

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

March 14, 2007  
Jefferson City, Missouri  
Volume 17

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

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

JEFF DAVIS, Chairman,  
STEVEN GAW, Commissioner,  
ROBERT CLAYTON, Commissioner,  
CONNIE MURRAY, Commissioner

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

2 JUDGE WOODRUFF: All right. Let's come to  
3 order, please. Welcome back to Day 3. When we left off  
4 last night, Mr. Lyons was on the stand. And we were about  
5 to come up for questions from the bench.

6 Before we begin -- get started with the  
7 testimony today, is there anything else that anyone needs  
8 to bring up, any resolutions or anything else?

9 MR. BYRNE: No, your Honor. We're still -- we're  
10 still working on our stipulation and should probably have  
11 something today on the first stipulation.

12 JUDGE WOODRUFF: Okay. Very good. Perhaps we  
13 can catch up on witnesses a little bit today, too. And,  
14 I, of course, encourage everyone to move things along as  
15 much as possible.

16 All right. Then we're up for questions from the  
17 Bench. Commissioner Gaw?

18 COMMISSIONER GAW: I'm afraid -- I'm afraid,  
19 Judge, I may not be able to follow your directions very  
20 well today. I apologize for that.

21 CROSS-EXAMINATION

22 BY COMMISSIONER GAW:

23 Q Good morning, Mr. Lyons.

24 A Good morning, Commissioner.

25 Q I -- let me -- let me -- let me begin by asking

1 a little bit about your information on the states that  
2 have a fuel adjustment clause, if you don't mind. I  
3 believe your testimony is that there -- there are 27 out  
4 of the 29 vertically integrated states that have a fuel  
5 adjustment clause; is that correct?

6 A Other than Missouri, yes, sir.

7 Q Other than Missouri. Thanks for that. Do you  
8 consider Missouri to have or not to have a fuel adjustment  
9 clause?

10 A Well, a fuel adjustment clause has been enabled  
11 by the Legislature and by the Commission's rules.

12 Q Okay. And I was wondering if you could tell me  
13 the number of utilities that have fuel adjustment clauses  
14 as an electric utility in each of those states that have a  
15 fuel adjustment clause and those utilities that do not. I  
16 want a list from you, if you -- if you have it.

17 A All of the utilities in those -- in those  
18 states, sir?

19 Q Yes.

20 A I do not have a list of all of the utilities in  
21 those states.

22 Q So would it be accurate to say that you have not  
23 researched the -- the underlying question of whether or  
24 not a fuel adjustment clause has been ordered for,  
25 particularly, utilities in those 27 states that you

1 mentioned?

2           A     We did research the -- whether -- the utilities  
3 that had their primary operating state within those --  
4 their primary operations within those states, whether they  
5 had fuel adjustment clauses, which is what I have on  
6 schedule MJL4-2 of my rebuttal testimony.

7           Q     So are you -- are you telling me that those are  
8 all of the utilities that are operating in the -- in the  
9 27 states?

10          A     No, sir.

11          Q     Did you not look at those other utilities?

12          A     That is correct, sir.

13          Q     Was there -- was there a reason why you didn't  
14 look at those?

15          A     Sir, it was the information that was most easily  
16 available.

17          Q     And did you go into detail about the -- the way  
18 the fuel adjustment clauses worked for each of these  
19 utilities that you do have in your list?

20          A     No, not specifically.

21          Q     Okay. So -- so all that we know is that there's  
22 some sort of an adjustment mechanism on the utilities that  
23 you list as having a fuel adjustment clause, correct?

24          A     That is correct.

25          Q     All right. And if I understood you correctly



1 yesterday, you do not know whether or not these states  
2 that are mentioned, the 27 states, have a mandatory fuel  
3 adjustment clause or not. Would that be accurate?

4 A That is correct.

5 Q There was some discussion yesterday in regard to  
6 Illinois having a fuel adjustment clause. Do you recall  
7 any discussion about that?

8 A Yes. I -- I mentioned that currently in  
9 Illinois, power costs, power purchase costs, are passed  
10 through a ryder mechanism.

11 Q How does that -- how does that work after the  
12 auctions last fall?

13 A After the auctions last fall, beginning in  
14 January, the electric distribution companies in the state  
15 procure power pursuant to the prices and terms established  
16 under that auction. And then those costs are passed  
17 through a ryder to the -- to the customers.

