
2 parties who may turn around and request that  
3 ratepayers recover the expense of their witnesses  
4 through rate case expense.

5                   And then lastly, I'd argue that the --  
6 the filings that we're asking that the Commission  
7 take judicial notice from a past Ameren case are  
8 relevant, they're not -- they're certainly not  
9 completely irrelevant. The points are with regard to  
10 generically what is a good fuel adjustment clause and  
11 what is the proper structure if you do adopt one,  
12 not -- the testimony's not really focused on a  
13 current fuel cost or current issues in the test year  
14 of this case. They are of a more broader policy  
15 matter and we do believe are nearly identical to the  
16 questions the Commission is asked and are  
17 sufficiently interwoven into this case. That's all I  
18 have.

19                   JUDGE WOODRUFF: All right. Well, I'm  
20 ready to make a ruling from the bench on this, then.  
21 First of all, for Mr. Coffman's suggestion that it's  
22 middle ground, I don't think there is any middle  
23 ground here either. The evidence is competent and  
24 substantial that the Commission can rely upon or it's  
25 not, and I don't want to clutter up the record with  
26

1 partial -- partially competent evidence. That would  
2 only be inviting reversal on appeal.

3 I will say that I think the concept of  
4 administrative notice is broader than what the  
5 Company has suggested. In fact, there was a decision  
6 issued by the Western District Court of Appeals just  
7 last week, Moore versus Missouri Dental Board, which  
8 actually very clearly sets out what the standards are  
9 for taking administrative review, and suggests that  
10 the Commission and administrative agencies in  
11 general, as well as courts for that matter, can take  
12 administrative notice of documents that are in their  
13 records.

14 But the bigger problem with -- with  
15 what -- what the AARP is proposing is the problem of  
16 hearsay and the fact that this testimony is about  
17 four years old. Clearly, we cannot have -- we don't  
18 have any witness here that can be cross-examined.  
19 Although she was cross-examined four years ago in  
20 that case, a lot has changed since then.

21 And -- and first of all, the composition  
22 of the Commission has changed. We have different  
23 Commissioners now. There are different parties in  
24 this case. The circumstances of AmerenUE have  
25 changed since then so that we can't really rely on

1 that cross-examination at that point.

2                   So therefore, I'm going to rule that the  
3 testimony that was proposed to be administratively  
4 noticed by AARP, Nancy Brockway and Mr. Binz's  
5 testimony, is not competent and substantial evidence  
6 and therefore will not be admitted. That's the  
7 ruling.

8                   All right. Let's move on, then, to the  
9 next --

10                   MR. BYRNE: One -- one other issue maybe  
11 we could clear up real quick is those Goldman  
12 reports --

13                   JUDGE WOODRUFF: Yes.

14                   MR. BYRNE: -- that were offered. I had  
15 raised an objection. AmerenUE does not really have  
16 an objection to those reports.

17                   JUDGE WOODRUFF: That was for -- what  
18 were the numbers on those, do you remember?

19                   MR. DEARMONT: I believe they were  
20 marked as Staff Exhibit 233. That would be the  
21 September 29th report, and Staff Exhibit 234 being  
22 the January 15th --

23                   JUDGE WOODRUFF: And does Staff have  
24 copies of those for the Commission?

25                   MR. DEARMONT: Yes.

1                   JUDGE WOODRUFF: All right. Now, then,  
2 hearing no objections to 233 and 234, they will be  
3 admitted.

4                   (EXHIBIT NOS. 233 AND 234 WERE RECEIVED  
5 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

6                   MR. BYRNE: One other housekeeping  
7 thing, your Honor, if we could just take a moment.  
8 We have some witness availability issues. I think we  
9 need, of course, to take Mr. Lawton first because of  
10 his availability, but two other witnesses are  
11 Ms. Cannell and Mr. Rygh, and we were hoping we could  
12 take them out of order because Mr. Rygh has a flight  
13 that's earlier than Ms. Cannell. And so I guess I  
14 would ask if we could take Mr. Rygh after Mr. Lawton.

15                   JUDGE WOODRUFF: Any party opposed to  
16 that?

17                   (NO RESPONSE.)

18                   JUDGE WOODRUFF: That will be fine.

19                   MR. BYRNE: Okay. Thank you, your  
20 Honor.

21                   COMMISSIONER DAVIS: Eric, these are all  
22 just one copy or --

23                   MR. DEARMONT: No. That's -- that's  
24 your copy, Commissioner.

25                   COMMISSIONER DAVIS: That's -- that's  
26

1 right. These are --

2 MR. DEARMONT: That's one copy of each  
3 report.

4 COMMISSIONER DAVIS: One copy of each  
5 report. Okay.

6 MR. DEARMONT: Yes, there's four more  
7 there for you, Judge.

8 JUDGE WOODRUFF: And see the -- which  
9 one was which here?

10 MR. DEARMONT: The September 29th report  
11 is 233, I believe, and the latter report, the  
12 January 15th report, is 234.

13 JUDGE WOODRUFF: Okay. All right. Then  
14 let's get started with Mr. Lawton.

15 (The witness was sworn.)

16 JUDGE WOODRUFF: Thank you very much.  
17 And before every witness has testified, I've made a  
18 little announcement, and that's simply that we want  
19 you to simply answer the questions that are asked of  
20 you by the attorneys and don't try to offer  
21 explanations that aren't asked for. We found that  
22 the hearing goes much faster if you just limit  
23 yourself to answering the questions you're asked.

24 THE WITNESS: I understand. Thank you.

25 JUDGE WOODRUFF: Thank you very much.  
26

1 You may inquire.

2 MR. MILLS: Thank you.

3 DIRECT EXAMINATION BY MR. MILLS:

4 Q. Could you state your name for the  
5 record, please.

6 A. Yes. My name is Daniel J. Lawton.

7 Q. And on whose behalf are you testifying  
8 in this proceeding?

9 A. In this proceeding I'm testifying on  
10 behalf of the Missouri Office of Public Counsel.

11 Q. And are you the same Daniel J. Lawton  
12 who has caused to be prefiled direct, rebuttal and  
13 surrebuttal testimony which has been marked as  
14 Exhibits 304, 305 and 306 in this matter?

15 A. Yes, I am.

16 Q. And if I were to ask you those same  
17 questions here today, would your answers be the same?

18 A. Yes, other than a -- a -- a small  
19 transposition on my direct testimony, and with the  
20 presiding officer's permission, I would just point it  
21 out.

22 JUDGE WOODRUFF: Sure.

23 THE WITNESS: On page -- I believe it's  
24 page 4 at table 1, the long-term debt dollar amount

25 of 3,615,000,000 should be 3,651,000,000. That -

26

1 with -- with that, I don't have any changes that I'm  
2 aware of.

3 BY MR. MILLS:

4 Q. And does that change, change anything  
5 else in your testimony?

6 A. No, no. It was a transposition error.  
7 The mathematics are correct.

8 Q. Thank you. And if I were to ask you the  
9 same questions here today, would your answers be the  
10 same?

11 A. Yes.

12 Q. Okay. And are those answers true and  
13 correct to the best of your knowledge, information  
14 and belief?

15 A. That is correct.

16 MR. MILLS: Judge, with that, I will  
17 offer Exhibits 304, 305 and 306 and tender the  
18 witness for cross-examination.

19 JUDGE WOODRUFF: All right. 304, 305  
20 and 306 have been offered. Are there any objections  
21 to their receipt?

22 (NO RESPONSE.)

23 JUDGE WOODRUFF: Hearing none, they will  
24 be received.

25 (EXHIBIT NOS. 304, 305 AND 306 WERE  
26

1 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
2 RECORD.)

3 JUDGE WOODRUFF: For cross-examination  
4 we begin with AARP.

5 MR. COFFMAN: No questions.

6 JUDGE WOODRUFF: Okay. MIEC?

7 MS. ISLES: No questions, your Honor.

8 JUDGE WOODRUFF: Staff?

9 MR. DEARMONT: I've got a few questions.

10 CROSS-EXAMINATION BY MR. DEARMONT:

11 Q. Good morning, Mr. Lawton. How are you?

12 A. Good morning. I'm -- I'm well, thank  
13 you.

14 Q. In the growth rate portion of your DCF  
15 analysis, you've relied on only positive EPS rates,  
16 correct?

17 A. Correct.

18 Q. And therefore, you eliminated any  
19 consideration of negative EPS growth?

20 A. Yes.

21 Q. Is it true that in response to Staff  
22 data request 304, you indicated you believe investors  
23 consider negative as well as positive growth?

24 A. I believe I did. I -- I don't have --

25 Q. Thank you.



1           A.       -- response 304 before me.

2           Q.       Okay.

3           A.       That's...

4           Q.       I have a copy if you'd like to see it.

5           A.       Yes, so I can confirm it's correct.

6           Q.       Okay. Sure. Do you recognize that?

7           A.       Yes, I do.

8           Q.       Okay. Specifically Staff data request

9           304, is that your response?

10          A.       Yes, it is.

11          Q.       Okay.

12          A.       Thank you.

13          Q.       So then just to clear up, you would

14           agree that in that response 304, you indicated that

15           investors consider negative and positive information?

16          A.       Yes, they do.

17          Q.       Okay. I believe on the first page of

18           the document that I just handed you, you'll see a

19           response to Staff data request 301. And in response

20           to that DR, you provided copies of past cost of

21           capital testimony, correct?

22          A.       That is correct.

23          Q.       And one of those testimonies was

24           testimony submitted by yourself in a Southwest Gas

25           Corporation case in Nevada in August of 2009,

1 correct?

2 A. I recall submitting testimony in Nevada  
3 in August 2009, Southwest Gas, and I'm sure it was on  
4 the list of documents I gave you.

5 Q. Okay. So you did file cost of capital  
6 testimony in that case?

7 A. Yes.

8 MR. DEARMONT: I'm going to -- I'm going  
9 to hand you -- may I approach after I already did the  
10 first time without asking?

11 JUDGE WOODRUFF: Yes.

12 BY MR. DEARMONT:

13 Q. I'll hand you a document. Is this the  
14 direct testimony that you filed in that case,  
15 Mr. Lawton?

16 A. I believe so, yes.

17 Q. Will you please turn to page 63 of that  
18 testimony?

19 A. I have it. The one with the blue tab.

20 Q. Convenient. Would you agree on page 63  
21 of your direct testimony in that case that you  
22 expressed concern that the Company witness had relied  
23 only on earnings growth rates and DCF analysis?

24 A. Have you got a line number?

25 Q. Sure. How about start at line 1348.

1           A.       I'm there.

2           Q.       And continue through 1352.  If you don't  
3 mind, will you just read those lines out loud?

4           A.       Can I start at line 1347?  It puts it in  
5 context.

6           Q.       Yes.  Yes, sir.

7           A.       Thank you.  "No other readily available  
8 forecast of earnings were considered by Mr. Handley.  
9 Moreover -- moreover, no other growth rates -- growth  
10 measures were considered by Mr. Handley.  In my  
11 opinion, a wider array of growth estimates need to be  
12 considered to arrive at a result consistent with the  
13 wide domain of factors investors may be considering  
14 in evaluating future growth prospects of an  
15 investment."  Is that where you wanted me to stop?

16          Q.       Yes, that will be just fine.  The same  
17 testimony you leveled at the Company witness in that  
18 case could be leveled against yours in this, could it  
19 not?

20          A.       No.

21          Q.       I'm going to regret asking this, but  
22 why?

23          A.       Okay.  The first sentence I -- I -- I  
24 read, that's why I started at line 1347, "No other  
25 readily available forecasts of earnings were

1 considered by Mr." -- I think it was Handley in that  
2 case and he only considered one. Here, I considered  
3 more than one readily available growth rate to  
4 investors.

5 Q. But in fact, in this case, Staff witness  
6 Stephen Hill indicates that in performing your DCF  
7 analysis, you could have relied on, quote, a wider  
8 array of growth estimates; is that accurate?

9 A. Yeah, I could -- that -- I think that's  
10 an accurate portrayal of his testimony. I could have  
11 done a lot of things.

12 Q. In fact, will you please turn to  
13 schedule DLJ-SR1 attached to your surrebuttal  
14 testimony filed in this case? Do you have your copy?

15 A. I have my surrebuttal. I have it.

16 Q. Will you identify that schedule for us?

17 A. Sure. DJL-SR1 is a portion of testimony  
18 I filed on behalf of the Attorney General in an  
19 Oklahoma case. I believe it was the Corporation  
20 Commission of Oklahoma.

21 Q. In the calendar year 2007?

22 A. Specifically on March 20th, 2007.

23 Q. Okay. Great. If you look at page 2 of  
24 that schedule DLJ-SR1, we see that in 2007 in the  
25 state of Oklahoma, you included growth rates -

1 excuse me -- included in the growth rates you  
2 reviewed were five-year historical earnings per share  
3 rates, dividends per share, book value per share and  
4 forecasted growth in EPS, DPS and BVPS, would you  
5 agree?

6 A. No. No, I won't.

7 Q. Well, let's look at page 2 of schedule  
8 DLJ-SR1.

9 A. I'm there.

10 Q. Okay. Specifically I want to talk about  
11 lines 18, probably through 27.

12 A. Yes.

13 Q. Beginning on line 19, is it an accurate  
14 summary that you say that included in a schedule  
15 attached to your testimony in that Oklahoma case, you  
16 reviewed -- reviewed and/or relied upon recent  
17 five-year historical growth rates and earnings per  
18 share, dividends per share, and book value per share  
19 as reported by Value Line?

20 A. Yes, that is correct. That's what was  
21 on the schedule and/or relied upon and it's the same  
22 in this case.

23 Q. Okay. And you go on to state that you  
24 also relied upon information from Value Line  
25 regarding forecasted growth rates in EPS, DPS and  
26

1 BVPS or earnings per share, dividends per share and  
2 book value per share?

3 A. That is correct.

4 Q. Have you relied upon that same  
5 information in this case?

6 A. Yes, in terms of earnings per share  
7 forecasted.

8 Q. What about dividend per share?

9 A. Forecasted?

10 Q. Yes.

11 A. No.

12 Q. What about book value per share?

13 A. Forecasted?

14 Q. Yes.

15 A. No. And I didn't rely upon them in that  
16 case either.

17 Q. You did not rely upon Value Line  
18 forecasted growth rates in EPS, DPS and book value  
19 per share in your testimony filed in 2007 in the  
20 state of Oklahoma?

21 MR. MILLS: Judge, I object. That's a  
22 compound question. I think we could clear this up if  
23 Mr. Dearmont would ask him about each of those and  
24 whether they're forecasted in turn rather than  
25 lumping them together.

1                   JUDGE WOODRUFF: It does sound compound.  
2 If you'd separate them.

3                   MR. DEARMONT: I guess.

4 BY MR. DEARMONT:

5           Q.       Did you rely upon Value Line forecasted  
6 growth rates in earnings per share in your testimony  
7 filed in 2007 in the state of Oklahoma?

8           A.       Yes, I did, and it's shown on the next  
9 page of the exhibit, page 3 of 3. If you look at the  
10 first paragraph, it tells you exactly what I relied  
11 upon.

12          Q.       Okay. Did you rely upon Value Line  
13 forecasted growth rates and dividends per share in  
14 your 2000 testimony filed in the state of Oklahoma?

15          A.       No. In terms of the final growth rate,  
16 no.

17          Q.       Okay. Is that not contradictory to the  
18 statement contained on page 2 of your schedule  
19 attached to the testimony filed in this case?

20          A.       By "this case" you mean the -- this  
21 case, the Oklahoma case?

22          Q.       No. "This case" as in the UE case  
23 currently pending, ER-2010-0036.

24          A.       No, it's not contradictory. If you'd  
25 like me to explain, I can, sir.

26

1 Q. No, let's not -- let's not do that. In  
2 September of 2009, you filed cost of capital  
3 testimony on behalf of the Utah Office of Consumer  
4 Services in a Rocky Mountain Power case, correct?

5 A. Yes, sir.

6 Q. In performing a traditional DCF analysis  
7 in that case, you -- you presented growth rates that  
8 included dividends, book value and sustainable growth  
9 in addition to earnings growth, correct?

10 A. I did, yes, sir.

11 MR. DEARMONT: May I approach, your  
12 Honor?

13 JUDGE WOODRUFF: (Nodded head.)

14 BY MR. DEARMONT:

15 Q. Here's a copy.

16 A. Thank you.

17 Q. Can you identify the document that I  
18 just handed to you?

19 A. Yes. It is my testimony on behalf of  
20 the Utah Office of Consumer Services dated  
21 September 17th, 2009.

22 Q. And is that the testimony that I just  
23 referenced in my previous question?

24 A. I think so, yes.

25 Q. You did file this testimony in Utah in



1 2009, correct?

2 A. I did.

3 Q. Would you turn to page 20 of this  
4 testimony?

5 A. I'm there.

6 Q. On page 20 you indicate, and I quote,  
7 that the combined forecasted earnings per -- excuse  
8 me -- that DCF growth rate is based upon, quote, the  
9 combined forecasted earnings per share estimates and  
10 internal growth rate estimates, end quote, correct?

11 A. Yes.

12 Q. Had you used internal growth estimates  
13 in this case as you had in the Rocky Mountain Power  
14 case that we just discussed, your internal -- excuse  
15 me -- your DCF growth rates would have been lower,  
16 correct?

17 A. No.

18 Q. Why?

19 A. Because when I did my analysis, the  
20 internal growth rates were approximately the same as  
21 the forecasted average. I just used the forecasted  
22 average.

23 MR. DEARMONT: Give me just one second,  
24 Judge.

25 JUDGE WOODRUFF: Sure.

1 BY MR. DEARMONT:

2 Q. Do you have any support for your  
3 proposition that the use of internal growth rates  
4 would have been consistent with those growth rates  
5 used by yourself in this case?

6 A. Yes. I'm testifying that I did a quick  
7 analysis when I was doing my analysis for this case.  
8 The growth rates were approximately the same. I just  
9 relied upon the forecasted averages.

10 Q. Have you attached to your testimony any  
11 information confirming that?

12 A. No, I didn't use it. I don't want to  
13 attach extraneous information.

14 Q. At this time I'd like to talk to you  
15 about the use of geometric versus arithmetic  
16 averages. Are you familiar with that concept?

17 A. Yes.

18 Q. I'd like to go back again to the Nevada  
19 testimony that you filed in 2009.

20 A. Yes, sir.

21 Q. Do you have that? At page 48 of that  
22 testimony, I believe you state that, "For the above  
23 reasons, a geometric average is the most appropriate  
24 measure for estimating historical risk premiums."

25 Did you state that?

1           A.       I haven't found page 48. I had the  
2 wrong testimony.

3           Q.       Okay. I didn't tab that one for you.

4           A.       Just give me a moment.

5           Q.       All right.

6           A.       I don't see it on page 48, sir.

7           Q.       How about the first line flowing into  
8 the second line, very top of the page.

9           A.       Oh, okay. I'm sorry. Yes, I did say  
10 that.

11          Q.       The geometric mean is always less than  
12 an arithmetic mean; is that correct?

13          A.       Less than or equal to.

14          Q.       That means that a market risk premium  
15 based upon a geometric average will be less than or  
16 equal to a market risk premium based upon an  
17 arithmetic average, correct?

18          A.       That is correct.

19          Q.       Is it your belief that a market risk  
20 premium based upon geathmatic [sic] averages is in  
21 your words the most appropriate?

22                   THE COURT REPORTER: Based upon what  
23 average?

24                   MR. DEARMONT: Geometric.

25                   THE WITNESS: Yes.

26

1 BY MR. DEARMONT:

2 Q. Which market risk premium did you use in  
3 your testimony filed in this case?

4 A. I employed an update employing  
5 Dr. Morin's, was it 6.45 percent, if I recall.

6 Q. Do you know whether or not Dr. Morin  
7 used a geometric average or an arithmetic average?

8 A. Oh, I know he uses an arithmetic  
9 average. And I pointed out in my testimony, I didn't  
10 agree with the results, it wasn't relevant for the  
11 calculation and that it updated the other components  
12 of the risk premium.

13 Q. I'd like to speak with you briefly about  
14 perpetual growth rates. Do you have a copy of your  
15 direct testimony filed in this case?

16 A. I do.

17 Q. Please turn to page 5 of that direct  
18 testimony.

19 A. I have.

20 Q. As a matter of fact, let's go to your  
21 surrebuttal testimony.

22 A. Okay. Do you have a page number in  
23 mind?

24 Q. Yes, page 5 of your surrebuttal.

25 A. I'm there.

1           Q.       Specifically I want you to look at  
2 lines 16 through 18. On lines 16 through 18, you  
3 indicate that your reliance on published price,  
4 dividend and growth data to estimate a cost of equity  
5 is not, quote, difference or -- different or unique  
6 because in your experience, that is what, quote,  
7 regulatory authorities typically consider in setting  
8 a reasonable return. Did you state that? Is that an  
9 accurate representation?

10          A.       I must be on the wrong testimony. You  
11 said the surrebuttal testimony at page 5 on lines 16  
12 to 18?