18 Q All right. Are those -- are those costs on a --  
19 an adjustable mechanism for fuel, or were they straight  
20 bid contracts for the -- for the power?

21 A They were -- they were -- they were power  
22 procured through the auction.

23 Q Yes. But let me ask the question a different  
24 way, then. When -- when the power was procured through  
25 the auction process, did that power have a ryder mechanism

1 within it that allowed it to be adjusted up and down  
2 according to fuel prices?

3 A No, sir.

4 Q So in effect, Illinois does not have a fuel  
5 adjustment mechanism currently; is that correct?

6 A Distribution companies, their cost is the power  
7 that -- the cost of the power that they procure. And  
8 those costs pass through the ryder dollar for dollar.

9 Q The -- the power costs are bid, though, are they  
10 not? Maybe I'm misunderstanding what you're saying to me.  
11 When they were bid, were they not bid at certain levels on  
12 a reverse auction?

13 A That is correct.

14 Q All right. And -- and how does the fuel -- fuel  
15 mechanism work on that reverse auction, then?

16 A It -- it's a -- it's a power purchase ryder. So  
17 for -- the regulated distribution companies buy power from  
18 the power suppliers which are non-regulated. And they  
19 pass along those purchase power costs that are incurred  
20 dollar for dollar.

21 Q I understand. But if they're bidding in the  
22 auction, is it just an open bid where they say, We're  
23 going to start at this price, and whatever floats up and  
24 down after that, you're going to have to pay?

25 Or do they say, We will provide you power at

1 this cost? At this price, rather.

2 A The -- the various people who bid into the  
3 auction bid into the auction. When the auction price  
4 cleared, the power companies or other folks who bid into  
5 that auction said, This is the price that we will supply  
6 you power at. And then the distribution companies buy at  
7 that cost --

8 Q Yes.

9 A -- and pass that cost along dollar for dollar  
10 through the ryder.

11 Q Yes. But that's a different -- that's a  
12 different mechanism than a fuel adjustment clause, is it  
13 not?

14 A I -- I personally think it's similar because  
15 their cost is -- is the -- for the distribution companies  
16 is the cost of the power service.

17 Q But it's a flat rate, isn't it?

18 A It was a flat rate established in the auction,  
19 yes, sir.

20 Q So it doesn't float up and down after it's bid?

21 A That is correct. Not -- not until the next  
22 auction, sir. That is correct.

23 Q Okay. So it's not -- it's not a fuel adjustment  
24 mechanism that floats up and down according to costs that  
25 occur after the auction. It stays the same until the next

1 auction price?

2 A The price will stay the same. The volumes  
3 purchased will change, and the total cost will change.

4 Q Thank you.

5 A Yes, sir. You're welcome.

6 Q I'm -- help me to understand. Yesterday you  
7 were asked about the -- and another witness was asked  
8 about the Price Waterhouse connection with Ameren. And --  
9 and I understood you to say that you were not directly  
10 involved in auditing Ameren while you were at Price  
11 Waterhouse; is that correct?

12 A Yes. I -- I mentioned that I did consult from  
13 time to time on certain issues. I don't recall what those  
14 were, but I certainly did. But I did not -- I did not  
15 have supervision responsibilities in the audit of that  
16 company.

17 Q Are there other -- other current officers of  
18 Ameren's system that did come from Price Waterhouse?

19 A Yes.

20 Q And -- and do you know who their -- who they  
21 are?

22 A Mr. Baxter worked at Price Waterhouse.  
23 Mr. Moehn worked at Price Waterhouse. And there may be  
24 one or two other Staff people at -- at Ameren that -- that  
25 did come from Price Waterhouse. I can think of one

1 individual whose name is Andrew Kirk who came from Price,  
2 Waterhouse, Coopers. I don't remember any other specific  
3 names, sir.

4 Q Okay. Is Price Waterhouse still the auditor for  
5 Ameren?

6 A Yes, sir.

7 Q What is the responsibility that Price Waterhouse  
8 has in regard to audit functions, just generally speaking?

9 A Generally speaking, they perform an audit of the  
10 financial statements for Ameren and each of its public  
11 registrants. They also, pursuant to the Sarbane's-Oxley  
12 rules provide an audit opinion on the internal controls  
13 that -- that Ameren has in place around its financial  
14 reporting.

15 Q Okay. Are there any restrictions as -- in  
16 regard to accountants going to work for a client who they  
17 have as -- who they have responsibilities to either -- as  
18 Price Waterhouse has with -- with Ameren?

19 A Yes, sir. There are rules. And I -- I don't  
20 recall whether those are FCC rules or PCAB rules. But  
21 yes, sir, there are rules.

22 Q Okay. Do you know any specifics about those  
23 rules?

24 A I don't recall the specifics of the rules.

25 Q Does -- is there someone at Ameren that -- that

1 has responsibility or -- let me rephrase that. Is there  
2 someone with Ameren that has contact with the -- the  
3 financial rating agencies?

4 A Yes, sir.

5 Q Who is -- who -- who does that generally?

6 A The primary responsibility for that is the -- is  
7 the treasury function, which reports to Mr. Baxter. And  
8 the treasury function is overseen by Mr. Jerry Birdsong.

9 Q So is that -- is that Mr. Birdsong's  
10 responsibility, then, generally --

11 A Yeah.

12 Q -- or is it Mr. Baxter's?

13 A It -- I guess you'd have to ask Mr. Baxter how  
14 much authority he delegates or doesn't delegate to  
15 Mr. Birdsong. I am -- I am aware that Mr. Baxter,  
16 Mr. Birdsong and an Assistant Treasurer, Mr. Nickloy, and  
17 I believe primarily Mr. Nickloy have interactions with  
18 those rating agencies.

19 Q Do you have any interaction with the rating  
20 agencies yourself?

21 A From time to time, I have, yes, sir.

22 Q Okay. When is the last time that you had  
23 interaction with them?

24 A I have -- at financial conferences, I've shaken  
25 hands. Less meaningful information I had, and I can't

1 remember the exact month was sometime during the  
2 rule-making process for the -- for the Commission's rules.  
3 The template Senate Bill 179.

4 Q Okay. Who did you have contact with?

5 A Ms. Barbara Iceman.

6 Q Who was she with?

7 A She's with Standard & Poors.

8 Q Okay. What is her position?

9 A I believe her title is -- is Credit Analyst, but  
10 I don't -- I don't have that with me.

11 Q Okay. What does that mean, Credit Analyst?

12 A That means that she reviews, in particular,  
13 AmerenUE's credit ratings and reviews its -- its business  
14 and operating environment. And my understanding is makes  
15 recommendations to a committee about the ratings to be  
16 placed on Ameren's debt securities.

17 Q Okay. And did she ask you questions at that  
18 meeting?

19 A She did.

20 Q And did you give her any -- any information?

21 A I did.

22 Q What -- what was that information?

23 A It was some months ago. And I don't remember  
24 the specifics. But her questions were around, you know,  
25 the debate during the time, the rule-making process as to

1 what types of things were being considered. For example,  
2 we're going to use projected costs or historical costs,  
3 how many true-ups were going to occur or adjustments to  
4 the -- to the mechanism during a given calendar year.  
5 Were power costs going to be recovered immediately or --  
6 or -- excuse me -- coal and purchase power costs  
7 immediately or whether there were going to be deferrals  
8 for later recovery. The questions about specific  
9 features, I would say, of the -- of the matters being  
10 debated.

11 Q Okay. Did you have any other contact in regard  
12 -- during that time frame with any other rating agencies?

13 A I did not, sir.

14 Q Okay. Did she make that contact initially, or  
15 did you?

16 A I was told by our Treasury Department that she  
17 had specific questions, and they asked me to participate  
18 in that portion of the meeting that they had with her.

19 Q Okay. So this was -- this was -- who was it  
20 specifically that told you?

21 A I believe it was Lee -- Mr. Lee Nickloy,  
22 Assistant Treasurer.

23 Q Okay. I want to -- to talk to you a little bit  
24 about this data request that was referred to yesterday  
25 from the -- from the Attorney General's office. Do you



1 have --

2 COMMISSIONER GAW: Can someone provide Mr. Lyons  
3 with a copy of that so I can walk through it with him and  
4 ask some questions?