13          Q.       16 through 18, yes.

14          A.       What a reg -- I have rather, "In my  
15 experience this is what regulatory authorities  
16 typically consider to determine a reasonable return  
17 for setting fair and just and reasonable rates."

18          Q.       Okay. In referring to "this" in that  
19 sentence, what is "this" referring to? Maybe the  
20 preceding sentence?

21          A.       Yes.

22          Q.       Okay. Does that state that the bottom  
23 line is that relying on published price, dividends  
24 and growth rate data and forecasts is not different  
25 or unique?

1           A.       That is correct.

2           Q.       So then your testimony is that that  
3 reliance upon that information is what regulatory  
4 authorities typically consider in setting a  
5 reasonable return?

6           A.       Yes.

7           Q.       In providing your testimony on an  
8 appropriate return on equity, are you providing  
9 information that regulatory authorities typically  
10 consider or are you providing information that you  
11 believe investors consider?

12          A.       Both.

13          Q.       In your DCF, your constant growth DCF,  
14 you utilize projected growth and EPS to determine a  
15 growth rate that you will expect will grow into  
16 perpetuity, correct?

17          A.       Correct.

18          Q.       And what growth rate did you use?

19          A.       The earnings forecast set forth in my  
20 direct testimony on schedule -- I believe it's  
21 schedule 5.

22          Q.       Can you give us a percentage?

23          A.       Well, there's a different percentage for  
24 each -- each -- each of the companies. Hold on.

25          Q.       How about an average?

1           A.       It's just a tad over 5 percent, as I  
2 recall.

3           Q.       And these EPS projections are based upon  
4 five-year EPS growth rate estimates, correct?

5           A.       Correct.

6           Q.       Have you looked at Mr. Hill's schedule 1  
7 attached to his rebuttal testimony in this case?

8           A.       I may have. I -- I don't recall.

9                   MR. MILLS: Mr. Dearmont, what testimony  
10 did you say?

11                   MR. DEARMONT: Hill surrebuttal  
12 schedule 1. I have a copy of it here. Rebuttal.  
13 Excuse me.

14 BY MR. DEARMONT:

15           Q.       That document that I just handed you,  
16 can you describe that for me?

17           A.       It looks like historical data from 1947  
18 to 1999 showing GDP dividends, earnings and book  
19 value. The footnote says, "The GDP data is from the  
20 St. Louis Federal Reserve Bank and utility per share  
21 data from Moody's public utility manual."

22           Q.       So this tack -- tracks GDP growth  
23 against growth in dividends per share, earnings per  
24 share and book value per share?

25           A.       It purports to.

1 Q. Okay. Over approximately the last 50  
2 years, would you accept that?

3 A. No.

4 Q. From 1947 to 1999?

5 A. That is correct.

6 Q. Okay. What is the average EPS growth  
7 rate for that period?

8 A. The average earnings calcu -- growth  
9 calculation indicates a 3.3 percent growth rate.

10 Q. Have you reviewed schedule 1 attached to  
11 Mr. Murray's rebuttal testimony?

12 A. Mr. Murray's rebuttal?

13 Q. Yes, sir.

14 A. I -- I don't recall.

15 Q. Do you have a copy of his testimony in  
16 front of you?

17 A. I didn't bring it with me.

18 Q. I'm going to hand you just one more  
19 document here.

20 A. All right. Thank you, sir.

21 Q. You're welcome. Is this graph familiar?

22 A. No.

23 Q. Have you -- you've never seen this  
24 before?

25 A. I -- I really don't recall seeing it or



1 studying it. It may have been in his testimony. I  
2 just focused on his words.

3 Q. You didn't review his schedules?

4 A. I don't recall reviewing his schedules,  
5 at least not this one.

6 Q. Okay. Would you agree that this  
7 document that I just handed you shows a decline in  
8 electric demand growth from the period of 1950 to the  
9 present?

10 A. It purports to show the growth in  
11 electricity usage historically for the time period  
12 you indicated and forecast from 2010 through 2030.

13 Q. Okay. Would you accept this as roughly  
14 the same period covered by Mr. Hill's schedule that I  
15 just showed you previously?

16 A. No. It's -- it's -- it goes well beyond  
17 Mr. Hill's schedule.

18 Q. If we're only focusing on what I'll call  
19 historical information, would you agree that it  
20 roughly covers the same period?

21 A. Yes, it goes ten years -- Mr. Murray's  
22 graph goes ten years beyond Mr. Hill's schedule.

23 Q. Okay. According to the chart --  
24 according to Mr. Murray's graph, excuse me --

25 A. Yes.

1 Q. -- expected demand growth is only  
2 1 percent annually -- expected to be only 1 percent  
3 annually for the period of roughly 2008 to roughly  
4 2035; is that correct?

5 A. That's what -- that's what this graph  
6 purports to show.

7 Q. Can you please help me understand how  
8 investors will accept the proposition that EPS will  
9 grow at over 5 percent in perpetuity when expected  
10 demand growth is roughly 1 percent as shown on this  
11 chart, and that electric utilities have historical  
12 EPS growth of a little over 3 percent? I'll be happy  
13 to rephrase if you think I can do that more --

14 MR. MILLS: Well, I think -- I think  
15 it's not only long and awkward, I think it was  
16 compound as well.

17 MR. DEARMONT: Okay.

18 BY MR. DEARMONT:

19 Q. I believe that your testimony has  
20 indicated that as shown on the -- the schedule  
21 attached to Mr. Hill's testimony, that average EPS  
22 growth as shown on that chart for the last 50-odd  
23 years is about 3.3 percent, correct?

24 A. That is correct.

25 Q. And as shown on the chart or graph

1 attached to the rebuttal testimony of Mr. Murray,  
2 this chart shows -- chart -- chart shows that  
3 electric demand growth is approximated to be roughly  
4 1 percent from, let's say, 2012 through 2035. Will  
5 you accept that?

6 A. That's what it shows.

7 Q. Okay. Given that information, can you  
8 help me explain how -- can you help me understand how  
9 investors will accept the proposition that EPS will  
10 grow at 5-plus percent into perpetuity?

11 A. That's not a yes-or-no answer.

12 Q. That's not a yes-or-no answer.

13 A. Okay. Number one, the -- the predicate  
14 to your question assumes that this growth rate  
15 forecast is, in fact, correct. And I think if you  
16 look around the country, you'll find very different  
17 forecasts for growth in energy as well as demand for  
18 utilities.

19 Second, you've got to look at utilities  
20 and where their funds come from. They not only come  
21 from the changes in electricity, but additional  
22 services are being provided by many utilities across  
23 the country. We've heard talk about smart meters and  
24 different services, and it's not all reliant totally  
25 upon the growth in electricity.

1                   If you do by analogy or look by analogy  
2 to the telephone industry and what we have with the  
3 cell phones and all the other services provided by  
4 telephone companies and the additional revenues  
5 provided by telephone companies, you'll see that  
6 maybe service for telephones hasn't exploded, but  
7 certainly the various services in additional ways of  
8 earning revenues have increased and changed over  
9 times.

10                   So with that, I -- I -- the current  
11 forecasts are 5 percent, that's what the analysts are  
12 estimating. That's what investors are going to be  
13 looking at. It's available to investors and I think  
14 you can rely upon it.

15           Q.       And that's a five-year forecast,  
16 correct?

17           A.       That is correct, it is.

18           Q.       And telephone -- telephone and  
19 telecommunications companies are not  
20 rate-based-regulated, would you agree with that?

21           A.       They were. They aren't anymore.

22           Q.       They are not currently?

23           A.       Currently, that is correct.

24           Q.       So they're -- so they're subject to  
25 competition in the open market?  
26

1           A.       They are.

2                   MR. DEARMONT:   Okay.  I have no further  
3 questions, awkward or otherwise.

4                   THE WITNESS:   Thank you, Mr. Dearmont.

5                   MR. DEARMONT:   Thank you.

6                   JUDGE WOODRUFF:   Cross for Ameren?

7                   MR. BYRNE:       Yeah, I have just a few.

8   CROSS-EXAMINATION BY MR. BYRNE:

9           Q.       Good morning, Mr. Lawton.

10          A.       Good morning, Mr. Byrne, is it?

11          Q.       It's Mr. Byrne, yeah.

12          A.       Okay.

13          Q.       Thanks for being here.

14          A.       No problem, I enjoy it.

15          Q.       Do you have your testimony with you?

16          A.       I do, sir.

17          Q.       And do you have a transcript of the  
18 deposition that I took?

19          A.       I do not.

20          Q.       Okay.  Let me give you one because we  
21 may want to refer to it.

22                   MR. BYRNE:   May I approach?

23                   JUDGE WOODRUFF:   You may.

24                   MR. MILLS:   Mr. Byrne, if you're going

25 to refer to that, may I have a copy too?

26

1 MR. BYRNE: Sure.

2 BY MR. BYRNE:

3 Q. And last question of things you have, do  
4 you have a calculator?

5 A. Yes.

6 Q. Does it have batteries?

7 A. Hold on. Yes.

8 JUDGE WOODRUFF: That sounds like a  
9 trap.

10 BY MR. BYRNE:

11 Q. Excellent. Mr. Lawton, my understanding  
12 for your -- of the -- your recommendation for return  
13 on equity for AmerenUE consists of both a range and a  
14 point recommendation; is that correct?

15 A. Yes. It is a point recommendation. I  
16 have to come up with a value for the Commissioners  
17 and certainly that's the 10.1 percent --

18 Q. Okay. And what is -- what is your  
19 range?

20 A. I believe it's set forth in my  
21 testimony, page -- page 31. There's a table that  
22 sets forth a -- a range on line 14.

23 Q. So the range is 9.3 percent to 10.9  
24 percent; is that correct?

25 A. That's correct, that's the range of

1 results.

2 Q. Okay. And would it be fair to say that  
3 estimating an appropriate return on equity for a  
4 public utility is not an exact science?

5 A. Yes.

6 Q. Would it be fair to say that estimating  
7 an appropriate return on equity requires a lot of  
8 judgment in deciding what analyses to use and what  
9 the inputs to those analyses should be?

10 A. Yes.

11 Q. And is that why capital -- capital --  
12 cost of capital experts often recommend a range for  
13 the utility's return on equity?

14 A. That is correct.

15 Q. Would it be reasonable in your opinion  
16 if the Commission ultimately decided to adopt an ROE  
17 for AmerenUE that is within your range?

18 A. Yes, it would, because --

19 Q. That's -- that's the answer to my  
20 question.

21 A. That's fine.

22 Q. Isn't it true, Mr. Lawton, that there's  
23 a relationship between the risk a utility faces and  
24 the cost of equity for that utility?

25 A. Yes.

1           Q.       And isn't it true that generally, as  
2 risk increases, investors would want a higher return  
3 as compensation for their risk?

4           A.       Yes.

5           Q.       And conversely, as risk declines, the  
6 required return for investors would decline also; is  
7 that true?

8           A.       That would be true.

9           Q.       Okay.  And it's true, is it not, that to  
10 the extent that an integrated electric utility owns  
11 generation and the generation is operating and is  
12 relied upon in the utility's portfolio for supplying  
13 customers, that integrated electric utility is  
14 riskier than a wires-only electric utility, would you  
15 agree with that?

16          A.       The general proposition is that fully  
17 integrated are riskier than wires companies, but  
18 there are situations where a wires Company could have  
19 unique risk.  So to say all or never is  
20 all-encompassing and -- and I don't want to say  
21 that --

22          Q.       Would you --

23          A.       -- but generally, I could -- I could say  
24 that.

25          Q.       Okay.  And you would agree, would you



1 not, that integrated electric utilities are more  
2 risky than gas distribution companies that use  
3 straight fixed variable rate design?

4 A. Yes.

5 Q. And aren't even wires-only electric  
6 utilities riskier than a gas distribution Company  
7 that uses straight fixed variable rate design?

8 A. Yes.

9 Q. All right. And isn't that because gas  
10 distribution utilities with -- using straight fixed  
11 variable rate design are not subject to any  
12 consequences for load variation -- any revenue  
13 recovery consequences due to load variation?

14 A. That -- no. That would be correct.  
15 They're not subject to consequences through variation  
16 and throughput of gas, but they are subject to  
17 variation for loss of customers which obviously were  
18 very low.

19 Q. Okay. I mean, is -- wouldn't it be fair  
20 to say that a gas utility with a straight fixed  
21 variable rate design is effectively guaranteed cost  
22 recovery absent customers leaving its system?

23 A. Yes.

24 Q. Okay. And would you agree that having  
25 straight fixed variable rate design is a significant

1 risk mitigation factor?

2 A. In terms of the recovery of revenues,  
3 absolutely.

4 Q. Okay. I'd like to take a look at the  
5 results of your analyses that appear on table 4 that  
6 I think we just referenced.

7 A. Page 31.

8 Q. Table 4 on page 31 of your direct  
9 testimony. And let's see if I can do this right. I  
10 made an effort to blow those results up on a chart so  
11 that we can talk about them a little bit.

12 A. It's a small chart.

13 Q. Yeah, it is a small chart. But could  
14 you take a look at that chart and tell me if I've  
15 correctly reproduced the results from your table 4 on  
16 that chart?

17 A. You have, except midpoint of 10.1 is not  
18 on the chart.

19 Q. Oh, okay. That's right. And below here  
20 I have your range and your midpoint which are not on  
21 your chart in your testimony; is that right?

22 A. That -- that -- that is correct.

23 Q. But those are the correct range of  
24 midpoint, right?

25 A. Right. You've added to my chart.

1 Q. Okay. And as I understand it, you've  
2 done two DCF analyses; is that correct?

3 A. Yes, sir.

4 Q. And can you briefly explain to us what  
5 the -- what the two numbers are? In other words, for  
6 the constant growth DCF, what's -- what constituted  
7 the range of 10.9 percent to 11.1 percent?

8 A. Certainly. I did a DC&F analysis using  
9 a comparable group employed by all the witnesses  
10 except Mr. Murray, I think, in this case, and the  
11 10.9 is the average and the 11.1 is the median  
12 result.

13 Q. Okay.

14 A. And I -- and I think the same applies to  
15 the two-stage DCF as well.

16 Q. Okay. And my understanding is the way  
17 you got to your range in this case is you eliminated  
18 the highest and lowest numbers on that chart and then  
19 the remaining highest and remaining lowest were the  
20 boundaries of your range; is that correct?

21 A. Yes, it would be a truncated average. I  
22 had a wide range, I said let's narrow it and throw it  
23 the highest and the lowest.

24 Q. Okay. And so the top of your range,  
25 then, is the constant growth DCF average; is that  
26

1 true?

2 A. That is true. It's 10.9 percent.

3 Q. And the bottom of your range is -- well,  
4 it's a -- it's 9.3 percent which appears as a number  
5 on your -- both your risk premium and your CAPM; is  
6 that correct?

7 A. Yes.

8 THE COURT REPORTER: And your cap --

9 MR. BYRNE: CAPM.

10 THE COURT REPORTER: Oh, CAPM. Sorry.

11 THE WITNESS: Yes.

12 BY MR. BYRNE:

13 Q. I'd like to look at your direct  
14 testimony for a minute. On page 11, line 16 --

15 A. I'm there.

16 Q. -- you say, and I quote, It is my  
17 opinion that the best analytical technique for  
18 measuring a utility's cost of common equity is the  
19 DCF methodology. Did I read that correctly?

20 A. You certainly did.

21 Q. Okay. And you have also identified the  
22 DCF as being the principal methodology that you  
23 employed; is that correct?

24 A. That is correct.

25 Q. And isn't it correct that over time, the

1 DCF analysis -- or the DCF methodology has produced  
2 consistent, reliable results?

3 A. Generally so. There are situations  
4 where it can't produce any result, there's no market  
5 data. And there have been periods where it's not --  
6 it hasn't been as consistent as I'd like. But  
7 overall I would say that statement is correct.

8 Q. Okay. And with respect to the CAPM and  
9 the risk premium methods in your direct testimony,  
10 page 11, line 18 --

11 A. I'm there.

12 Q. -- you say, "Other return on equity  
13 modeling techniques such as the capital asset pricing  
14 model (CAPM) and risk premium are often used to check  
15 the reasonableness of the DCF results." Did I read  
16 that correctly?

17 A. You did.

18 Q. Okay. And on lines 2 and 3, you say --  
19 let's see.

20 A. At the top of the page?

21 Q. Yeah. I'm not finding it. Well,  
22 somewhere on this page I believe you say the risk  
23 premium approach is not without its problems and  
24 drawbacks.

25 A. That is correct.

1 Q. And you also say -- you also discuss one  
2 of the drawbacks -- and you say, "In practice, there  
3 is considerable debate as to the time period to  
4 analyze the determination of the bond equity return  
5 risk spread." Would you agree with that?

6 A. Yes.

7 Q. Okay. And -- and you also say, "Like  
8 the risk premium discussed above, the CAPM is subject  
9 to measurement uncertainties." Would you agree with  
10 that?

11 A. Yes, sir.

12 Q. And you also say -- you also identify  
13 one uncertainty by saying, "First, the general  
14 problem of how to measure the equity risk premium and  
15 the time period for which the premium is analyzed is  
16 subject to considerable debate. This problem and  
17 associated criticisms is generic to all variants of  
18 the risk premium model."

19 MR. MILLS: Mr. Byrne, can I ask you  
20 where you're -- where you're reading from?

21 MR. BYRNE: Well, I lost the page.

22 MR. MILLS: I don't -- if the question  
23 is does he agree with the statement, that's fine, but  
24 if the question is --

25 MR. BYRNE: Yeah, that is the question.

26

1                   MR. MILLS:  -- did you say this in your  
2 testimony, I want to know where the testimony is.

3 BY MR. BYRNE:

4           Q.       Okay.  The question is, do you agree  
5 with the statement?

6           A.       That's the way I've interpreted it,  
7 and -- and yes, if you don't refer to a line number,  
8 I'm assuming -- do I agree with your statement?

9           Q.       Yes.

10          A.       And the answer is yes, and it's -- it is  
11 actually somewhere in the testimony.

12          Q.       Okay.  And just a couple of more  
13 sentences.  One is, do you -- and do you agree with  
14 this sentence is the -- is the question I'm asking.  
15 "Second, measures of data are often unstable from  
16 period to period and may not reflect the equity risk  
17 spread measure."

18          A.       Yes.

19          Q.       Okay.  And finally, another -- another  
20 sentence says, "For all of the above reasons, risk  
21 premium methods should be viewed with considerable  
22 caution."  Do you agree with that?

23          A.       Yes, and we're having all those debates  
24 on all those questions in this case.

25          Q.       Yep.  And isn't it true that in your

1 view, the risk premium and CAPM methods oftentimes  
2 produce results that are not meaningful?

3 A. Oh, absolutely.

4 Q. Okay. And my understanding is that  
5 if -- well, looking -- looking at page 26 of your  
6 direct, if you had only relied on your DCF analyses,  
7 they would have produced a range from 10.2 percent to  
8 11.1 percent; isn't that correct?

9 A. Yes, sir, that's what that chart shows.

10 Q. And that would have -- the midpoint of  
11 that range would have been 10.65 percent; is that  
12 correct?

13 A. Correct.

14 Q. Okay. I'll get another chart. This is  
15 the part where I'm hoping your calculator will work.  
16 So the first line I have is "DCF Only." And could  
17 you tell me the range again that you just told me?

18 A. You want my full range that I didn't  
19 recommend?

20 Q. The -- correct.

21 A. Right.

22 Q. The DCF range --

23 A. Right.

24 Q. -- that's on -- appears on that page of  
25 your testimony that we were just talking about.



1           A.       Yeah, it says on page 26, line 5 and 6,  
2 "The range is 10.2 to 11.11 and the midpoint of that  
3 DCF range is 10.65 percent."

4           Q.       Okay. So 10.2 to 11.11; is that right?

5           A.       That is right. That's what it says --

6           Q.       And the midpoint is 10.65?

7           A.       Yes, sir.

8           Q.       Okay. My understanding from your  
9 deposition is that if you were to update your CAPM  
10 analysis, it would be somewhat higher than it was  
11 when you did your direct testimony; is that correct?

12          A.       I -- I -- I believe I recall those  
13 statements. It was either 20 or 30 basis points  
14 higher.

15          Q.       And is that due to the -- why is that?

16          A.       A treasury bond rate that I employed,  
17 the 30-year treasury rate, I used a three-month  
18 average for the three months ending, I believe, in  
19 November '09. And since that time, the treasury bond  
20 rate has gone up about 30 basis points since November  
21 '09, 20 or 30 basis points.

22          Q.       Do you know what those bonds are trading  
23 at today?

24          A.       Today, no. I got up early but I didn't  
25 look.

1 Q. Do you know what they were trading at  
2 yesterday?

3 A. No. I was traveling.

4 MR. BYRNE: Okay. I'd like to mark an  
5 exhibit, your Honor.

6 JUDGE WOODRUFF: The next number is 174.

7 (EXHIBIT NO. 174 WAS MARKED FOR

8 IDENTIFICATION BY THE COURT REPORTER.)

9 BY MR. BYRNE:

10 Q. Can you identify that, Mr. Lawton?

11 A. Sure. It's --

12 THE WITNESS: The mark is Exhibit 174?

13 JUDGE WOODRUFF: Correct.

14 THE WITNESS: And it's economic research  
15 statistics of the Federal Reserve Bank of St. Louis.

16 BY MR. BYRNE:

17 Q. And does that show --

18 A. Showing 30-year treasury constant  
19 maturity, right.

20 Q. Okay. And what's the most recent one  
21 that it shows?

22 A. Dated March 16th, 2010, of 4.59 percent.

23 Q. Okay. And if you had used a 4.59  
24 percent 30-year treasury rate in calculating the  
25 CAPM, what result would that have produced?

1           A.       9.7 percent.

2           Q.       Would it have --

3           A.       No, excuse me, 9.3 percent. I didn't

4 use the flotation costs. I was looking at the wrong

5 number.

6           Q.       But isn't -- your CAPM is a range right

7 now, isn't it?

8           A.       Yes, it is.

9           Q.       So what would it have done to that

10 range?

11          A.       Well, you -- oh, you want the empirical

12 CAPM as well?

13          Q.       Yes. Yeah, I'm sorry.

14          A.       Okay. The bottom of the range would be

15 9.3.

16          Q.       Okay.

17          A.       And the top of the range would be 9.7 --

18          Q.       Great.

19          A.       -- percent.

20          Q.       Got it. Okay. And let me ask you this:

21 If you did a similar calculation that you did for

22 your DCF or you -- on page 26 of your testimony, you

23 have a range and a midpoint for your two separate DCF

24 analyses. Do you remember that?

25          A.       Yes.

1 Q. If you did a similar thing with your  
2 CAPM and risk premium analyses together, what would  
3 the range be and what would the midpoint be?

4 A. If -- if you could repeat that question?  
5 I missed part of it.

6 Q. Sure. If you -- if you did a similar  
7 thing with your CAPM and your risk premium analysis  
8 that you did with your DCF analysis, in other words,  
9 look at them separately and develop a -- you know,  
10 have a range for them and then a midpoint, what would  
11 that range and midpoint be?

12 A. Well, it -- according to your -- your  
13 chart, it would be 9.3 to 10.6.

14 Q. Okay. And what would the midpoint be if  
15 you can figure that out?

16 A. I'll try. 9.95.

17 Q. Okay. And let me ask you this: If you  
18 had given two-thirds weight to the midpoint of your  
19 DCF and one-third weight to the midpoint of the CAPM  
20 and the risk premium that you just calculated, what  
21 rate of return would you have calculated?

22 MR. MILLS: Judge, I'm going to object  
23 to the question on the basis of relevance. There are  
24 any number of ways that Mr. Lawton could have done  
25 things differently, and there's no showing that this  
26

1 is a -- an appropriate way to do it or a reasonable  
2 way to do it or that simply mixing and matching --  
3 mixing and matching and chopping up the numbers in  
4 this fashion has any relevance to this witness's  
5 conclusions.

6 MR. BYRNE: I have -- I have two -- two  
7 different ways of presenting the data that Mr. Lawton  
8 has and I do think it's relevant. I -- you know, I'm  
9 not going to do ten of them, but I'm going to do two  
10 of them. If he would have -- if we would have done  
11 things slightly different, it would have produced a  
12 different ROE and I think that's an appropriate line  
13 of inquiry.

14 JUDGE WOODRUFF: I'm going to overrule  
15 the objection. You can proceed.

16 BY MR. BYRNE:

17 Q. So do you -- do you have the question,  
18 Mr. Lawton?

19 A. I -- I have, and I -- obviously, I  
20 wouldn't do it. You've got me confused now, but  
21 that's okay.

22 Q. Two-thirds weight to your 10.65 midpoint  
23 for DCF and one-third weight to the 9.95 midpoint of  
24 your CAPM and risk premium.

25 A. 10.44.

1 Q. And it's just -- there's not a range,  
2 it's just one number, but I'm going to put it down  
3 under midpoint. 10.44 percent, correct?

4 A. Yes, sir.

5 Q. Okay. We talked about where both  
6 numbers for your DCF analyses came from, but I'd like  
7 to talk a moment about the two numbers for your risk  
8 premium analysis. Now, my understanding is the  
9 higher number represents your application of a second  
10 step to your risk premium analysis; is that correct?

11 A. Yes, sir.

12 Q. And my understanding also is that second  
13 step has been employed by Dr. Morin as well; is that  
14 correct?

15 A. Yes, yes.

16 Q. And you also --

17 A. Excuse me. I -- I don't want to mislead  
18 the record. Not in this case he didn't do it.

19 Q. Okay.

20 A. In another case.

21 Q. Okay. And my understanding is you also  
22 employed it in a recent case in Nevada; is that  
23 correct?

24 A. Yes. The second step?

25 Q. Yes.

1           A.       I don't recall.

2           Q.       Okay.  And my understanding of the  
3 second step is that it accounts for the fact that  
4 bond rates and equity rates do not move in a linear  
5 fashion; is that correct?

6           A.       That is correct, they do not move in --  
7 in -- in lockstep and it explains the inverse  
8 relationship between interest rates and risk  
9 premiums.

10          Q.       And my understanding from your  
11 deposition is that you believe that this adjustment  
12 is a reasonable approach; is that correct?

13          A.       I believe that it's not an unreasonable  
14 approach, in the words I think I kept using.

15          Q.       Okay.  And then taking a look at the  
16 CAPM range, I think you mentioned before, the two  
17 numbers, one is your CAPM and the other is your  
18 ECAPM; is that correct?

19          A.       Yes, sir.

20          Q.       And what does ECAPM stand for?

21          A.       The empirical CAP -- CAPM.

22          Q.       Okay.  And my understanding of the  
23 difference is the ECAPM -- the ECAPM adjusts the  
24 results of the CAPM to reflect the fact that the  
25 regular CAPM will underestimate the return for low  
26

1 beta securities and overstate the required return for  
2 high beta securities; is that correct?

3 A. That would be correct. It tries to  
4 capture some variables that the plain vanilla CAPM  
5 financial research indicates the plain vanilla CAPM  
6 does not capture.

7 Q. And having read Dr. Morin's testimony in  
8 more than one case, my understanding is Dr. Morin  
9 supports that position as well; is that true?

10 A. He supports that position as well as  
11 imply a more -- presents the plain vanilla CAPM  
12 results.

13 Q. And you don't dispute that this is an  
14 appropriate adjustment, do you?

15 A. No.

16 Q. Okay. And if you had -- if you had used  
17 the risk premium as adjusted, so that would be 10.6  
18 percent, and if you had used the updated ECAPM number  
19 which is 9.7 percent, what would the average of those  
20 two numbers be?

21 A. I'm confused. Could you -- could you --

22 Q. Sure.

23 MR. MILLS: Mr. Byrne, can I ask for a  
24 clarification? When you refer to an "updated CAPM,"  
25 are you talking about the number that you just had



1 him calculate based on this economic research paper  
2 that you have out?

3 MR. BYRNE: Yes.

4 MR. MILLS: Thank you. I have no other  
5 questions.

6 BY MR. BYRNE:

7 Q. Okay. So I'm asking you if you took  
8 the -- let me put this up. If you took the risk  
9 premium with the -- with the adjustment that we  
10 talked about which is 10.6 percent, correct?

11 A. Yes.

12 Q. And if you took the updated ECAPM which  
13 is 9.7 percent, what would the average of those  
14 numbers be?

15 A. 10.15 percent.

16 Q. Okay. And if you had weighted your DCF  
17 average -- your DCF midpoint of 10.65 percent  
18 two-thirds --

19 A. Hold on. Okay.

20 Q. -- and weighted the 10.15 percent number  
21 that you just calculated one-third, what would that  
22 result be?

23 MR. MILLS: Judge, can I just lodge a  
24 continuation objection to this "if-you-had" line of  
25 questioning?  
26

1 JUDGE WOODRUFF: Sure.

2 MR. MILLS: Rather than objecting to  
3 every single question, because I object to this  
4 question as well and I object to all of them where he  
5 says if you had done something completely different  
6 from what you thought was appropriate, would you have  
7 come up with some other number.

8 JUDGE WOODRUFF: We'll take it as a  
9 continuing --

10 MR. MILLS: Thank you.

11 JUDGE WOODRUFF: -- objection.

12 THE WITNESS: With the preface that I  
13 didn't do this and wouldn't, it's 10.48 percent,  
14 Mr. Byrne.

15 BY MR. BYRNE:

16 Q. 10.48 percent?

17 A. It's rounded up.

18 Q. Okay. I think we're done with  
19 calculating things.

20 A. Okay. I'll put it away.

21 Q. I'd like to talk about the growths you  
22 used in your DCF analyses.

23 A. Yes, sir.

24 Q. And my understanding is for your  
25 constant growth DCF model, you used forecasted growth  
26

1 rates for earnings per share from Value Line, Zacks  
2 and IBES Finance; is that correct?

3 A. That is correct.

4 Q. And these are analysts' forecasts for  
5 growth over a five-year period; is that correct?

6 A. That is also correct.

7 Q. And isn't it correct that the use of  
8 analysts' forecasted growth data in a DCF analysis is  
9 common practice because the purpose is to try to  
10 determine what investors are thinking and investors  
11 have access to these published growth rates?

12 A. Yes. I think I said they're -- they're  
13 published for a reason and -- and they continue to be  
14 published for a reason. Investors look at them, rely  
15 on them, purchase them.

16 Q. And wouldn't you agree that in today's  
17 market, it is inappropriate to rely on historical  
18 growth rates?

19 A. It's -- it's not going to give you what  
20 investors will rely upon, so if you're doing a DCF  
21 for an ROE, the answer would be yes, and I think even  
22 Staff witness Murray agreed with that.

23 Q. Okay. And I think Mr. Dearmont may have  
24 touched on this with you, but would you agree with me  
25 that it is inappropriate to use negative growth rates  
26

1 in a DCF analysis?

2 A. You're misrepresenting what I think  
3 Mr. Dearmont was saying. I say it's inappropriate to  
4 use negative growth rates and he was commenting I  
5 excluded them.

6 Q. Okay. And why is it inappropriate in  
7 your view --

8 A. Well, investors are not going to rely  
9 upon negative growth rates and invest good capital to  
10 get negative amounts of money in the long run. I  
11 mean, it just doesn't make sense. We have to assume  
12 that investors are rational.

13 Q. Okay. And turning to your two-stage  
14 DCF, my understanding is you used two separate growth  
15 rates for the two stages; is that correct?

16 A. That is correct.

17 Q. Okay. And your first stage is five  
18 years in length; is that correct?

19 A. Yes -- yes, I believe so, and it's Value  
20 Line dividends.

21 Q. Okay. And -- and again, would it be  
22 fair to say that you've used that Value Line dividend  
23 information for your growth rate because that's the  
24 information that's available for investors?

25 A. That is correct.

1 Q. Okay. And -- and that information is  
2 relied on by investors too, is it not?

3 A. I -- in my experience it is, and  
4 analyses I do in evaluating projects with -- on due  
5 diligence analyses with various groups, yeah, folks  
6 rely on it.

7 Q. Okay. And what's the length of your  
8 second stage? Is it year 6 to infinity or do I have  
9 that wrong?

10 A. It's year 6 to approximate infinity. I  
11 used year 150.

12 Q. Okay. And as I understand it, you used  
13 forecasted growth and earnings per share from Zacks,  
14 Value Line and IBES for the growth rate for that  
15 stage; is that correct?

16 A. That is correct. I used the median  
17 value of their forecast for the comparable group.

18 Q. Okay. And again, isn't it true that you  
19 used those sources because they are available to  
20 investors?

21 A. Yes. Moreover, it's also consistent  
22 with the recent 10- and 20-year GDP growth and I  
23 pointed that out in discovery.

24 Q. Okay. And Mr. Lawton, isn't it true  
25 that Staff witnesses in some -- were in some way  
26

1 critical of your analyses?

2 A. They -- critical is in the eye of the  
3 beholder. They had a different opinion.

4 Q. Okay. Staff has used projected growth  
5 in electricity demand for the growth rate in stage 3  
6 of their multistage DCF; isn't that correct?

7 A. That's what I recall, yes.

8 Q. And their stage 3 is the perpetual  
9 growth of -- the growth to infinity similar maybe to  
10 your stage 2; is that fair to say?

11 A. Yes.

12 Q. Okay. And my understanding is you  
13 haven't ever seen anyone use projected growth and  
14 electricity demand in this way; is that correct,  
15 Mr. Lawton?

16 A. Not quite.

17 Q. It's not quite correct?

18 A. That's right, in the sense that -- I  
19 said I haven't seen them use projected -- projections  
20 in demand, but I have seen projections in sales used  
21 as a growth rate.

22 Q. Okay. But --

23 A. And -- and -- and --

24 Q. But for projections in demand, my

25 question -

26

1 A. Yeah.

2 Q. -- was limited to projections in  
3 demand --

4 A. Okay.

5 Q. -- you've never seen anyone use that as  
6 a growth rate, have you?

7 A. No. Generally, no.

8 Q. Okay. And isn't it true that you  
9 yourself would not rely on projected increases in  
10 electricity demand to use that as the growth rate in  
11 a DCF analysis so long as analysts' forecasts are  
12 available to be used?

13 A. Yes. If I had other information --

14 Q. Okay. That's --

15 A. -- I -- I certainly wouldn't.

16 Q. Okay. Mr. Murray also relied on the  
17 Missouri State Retirement System, some information to  
18 confirm the results of his analysis; isn't that  
19 correct?

20 A. That is correct.

21 Q. Do you recall ever seeing anybody but  
22 Mr. Murray rely on this kind of information in  
23 estimating a cost of equity?

24 A. Generally, no. I think I pointed out in  
25 deposition I saw Mr. Murray rely upon it in a -- in a  
26

1 prior case I testified in Missouri.

2 Q. Okay. But nobody other than Mr. Murray?

3 A. That is correct.

4 Q. Okay. And isn't it true that retirement  
5 plans generally have different portfolio goals than  
6 electric utility stock?

7 A. Oh, they may have electric utility  
8 stocks in their portfolio. I think it's based  
9 on different portfolio goals than the average  
10 investor. And -- and -- and if I'm investing for my  
11 retirement and I'm -- that may be a different  
12 portfolio than if I'm a young man and I'm trying to  
13 see some real growth and -- and -- and make some  
14 money in the market and --

15 Q. And that -- so that --

16 A. -- may have different goals.

17 Q. Is that the problem with using  
18 retirement system data in this way?

19 A. Yes.

20 Q. Okay. Isn't it true that Mr. Murray  
21 also used investment analysts' reports to confirm the  
22 reasonableness of his recommendation?

23 A. I believe in rebuttal or somewhere I saw  
24 it, and maybe it was direct. He did refer to  
25 visiting some site, a repository of the Company,  
26



1 maybe it was your headquarters, and found some  
2 analysts' reports and -- amongst the papers provided  
3 in this cause.

4 Q. And isn't it true that you are concerned  
5 with using that information because investors in  
6 general don't have access to that information?

7 A. Well, that's one of my concerns. I try  
8 to employ growth rates that invest -- that are out  
9 there for the investing public and available, easy  
10 access, either through the Internet or any other  
11 means, or local public library for Value Line, for  
12 example.

13 Q. And those analysts' reports are not  
14 available in that way; is that correct?

15 A. No, you can probably buy some.

16 Q. Okay. And that's the problem with using  
17 them; is that correct?

18 A. One of the problems, yes.

19 Q. What -- are there other problems?

20 A. And access to them, knowing about them.  
21 A lot of average investors may not know about these  
22 specific analysts' reports.

23 Q. Okay. Any other problems of using them?

24 A. No, that's generally it.

25 Q. Okay. Mr. Lawton, would you agree that

1 AmerenUE competes for capital with other electric  
2 utilities?

3 A. It competes with other electric  
4 utilities and anybody else in the marketplace that  
5 needs capital.

6 Q. And would you also agree that it is a  
7 reasonable thing for the Commission to consider the  
8 decisions of other regulatory agencies in setting a  
9 return on equity for AmerenUE?

10 A. Current decisions, yes. I think most  
11 commissions are cognizant of current decisions, as  
12 are investors. You're considering the same  
13 investment decisions that investors consider.

14 Q. I mean, because to some degree, those  
15 decisions tell investors what's happening in the  
16 marketplace; would that be fair to say?

17 A. In most respects, yes.

18 Q. And can't those decisions also impact  
19 the cost of capital for utilities, at least the  
20 utility that's the subject of the decision?

21 A. It can.

22 Q. Okay. Now, you referenced the fairly  
23 recent Florida Power & Light and Progress Energy  
24 decisions in your rebuttal testimony; is that  
25 correct?  
26

1 A. I do.

2 Q. And my understanding is that you were  
3 directly involved in those cases; is that correct?

4 A. I was.

5 Q. Okay. And I think you represented a  
6 consumer advocate group, is that true, in those  
7 cases?

8 A. I represented the Florida Public  
9 Counsel.

10 Q. Okay. And is that -- is that equivalent  
11 to the Missouri Office of the Public Counsel?

12 A. I -- I -- I would assume so. I haven't,  
13 you know, measured the -- what each of them do.

14 Q. Okay. Fair enough. And my  
15 understanding is in those cases, the Commission, the  
16 Florida Commission generally rejected the requests of  
17 the utilities. Is that a fair representation of what  
18 happened in those cases?

19 A. Yes, and -- and -- and correctly so.

20 Q. And do you know what -- well -- and  
21 isn't it true that the Florida Commission authorized  
22 a 10 percent return on equity for Florida Power &  
23 Light Company?

24 A. That is correct.

25 Q. Okay. And the Florida Commission

1 authorized a 10.5 percent return on equity for  
2 Progress Energy; is that correct?

3 A. That is also correct.

4 Q. And hasn't Florida Power & Light Company  
5 represented that they're going to substantially  
6 reduce their investment in the state of Florida in  
7 the wake of that decision?

8 A. They are going to reduce their -- their  
9 capital expansion program, yes, but most utilities  
10 are doing it now anyway because of the economy.  
11 Whether that decision occurred or not or the Company  
12 got a lot of capital, there's no basis for the  
13 construction right now.

14 Q. Okay. But didn't -- didn't Florida  
15 Power & Light say it was due at least in part to the  
16 decision?

17 A. They -- they -- I think in some  
18 analysts' reports or some press reports I did see  
19 that language. But in the case, they also indicated  
20 that the CAPX program -- capital expansion, excuse me  
21 now. The capital expansion program would be reduced  
22 because of the -- you know, it's a tourist economy  
23 and that's the last one to come back after a  
24 recession, so consumers have discretionary funds to  
25 go see Mickey Mouse and whatever.  
26

1           Q.       Isn't it true that Florida Power & Light  
2 was put on negative credit watch by several credit  
3 rating agencies immediately after that decision?

4           A.       Yes.

5           Q.       And isn't it true that more recently,  
6 Florida Power & Light was downgraded by Standards --  
7 Standard & Poor's?

8           A.       One notch from A to A-minus, the day  
9 after the deposition, by the way. And it was not  
10 because of the rate decision at all, so don't --

11                   MR. BYRNE: Okay. Thank you very much,  
12 Mr. Lawton. I don't have any other questions. Your  
13 Honor, I would offer the exhibit -- the exhibit that  
14 I had marked.

15                   JUDGE WOODRUFF: It's 174.

16                   MR. BYRNE: 174.

17                   JUDGE WOODRUFF: 174 has been offered.

18 Any objection to its receipt?

19                   MR. MILLS: Is 174 the report on  
20 treasury?

21                   JUDGE WOODRUFF: Yes, the 30-year  
22 treasury constant maturity rate.

23                   MR. MILLS: Well, I object. I don't  
24 think -- I don't think Mr. Byrne laid any foundation  
25 for that, that it's -- that it's any kind of a  
26

1 reliable or accurate document Mr. Lawton's relying  
2 upon.

3 MR. BYRNE: Well, it's exactly what this  
4 witness relied upon in calculating his CAPM and he  
5 said if he's updated the CAPM to reflect this --

6 MR. MILLS: Mr. Byrne said this is  
7 exactly what he relied upon. He neglected to ask the  
8 witness if that's what he relied upon.

9 JUDGE WOODRUFF: Do you want to further  
10 inquire?

11 MR. BYRNE: Sure.

12 MR. MILLS: Well --

13 BY MR. BYRNE:

14 Q. Mr. Lawton, is -- is this information on  
15 30-year treasury bonds the information that you  
16 relied upon in calculating your CAPM?

17 A. I -- I -- I looked at these yields --  
18 well, not these particular -- I'm not pressing it.

19 Q. Right.

20 A. When I did this, these weren't out yet.

21 Q. But this -- but these are updates of the  
22 yields that you looked at when you calculated your  
23 CAPM; is that true?