5 MR. LOWERY: Commissioner, is it -- is it  
6 Exhibit 510?

7 COMMISSIONER GAW: No. Mine's not marked.  
8 DRAGUTI0207.

9 MR. MICHEEL: It's 511, Commissioner.

10 COMMISSIONER GAW: 511. Thank you.

11 Q (By Commissioner Gaw) Do you have that in front  
12 of you, Mr. Lyons?

13 A Mine is not marked, but I -- I presume it's the  
14 right one.

15 Q Well, let's see. Does it have a DRAGUTI-207  
16 number on it?

17 A It does, sir. It does.

18 Q Okay. Let's look at -- at the first response  
19 page, if you would. These -- mine has a -- the years 202  
20 -- 2002 to 2006 --

21 A Yes.

22 Q -- on that page. Do you see that?

23 A I do, sir.

24 Q Now, most of what I want to do here is just to  
25 understand what these numbers represent. So if have you

1 -- if -- if you think someone else is better suited for  
2 that, I'll -- I'll try to deal with it with them. But  
3 just tell me when -- when we get to it.

4 A I appreciate that, Commissioner.

5 Q This -- let's look at -- at this -- this title.  
6 Okay. Native load generation, that column, tell me what  
7 that means, what that's referring to.

8 A That would be generation to supply our retail  
9 customers, meaning that would not be the generation to  
10 serve -- support off system sales.

11 Q Okay. And the -- the numbers under it, what do  
12 they represent?

13 A Those -- those represent -- well, they represent  
14 unit volumes, sir. I was trying to determine whether they  
15 are kilowatt hours or megawatt hours.

16 Q And I was having difficulty with that, too, and  
17 I was hoping you might shed some light on it for me. So  
18 you think those -- those are, what? Do you know?

19 A I believe they're megawatt hours, sir.

20 Q Okay. All right. Now, and then the -- the next  
21 column is native load costs. Now, I'm assuming -- you --  
22 you tell me if this was right -- that that refers to the  
23 first column in -- and it represents dollar figures,  
24 correct?

25 A Correct.

1 Q And tell me what those figures represent.

2 A Those would be the costs associated with  
3 producing the generation figures just to the left of those  
4 numbers, sir.

5 Q Okay. And when you say costs, tell me what you  
6 mean by that.

7 A Those would be the -- the production costs, sir,  
8 the -- the coal costs, the fuel costs.

9 Q Okay. All right. Now, let's see here. Let's  
10 -- let's turn the page over. And -- and I think that --  
11 you tell me if this is correct. The pages that follow are  
12 a breakdown of the -- of the numbers that are generated on  
13 that first page that we looked at by year. Is that -- is  
14 that correct?

15 A That appears to be correct. Yes, sir.

16 Q All right. So, for instance, then, you have in  
17 the first column there, native load generation as -- as a  
18 column. And then that's broken down in -- in rows  
19 according to generating unit, correct?

20 A Appears to be correct, sir.

21 Q Okay. And then -- and, of course, that number,  
22 that native load generation -- let's see -- ties back over  
23 to -- to that first page we were looking at, correct?

24 A Yes, sir.

25 Q All right. But then there's a -- another column

1 -- the next column is interchange and inter-company  
2 generation. And tell me what that means.

3 A I -- I believe that to be -- I believe that to  
4 be the volumes of interchange sales or volumes sold --

5 Q Okay.

6 A -- to other than native load customers.

7 Q Okay. So it would include all off system sales  
8 that were made?

9 A Yes.

10 Q But, again, this is --

11 A I believe so.

12 Q -- not a dollar figure, but we think a megawatt  
13 hour figure?

14 A I believe so, sir.

15 Q Okay. And that would also include the -- as you  
16 -- as it says this, interchange and inter-company  
17 generation, so affiliate transactions would be included in  
18 that?

19 A I believe they were included, yes, sir.

20 Q Okay. And then there's a -- next column is Net  
21 Generation, which I think is the total of the first two  
22 columns; is that right?

23 A It appears to be, sir, yes.

24 Q And then there's a percentage figure there,  
25 which represents the percentage for each generating unit

1 of their total generation that was used for native load,  
2 correct?

3 A Yes, sir. I do see that.

4 Q And then the next -- next column, then,  
5 represents the percentage for that generating unit that  
6 was used for interchange and inter-company sales or off  
7 system sales?