24 A. Yes, they are, and my yields are shown  
25 on my schedule 2 of my direct.

26

1                   MR. BYRNE: Okay. Thank you. I would  
2 offer the exhibit.

3                   JUDGE WOODRUFF: Objections?

4                   MR. MILLS: I think he's managed to cure  
5 my objection, thank you.

6                   JUDGE WOODRUFF: Exhibit 174 will be  
7 received.

8                   (EXHIBIT NO. 174 WAS RECEIVED INTO  
9 EVIDENCE AND MADE A PART OF THE RECORD.)

10                  MR. BYRNE: Your Honor, I would also  
11 like the opportunity -- well, I'd like to have these  
12 marked as exhibits. And -- and again, I would make  
13 them in eight -- I'll bring them back in eight and a  
14 half by 11 pieces of paper, but could I have both of  
15 these charts marked as exhibits? And I'd like to  
16 offer them.

17                  JUDGE WOODRUFF: Do you want to mark  
18 them as separate exhibits?

19                  MR. BYRNE: Yes.

20                  JUDGE WOODRUFF: All right. 175, then,  
21 is the cost of equity capital summary and 176, what  
22 would -- what would the other one be called?

23                  MR. BYRNE: We could call it adjusted  
24 cost of capital summary.

25                  (EXHIBIT NOS. 175 AND 176 WERE MARKED  
26

1 FOR IDENTIFICATION BY THE COURT REPORTER.)

2 JUDGE WOODRUFF: All right. 175 and 176  
3 have been offered. Any objection to their receipt?

4 MR. MILLS: Yeah, Judge, I have a number  
5 of objections, and most of -- some of them are  
6 different for each exhibit. I would like the right  
7 to make those objections after I do my redirect  
8 because I don't want to give Mr. Byrne the  
9 opportunity to do additional cross-examination to fix  
10 the flaws in those exhibits that he's already  
11 offered. Can I -- can I reserve my objections until  
12 after that so that Mr. Byrne doesn't get another  
13 crack at the apple?

14 JUDGE WOODRUFF: All right. I'll  
15 reserve my ruling.

16 MR. BYRNE: Thank you, Mr. Lawton.

17 THE WITNESS: Thank you, Mr. Byrne.

18 JUDGE WOODRUFF: All right. We'll come  
19 up for questions from the bench. Commissioner Davis?

20 THE WITNESS: Good morning,  
21 Commissioner. How are you?

22 COMMISSIONER DAVIS: I am -- I am  
23 wonderful, Mr. Lawton, but before -- before I start  
24 with you, I think I need to inquire of Mr. Dearmont  
25 for a moment.



1 MR. DEARMONT: Okay.

2 COMMISSIONER DAVIS: Mr. Dearmont, in  
3 cross-examining witnesses that hear -- I mean, you've  
4 asked them about testimony. I think you asked  
5 Dr. Morin about his testimony in Canada and I heard  
6 you ask Mr. Lawton about Nevada and possibly a few  
7 other jurisdictions, correct?

8 MR. DEARMONT: Yes, sir.

9 COMMISSIONER DAVIS: Did you hear the  
10 opening -- the very opening statements in this case?  
11 Not the opening statements on ROE, but --

12 MR. DEARMONT: Some of them.

13 COMMISSIONER DAVIS: Did you hear  
14 Mr. Coffman's?

15 MR. DEARMONT: I heard a portion of it.

16 COMMISSIONER DAVIS: Okay. Did you hear  
17 him where he was urging us to take notice of the  
18 Ameren Illinois proceedings?

19 MR. DEARMONT: I don't recollect that.

20 COMMISSIONER DAVIS: You don't -- you  
21 don't recollect that.

22 MR. DEARMONT: No.

23 COMMISSIONER DAVIS: You've  
24 cross-examined Mr. Gorman already, correct?

25 MR. DEARMONT: Correct.

1                   COMMISSIONER DAVIS: Did you look at  
2 Mr. Gorman's testimony in the Ameren Illinois  
3 electric rate cases?

4                   MR. DEARMONT: Personally? I personally  
5 have not. I am aware that Mr. Gorman has filed  
6 testimony in the state of Illinois.

7                   COMMISSIONER DAVIS: Did -- did other  
8 Staff witnesses?

9                   MR. DEARMONT: Mr. Hill had indicated he  
10 had not, Mr. Murray had indicated he had not.

11                  COMMISSIONER DAVIS: Okay. So to the  
12 best of your knowledge, no one looked at the Illinois  
13 Commerce Commission Staff's recommendation in those  
14 three electric cases?

15                  MR. DEARMONT: To the best of my  
16 knowledge.

17                  COMMISSIONER DAVIS: You don't have a  
18 copy of it in front of you, but 4 CSR 240-4.020 deals  
19 with conduct during proceedings, and it states  
20 that -- subsection (1): "Any attorney who  
21 participates in any proceeding before the Commission  
22 shall comply with the rules of the Commission." And  
23 it goes on to talk about ethical standards that go on  
24 during a proceeding. You are an attorney  
25 participating in the proceeding, correct?  
26

1 MR. DEARMONT: Yes, sir.

2 COMMISSIONER DAVIS: Okay. And that  
3 would also apply to all the other Staff attorneys  
4 that are appearing -- appearing as well?

5 MR. DEARMONT: Yes, sir.

6 COMMISSIONER DAVIS: Okay. And so you  
7 agree that you're bound by the rules of the  
8 Commission, correct?

9 MR. DEARMONT: Yes, sir.

10 COMMISSIONER DAVIS: Okay. Going over  
11 to 4 CSR 240-4.010, it codifies executive order 92-04  
12 which is the executive branch employee code of  
13 conduct. Section 1 B of that code states:  
14 "Employees shall act impartially and neither dispense  
15 nor accept special favors or privileges to be  
16 construed to improperly influence the performance of  
17 their official duties."

18 Now, just to be clear, you're an  
19 employee, Mr. Murray's an employee, for purposes of  
20 this proceeding, even Mr. Hill is an agent or an  
21 employee; you'd agree with that, wouldn't you?

22 MR. DEARMONT: Yes.

23 COMMISSIONER DAVIS: And would you agree  
24 with me that "and" is a conjunctive phrase such that  
25 if you have a phrase that says do this and that,  
26

1 you're required to do both this and that?

2 MR. DEARMONT: Yes.

3 COMMISSIONER DAVIS: Okay. Now, going  
4 back to section 1 B of the code of conduct, it says:  
5 "Employees shall act impartially." Now, I don't have  
6 a new edition of Black's Law Dictionary in front of  
7 me. I've got the 7th edition. We don't get new  
8 editions of Black's Law every day. But it defines  
9 the term "impartial" as "unbiased, disinterested."  
10 Would you agree with that definition?

11 MR. DEARMONT: Yes.

12 COMMISSIONER DAVIS: So Mr. Dearmont, I  
13 guess here's my question: If the PSC Staff is  
14 testifying and you're cross-examining witnesses about  
15 testimony in other jurisdictions and according to the  
16 code of conduct it's supposed to be impartial, then  
17 shouldn't you present the evidence from the other  
18 jurisdictions that's unfavorable to your position as  
19 well as favorable?

20 MR. DEARMONT: Should we present that  
21 information, is that --

22 COMMISSIONER DAVIS: Uh-huh.

23 MR. DEARMONT: -- if I understand your  
24 question correctly? I definitely think that that  
25 information is relevant to the Commission's decision,  
26

1 and I -- I believe that Staff in this case is  
2 presenting what it believes to be an impartial -- an  
3 impartial recommendation, an impartial estimate as to  
4 AmerenUE's cost of equity capital. Commissioner, to  
5 the best of my knowledge, Staff has not done anything  
6 to intentionally disavow this Commission of the  
7 ability to look at that. And to the extent the  
8 Commission would like to examine that information, I  
9 think that Staff would be happy to discuss it. I  
10 mean, I...

11 COMMISSIONER DAVIS: I guess -- I guess  
12 what I'm getting at --

13 MR. DEARMONT: Yes.

14 COMMISSIONER DAVIS: -- is do you have a  
15 duty to disclose that information?

16 MR. DEARMONT: A duty to disclose? I  
17 think that Staff most likely has a duty to disclose  
18 any information that they believe relevant to the  
19 Commission's decision in this case. I -- Mr. Byrne  
20 has been -- said yesterday that he's been practicing  
21 cost of equity for 25 years, and I've been doing it  
22 for 25 weeks. It's probably a more accurate  
23 estimate.

24 So I don't understand the -- the  
25 comparison necessarily between the comparable groups  
26

1 in Illinois and the -- and the comparable groups  
2 in -- in -- that were used in the proxy groups of the  
3 equity witnesses in this case, so I don't -- I don't  
4 feel that I'm fully qualified to be able to tell you  
5 whether or not they should have considered that  
6 information in reaching a neutral and unbiased  
7 recommendation in this case or not.

8 COMMISSIONER DAVIS: Okay. So to the --

9 MR. DEARMONT: So to the extent that  
10 they should have, then yes, I think that maybe that  
11 information --

12 COMMISSIONER DAVIS: So you're just --  
13 you're just an advocate and you're advocating for the  
14 right answer, and the right answer you believe is  
15 9.35 percent; is that -- is that fair?

16 MR. DEARMONT: That is accurate, yes,  
17 sir.

18 COMMISSIONER DAVIS: Okay. All right.

19 MR. DEARMONT: And again, I apologize  
20 for --

21 COMMISSIONER DAVIS: No, no, no, it's --  
22 I mean, that's a more important public policy  
23 question than what we're going to be answering here.

24 MR. DEARMONT: Okay.

25 COMMISSIONER DAVIS: So all right.

26

1 QUESTIONS BY COMMISSIONER DAVIS:

2 Q. Good morning, Mr. Lawton.

3 A. Good morning, Commissioner Davis.

4 Q. Going back to questions from -- from  
5 Mr. Dearmont, why did you take the negative EPS data  
6 out of -- out of your recommendation again?

7 A. I take -- I removed the negative EPS  
8 data because investors are not going to make an  
9 investment decision on having negative growth and  
10 eventually someday losing their entire investment if  
11 you stay there forever.

12 Dr. Morin is another who -- in this case  
13 who pointed out you don't use negative growth rates,  
14 and he excluded companies that had negative growth  
15 rates. It just seems silly to -- to employ it.

16 Q. All right. In examining cost of capital  
17 testimony here in past cases, it's been my impression  
18 that a number of experts in selecting their proxy  
19 group would exclude companies that had cut their  
20 dividends.

21 A. Yes.

22 Q. Is that a fairly common practice?

23 A. Yes.

24 Q. Why?

25 A. Basically, the -- if you look at a

1 Company after it cuts its dividend --

2 Q. Uh-huh.

3 A. -- you'll see that the stock price  
4 reaction is quick or swift and -- and -- and  
5 punishing because investors expected those -- those  
6 dividends to be paid, and suddenly, they -- they're  
7 not going to be paid, they're not going to have that  
8 income. And you'll -- you'll -- and it also reflects  
9 there's a problem there. That is a cash flow  
10 problem. And investors are concerned about that.  
11 That price will plummet.

12 Q. And are you aware that AmerenUE's parent  
13 Company, Ameren, cut their dividends?

14 A. I am aware of that, and -- and when they  
15 cut it. And I am also aware that it's in the group.

16 Q. Right. And they're not the only one,  
17 they're not the only utility that's cut dividends?

18 A. No, they're not. Although in the  
19 past -- I would say in the past -- I read a report  
20 recently, the past six months or '09, only one has  
21 really cut their dividends out of 59 utilities in the  
22 recent periods.

23 Q. So you'd agree with me that they're  
24 filing more rate cases?

25 A. Oh, around the country the rate cases



1 are -- are -- are popping up much more frequently  
2 than recently, and typically it's a rate case to  
3 invoke tracker clauses. We're seeing that all over  
4 the country to get more rapid recovery and more  
5 assured recovery. Tracker clauses from not just fuel  
6 but other costs.

7 Q. Okay. And going back to your direct  
8 testimony, page 31 --

9 A. Page what, sir?

10 Q. Page 31 of your direct testimony, the --

11 A. The table?

12 Q. Yeah, the table --

13 A. I'm there.

14 Q. -- the table that everyone -- the table  
15 that everyone asks about. Actually, I'm not -- I'm  
16 not -- I'm not going to ask you. Just lines 14  
17 through 16 you said, "The midpoint estimate for the  
18 comparable group is about 10.2 percent."

19 A. Yes, sir.

20 Q. 10.1 percent is about 10.2 percent.

21 A. Yes, I think I cleared that up in  
22 surrebuttal, sir.

23 Q. Okay. And -- and so just to be clear,  
24 10.2 percent is a reasonable estimate --

25 A. Yes.

1 Q. -- on AmerenUE's cost of equity?

2 A. Yes, sir. It's within that -- as I said  
3 to Mr. Byrne, anything within the range is -- is --  
4 is reasonable, and 10.2 is within my range.

5 Q. Okay. Mr. Lawton, is there anything  
6 else that you would like to add that you think is  
7 relevant to anything that you've been asked here this  
8 morning?

9 A. Yes, sir. Two things: One, I think  
10 that the updated -- or the 10.1 or 10.2 percent cost  
11 of equity is -- is -- is a reasonable estimate,  
12 it's -- it's consistent with what regulatory  
13 authorities are granting currently. But the other  
14 thing I did want to point out is it seems that some  
15 parties are trying to lay the predicate I've somehow  
16 changed my approach of my testimony.

17 Q. Uh-huh.

18 A. And that is just absolutely incorrect.  
19 I present the same data. And if you look at that  
20 Oklahoma testimony that Mr. Dearmont presented, it  
21 says right in the testimony on the next couple of  
22 lines, and I point this out in surrebuttal, that I  
23 relied upon the earnings forecasted growth rates just  
24 like I do in all cases.

25 And so I just think Mr. Hill in  
26

1 evaluating that testimony in his -- in his analysis  
2 made an error and just didn't read that, possibly. I  
3 don't think he was trying to be misleading. And I  
4 just wanted to make that clear that I am consistent  
5 and consistency has -- has -- has proven to be  
6 correct. And that's all I'd add.

7 Q. Okay. And when you were here testifying  
8 on behalf of the Office of Public Counsel in the MGE  
9 rate case, both -- you recall that both you and  
10 Dr. Handley used the semiannual DCF?

11 A. Yes, sir.

12 Q. Okay.

13 A. Which I've done in this case as well.

14 Q. Done that -- done that in this case as  
15 well?

16 A. Yes, sir.

17 Q. Consistently?

18 A. Consistently.

19 Q. Consistently. And why do you -- why do  
20 you employ the semiannual DCF as opposed -- opposed  
21 to the annual DCF again?

22 A. It's -- Dr. Morin increases it by the  
23 full growth rate, and I increase it by one-half the  
24 growth rate, the dividend yield, and it's  
25 mathematically correct. We're trying to get what is  
26

1 the expected dividend. If you buy stock today,  
2 Commissioner, you're expecting next year's dividend,  
3 that's what you're buying. You're not buying last  
4 year's dividend. So we try to get an estimate of  
5 what you're buying, that cash flow. And one-half the  
6 growth rate gets it exactly.

7 Dr. Morin uses one -- the full -- the  
8 full growth rate. It overstates the dividend yield.  
9 But if you look at Dr. Morin's surrebuttal, he  
10 indicates he uses the full growth rate because he  
11 captures quarterly compounding in there, which I  
12 don't.

13 Q. Right. But you agree that some level of  
14 compounding is appropriate? That's why you do it  
15 or --

16 A. Yes. Some -- some -- some -- you're  
17 recognizing the dividend the consumer is buying next  
18 year. In terms of formally adjusting it and  
19 compounding for the four quarterly payments, it's my  
20 opinion and it has been consistently, that the way  
21 regulatory authorities are set up -- and it's -- and  
22 it's this case in Missouri -- that if you look at the  
23 working capital calculation --

24 Q. Uh-huh.

25 A. -- you have all the components of the

1 cost of service in there except for dividends.  
2 The -- when you as a consumer pays a bill to Ameren  
3 Corporation, you are paying the entire cost of  
4 service including the dividend. Ameren holds that  
5 dividend until the 90th day and pays it out  
6 quarterly.

7                   They have the opportunity to earn money  
8 on that dividend payment. Just like this Commission  
9 has recently ruled that interest that they paid to  
10 bondholders should be included in the cash working  
11 capital calculation --

12           Q.       Uh-huh.

13           A.       -- then that -- that the quarterly  
14 compounding is reflected in the payment of the  
15 dividend because the dividend is not included in your  
16 cash working capital calculation in the state of  
17 Missouri or most other states. And that's why I  
18 don't adjust it again for quarterly compounding.

19           Q.       Okay. Would you agree with me that the  
20 difference between -- say, I'm a little sketchy on  
21 the -- on the S&P or Moody's rating chart, but --

22           A.       Sure.

23           Q.       -- for instance, you know, Florida  
24 Power & Light was downgraded a notch from, what was  
25 it, A to A-minus?  
26

1           A.       Yes, it was noted as the strongest --  
2 financially strongest utility in the country.

3           Q.       Right. So they're still A-rated and  
4 they're -- and in your opinion, that's really not  
5 much of a material downgrade, is it?

6           A.       Well, it's -- it's -- in my opinion that  
7 is correct, but you have to read the downgrade  
8 opinion. And what it states in Florida is that we  
9 are downgrading because of a different decision,  
10 unexpected decision from the Florida Commission and  
11 the investments and concerns of risk in the  
12 unregulated portion of the business in Florida  
13 Power & Light.

14                       Now, if Progress Energy got hit with the  
15 same decision at the same time, it was not downgraded  
16 and it doesn't have those unregulated risky  
17 businesses. So it's my opinion that the decision in  
18 and of itself did not cause the downgrade. Other  
19 factors are there.

20           Q.       Okay. Would you -- would you agree with  
21 me that the distinction between someone going from,  
22 say, an S&P rating of triple B to triple B-minus  
23 would -- would be a much more significant impact?

24           A.       I would, and the reason I would say  
25 that's more significant, not in terms of the credit  
26

1 move and the notches as they rate them, but if you  
2 look at the recent financial calamity we had in this  
3 country, the ones -- the utilities or bondholders or  
4 companies that got hammered the most were those rated  
5 low triple B or in the triple B rating.

6                   You'll see that the interest rates on  
7 triple B bonds went from low 6s to almost 9 percent  
8 while A and double A and triple A, yes, they went up,  
9 but not by as much, nearly as much. And the reason  
10 is once you're at triple B minus, you're close to  
11 going to junk bonds. That's the riskiest segment.  
12 And all I can point you to for the evidence if you  
13 look at my testimony, schedule 2 --

14           Q.       Okay. Hold on.

15           A.       That's the direct testimony.

16           Q.       Yep, I have it -- I believe I have it  
17 right here.

18           A.       If you look at the column headed triple  
19 A and the column headed triple B, those are corporate  
20 bond yields.

21           Q.       Uh-huh.

22           A.       And you'll see that in the -- in the --  
23 let's look at the month of June '08 for triple B.  
24 They were averaging about 7.07 percent. Then you see  
25 the financial calamity hit and we're at 9.21 and -  
26

1 they went way up. But on the triple A side, you  
2 don't see that -- that kind of increase. And what  
3 that indicates is -- is that those with the lower  
4 grade financial rating are going to be hit harder.  
5 There's concern --

6 Q. Right.

7 A. -- to get investors to lend capital when  
8 you're at that level.

9 Q. And you know, the last three-month  
10 average here for September, October, November was  
11 roughly 6.3 percent for --

12 A. That's correct.

13 Q. That's -- that's correct?

14 A. What that means is -- I -- I've  
15 concluded from that as the government's intervention  
16 with TARP programs and all -- all the things we see  
17 the Federal Reserve doing has -- has brought  
18 financial stability back. We had a real liquidity  
19 crisis as you're well aware of.

20 Q. Right.

21 A. And so you saw the triple Bs go from 9  
22 percent in November down back to the prefinancial  
23 crisis levels.

24 Q. Right. And do you have any concerns  
25 that if we were to adopt a decision in this case -  
26



1           A.       Sure.

2           Q.       -- with Staff's recommended return on  
3 equity, with Staff's recommended depreciation rates,  
4 which I guess for purposes of this hypothetical, you  
5 could assume that the investment community would view  
6 them as some of the lowest, if not the lowest in the  
7 country, as well as a fuel adjustment that would also  
8 be viewed by rating agencies and investors as  
9 substandard in that it's -- would be a lesser  
10 percentage than other utilities in other vertically  
11 integrated jurisdictions might get, would you be  
12 concerned with those three predominant factors that  
13 the Company would be risking another downgrade and  
14 that would increase the cost of debt?

15          A.       My concern would be the impacts on cash  
16 flow, because that's what they're going to look at  
17 from the rating agencies.  And when you reduce  
18 return -- and I haven't studied the impact of Staff's  
19 case in this case, but if you reduce return, you're  
20 going to reduce cash flow coming from the Company to  
21 pay dividends or anything else they want to use.

22                    If you reduce depreciation, you're also  
23 reducing cash flow; that is, the recovery of past  
24 capital investments are coming into the Company  
25 that's used for whatever corporate purposes.  So that  
26

1 would be viewed as a concern.

2                   And the last thing is that if fuel  
3 costs -- and I haven't studied it, but to the extent  
4 you don't recover your actual expenditure cost,  
5 absent imprudence, you've got real problems. And if  
6 you've got imprudence, you've got major problems. I  
7 don't know what the facts are in that issue.

8                   But I can tell you that in the Florida  
9 case, what happened there is depreciation was used to  
10 address cash flow needs. In other words, if you  
11 raise a return on equity for Ameren, you've got to  
12 pay them not only the dollars for the return on  
13 equity, but the taxes associated with it, where  
14 depreciation, that's dollar-for-dollar.

15           Q.       All right. Is it fair to say that --  
16 this is my mental impression of Florida and as  
17 someone who --

18           A.       Sure.

19           Q.       -- testified on behalf of the consumer  
20 advocate in that case, I mean, my impression was that  
21 Florida Power & Light went to the Florida legislature  
22 and said, you know, you pass this legislation and  
23 we're going to build some nuke plants and it's going  
24 to be jobs, infrastructure and economic development  
25 and it's -- it's going to be great and then, you  
26

1 know, they -- maybe they soft-pedal the whole, hey,  
2 how much is this going to cost to the legislature and  
3 then, you know, in my opinion -- or in my impression,  
4 just flat out overreached big time with the  
5 Commission consistently and that's what got them in  
6 real trouble. Is that a fair impression?

7 A. I think that's not the -- for the  
8 ultimate decision, the reasoning, but the -- those  
9 factors were there because the surcharge for the  
10 nuclear power plants was allowed a consistent  
11 recovery as you're constructing. Preconstruction  
12 costs, which are substantial --

13 Q. Right.

14 A. -- the first hit on the surcharge I  
15 think was in the range of \$400 million or so and it  
16 was -- there was a substantial amount of money  
17 involved, which was way above original estimates and  
18 it certainly raised eyebrows. And so there was --  
19 there were -- there were a number of problems with  
20 that creation of an enhancement mechanism to build  
21 nuclear power plants.

22 Q. And I don't know how many customers  
23 Florida Power & Light has in Florida, but I mean, do  
24 you know roughly what the -- what the \$400 million  
25 effect was or what the effect of the proposed million  
26

1 dollar rate increase would have been on customers?

2 A. It -- I don't -- I do know that the  
3 billion 250 -- two hundred -- it was a billion 250  
4 million --

5 Q. Billion?

6 A. -- it was a billion in year 1, 250  
7 million in year 2 added. And -- and -- and so that  
8 was a 25 percent base rate increase for consumers.  
9 So they have a substantial cost of service in the  
10 state of Florida for Florida Power & Light. The half  
11 billion increase that Florida Progress requested was,  
12 as I recall, in the same range, 18 to 20 percent base  
13 rate increase.

14 COMMISSIONER DAVIS: All right.

15 Mr. Lawton, thank you. Thank you for your time.  
16 Hopefully we'll get you out of here this morning and  
17 back on the airplane to Texas.

18 THE WITNESS: Well, thank you, sir.

19 Appreciate it.

20 QUESTIONS BY JUDGE WOODRUFF:

21 Q. I have a couple questions.

22 A. Oh, I'm sorry. I didn't mean to ignore  
23 your turn.

24 Q. That's okay. I actually wasn't looking  
25 at you when I said it either. I'm looking at my  
26

1 screen here because I've gotten questions from some  
2 of the Commissioners who aren't here in the hearing  
3 room.

4 A. Yes, sir.

5 Q. Commissioner Gunn asked me to ask a  
6 couple of questions, and the same questions he had  
7 asked Dr. -- Mr. Gorman and Morin. And this is --  
8 concerns the zone of reasonableness the Commission  
9 has talked about in past rate cases where -- you're  
10 familiar with that idea?

11 A. Yes, sir.

12 Q. Okay. His question is, "If you had done  
13 your analysis and it was outside the zone of  
14 reasonableness and after you checked your input you  
15 determined that you were correct, would you adjust  
16 your conclusion -- adjust your recommendation?"

17 A. I understand -- and so I understand your  
18 question, the zone of reasonableness is 100 basis  
19 points plus or minus the average --

20 Q. Right.

21 A. -- utility commission in this country.  
22 Now, if I had done my analysis and found I was  
23 outside the zone of reasonableness, would I change to  
24 get into the zone of reasonableness?

25 Q. That's the question, yes.

1           A.       Okay.  I would -- I would check my  
2 analysis, but if I was way outside the analysis, I  
3 don't know.  I wouldn't just drop my numbers and say  
4 I'll accept the zone of reasonableness.  I don't know  
5 that I could do that.  That wouldn't be consistent  
6 with past testimonies.  I -- I -- that's an  
7 interesting question.  I don't necessarily believe  
8 that I would go to the zone of reasonableness.  I  
9 can't imagine that happening, that I would be so far  
10 off from other public utility commissions around the  
11 country.

12          Q.       So is it fair to say, then, that you  
13 don't think these zone of reasonableness should be  
14 used as an automatic disqualifier?

15          A.       That's correct.  I don't think it should  
16 automatically disqualify me.  But I'd be concerned if  
17 I was outside it, and it's a -- I just can't imagine  
18 a situation where I would be.

19          Q.       Looking at the methodologies of all the  
20 other ROE experts used in this case --

21          A.       Sure.

22          Q.       -- are -- are any of the methodologies  
23 theoretically unsound, aside from the inputs that are  
24 put into it?

25          A.       No.  I think Mr. Gorman, Dr. Morin and I

1 have -- and -- and -- and Staff have used the same  
2 approaches, the DCF or the risk premium or the  
3 capital asset pricing models to get ourselves a  
4 range, and so they're -- they're all sound.

5 Q. All right. Thank you. Then  
6 Commissioner Kenney also sent me an e-mail.

7 A. Okay.

8 Q. And his question is, "What extent do you  
9 believe that regulatory lag plays a role in  
10 increasing Ameren's risk?"

11 A. Decreasing or increasing?

12 Q. Increasing.

13 A. It -- it -- it plays a role in every  
14 utility's risks, but I -- I -- I recall reading  
15 the -- the interim rate testimony in this case. I  
16 think they -- the Company asserted -- and as well as  
17 Mr. -- Dr. Morin -- have asserted an extraordinary  
18 regulatory lag. That just doesn't exist.

19 The facts are, as I point out in my  
20 rebuttal or surrebuttal, the average regulatory lag  
21 in this country for an electric utility is about ten  
22 months. And Mr. Baxter pointed out it was 11 months  
23 was extraordinary and I don't see that. And so the  
24 facts are it's -- it's -- it's not a real problem.

25 If it is a real problem, it doesn't appear to be the  
26

1 legislative statutes that you folks have to follow.

2           The utility -- what I see around the  
3 country and -- and -- and in this case as well,  
4 utilities -- it's become mass tort litigation in  
5 these rate cases. And I think things have to be  
6 streamlined a bit to -- to clean up the process so  
7 that folks like yourselves can render a decision  
8 rather quickly and the utility can be on its way.

9           When I first started in this business,  
10 we used to visit the utility, we'd sit down with the  
11 witnesses, we'd exchange papers and no mass tort  
12 litigation. Now it's -- it's just -- and I'm a  
13 lawyer, I'm not picking on lawyers, but I don't know  
14 if lawyers are running too much of the show or what,  
15 but it's got to be streamlined a bit.

16           JUDGE WOODRUFF: Okay. That's all the  
17 questions I have.

18           THE WITNESS: Thank you, sir.

19           JUDGE WOODRUFF: And we'll take a break  
20 before we go on to recross. We'll come back at  
21 10:50.

22           (A RECESS WAS TAKEN.)

23           JUDGE WOODRUFF: Let's come to order,  
24 please. All right. Before we took our break, we  
25 were ready for recross of Mr. Gorman [sic]. Recross  
26



1 based on questions from the bench.

2 MR. BYRNE: Mr. Lawton.

3 JUDGE WOODRUFF: So we'll begin with  
4 Public Counsel.

5 MR. MILLS: He's my witness, I'm going  
6 to go last.

7 JUDGE WOODRUFF: I've not only confused  
8 his name, I confused his party. Okay.

9 MR. MILLS: If it was Mr. Gorman, it  
10 would be my turn.

11 THE WITNESS: Mr. Gorman is very upset.

12 JUDGE WOODRUFF: We'll start with MIEC,  
13 then.

14 RE-CROSS-EXAMINATION BY MS. ISLES:

15 Q. I just have one question. Commissioner  
16 Davis was asking you about various impacts -- I think  
17 you were talking about some cash flow issues from  
18 various other issues in this case?

19 A. Yes, ma'am.

20 Q. Have you actually done a cash flow  
21 analysis of those issues?

22 A. Of those issues, no. Of return on  
23 equity, yes.

24 Q. Okay. So you --

25 A. My direct test -

1 Q. -- haven't looked at depreciation, for  
2 example, or the fuel adjustment clause?

3 A. (Shook head.)

4 MS. ISLES: Thank you. I --

5 THE WITNESS: Oh, excuse me. No. I  
6 have to -- I was shaking my head. I have to give an  
7 audible answer. I apologize.

8 MS. ISLES: Thank you. That's all the  
9 questions I have.

10 JUDGE WOODRUFF: Recross from Staff?

11 MR. DEARMONT: I have no questions.  
12 Thank you.

13 THE WITNESS: Thank you.

14 JUDGE WOODRUFF: All right. Ameren?

15 RE-CROSS-EXAMINATION BY MR. BYRNE:

16 Q. I just had a couple. Mr. Lawton,  
17 Commissioner Davis was asking you about dividend  
18 cuts. Do you remember that?

19 A. Yes, sir.

20 Q. A set of questions. And I think he said  
21 not very many companies have cut their dividends even  
22 though -- like Ameren Corporation has recently,  
23 right?

24 A. Yes.

25 Q. But not that many other companies have

1 cut their dividend?

2 A. Right. I think I had -- the report I  
3 referenced indicated out of 59 companies, one had cut  
4 them and 58 hadn't -- had actually kept on the same  
5 or raised.

6 Q. And are you aware that Great Plains cut  
7 their dividend? Is that the one Company maybe?

8 A. It -- it -- it may be. I don't recall.  
9 I can check, obviously.

10 Q. That's okay. You know, you were talking  
11 a little with Commissioner Davis about regulatory  
12 lag, and I think you said the average length of rate  
13 case is ten months across the country versus 11 here.  
14 Do you remember that?

15 A. Yes.

16 Q. And my question is this: Aren't there  
17 mechanisms in a lot of states that allow a utility to  
18 recover costs of capital investment without waiting  
19 for a rate case?

20 A. No.

21 Q. Well, like in -- like in Florida, for  
22 example, aren't they allowed to recover the cost of  
23 construction work in progress while they're building  
24 a nuclear plant or while they're building another  
25 plant?  
26

1           A.       Certain items are allowed to be  
2 recovered, but your question prior to that, aren't  
3 there a number of mechanisms to allow them to recover  
4 their cost of capital, the answer is no. Are there  
5 mechanisms that allow the recovery of certain costs,  
6 yes. Those are specific costs for specific reasons.

7           Q.       Would it be fair to say there are more  
8 mechanisms like that in other states than there are  
9 in Missouri?

10          A.       Pick a state and we'll compare. I mean,  
11 there are -- there are mechanisms, for example, fuel.  
12 Most states have fuel clauses for -- for the recovery  
13 of fuel expenditures. Some states will have the  
14 ongoing kind of construction mechanisms, and -- for  
15 specific reasons and for specific construction.

16                   I think Mr. -- Commissioner Davis and I  
17 were talking about the nuclear construction in the  
18 case of Florida, a recent specific statute. Other  
19 states -- or I know other utilities have tried, for  
20 example, the -- the -- the vegetation management  
21 clauses, but that hasn't really gone over well  
22 because that's something you can predict, vegetation  
23 management, those costs. And so those kinds of  
24 clauses have been pretty much rejected.

25          Q.       How about projected test years, do some

1 jurisdictions use projected test years?

2 A. Yes, for example FERC, the Federal  
3 Energy Regulatory Commission, employs a projected  
4 test year. Other states actually do projected test  
5 years similar to FERC, and alternatively you could  
6 have a -- a -- a normalization kind of adjustment or  
7 a true-up to go to the Commission. And I think  
8 that's what you have in this case, so --

9 Q. Right. But that's not as -- that's not  
10 as good in terms of reducing regulatory lag as  
11 compared to test year, is it?

12 A. I -- I don't know, it could be even  
13 better. I mean, it could be more accurate, I mean,  
14 than a forecasted test year.

15 MR. BYRNE: All right. Thank you,  
16 Mr. Lawton.

17 THE WITNESS: You're welcome, Mr. Byrne.

18 JUDGE WOODRUFF: All right. Redirect?

19 REDIRECT EXAMINATION BY MR. MILLS:

20 Q. Mr. Lawton, let me -- let me start with  
21 just a quick cleanup question. If I can get you to  
22 turn to page 62 of the Nevada testimony that  
23 Mr. Dearmont asked you about. And he's got a tab at  
24 page 63. I believe he's got your copy tabbed as  
25 well.  
26

1           A.       Yes.

2           Q.       And is the point of your testimony  
3 there -- well, first of all, let me -- let me ask  
4 you, what is the point of your testimony there?

5           A.       I'm talking about growth rate in --  
6 in -- that I have analyzed in -- for this case. It  
7 was a -- it was a gas case in the state of Nevada and  
8 I did a DCF and was talking about the growth rates.

9           Q.       Okay. And you were criticizing another  
10 witness's use of growth rates; is that correct?

11          A.       That is correct. He had very limited  
12 forecasted growth rates.

13          Q.       And if I can get you to turn to page 62,  
14 how many -- how many growth rates did he use, if you  
15 look at the bottom of page 62?

16          A.       Two earnings growth rates.

17          Q.       And then that's too few; is that  
18 correct?

19          A.       That's correct.

20          Q.       So whether it's one or two, it's still  
21 too few?

22          A.       Yes.

23          Q.       I believe -- I believe in response to a  
24 question from Mr. Dearmont, he said he used one, but  
25 he, in fact, used two?  
26

1           A.       Yes, he did.  He did.

2           Q.       Okay.  Now, I think you got into this a  
3 little bit in response to -- to a question from  
4 Commissioner Davis, but I'd like -- I'd like you to  
5 explain what you did here in Missouri in your  
6 testimony in terms of growth rate analysis as  
7 compared to what you did in Oklahoma.  A portion of  
8 your testimony is attached to your surrebuttal  
9 testimony.

10          A.       Uh-huh.

11          Q.       And -- and in Nevada, for that matter  
12 that Mr. Dearmont talked to you about?

13          A.       Sure.  In -- in all of those cases, I  
14 employed forecasted growth rates, and the same  
15 forecasted growth rates I employed in this case; that  
16 being Value Line forecast, Zacks forecast and the  
17 IBES forecast.

18                    Yes, I presented other data in those  
19 cases just like I presented historical data in this  
20 case, but I relied upon and the sentence specifically  
21 states, I employed the forecasted growth rates.  In  
22 addition in those cases, I did a specific analysis  
23 for the internal rate of return.  But in -- in a  
24 quick analysis in this case I found it to be the same  
25 as the forecasted growth rates --  
26

1                   THE COURT REPORTER:  And you what?  You  
2  found it the same --

3                   THE WITNESS:  The same as these  
4  forecasted growth rates, and therefore I didn't  
5  bother.

6                   THE COURT REPORTER:  Thank you.

7  BY MR. MILLS:

8           Q.       Now, also in that -- in that Nevada  
9  decision, there's a tab at page 48, and Mr. Dearmont  
10  asked you about the conclusion of a fairly lengthy  
11  discussion about geometric means.

12          A.       Yes, sir.

13          Q.       And we have in Missouri at least one  
14  Commissioner who is strangely interested in geometric  
15  and arithmetic means.  Is there anything in that  
16  discussion other than the conclusion that you talked  
17  about that would help educate and inform the  
18  Commission?

19          A.       Yes.  Well, what -- what I can tell you  
20  is that I think that the geometric mean measure of  
21  return averages is the better, and -- than the  
22  arithmetic average and should be employed.  In other  
23  words, the geometric mean because it's measuring  
24  returns over a long period of time.  I believe it's  
25  Dr. Morin in this case that says that the arithmetic  
26



1 mean should be employed and we just disagree.

2 Q. And I think it was part of Mr. --  
3 implicit in Mr. Dearmont's questions about the -- the  
4 arithmetic and geometric mean. Did you do anything  
5 with Dr. Morin's analysis in which he used the  
6 arithmetic mean?

7 A. Yes, I -- I -- I employed his  
8 calculation employing the arithmetic mean. It made  
9 no difference in our analysis. I was updating  
10 Dr. Morin's capital asset pricing models, so I just  
11 used his calculation. Why create another issue where  
12 it's not necessary, is kind of my approach.

13 Q. And by doing that update, you didn't in  
14 any way endorse his -- his calculations?

15 A. No. As a matter of fact, I specifically  
16 state in my direct testimony I don't agree with it  
17 but I'm just going to update it for the limited  
18 purposes of showing the data.

19 Q. Now, you told Commissioner Davis that --  
20 in response to a specific question that you thought  
21 10.2 would be a reasonable return on equity; do you  
22 recall that?

23 A. Yes.

24 Q. Is that your estimate or your  
25 recommendation?  
26

1           A.       No. My recommendation is a range of  
2 return on equity estimates, and I picked the midpoint  
3 of 10.1 percent as corrected by Staff witness Murray  
4 for me, and it's truly 10.1 percent.

5                       And the second reason you wouldn't  
6 really want to go up from the midpoint is that if the  
7 Commission were to adopt the new capital structure in  
8 the update, which I've said use, that means there's  
9 more equity in the capital structure, that means  
10 there's less risk for this Company which would tell  
11 you stay at the midpoint or go down.

12          Q.       Okay. And -- and specifically referring  
13 to the correction of 10.2 to 10.1, was that simply a  
14 nun pro tunc correction?

15          A.       Yes.

16          Q.       Okay. You're a lawyer, you know what  
17 that means.

18          A.       I know exactly what it means --

19          Q.       Okay.

20          A.       -- but -- but -- but for the record  
21 and -- and -- and the reader, it was just a -- a --  
22 a -- a typo on my part and to correct. No  
23 substantive changes really.

24          Q.       Now, you were asked some questions about  
25 the CAPM and the risk premium in general.

1           A.       Yes, sir.

2           Q.       In this case, did the -- did the CAPM  
3 and the risk premium produce results -- results that  
4 are -- it's not something that you -- that you relied  
5 as much as the DCF but are at least meaningful and  
6 useful?

7                   MR. BYRNE:  I'm going to object.  The  
8 question is leading.

9                   MR. MILLS:  Okay.  I'll rephrase.

10                  JUDGE WOODRUFF:  Okay.

11 BY MR. MILLS:

12           Q.       Can you please describe the results of a  
13 CAPM and the risk premium in this case?

14           A.       Yes.  I did two risk premium analyses  
15 and they're both as set forth in my schedules, and  
16 the results indicated reasonable numbers consistent  
17 with the DCF.  And I employed all of the results, not  
18 biasing anything, but here are the numbers, here is  
19 what you would get from the factual data we can all  
20 check.  And the result indicated 10.1 percent.  When  
21 you put it all together, cost of equity is  
22 appropriate.

23                   And those are set forth, and I was  
24 looking at page 31 of my direct testimony ranging  
25 from 9.3 to 10.6 percent, almost exactly on my DCF -  
26

1 on my overall ranges.

2 Q. Do -- and I think -- I think this is  
3 where I was going, do the -- do the CAPM and the risk  
4 premium always produce results that are meaningful  
5 and useful?

6 A. No, they don't always.

7 Q. But here they did?

8 A. Here they did.

9 Q. Okay. Now, let's -- let me -- I'm going  
10 to move up here and I want to talk to you a little  
11 bit about the exhibits that Mr. Byrne went through  
12 with you. Okay. First of all -- and you just talked  
13 about your -- the update that you did to Dr. Morin's  
14 testimony. Can you define how you would use the term  
15 "updated" in this context?

16 A. Yes, sir. On -- Dr. Morin did his  
17 analysis and submitted his testimony in July of 2009.  
18 I did my testimony and submitted it in -- on  
19 December 18th, 2009. In the intervening  
20 approximately five to six months, the treasury rates  
21 and some other items changed, and so I updated the  
22 inputs to Dr. Morin's calculation using the  
23 published, most recent data as of that time and I  
24 ended up with the numbers that are set forth in my --  
25 in my testimony.