8 A Yes, sir.

9 Q And then there's -- there's the -- there's a  
10 column that says Native Load Fuel Costs followed by  
11 Interchange and Inter-company Fuel Costs. I'm assuming  
12 that those are the fuel costs that are broken down  
13 according to the percentage of use for native load or off  
14 system sales?

15 A Yes. It appears to be correct, sir.

16 Q Okay. Now, let's -- let's look at a few of  
17 these generating units in 2002. It -- Meramac is first on  
18 the list there. And that -- these are coal units in this  
19 first -- the first four or five units -- first, I guess,  
20 four units, correct?

21 A Yes, sir.

22 Q All right. And down below, there is an  
23 additional row dealing with the net ash removal costs that  
24 -- that are allocated -- allocated with the -- with the  
25 totals. Can you tell me how that -- how that figure is

1 divided up?

2 A I -- I can't tell you that specifically, sir.

3 Q Okay. Who -- who would be able to do that, if I  
4 wanted to know?

5 A I -- I think that I could -- I could research  
6 that, sir, and get back to you.

7 Q Okay. Now, as I move -- move down through here,  
8 I can see that the Callaway plant is listed, and it's  
9 showing that a hundred percent of its use was for native  
10 load generation in 2002, correct?

11 A I see that. Yes, sir.

12 Q All right. No off system sales use is noted?

13 A Very little. Yes.

14 Q And -- and that's because the -- is that because  
15 -- well, let me ask you this: How is Callaway handled in  
16 order of dispatch?

17 A I believe it is -- again, I'm not intimately  
18 familiar with the total order of our dispatch. But  
19 Callaway, I believe, is our lowest cost dispatch, sir.

20 Q Perhaps except for the -- for the hydro unit at  
21 the lake or something like that?

22 A It -- excellent point. Yes, sir.

23 Q Okay. Now, if I -- if I move on down -- well,  
24 let me ask you this first: Can you explain to me why it  
25 is that as I look through the coal units there is a Rush

1 Island and Labadie are shown as 97, 95 percent native load  
2 use. On the other hand, Meramac is shown at 38 percent.  
3 Can you explain why that would be?

4 A I don't know specifically. But I would expect  
5 that is because Meramac is a -- a higher cost unit.

6 Q So it would be farther -- farther down in the  
7 order of dispatch when it's being used, correct?

8 A Correct.

9 Q And we would expect Ameren to be dispatching for  
10 native load and lowest cost generation to highest  
11 according to the -- the load that -- that was out there  
12 that needed to be served?

13 A That is correct, sir.

14 Q So that -- that -- the higher cost unit, then,  
15 if they're not being used for native load and if it is  
16 profitable to be -- for that energy to be sold into the  
17 off systems market, then would it be more available for  
18 off system sales?

19 A That's correct.

20 Q Okay. Do you know whether Meramac and the other  
21 unit -- is that Sioux -- what -- that's not the full name  
22 for that, is it?

23 A I think it is, sir. Uh-huh.

24 Q Are they -- are they -- do they run most of the  
25 time? Do you know?

1           A     I -- I'm not sure offhand what their capacity  
2 factors are, sir.

3           Q     Okay. Let's -- let's move on down to the  
4 purchases column. EEI is noted down there, isn't it?

5           A     I do see that. Yes.

6           Q     It shows -- how many -- in 2002, how many  
7 megawatt hours of native load generation?

8           A     I do see that.

9           Q     Can you read that figure?

10          A     2,446,490.

11          Q     Okay. Can you tell me what the percentage of  
12 use for EEI was of native load compared to off system  
13 sales in 2002?

14          A     100 percent native load, sir.

15          Q     Okay. Let's just -- let's just track EEI back a  
16 ways. Tell me about that same figure on -- just this --  
17 talk to me about percentages at this point. The other  
18 figures will speak for themselves in the record. But what  
19 percentage of native load use was EEI in 2003?

20          A     100 percent.

21          Q     How about 2004?

22          A     100 percent.

23          Q     And 2005?

24          A     100 percent.

25          Q     And then what do you show for 2006?



1           A     Nothing, sir.

2           Q     How many megawatt hours -- if we're -- let's --  
3 we hope we're right about this being megawatt hours. And  
4 if you -- if you find out differently, you -- you be sure  
5 and tell us, will you?