1           Q.       Okay.  And when you did that, did you  
2       make any changes to the ways that -- the ways that he  
3       picked those inputs?  You simply used more recent  
4       numbers?

5           A.       I used more recent numbers and he --  
6       "he" being Dr. Morin -- uses the most recent month of  
7       treasury bonds for his CAPM analysis.  I use a  
8       three-month average, just try to smooth out any --  
9       any changes.

10          Q.       Okay.  And let's talk about that.  For  
11       treasury bonds, you used a three-month average in --  
12       in your -- in your CAPM and ECAPM --

13          A.       Yes, sir.

14          Q.       -- calculations; is that correct?

15          A.       Yes.

16          Q.       And why is that?

17          A.       Well, it smooths out the average, the --  
18       the -- the -- the monthly -- month-to-month changes  
19       in the data.  And if you look at my -- and for  
20       example, the three-month average I had, indicated a  
21       couple of months at 4.2 percent and another month at  
22       4.4 percent.  And so I looked at a quarter of data,  
23       one quarter, calendar quarter, and -- using the three  
24       months, and I said let's smooth it out and I -- and I  
25       averaged those and ended up with 4.2 percent.  
26

1 Q. Okay.

2 A. Kind of a happy medium.

3 Q. Okay. And is the use of three months  
4 important?

5 A. It -- it -- it is to the extent the data  
6 is -- is -- is moving from month to month. It is  
7 important.

8 Q. And let me -- let me talk to you about  
9 what Mr. Byrne has denominated as updated CAPM.

10 A. Yes, sir.

11 Q. When Mr. Byrne had you recalculate your  
12 CAPM, did he use a three-month average?

13 A. No. He used a -- a -- a single monthly  
14 number. Actually, it was a daily number as I recall.  
15 I think he used the March 16th value. And -- and if  
16 you look at treasury bonds throughout a month,  
17 they -- they can -- they can change substantially.

18 Q. Okay. Do you believe that it's  
19 appropriate to use a single day?

20 A. No, absolutely -- I believe it is not  
21 appropriate to use a single day. Even Dr. Morin, his  
22 witness did not use the single day.

23 Q. Okay. So by -- by taking your analysis  
24 that uses three months of data and simply plugging in  
25 a single day of data, do you consider that to be an  
26

1 update to your analysis or a different analysis?

2 A. A different analysis.

3 Q. Okay. Given that this chart has your  
4 name at the top, would you say this is an accurate  
5 reflection of the way that you would have done a cost  
6 of equity capital?

7 A. Well, if it had my name at the top, it  
8 would have different numbers and a different  
9 analysis.

10 Q. Okay. Now, this was 175. Let's talk  
11 about 176.

12 A. Yes, sir.

13 Q. There are some numbers in which you were  
14 asked to give different weights to risk premium and  
15 CAPM than you did in your testimony. Do you recall  
16 that?

17 A. Yes, sir, I do.

18 Q. And in both of those calculations,  
19 didn't -- didn't Mr. Byrne ask you to carry over what  
20 he called your updated CAPM numbers?

21 A. Yes, sir.

22 Q. That you have just disavowed?

23 A. Yes, sir.

24 Q. Okay. Now, with respect to the -- to  
25 the idea of giving different weights to the DCF and  
26

1 to risk premium and CAPM, is that something that you  
2 would do in -- in -- in this case?

3 A. No. Generally, no. I -- I -- I haven't  
4 a witness in this -- no witness in this case has  
5 really done that and where the two-thirds/one-third  
6 comes from, I don't know. It's certainly not  
7 financial theory and it's just arbitrary selection of  
8 a weighting.

9 And you know, somebody has to explain to  
10 the decision-makers, the Commission, why would you do  
11 it that way? I mean, they deserve an answer and I  
12 don't know what that answer would be. I guess  
13 Mr. Byrne would have to tell them.

14 Q. So again, this doesn't reflect anything  
15 useful about your analysis and it shouldn't have your  
16 name on it and it doesn't -- well, let me -- that's  
17 several questions. Does this reflect anything useful  
18 about your analysis?

19 A. No.

20 Q. Okay.

21 A. And it shouldn't have my name on it.

22 Q. Okay. Now, I'm going to -- I'm going to  
23 follow up a little bit on -- on questions that  
24 Mr. Davis asked you about and that the attorney for  
25 MIEC asked you about, and that's the -- the three  
26



1 factors that Mr. Davis brought up which were return  
2 on equity, depreciation and fuel cost recovery. Do  
3 you recall that discussion -- discussion?

4 A. I do.

5 Q. Have you done any analysis about how  
6 likely a downgrade would be based on the PSC's  
7 decision on those issues in this case?

8 A. No, I haven't. I mean, there's no  
9 reason for me to do that. I don't know what the PSC  
10 is going to decide.

11 Q. Okay.

12 A. I just did it on my analysis.

13 Q. You agree that those three items could  
14 impact cash flow, correct?

15 A. Yes, sir.

16 Q. And cash flow can impact credit rating?

17 MR. BYRNE: I'm going to -- I'm going to  
18 object. These are leading questions, your Honor.

19 JUDGE WOODRUFF: Sustained.

20 BY MR. MILLS:

21 Q. Okay. Do these three items impact cash  
22 flow?

23 A. Yes, they do.

24 Q. Does cash flow impact credit rating?

25 A. Yes, it does.

1           Q.       Okay. Do you know whether there's  
2 enough cash flow at stake in this case based on the  
3 position of the parties to move the credit rating?

4           A.       I don't know because I haven't done the  
5 analysis.

6                   MR. MILLS: Judge, that's -- that's all  
7 the redirect that I have. I would like to object to  
8 the admission of both of those exhibits, I believe  
9 they were 175 and 176, on the basis that they don't  
10 reflect this witness's opinion, they are mislabeled  
11 in a number of ways, partly because the updated CAPM  
12 is not simply an updated CAPM, it uses a number that  
13 this witness has said is not reliable, is not the  
14 appropriate -- not only is the number not reliable,  
15 but the method to choose that number is unreliable  
16 and because it doesn't reflect his opinion of what  
17 that range should be.

18                   And because that range is carried over  
19 to the next exhibit, neither of these has anything  
20 useful to say about this witness's calculation.  
21 There's been no foundation laid that there is any  
22 rationale for doing the updated CAPM that way or for  
23 taking that updated CAPM that was improperly done and  
24 giving it the weighting that it's been given on the  
25 second chart. So I object to the lack of foundation  
26

1 and the relevance.

2 JUDGE WOODRUFF: Okay. Your response?

3 MR. BYRNE: Sure, your Honor. I -- I do  
4 think it's relevant. I understand Mr. Lawton has  
5 explained that that's not the way he would have  
6 updated his CAPM, but I used the same type of data  
7 that he used in his CAPM. I think -- I think the  
8 record is clear about Mr. Lawton's opinion, but I  
9 think -- but I think it's fair for me to say if you  
10 had used the most recent treasury bond number in your  
11 CAPM, what would that result have produced. I think  
12 that's a fair question for me to ask.

13 Mr. Lawton -- and with regard to the  
14 second -- with regard to the second chart, Mr. Lawton  
15 has testimony about the benefits of the DCF analysis  
16 and the problems with the CAPM and the risk premium  
17 analysis. I think it's fair for me to say what if  
18 you would have weighted your -- your own analyses a  
19 little bit heavier for the DCF and that's what that  
20 does.

21 I understand Mr. Lawton doesn't agree  
22 with that and that's not his position, but I think  
23 it's fair for me to ask him what if you would have  
24 done this, what would your result have produced. I  
25 think that's relevant.  
26

1                   JUDGE WOODRUFF: These are "what if"  
2 charts, and that's been made abundantly clear in  
3 redirect that they are not the position Mr. Lawton --

4                   MR. MILLS: And Judge, I made this  
5 similar objection when Mr. Byrne did that yesterday,  
6 but I think this is a different objection because in  
7 that, he simply took numbers that were in testimony,  
8 in evidence that the witnesses had relied upon, and  
9 used them.

10                   Here, there is absolutely no reason to  
11 think that taking a particular day for a treasury  
12 bond yield, yields anything like a significant --

13                   JUDGE WOODRUFF: Your witness has  
14 certainly explained that in his redirect. I'm going  
15 to overrule the objection and let the documents in  
16 with the understanding, of course, that they are not  
17 actually representing Mr. Lawton's position.

18                   MR. MILLS: Are we -- are we admitting  
19 them as boards or are they going to be reduced to --

20                   JUDGE WOODRUFF: Are you going to reduce  
21 them?

22                   MR. BYRNE: I tell you what, I will  
23 reduce them to paper size.

24                   MR. MILLS: Okay. Can we have them  
25 relabeled Mr. Byrne's cost of equity - equity  
26

1 capital summary instead of Mr. Lawton's capital  
2 equity summary?

3 JUDGE WOODRUFF: We can relabel --  
4 relabel them AmerenUE's cross-examination charts of  
5 Mr. Lawton.

6 MR. MILLS: Thank you.

7 MR. BYRNE: Fair enough.

8 MR. MILLS: I think that would be a  
9 little bit more accurate.

10 JUDGE WOODRUFF: All right.

11 MS. ISLES: Your Honor --

12 MR. BYRNE: I wasn't sure he wasn't  
13 going to adopt them when I made the chart, so that's  
14 why I --

15 MS. ISLES: Your Honor, I recognize  
16 Mr. Gorman's chart was already admitted into the  
17 testimony, but to make the record clear, if we're  
18 going to relabel the heading on this chart, could we  
19 do the same on Mr. Gorman's?

20 JUDGE WOODRUFF: I'm not sure what it  
21 was labeled the last time.

22 MS. ISLES: It was just labeled Michael  
23 Gorman which I think is very misleading and suggests  
24 that's it's --

25 JUDGE WOODRUFF: That it's his chart.  
26

1 MS. ISLES: -- his chart.

2 MR. BYRNE: What if I put AmerenUE's  
3 cross-examination of Michael Gorman, AmerenUE's  
4 cross-examination of Daniel Lawton, so we know who  
5 whose -- whose are whose?

6 JUDGE WOODRUFF: I think that's  
7 appropriate.

8 MS. ISLES: Yes, I would like that.

9 JUDGE WOODRUFF: And just so the record  
10 is clear, the cross-examination of Mr. Gorman's chart  
11 was number 172.

12 MS. ISLES: And so what we've just  
13 stated is that we're going to substitute a -- an  
14 amended version of that in the record and Mr. Byrne  
15 has agreed to that.

16 JUDGE WOODRUFF: Yes. Okay. With that  
17 understanding, 175 and 176 are received.

18 (EXHIBIT NOS. 175 AND 176 WERE RECEIVED  
19 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

20 JUDGE WOODRUFF: Now we're going to move  
21 on.

22 MR. MILLS: May Mr. Lawton be excused?

23 JUDGE WOODRUFF: Mr. Lawton can be  
24 excused. You can head back to --

25 THE WITNESS: Thank you.

26

1 JUDGE WOODRUFF: -- head back to Texas.

2 THE WITNESS: Appreciate it, sir.

3 JUDGE WOODRUFF: I believe the next  
4 witness, then, was going to be Mr. Rygh. And that's  
5 on the fuel adjustment clause issue. We had a  
6 discussion during the break suggesting that we delay  
7 until Monday the mini openings on the fuel adjustment  
8 clause. Do you think anybody may have a problem with  
9 that?

10 MR. WILLIAMS: I'm sorry?

11 JUDGE WOODRUFF: That we would delay the  
12 mini openings on the fuel adjustment clause until  
13 Monday.

14 MR. WILLIAMS: That's fine.

15 JUDGE WOODRUFF: Okay. That's what  
16 we'll do, then. All right. Mr. Rygh, if you'd  
17 please raise your right hand.

18 (The witness was sworn.)

19 JUDGE WOODRUFF: Thank you very much.  
20 And I don't know if you were here when I gave my  
21 little speech before, but we -- I've been telling  
22 every witness to be sure to answer only the questions  
23 that are asked rather than trying to elaborate your  
24 own responses --

25 THE WITNESS: Sure.

1                   JUDGE WOODRUFF:  -- because that just  
2 delays everything.

3                   THE WITNESS:  Appreciate that.

4                   JUDGE WOODRUFF:  All right.  Mr. Byrne,  
5 you may inquire.

6 DIRECT EXAMINATION BY MR. BYRNE:

7           Q.       Okay.  Could you please state your name  
8 for the record?

9           A.       Gary Rygh.

10          Q.       And by whom are you employed?

11          A.       Barclay's Capital.

12          Q.       And are you the same Gary Rygh that  
13 caused to be filed in this case rebuttal testimony  
14 regarding AmerenUE's fuel adjustment clause which has  
15 been marked as Exhibit No. 120?

16          A.       Yes, I am.

17          Q.       And is the information contained in that  
18 prefiled testimony true and correct to the best of  
19 your knowledge and belief?

20          A.       Yes, it is.

21          Q.       And if I were to ask you the same  
22 questions that are contained in the prefiled  
23 testimony here today when you're under oath, would  
24 your answers be the same?

25          A.       Yes.



1 Q. And do you have any corrections that you  
2 need to make to your testimony?

3 A. No.

4 MR. BYRNE: Okay. Thank you, Mr. Rygh.  
5 I would offer Exhibit 120 into the record and tender  
6 Mr. Rygh for cross-examination.

7 (EXHIBIT NO. 120 WAS MARKED FOR  
8 IDENTIFICATION BY THE COURT REPORTER.)

9 JUDGE WOODRUFF: Exhibit 120 has been  
10 offered. Any objections to its receipt?

11 MR. WILLIAMS: No objection.

12 JUDGE WOODRUFF: All right. Hearing  
13 no -- no objections, it will be received.

14 (EXHIBIT NO. 120 WAS RECEIVED INTO  
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 JUDGE WOODRUFF: For cross-examination  
17 beginning Public Counsel?

18 MR. MILLS: No questions.

19 JUDGE WOODRUFF: For MIEC?

20 MS. ISLES: No questions.

21 JUDGE WOODRUFF: Staff?

22 MR. WILLIAMS: No questions.

23 JUDGE WOODRUFF: Okay. Well, I have no  
24 questions for you, so there's no need for recross and  
25 no need for redirect. You can step down and be on  
26

1 your way.

2 THE WITNESS: Okay.

3 JUDGE WOODRUFF: Then we'll deal  
4 with Julie Cannell.

5 MR. BYRNE: Who's not here because she  
6 didn't realize that would be so quick.

7 JUDGE WOODRUFF: Okay. We'll go off the  
8 record for the moment, then.

9 (A RECESS WAS TAKEN.)

10 (EXHIBIT NOS. 117, 118, 119, 304, 305  
11 and 306 WERE MARKED FOR IDENTIFICATION BY THE COURT  
12 REPORTER.)

13 JUDGE WOODRUFF: All right. Ms. Cannell  
14 has arrived. It's my understanding that she is  
15 actually going to be testifying on two different  
16 issues and it was agreed that we would have her  
17 testify first on ROE and then start over again  
18 separately for the fuel adjustment clause. Is that  
19 everyone's understanding? Okay.

20 (The witness was sworn.)

21 JUDGE WOODRUFF: And I did want to give  
22 you an instruction that I've given to all the other  
23 witnesses that please only answer the questions that  
24 are asked. Don't offer explanations unless it's  
25 requested by the attorneys, and everything goes a lot  
26

1 faster if we do it that way.

2 THE WITNESS: Yes, sir.

3 JUDGE WOODRUFF: Thank you. And you may  
4 inquire.

5 MR. LOWERY: Thank you, your Honor.

6 DIRECT EXAMINATION BY MR. LOWERY:

7 Q. Would you please state your name for the  
8 record.

9 A. Julie M. Cannell.

10 Q. And Ms. Cannell, am I correct that you  
11 caused to be prepared for filing in this docket  
12 prefiled testimonies that have been premarked as  
13 Exhibits 117, 118, 119 and 120 [sic]?

14 A. Yes.

15 Q. And if I were to ask you the same  
16 questions that are posed in that prefiled testimony,  
17 would your answers be the same?

18 A. They would.

19 Q. Do you have any -- you don't have any  
20 corrections to any of those testimonies?

21 A. Two very minor things --

22 Q. Would you please --

23 A. -- if I should --

24 Q. -- tell us what those are?

25 A. Page 26, line 12, the word should be

1 "consistency."

2 Q. Which testimony are you --

3 A. I'm sorry. This is on my direct,  
4 page 26, line 12, "consistency," not "consistently."

5 Q. Would that be your -- would that  
6 actually -- that would be your rebuttal testimony,  
7 right, your --

8 A. Excuse me, my rebuttal testimony.  
9 Excuse me.

10 Q. So page?

11 A. 26.

12 Q. Okay.

13 A. Line 12.

14 Q. All right. And go ahead and state that  
15 correction again, if you would, please.

16 A. The word "consistently" should be  
17 "consistency."

18 Q. Okay. Thank you. You said you had  
19 another correction?

20 A. Yes. Page 29, the footnote 12, the full  
21 citation was -- excuse me -- omitted, and it should  
22 read "(Jesup and Lamont) which does exist." The  
23 title of the report is "Ameren: Union Electric  
24 Receives Important and Constructive Rate Order," and  
25 those would be within parens with a period. The date  
26

1 of the report is January 28th, 2009.

2 Q. And with those two corrections, your  
3 testimony is true and correct to the best of your  
4 knowledge and belief; is that correct?

5 A. It is.

6 MR. LOWERY: With that, your Honor, I  
7 would offer Exhibits 117 through 120 into record and  
8 tender the witness for cross.

9 JUDGE WOODRUFF: 120 is Mr. Rygh's  
10 exhibit.

11 MR. LOWERY: I'm sorry. 117 through  
12 119.

13 JUDGE WOODRUFF: 117 is Cannell --  
14 Cannell rebuttal, 119 is her surrebuttal. 118 is her  
15 FAC rebuttal, which I believe we're going to be  
16 handling separately, we'll -- I'll defer ruling on  
17 that.

18 MR. LOWERY: Okay. Very well.

19 JUDGE WOODRUFF: So at this point 117  
20 and 119 have been offered. Are there any objections  
21 to their receipt?

22 (NO RESPONSE.)

23 JUDGE WOODRUFF: Hearing none, they will  
24 be received.

25 (EXHIBIT NOS. 117 AND 119 WERE RECEIVED  
26

1 INTO EVIDENCE AND MADE PART OF THE RECORD.)

2 JUDGE WOODRUFF: For cross-examination  
3 we begin with Public Counsel.

4 MR. MILLS: No questions.

5 JUDGE WOODRUFF: For Staff?

6 MR. DEARMONT: Just a few questions.

7 CROSS-EXAMINATION BY MR. DEARMONT:

8 Q. How are you this morning?

9 A. Fine, thank you, Mr. Dearmont. I hope  
10 you are too.

11 Q. Oh, I'm okay. Would you agree that in  
12 the testimony of Mr. Murray, Mr. Murray discusses  
13 some price-to-earnings ratios that he believes are  
14 used by Goldman Sachs?

15 A. Which testimony of Mr. Murray's?

16 Q. I believe it is his rebuttal testimony.

17 A. I don't have a copy of that in front of  
18 me, but I do remember reading that.

19 Q. Just generally?

20 A. Yes, generally.

21 Q. Does Goldman Sachs use P-to-E ratios?

22 A. I believe they do.

23 Q. Do you know if those ratios are based on  
24 historical or projected earnings?

25 A. I don't know. It can be either, but

1 typically investors use projected earnings.

2 Q. Do you believe that a utility's PE ratio  
3 is related to the cost of capital?

4 A. The price-to-earnings ratio is an  
5 indication of the valuation of the stock. It is an  
6 expected ratio, it is not the required cost of  
7 capital.

8 Q. Is it related to the estimation of that  
9 required cost of capital?

10 A. No. I believe it has to do with, again,  
11 expectations as opposed to requirements.

12 Q. Would you accept that the inverse of the  
13 P-to-E ratio is the earnings-to-price ratio or EP?

14 A. Yes.

15 Q. Do you know whether or not the  
16 earnings-to-price ratio is one way to estimate the  
17 cost of equity for a utility firm?

18 A. It's not something that I used.

19 Q. I'm not sure that answers the question,  
20 so I'll ask it again. Do you know whether or not the  
21 earnings-to-price ratio is one way to estimate the  
22 cost of equity for a utility?

23 A. A very simplistic way of estimating the  
24 expected return is the dividend yield plus the growth  
25 rate. So I'm not sure that this ratio, the  
26

1 earnings-to-price ratio -- again, I think we're --

2 Q. Do you know if the earnings-to-price  
3 ratio --

4 A. No.

5 Q. -- is a way to estimate cost of equity  
6 or do you not know that?

7 A. In my experience, I don't know that.

8 Q. Okay. Have you seen this book?

9 MR. DEARMONT: May I approach, your  
10 Honor?

11 JUDGE WOODRUFF: You may.

12 THE WITNESS: I have not.

13 BY MR. DEARMONT:

14 Q. Okay. Do you know who Dr. Roger A.  
15 Morin is?

16 A. Yes, I do.

17 Q. Okay. Is he affiliated with this case  
18 in any way, shape or form?

19 A. Yes.

20 Q. Okay. In what aspect?

21 A. He presented the cost of capital  
22 requirement for the Company.

23 Q. Do you have any reason to believe that  
24 this book was not authored by the Company's witness?

25 A. No reason.



1           Q.       Okay. I'm going to ask that you take  
2 it, if you don't mind. On page 260 of that book --  
3 I'm sorry. Do you see a heading called "The Earnings  
4 Price Ratio"?

5           A.       Yes.

6           Q.       Will you read the first sentence under  
7 that heading?

8                   MR. LOWERY: Your Honor, I'm going to  
9 object. This is hearsay. Ms. Cannell hasn't  
10 testified that she relied upon this book in any way,  
11 shape or form for any opinion that she's expressed or  
12 even has in this case, and that book is hearsay. And  
13 she's never seen it before her testimony. You can't  
14 read hearsay into the record. If an expert has  
15 relied upon hearsay, I mean --

16                   MR. DEARMONT: I'll withdraw the  
17 question, I'll withdraw the question.

18                   JUDGE WOODRUFF: Okay.

19 BY MR. DEARMONT:

20           Q.       You can put that aside. Hypothetically,  
21 if E divided by P, the earnings price ratio is one  
22 way to off -- estimate the cost of a utility's  
23 equity, would you agree that P divided by E is then  
24 at least related to the cost of equity?

25           A.       Mr. Dearmont, as we discussed

1 extensively in my -- my deposition, this is not what  
2 I do --

3 Q. Okay.

4 A. -- and it is not what I did as an  
5 analyst. It's not my role in this case.

6 Q. I want to talk about our deposition or  
7 at least some questions that I asked during our  
8 deposition. Do you have a copy of that with you?

9 A. I don't.

10 Q. I have an extra one here. I'll give it  
11 to you.

12 A. Thank you.

13 Q. You have sponsored rate of return  
14 testimony before, have you not?

15 A. Yes, from the perspective of the  
16 investor, not from establishing the cost of capital  
17 such as Dr. Morin did.

18 Q. Okay. Would you say, however, that you  
19 supported the Company position in all of that  
20 testimony?

21 A. I've supported the investor's  
22 perspective which typically has been consistent with  
23 the Company's position.

24 Q. Typically or always?

25 A. In my memory, I don't recall there being

1 a deviation.

2 Q. Are you the president of J.M. Cannell,  
3 Incorporated?

4 A. Yes.

5 Q. Okay. Has that entity done work for EEI  
6 in the past?

7 A. Yes, it has.

8 Q. Would you agree that the return on  
9 equity is the same thing as the cost of equity  
10 capital?

11 A. Are you talking about the required  
12 return on equity?

13 Q. Yes.

14 A. The required return on equity is the  
15 cost of equity capital. Not the expected cost, but  
16 the cost.

17 Q. What about an authorized return on  
18 equity, is that the same thing as the cost of equity  
19 capital?

20 A. Hopefully what is authorized is going to  
21 be what is required by investors, but it isn't always  
22 the case.

23 Q. Is customer growth a factor that could  
24 affect the revenues in the electric utility industry?

25 A. Yes.

1 Q. Would it be proper to use the S&P 500 as  
2 a benchmark to measure investor expectations?

3 A. No, I don't think so.

4 Q. Never?

5 A. The S&P 500 is a composition -- or  
6 compilation, rather, of 500 stocks. The -- as we  
7 talked about in my deposition, returns can be gauged  
8 against the returns of the S&P 500. The S&P 500 is  
9 used as a proxy for the market.

10 Q. Will you turn to your deposition, if you  
11 have a copy of it, specifically page 41?

12 A. I have it.

13 Q. You see the question that begins on line  
14 17 of page 41?

15 A. Uh-huh, yes, I do.

16 Q. Cutting out the confusing part, would  
17 you agree that this question asked that, "If an  
18 institutional investor expected the broad U.S. equity  
19 market as measured by the S&P 500, to provide an  
20 annual compound return of 11 percent, then when  
21 this -- would a portfolio manager use this 11 percent  
22 as a benchmark to evaluate potential investments?"  
23 Do you remember me asking that question?

24 A. As I reread it, yes.

25 Q. Okay. And did I state that question

1 accurately?

2 A. I assume so.

3 Q. And do you see your answer starting on  
4 page -- or excuse me -- line 25?

5 A. Yes.

6 Q. Would you agree that you answered that,  
7 "Potentially the S&P 500 could be used as -- as a  
8 benchmark for portfolio managers"?

9 A. Yes.

10 Q. Okay. If an expected risk of an  
11 investment was higher than a certain benchmark, any  
12 benchmark, do you think that investors would demand  
13 higher returns?

14 A. I think it's logical to expect that,  
15 yes.

16 Q. And is the converse also true, if it was  
17 lower, would investors expect lower returns?

18 A. I think we talked about that in the  
19 deposition, and I understand what you are asking.  
20 I'm reading what I -- how I responded, if I might,  
21 during my deposition.

22 Q. Sure, sure.

23 A. As I said then, you have to really look  
24 at the portfolio as a whole. And if you look at  
25 individual stocks, yes, you're trying to find the  
26

1        juncture of the -- where risk and return should meet.

2            Q.        Okay. Say that you were using the S&P  
3        500 as a benchmark and that you were looking at  
4        expectations of a portfolio as a whole, like you just  
5        said. If those expectations viewed as a whole --  
6        excuse me -- if that portfolio viewed as a whole was  
7        perceived to be more risky than the benchmark of the  
8        S&P 500, do you think that investors would expect a  
9        higher return on that portfolio?

10          A.        I think it logically can be concluded,  
11        yes.

12          Q.        Okay. Can I just ask you if the  
13        converse is also true, without having to put all  
14        those things in negatives?

15          A.        Yes.

16          Q.        Okay. Did you ever estimate the cost of  
17        equity in your position as a securities analyst with  
18        Lord Abbott?

19          A.        No.

20          Q.        You, in fact, used a model while you  
21        worked with them, correct?

22          A.        Yes. And may I -- if I may go back to  
23        the previous question, did I ever estimate the cost  
24        of equity?

25          Q.        Sure.

1           A.       May I just clarify that I did not  
2 estimate it by the models that have been used in this  
3 case or being used in this case by the various  
4 witnesses, Mr. Hill, Mr. Murray, Dr. Morin,  
5 et cetera.

6           Q.       Did you -- did you personally estimate  
7 it via other methodologies?

8           A.       My previous firm used -- utilized a  
9 model in -- it was a tool in our reaching investment  
10 decisions.

11          Q.       Okay. Can you describe this model in  
12 more depth for me?

13          A.       It was a form of a dividend discount  
14 model, it utilized the current stock price, the  
15 earnings growth rate and it solved for the expected  
16 return.

17          Q.       Now, is the dividend discount model the  
18 same thing as the discounted cash flow model?

19          A.       They're similar.

20          Q.       Okay.

21          A.       Again, not my expertise.

22          Q.       Do you think it's ever appropriate to  
23 use a multistage dividend discount model?

24          A.       I -- I don't know. It's -- I -- it's  
25 not my expertise.

1 Q. You have a CFA designation, correct?

2 A. I do.

3 Q. Is it safe to say that at least at one  
4 time you were familiar with the financial theories  
5 related to cost of capital estimation?

6 A. I received my CFA in 1983 which was a  
7 long time ago. I seem to remember, yes, that that --  
8 that was part of the course of study.

9 Q. Okay. A generic question. Is what one  
10 does in theory and what one does in practice the same  
11 thing?

12 A. I'm not sure that that's necessarily the  
13 case.

14 Q. Would you agree that good investment  
15 decisions are based upon sound theory?

16 A. I think that they could be.

17 Q. Should be?

18 A. I think that investment decisions  
19 incorporate a lot of judgment, and sometimes that may  
20 not be lockstep with sound theory.

21 Q. It's just the -- the practice versus  
22 preaching differentiation that we just discussed?

23 A. Theory is one thing, practice is  
24 another.

25 Q. Is theory a good place to start in



1 practice?

2 A. Well, I think it's not a bad thing.

3 Q. In your testimony, I believe it's your  
4 rebuttal testimony, you discuss UIL, correct?

5 A. Yes.

6 Q. And what is UIL?

7 A. UIL is the stock symbol for United  
8 Illuminating. Excuse me, UIL Holdings is the parent  
9 Company. United Illuminating is the electric  
10 utility.

11 Q. Would you agree that the S&P 500 hit a  
12 15-year low in March of 2009?

13 A. I believe that we discussed that  
14 previously in the deposition, and I said subject to  
15 check, yes.

16 Q. Okay. You have no reason to believe  
17 that that's not true?

18 A. No.

19 Q. Did you mention this in your analysis of  
20 UIL's stock price?

21 A. No, I didn't.

22 Q. Would you agree that without any change  
23 in ROE, UIL's stock price since that March of 2009  
24 has increased by more than 50 percent?

25 A. I believe that that's a statistic that

1 you mentioned once before, and I think that there  
2 were many reasons for that change in that stock  
3 price.

4 Q. Has UIL's authorized ROE changed during  
5 that time?

6 A. No.

7 Q. So is it safe to assume that that's not  
8 one of those reasons?

9 A. Yes.

10 Q. You believe that capital markets are  
11 global in nature, right?

12 A. Yes.

13 Q. So a U.S. investor could invest in a  
14 Company in Canada, in Mexico?

15 A. Depending upon the investment charter of  
16 the fund in which the investor was operating, yes.

17 Some funds preclude --

18 Q. And I guess --

19 A. -- global investing.

20 Q. -- I wasn't clear, but you're assuming  
21 they were talking about institutional investors?

22 A. Yes, I am.

23 Q. Okay. If allowed under -- under the --  
24 in the context of the goal of the institution, could

25 institutional investors make those types of

26

1 international investments?

2 A. Yes.

3 Q. Could individuals?

4 A. Yes.

5 Q. Could investors and in other countries  
6 such as Canada, Mexico, Australia, wherever, could  
7 they invest in utility companies in the United  
8 States?

9 A. Yes.

10 Q. Do you think that the -- the global  
11 nature of the capital market impacts the cost of  
12 capital in the United States?

13 A. It could.

14 Q. Do institutional investors rely on  
15 equity research reports to help them in evaluating  
16 the attractiveness of utility stocks?

17 A. Yes. As we talked about, certain  
18 categories of investors who work -- who work for  
19 institutions do utilize research reports produced by  
20 other institutions.

21 Q. Buy side and sell side?

22 A. Buy side and sell side, that's right.

23 Q. Would it be fair to say that this  
24 exchange of information, at least on -- between the  
25 buy and sell side, is common practice in the  
26

1 industry?

2 A. Yes.

3 Q. So then would you agree that there is a  
4 free-flowing exchange of information between the buy  
5 and sell side?

6 A. Yes.

7 Q. Do you believe that equity analysts'  
8 research reports can be considered a good gauge for  
9 investor perceptions?

10 A. Yes.

11 Q. Do you believe that these opinions --  
12 equity analyst opinions have an influence on  
13 individual investors as opposed to institutional?

14 A. They could. They don't necessarily have  
15 access to them.

16 Q. Do you believe that these equity  
17 analysts are reliable?

18 A. Yes.

19 Q. Do you think that they provide sound  
20 analyses?

21 A. Generally speaking, yes, I do.

22 Q. Is Goldman Sachs reliable?

23 A. To the best of my knowledge, yes.

24 Q. Did you review the Goldman Sachs equity  
25 reports cited by David Murray in his testimony?  
26

1           A.       No.

2           Q.       Do you think that states that have --  
3       excuse me. Do you think that states that have  
4       restructured have caused more risk in the electric  
5       utility industry?

6           A.       I think, as my testimony stated,  
7       restructuring in the industry has changed the level  
8       of risk involved in investing in the industry.

9           Q.       Do you know if electric utility  
10       consumption has been above or below that of GDP  
11       recently?

12          A.       It certainly has slowed. It used to be  
13       a lockstep kind of relationship, and I suspect it  
14       could be slightly lower now, but I don't know the  
15       exact statistics.

16          Q.       Would you accept that it is lower today?

17          A.       Yes.

18          Q.       Do you think that this could impact  
19       growth rate expectations for electric utility  
20       companies?

21          A.       It could.

22                   MR. DEARMONT: That's all. Thank you  
23       very much.

24                   JUDGE WOODRUFF: Cross for MIEC?

25                   MS. ISLES: Yes.

26

1 CROSS-EXAMINATION BY MS. ISLES:

2 Q. Ms. Cannell.

3 A. Good morning.

4 Q. Good morning. Is it fair to say that  
5 your testimony in this case advises the Commissioners  
6 of what expectations investors have for a reasonable  
7 Commission decision in this proceeding?

8 A. My -- excuse me. My -- my testimony  
9 talks about the perceptions of investors.

10 Q. And what would be their reaction to the  
11 Commission's decision would be correct?

12 A. That's right.

13 Q. And you believe it's important for the  
14 Commission to consider investor expectations in order  
15 to preserve a positive perception by the investment  
16 community toward the Missouri Public Service  
17 Commission, correct?

18 A. Correct.

19 Q. And it's a reasonable expectation for  
20 investors that the Company will be allowed a fair  
21 opportunity to return -- to earn a fair rate of  
22 return on their investments in utility plant and  
23 equipment, correct?

24 A. Yes.

25 Q. Do you agree that investors would

1 believe it to be reasonable that the Commission give  
2 some consideration to maintaining competitive rate  
3 structure for AmerenUE in this proceeding so it can  
4 retain existing customers and attract new customers  
5 to its service territory?

6 A. Investors have really not addressed the  
7 rate structure in this case.

8 Q. But wouldn't it be reasonable for them  
9 to give some consideration to that?

10 A. I think it would be reasonable, but  
11 again, investors have really not addressed that  
12 specifically.

13 Q. Do you believe it is necessary -- do you  
14 believe it's necessary for AmerenUE to be able to  
15 retain existing customers and attract new customers  
16 in order to grow its customer base and grow its  
17 utility system in order to meet investors'  
18 expectations of earnings and dividend growth?

19 A. I think that's reasonable.

20 Q. And would you agree that when capital  
21 market costs are increasing and a utility's cost of  
22 common equity is increasing, that the Commission  
23 should recognize those increased costs of common  
24 equity and award AmerenUE a return on equity that  
25 might be higher than what it had awarded in a  
26

1 previous case?

2 A. I think that the Commission is charged  
3 with evaluating what the cost of equity should be at  
4 a given time.

5 Q. All right. But my question was, if you  
6 could just let me know your response to this  
7 question, if the capital market -- if the cost of  
8 capital was increasing, then it should -- that  
9 increase in cost should be recognized by the  
10 Commission, correct?

11 A. Yes.

12 Q. Okay. And would you agree that  
13 authorizing that higher return on equity in a case  
14 where Ameren's cost of equity has increased, would be  
15 necessary to maintain the financial integrity of the  
16 utility and allow it to attract the capital?

17 A. It would seem logical.

18 Q. Yes, thank you. Now, is it your  
19 testimony that the -- a Commission should never  
20 reduce the authorized return on equity relative to  
21 the previous case for a Company?

22 A. No.

23 Q. So in this -- in this case or any case,  
24 if the evidence supported a finding that a utility's  
25 cost of capital has declined, would it be reasonable  
26



1 for investors to expect that the authorized return on  
2 equity awarded by a Commission would also decline  
3 relative to past rate cases?

4 A. It would seem logical.

5 Q. All right. But that would be consistent  
6 with what I'm asking you is, would that be consistent  
7 with their reasonable expectations?

8 A. I think in this case --

9 Q. In any case where -- the question  
10 concerns any case where the evidence shows that the  
11 cost of capital is declined.

12 A. I think that the Commission has to look  
13 at the evidence. I think that --

14 Q. And that's what the investors expect,  
15 right?

16 A. Investors expect that their return  
17 expectations be met.

18 Q. But they also are looking for a  
19 reasonable decision from the Commission?

20 A. They're also looking for consistency.  
21 Very importantly they're looking for consistency.

22 Q. All right. And consistency is a part of  
23 reasonableness?

24 A. Yes.

25 Q. And a consistent result based on the

1 evidence that has been presented to the Commission  
2 which would comport with the circumstances in the  
3 economy and the financial markets at the time?

4 A. That would certainly be a factor, yes.

5 MS. ISLES: All right. Thank you. I  
6 have no further questions.

7 JUDGE WOODRUFF: All right. AmerenUE --  
8 or I'm sorry. You don't get to cross her. It's been  
9 a long week. I apologize. Ready to come up for  
10 questions from the bench, and I have none so there's  
11 no recross. Now redirect.

12 MR. LOWERY: You just used the wrong  
13 word, your Honor.

14 JUDGE WOODRUFF: Yes.

15 MR. LOWERY: It was -- it was my turn  
16 after all.

17 REDIRECT EXAMINATION BY MR. LOWERY:

18 Q. Ms. Cannell, I want to go back to a  
19 question that Ms. Isles asked you recently, and I  
20 think she asked you something about whether it would  
21 be true that the Commission should never reduce the  
22 cost of equity. Do you remember a question along  
23 those lines?

24 A. I do.

25 Q. Why -- I think you've indicated that the

1 Commission shouldn't reduce the cost of equity in  
2 this case from what was allowed in the last case?

3 A. That's correct.

4 Q. Why is that? Can you explain why you  
5 have that opinion?

6 A. There's several reasons for that,  
7 Mr. Lowery. Nationwide, the trend in allowed ROEs  
8 for integrated companies has been increasing,  
9 slightly, but it's been increasing. For 2008 and  
10 2009, the average was 10.59 percent. And for the  
11 Commission to accept some of the recommendations in  
12 this case that would go below that level, I think  
13 would be a very difficult thing.

14 Investors were heartened by the decision  
15 that this Commission rendered in January of 2009.  
16 The return was deemed reasonable and acceptable. The  
17 fact that a fuel adjustment clause was implemented  
18 was a positive finding. And I think the -- excuse  
19 me -- investors would like to see a continuation of  
20 that constructive trend. There has been no reduction  
21 in the risk of AmerenUE between the time that this  
22 last decision was rendered and today.

23 While the capital markets have come off  
24 of the highs of the crisis, the peak that  
25 Mr. Dearmont alluded to in March of 2009, risks are  
26

1 still very present in the economy and in the world  
2 economies for that matter.

3 In the industry itself, Ameren, and  
4 specific to Ameren, the Company is facing a long time  
5 frame of having to construct for a variety of  
6 reasons. And that could be -- those levels of  
7 construction could be increased and -- due to carbon  
8 legislation if it passes -- and it is going to need  
9 to continue to access the capital markets.

10 The supply of capital has declined. The  
11 demand for that capital has increased. So the lower  
12 the return, the less competitive AmerenUE would be in  
13 trying to access the capital that it needs now and  
14 will continue to need.

15 Q. Ms. Isles was asking you questions about  
16 if the evidence showed, you know, the cost of capital  
17 had decreased. Do you remember those questions?

18 A. Yes.

19 Q. Do you accept the premise that the cost  
20 of capital has decreased relative to conditions in  
21 mid, late 2008?

22 A. I'm sorry. Would you -- would you mind  
23 repeating that, please?

24 Q. Sure. Do you accept the premise of  
25 Ms. Isles' question?  
26

1           A.       That the cost of capital has decreased  
2 for this Company?

3           Q.       Yes.

4           A.       No, I don't accept that.

5           Q.       Ms. Isles asked you some questions about  
6 rate structure. Do you recall those?

7           A.       Yes.

8           Q.       Do you have an opinion about whether the  
9 rates customers pay somehow determine its required  
10 return -- required -- what return investors require  
11 for that Company?

12          A.       No. Excuse me. I don't believe that  
13 they -- they do. Ms. Isles was asking if -- if a  
14 Company should -- should try to retain its customers  
15 and -- and be able to gain new customers, and of  
16 course, the answer is yes. But the rate structure is  
17 not an issue related to the cost of capital.

18          Q.       Mr. Dearmont asked you some questions  
19 about equity analysts and their reports. Do you  
20 recall those questions?

21          A.       Yes.

22          Q.       And I think he asked you if Goldman  
23 Sachs was a reliable investment firm.

24          A.       Yes.

25          Q.       And there was some discussion about

1 models. Do you recall those questions?

2 A. I do.

3 Q. Do you know what Goldman Sachs is trying  
4 to determine when Goldman Sachs uses a -- I think  
5 dividend discount model, I think maybe is the term  
6 that was used. Do you know what they're trying to  
7 determine?

8 A. They're trying to determine the value of  
9 an investment, what the expected return is of an  
10 investment relative to other investments that are  
11 available in the marketplace.

12 Q. Is -- the expected return of a  
13 particular investment, is that the same as the  
14 required return?

15 A. It's -- it, in a perfect world, should  
16 be, but it typically is not. Perhaps if I might, I  
17 could draw a picture that shows the difference.