6           A     Yes, sir.

7           Q     How many megawatt, if we assume that's the  
8 right -- right tag on these numbers, was used in -- in  
9 2005 for EEI for native load generation? Just read that  
10 figure for me, would you?

11          A     Yes, sir. 2,951,799.

12          Q     Okay. And in 2006, did the load of -- of  
13 AmerenUE decrease by that figure that you just read to me  
14 for EEI, its contribution to UE in 2005?

15          A     I'm not sure I understood the question,  
16 Commissioner. Could you repeat it? I'm sorry.

17          Q     It -- no. That's okay.

18          A     Okay.

19          Q     Do you know whether UE's load decreased by the  
20 amount of lost EEI generation in 2006 from 2005?

21          A     I don't know specifically. But I don't believe  
22 so, sir.

23          Q     In fact, Ameren's load has not -- did not  
24 decrease, did it? Or did it in 2000 -- between 2005 and  
25 2006?

1 A I believe it increased, sir.

2 Q You believe it increased?

3 A Yes, sir.

4 Q Did I hear you?

5 A Yes. That's what I said.

6 Q And it's my -- my hearing. I apologize.

7 A I may not be speaking up. And I apologize if  
8 that is the case.

9 Q What -- as a consequence of the loss of EEI's  
10 generation in 2006, what units picked up the extra load?

11 A I don't know specifically, sir.

12 Q We might be able to guess from this -- from this  
13 page, I suppose, because at least it shows how the load  
14 was served according to the units used, correct?

15 A I -- I think it could likely be used for that  
16 kind of analysis.

17 Q But you yourself have not done that analysis,  
18 correct?

19 A I have not, sir.

20 Q Okay. Thank you. I cannot remember whether you  
21 have any testimony on the specifics of the -- of EEI in  
22 regard to -- to the cost to run it and -- and the -- those  
23 kinds of technical details that -- do you?

24 A I have none, sir.

25 Q I'll leave -- I will probably not pursue this

1 much farther with you, then. So unless I think of  
2 something, I'll come back to it.

3 A Yes, sir.

4 Q Let me ask you again on this document -- let's  
5 see what's the best page to do this from. Why don't we  
6 just -- I think we can do it from the first page again on  
7 the -- on the cumulative numbers, 2002 to 2006.

8 I want to look down at the transmission  
9 expenses. Let me first -- let me first look under the  
10 purchases figure. In the second row down, it says MISO  
11 charges in 555. Do you see that?

12 A I do, sir.

13 Q And, of course, there are no charges or numbers  
14 listed there until -- I believe there are some in 2004, is  
15 that correct, native load generation?

16 A I may be looking at this wrong, sir. I see  
17 charges in 2005. I don't --

18 Q Oh, I'm sorry. It's -- you're correct. I  
19 apologize for that. That's my -- my fault. If -- and  
20 that's -- and that's that 470, 475 figure that you're  
21 referring to under native load generation?

22 A Yes, sir.

23 Q Okay. And then there are numbers, then, from  
24 that point over, native load costs for 2005, and then 2006  
25 has some charges. Can you tell me what those charges are

1 for?

2 A I can't -- I can't say specifically off the top  
3 of my head, sir.

4 Q Who would know that?

5 A We provided testimony, I believe, on that  
6 subject in Mr. Schukar's testimony.

7 Q So I should ask him about it? Okay. And the  
8 same -- similar question on the MISO charges under  
9 transmission expenses, the 565 account. There are  
10 congestion charges, financial transmission rights,  
11 ancillary services and MISO activities and transmission  
12 fees, power trading real time, transmission bundle and  
13 transmission expenses. Explain what those figures are.

14 A I do not believe I'm the best person to answer  
15 that question, sir. I think Mr. Schukar could explain the  
16 nature of those best.

17 Q Okay. Do you -- do you know at all yourself?

18 A I have -- I have familiarity with the term, sir,  
19 but I'm not -- I'm not intimately knowledgeable what gives  
20 rise to these charges.

21 Q Okay. That's all right. Well, you can at least  
22 tell me -- I know some of these figures on this -- on this  
23 page are in parentheses, and I'm assuming from an  
24 accounting standpoint when they're in parentheses that is  
25 a negative to whatever the figure is that's not in

1 parentheses.