18 Q. Would that help you explain your answer  
19 better?

20 A. I think it would help me explain my  
21 answer better.

22 Q. I think there is an easel in this room.  
23 We can use one of these white boards.

24 JUDGE WOODRUFF: Get it close enough to  
25 the microphone or move the podium. Why don't we move  
26

1 the microphone both.

2 THE WITNESS: I'm not an artist, but if  
3 on the Y axis we place return, the percentage of  
4 return, and on the X axis risk, there is a line that  
5 is comprised of all of the expected returns of all of  
6 the investable stocks in the universe and these are  
7 the required returns of equity capital.

8 When a firm like Goldman Sachs or others  
9 are expressing what a return is and, let's say in the  
10 case of Ameren and the reports that were referenced,  
11 that return can be down there. That is the expected  
12 return. This is the required return. So there is --  
13 for that equity capital of that corporation.

14 So there is a gap, and that is an  
15 instance of where the stock is considered to be  
16 unattractive. In fact, Goldman Sachs, I believe --  
17 there was a report issued into evidence yesterday  
18 that revealed that Goldman Sachs has a conviction  
19 sell on Ameren. If the required return and the  
20 expected return were the same, there would first of  
21 all not be a conviction sell on this stock and  
22 this -- their expectation would be up here, but in  
23 fact, it's down here.

24 BY MR. LOWERY:

25 Q. All right. Thank you.

1           A.       You're welcome.

2                   MR. LOWERY:  Your Honor, I think --  
3       could we go ahead and mark this as an exhibit?  And  
4       we can reproduce it in a way that it could be  
5       actually put into the record, but I think the record  
6       would be clearer if the diagram is actually in the  
7       record since she testified about it and drew it.

8                   JUDGE WOODRUFF:  Your next number is  
9       177.

10                  MR. LOWERY:  And I'd offer 177 into the  
11       record.

12                  JUDGE WOODRUFF:  177 has been offered.  
13       Is there any objection to its receipt?

14                   (NO RESPONSE.)

15                  JUDGE WOODRUFF:  Hearing none, it would  
16       be received.

17                   (DISCUSSION HELD OFF THE RECORD.)

18                   (EXHIBIT NO. 177 WAS MARKED FOR  
19       IDENTIFICATION BY THE COURT REPORTER.)

20                   (EXHIBIT NO. 177 WAS RECEIVED INTO  
21       EVIDENCE AND MADE A PART OF THE RECORD.)

22       BY MR. LOWERY:

23                  Q.       Ms. Cannell, you were asked by  
24       Mr. Dearmont about a UIL stock price.  Do you  
25       remember that question?  
26



1           A.       Yes.

2           Q.       And I think he asked you something along  
3 the lines of that you hadn't mentioned where the S&P  
4 was in March of 2009 --

5           A.       Right.

6           Q.       -- in your testimony? Why -- why didn't  
7 you mention that?

8           A.       Because I think that what caused UIL's  
9 stock to rebound, certainly some of it could have  
10 been because of the market, but I think a larger  
11 factor was the stock had been so depressed that as we  
12 talked about in my deposition, it had what I would  
13 call a dead cat bounce, it came back to a more normal  
14 level.

15                         And one of the more important  
16 fundamental factors that permitted that to occur or  
17 that caused that to occur is that the Company went  
18 into the financial markets and sold debt and equity.  
19 The equity that it sold permitted the Company to  
20 avoid a downgrade, and I think that that was in large  
21 part what the stock reaction was about.

22           Q.       Mr. Dearmont also asked you some  
23 questions about the model that I don't think you  
24 yourself used at Lord Abbott but that folks at Lord  
25 Abbott used. Do you remember those questions?  
26

1           A.       Yes.

2           Q.       Did Lord Abbott, to the best of your  
3 knowledge, did they -- did they use that model in the  
4 way, for example, Goldman Sachs uses the model? Was  
5 the object the same?

6           A.       It was to assess relative valuations of  
7 different stocks. It's not -- it was not to  
8 determine the utility cost of capital.

9                   MR. LOWERY: Thank you. I have no  
10 further questions, your Honor.

11                   JUDGE WOODRUFF: All right. Then that  
12 completes the ROE, capital structure, flotation cost  
13 issue. Ms. Cannell is also on for fuel adjustment  
14 clause, so she's already on the stand. So we'll now  
15 change gears and talk about fuel adjustment clause.  
16 So direct on fuel adjustment clause.

17                   MR. LOWERY: Well, your Honor, I've  
18 already asked her about, I believe it's Exhibit 119  
19 and --

20                   JUDGE WOODRUFF: Yes.

21                   MR. LOWERY: -- whether or not she had  
22 any corrections and whether it was true and accurate,  
23 so I would just at this point offer 119 and tender  
24 the witness for cross for the fuel adjustment clause  
25 issue.

26

1 JUDGE WOODRUFF: It's actually 118.

2 MR. LOWERY: I apologize. Offer 118.

3 JUDGE WOODRUFF: 118 has been offered.

4 Any objections to its receipt?

5 (NO RESPONSE.)

6 JUDGE WOODRUFF: Hearing none, it will  
7 be received.

8 (EXHIBIT NO. 118 WAS RECEIVED INTO  
9 EVIDENCE AND MADE A PART OF THE RECORD.)

10 JUDGE WOODRUFF: And for  
11 cross-examination on the fuel adjustment clause  
12 issue, we begin with Public Counsel.

13 MR. MILLS: No questions.

14 JUDGE WOODRUFF: Staff?

15 MR. WILLIAMS: Thank you, Judge.

16 CROSS-EXAMINATION BY MR. WILLIAMS:

17 Q. Good afternoon, Ms. Cannell.

18 A. Good afternoon.

19 Q. I just have a few what I believe are  
20 clarifying questions about your testimony.

21 A. Certainly.

22 Q. On what's been marked as Exhibit 118, on  
23 page 1 you state that the purpose of your rebuttal

24 testimony is to respond to the recommendations of

25 certain intervenors to alter the existing fuel

26

1 adjustment clause under which Union Electric  
2 Company -- Union Electric Company currently operates,  
3 do you not?

4 A. Yes.

5 Q. Which intervenors are you referring to?

6 A. I believe that they are referenced. And  
7 I'm sorry. I don't have those in front -- I --  
8 sorry -- they aren't in my testimony. I'm sorry. I  
9 don't -- I can't list them for you.

10 Q. And what --

11 A. I don't have them with me.

12 Q. And what recommendations are you  
13 responding to?

14 A. That a change in the sharing mechanism  
15 from the existing 95/5 would be appropriate.

16 Q. Any other recommendation?

17 A. I think that if -- that is the primary  
18 one, sir.

19 Q. And then on page 2 of your testimony at  
20 lines 19 through 20, you talk about changing the fuel  
21 adjustment clause only a little more than a year  
22 after it was initiated as well as degrading the  
23 quality of the mechanism would signal to investors in  
24 your opinion that the constructive regulatory tone  
25 evident in Missouri in early 19 -- 2000 -- in early  
26

1 2009 could be evaporating. What are you referring to  
2 about degrading the quality of the mechanism?

3 A. The -- the sharing -- changing the  
4 sharing mechanism.

5 Q. And what is your understanding of the  
6 costs that are passed through the AmerenUE's fuel  
7 adjustment clause?

8 A. I believe that it passes through the  
9 cost of fuel.

10 Q. All of the cost of AmerenUE's fuel costs  
11 or just a portion of them?

12 A. Well, 5 percent are not permitted.

13 MR. WILLIAMS: No further questions.

14 JUDGE WOODRUFF: Okay. Cross from MIEC?

15 MS. VUYLSTEKE: No questions.

16 JUDGE WOODRUFF: Okay. We'll come up  
17 from questions from the bench, then. Commissioner  
18 Davis?

19 QUESTIONS BY COMMISSIONER DAVIS:

20 Q. Good afternoon, Ms. Cannell.

21 A. Good afternoon, Commissioner.

22 Q. Just a -- just a couple questions. Have  
23 you -- have you read any of the other testimony in  
24 this case?

25 A. Yes, sir, I have.

1 Q. Okay. And so in your opinion does the  
2 amount of money that AmerenUE has flowed through  
3 their fuel adjustment or projects to flow through  
4 their fuel adjustment clause in the first year, does  
5 that -- that justify keeping the 95/5 split?

6 A. I believe that the amount -- the cost of  
7 fuel is the cost of fuel, and I think that it needs  
8 to be recovered.

9 Q. Right. And do you know what -- what  
10 fuel costs Ameren has incurred since, say, last March  
11 or April, whenever?

12 A. I know that in this request, the  
13 amount -- and I may be off somewhat here -- but it's  
14 somewhere around 200 million.

15 Q. Right. It's -- it's a significant  
16 number?

17 A. Yes, sir, it is.

18 Q. And if we were to not allow any  
19 passthrough, would -- would you consider that to be  
20 catastrophic?

21 A. Yes, sir, absolutely.

22 Q. And if -- even -- even 50/50 would be --  
23 would that be fairly catastrophic or --

24 A. It would be --

25 Q. -- not quite as catastrophic as zero,

1 but...

2 A. -- quite significant. I think investors  
3 would be extremely, extremely concerned about that.

4 Q. And is it your impression that prior to  
5 2005 and prior to the passage of Senate Bill 179 that  
6 there were certain investors that wouldn't even  
7 invest in Missouri because of the lack of a fuel  
8 adjustment clause?

9 A. I think that that's reasonable to  
10 assume, yes, because it -- the cost of fuel is  
11 arguably one of the largest, if not the largest cost  
12 in a utility's cost structure. And to not permit  
13 recovery of that is, first of all, tantamount to  
14 saying that whatever return is allowed certainly  
15 cannot be earned and it's -- it's just not fair.

16 Q. That's pretty much every state doesn't  
17 allow 100 percent passthrough?

18 A. Yes.

19 COMMISSIONER DAVIS: Thank you.

20 THE WITNESS: You're welcome.

21 JUDGE WOODRUFF: Any recross based on  
22 questions from the -- from the bench? Public  
23 Counsel?

24 MR. MILLS: Yes, I do, thank you.

25 RE-CROSS-EXAMINATION BY MR. MILLS:

26

1 Q. Ms. Cannell, you just, in response to  
2 questions from Commissioner Davis, said that  
3 elimination of the fuel adjustment clause would be  
4 catastrophic, I believe; is that the term you used?

5 A. If it were totally eliminated, I think  
6 the Commissioner asked if it would be considered  
7 catastrophic by investors, and yes.

8 Q. And you agree with that term?

9 A. I do.

10 Q. Okay. Did Union Electric operate in  
11 Missouri from 1979 to 2009 without a fuel adjustment  
12 clause?

13 A. I believe it did.

14 Q. Did Union Electric have investors during  
15 that time?

16 A. Yes.

17 Q. Did it have fuel costs during that time?

18 A. Yes.

19 Q. Did it recover fuel costs during that  
20 time?

21 A. Not through a fuel adjustment clause.

22 Q. That wasn't my question. Did it recover  
23 fuel costs during that time?

24 A. I believe it had to in the context of  
25 rate cases.  
26



1 Q. And for much of that time did UE have  
2 fairly good returns?

3 A. I don't recall the numbers, sir.

4 Q. Do you recall the -- prior to the rate  
5 increase case filed in 2006, do you recall the last  
6 time Union Electric raised its rates?

7 A. No.

8 Q. If the evidence in this case would show  
9 that the last time it raised its rates was in the mid  
10 to late '80s -- just assume that that's the case --  
11 would you be able to say that UE had good returns  
12 during that period of time?

13 A. I don't know that it had good returns.  
14 There are a lot of reasons why utilities do not go in  
15 for rate cases.

16 Q. Okay. Well, let me -- let me ask you to  
17 assume something else. If you assume that during  
18 that period of time UE not only did not ask for rate  
19 increases, but in fact, decreased its rates through  
20 agreements and through complaint cases a number of  
21 times, would that indicate to you that UE had good  
22 returns during that period of time?

23 A. Again, I'm not sure that the returns  
24 were good, but the Company chose to do -- to take the  
25 steps that it did.

1 Q. A utility voluntarily reducing its rates  
2 does not indicate to you that their returns are good?

3 A. Well, it would stand to reason.

4 MR. MILLS: Can you think of -- well, no  
5 further questions.

6 JUDGE WOODRUFF: Recross from Staff?  
7 MIEC?

8 MS. VUYLSTEKE: No questions.

9 JUDGE WOODRUFF: Redirect?

10 MR. LOWERY: No redirect.

11 JUDGE WOODRUFF: Okay. And Ms. Cannell,  
12 you can step down. You're excused.

13 MR. LOWERY: Your Honor, we have a -- or  
14 I have a housekeeping matter we'd at least like to  
15 advise the Commission about. I've talked with some  
16 of the counsel in the room about Monday and whether  
17 we might take low income before the FAC in part  
18 because Mr. Mark is going to come in for the  
19 stipulation hearing on Monday morning because  
20 Commissioners had specific questions about energy  
21 efficiency which is his area and he's also our low  
22 income witness, and subject to people double-checking  
23 with their witnesses, I think generally we're in  
24 agreement to do that, but we'll -- they'll have to  
25 check with their witnesses and we'll have to let you  
26

1 know. But I thought Commissioners might like to know  
2 as soon as possible --

3 JUDGE WOODRUFF: I appreciate it.

4 MR. LOWERY: -- that we might be  
5 flipping that around if it's -- if it's all right  
6 with the bench.

7 JUDGE WOODRUFF: That should be fine.

8 MS. VUYLSTEKE: We may have some  
9 concerns with doing that, and we will let everyone  
10 know right away.

11 JUDGE WOODRUFF: Okay.

12 MS. VUYLSTEKE: As soon as we can.

13 JUDGE WOODRUFF: As far as -- looking at  
14 my schedule, they're both scheduled for March 22nd,  
15 so from the Commission's perspective, it will make  
16 little difference.

17 MR. MILLS: And Judge, I don't know that  
18 I have a conceptual problem with switching those  
19 two. I don't know about my witness -- witnesses'  
20 availability to do that, but I will -- I will check  
21 and let you know.

22 And could I also inquire of the bench as  
23 to what specific questions do the Commissioners have  
24 for the stipulation presentation, do we -- do we know  
25 that?  
26

1                   COMMISSIONER DAVIS: I can't speak for  
2 anyone else, but I'm going to just openly pontificate  
3 here for a few minutes to allow my colleagues to  
4 e-mail Judge Woodruff so they can speak for  
5 themselves.

6                   I've got to study the stips some more  
7 this weekend, Mr. Mills, but just with regard to DSM  
8 and some of the provisions, I guess it's just sort of  
9 my -- I just want to make sure that there's a meeting  
10 of the minds on some of these terms and what -- when  
11 you get down to the -- someone used this in agenda on  
12 Wednesday, the granularity of the terms, you know,  
13 what does that -- I mean, what do you -- what do  
14 these -- what is the essence of the agreement in  
15 terms of energy efficiency, demand response?

16                   You know -- you know, are -- you know,  
17 are we trying to eliminate peaks, are we trying to,  
18 you know, lessen demand? I think we just -- I don't  
19 know, I can't speak for anyone else, but I just want  
20 to try to get some of these things fleshed out, you  
21 know, just to make sure that, you know, we're not  
22 back here in six months or a year with good people  
23 claiming that Ameren has somehow, you know, not -- is  
24 not living up to the agreement or this is not what  
25 they thought they were getting.  
26

1 MR. MILLS: That's helpful. Thank you.

2 JUDGE WOODRUFF: And I have received one  
3 e-mail so far from Commissioner Jarrett's advisor  
4 indicating she's working on questions on -- general  
5 questions on pure power and the demand side  
6 management issues. And that was also mentioned in  
7 agenda. And I will state that no Commissioner  
8 indicated they were -- indicated opposition to the --  
9 to the stipulation and agreement. They were looking  
10 for clarification.

11 MR. MILLS: And maybe this would help me  
12 even more. Was this -- was this discussed during  
13 agenda earlier this week on Wednesday?

14 COMMISSIONER DAVIS: Yes.

15 MR. MILLS: So we can go back and look  
16 at the replay of agenda and get a better idea.

17 COMMISSIONER DAVIS: Yes.

18 MR. MILLS: Perfect. Thank you.

19 COMMISSIONER DAVIS: And I guess I'm  
20 going to try to phrase it another way, Mr. Mills, to  
21 quote a former member of the Missouri House of  
22 Representatives: I know what it says, I just want to  
23 make sure I have a better understanding of what it  
24 does or what people think it's going to do. So that  
25 way, if we can clear that up -- I mean, I don't - I  
26

1 didn't get the impression at the agenda meeting that  
2 anyone was opposed to it. I think we just all had  
3 questions and want to make sure that we understand  
4 what -- what the agreement means about what programs  
5 we're going to have going forward. And that's my  
6 impression. I can't speak for anyone else.

7 MR. MILLS: Thank you.

8 JUDGE WOODRUFF: Any other housekeeping  
9 matters?

10 (NO RESPONSE.)

11 JUDGE WOODRUFF: Well, Ms. Cannell was  
12 our last witness, then, for today. We will resume on  
13 Monday morning with the presentation about the  
14 nonunanimous stipulation and agreement.

15 (Whereupon, the hearing was adjourned  
16 until March 22, 2010, at 8:30 a.m.)

17

18

19

20

21

22

23

24

25

## I N D E X

1		
2		
3	ISSUE: ROE, CAPITAL STRUCTURE, FLOTATION COSTS	
4	DANIEL J. LAWTON	
	Direct Examination By Mr. Mills	2162
5	Cross-Examination By Mr. Dearmont	2164
	Cross-Examination By Mr. Byrne	2185
6	Questions By Commissioner Davis	2227
	Questions By Judge Woodruff	2240
7	Recross-Examination By Ms. Isles	2245
	Recross-Examination By Mr. Byrne	2246
8	Redirect Examination By Mr. Mills	2249
9		
	ISSUE: FUEL ADJUSTMENT CLAUSE	
10	GARY M. RYGH	
11	Direct Examination By Mr. Byrne	2268
12		
	ISSUE: ROE, CAPITAL STRUCTURE, FLOTATION COSTS	
13	JULIE M. CANNELL	
14	Direct Examination By Mr. Lowery	2271
	Cross-Examination By Mr. Dearmont	2274
15	Cross-Examination By Ms. Isles	2290
	Redirect Examination By Mr. Lowery	2294
16		
	ISSUE: FUEL ADJUSTMENT CLAUSE	
17	Cross-Examination By Mr. Williams	2303
18	Questions By Commissioner Davis	2305
	Recross-Examination By Mr. Mills	2307
19		
20		
21		
22		
23		
24		
25		

EXHIBITS INDEX			
		MARKED	RECEIVED
1			
2			
3			
4	Exhibit No. 117		
5	Rebuttal testimony of Julie Cannell	2270	2273
6	Exhibit No. 118		
7	FAC Rebuttal testimony of Julie Cannell	2270	2303
8	Exhibit No. 119		
9	Surrebuttal testimony of Julie Cannell	2270	2273
10	Exhibit No. 120		
11	Gary Rygh's rebuttal testimony regarding AmerenUE's fuel adjustment clause	2269	2269
12	Exhibit No. 174		
13	Economic research statistics of the Federal Reserve Bank of St. Louis	2198	2219
14			
15	Exhibit No. 175		
16	Cost of equity capital summary (Ameren's exhibit regarding Mr. Lawton's testimony)	2219	2266
17	Exhibit No. 176		
18	Adjusted cost of capital summary (Ameren's exhibit regarding Mr. Lawton's testimony)	2219	2266
19			
20	Exhibit No. 177		
21	Diagram drawn by Ms. Cannell	2300	2300
22	Exhibit No. 233		
23	September 29th Goldman report	*	2160
24	Exhibit No. 234		
25	January 15th Goldman report	*	2160
	* Marked for identification in a previous volume.		



		MARKED	RECEIVED
1	EXHIBITS INDEX (CONTINUED)		
2			
3			
4	Exhibit No. 304		
5	Direct testimony of Daniel J. Lawton	2270	2163
6			
7	Exhibit No. 305		
8	Rebuttal testimony of Daniel J. Lawton	2270	2163
9			
10	Exhibit No. 306		
11	Surrebuttal testimony of Daniel J. Lawton	2270	2163
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

CERTIFICATE OF REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MISSOURI            )  
                                  ) ss.  
COUNTY OF COLE             )

I, PAMELA FICK, RMR, RPR, MO CCR #447,  
do hereby certify that the foregoing proceedings were  
taken by me to the best of my ability and thereafter  
reduced to typewriting under my direction; that I am  
neither counsel for, related to, nor employed by any  
of the parties to the action to which this hearing  
was taken, and further that I am not a relative or  
employee of any attorney or counsel employed by the  
parties thereto, nor financially or otherwise  
interested in the outcome of the action.

\_\_\_\_\_  
PAMELA FICK, RMR, RPR, CCR # 447