2 A I would conclude the same thing, sir.

3 Q Okay. So if I want to talk about financial  
4 transmission rights and I've got a number in parentheses,  
5 that's probably an add-back on an expense sheet?

6 A That's correct.

7 Q Okay. Are you familiar with what these --  
8 generally speaking, what these MISO charges and in some  
9 cases, credits are for, just generally speaking?

10 A Generally speaking, they are charges that are  
11 incurred to move power either to or from our system  
12 between various points across the transmission system.

13 Q Okay. Now, before MISO was in existence, were  
14 you able to do that for free?

15 A No, sir. I don't believe so.

16 Q Where would the charges be in the years before  
17 2005 or the costs, I should say, for doing what you're  
18 paying MISO to do in this -- in this document that we're  
19 looking at?

20 A I don't know specifically, sir, though I think  
21 they may be some -- some in purchases, some in the off  
22 system sales prices. And --

23 Q Do you know for sure that they're in here at  
24 all?

25 A I -- I do not -- I do not personally know, sir.

1 Q Would Mr. Schukar know that?

2 A He may have a better understanding, sir.

3 Q Okay. Well, I'll -- I'll -- I'll hold off for  
4 them, there, too, then, I guess. Let me ask you about --  
5 if I can find it real quick. I want to ask about Tomsauk  
6 a minute.

7 In that category is the word -- which was just  
8 -- which is under hydro; correct? I'm sorry. My  
9 microphone may not be close enough.

10 A I see it, sir, yes, sir.

11 Q I'm just curious about this. There is --  
12 Tomsauk is shown as -- as -- as producing varying levels  
13 of -- of generation from year to year from 2002 until --  
14 well, there is a figure for 2005, I guess.

15 Under the native load cost, there is no figure  
16 there. And I'm trying to understand why that is.

17 A I'd have to look at how this was presented. It  
18 -- you know, in terms of, obviously, there was power used  
19 to pump the water up the mountain.

20 Q Well, that was the reason I was asking that.

21 A Yes.

22 Q It wasn't -- it wasn't clear to me why there  
23 would be no figure there. And -- and you don't know the  
24 answer to that, you're telling me?

25 A That's correct, sir.

1           Q     Is that something you're going to find out for  
2 me or ask somebody else?

3           A     I will look into that, sir.

4           Q     Okay. Thanks.

5           A     I hope somebody's taking notes.

6           Q     I hope they are, too. Actually, you may be  
7 lucky if they aren't, and maybe I won't be. Let's see.  
8 It appears on the -- the following pages in regard to  
9 Tomsauk that the percentage of use of Tomsauk for native  
10 load and inter -- inter-company sales or under exchange  
11 sales are varied pretty widely from year to year.

12                     Do you think that's accurate? Do you think  
13 these figures that are in here are accurate? Let me just  
14 say that.

15          A     I believe that they are accurate.

16          Q     Okay. Was it generally the case that Tomsauk  
17 was viewed as a -- as a resource -- as a -- more of a  
18 revenue maker on off system sales than for service to  
19 native load or not?

20          A     I don't know the answer to that, sir.

21          Q     Okay. Okay. Let's -- let's talk for just a bit  
22 about the -- the sharing grid proposal that you have. Can  
23 you tell me what page that is real quick on your -- on  
24 your testimony in your surrebuttal?

25          A     Page 22, sir.

1           Q     I -- the first question I want to know is -- is  
2 whether or not you are familiar with whether this  
3 particular grid or -- or sharing mechanism is in use in  
4 any of those states that you looked at.

5           A     I'm not aware of that -- it in particular, sir.

6           Q     Okay. Do -- and I think you may have already  
7 answered this, but did you do research into what sharing  
8 mechanisms are in each of those cases or utilities that  
9 you have noted in your exhibit as having fuel adjustment  
10 clause?

11          A     Not the specifics of the sharing mechanisms.  
12 No, sir.

13          Q     Or whether they even have one?

14          A     Well, sir, on Schedule MGL-5 of my surrebuttal  
15 testimony --

16          Q     Yes.

17          A     -- we do list states, non-restructured states,  
18 describe the type of -- of ryder that they have and -- and  
19 also whether they have a sharing on the far right-hand  
20 side.

21          Q     I think I'm looking at the wrong exhibit. Which  
22 one is that again?

23          A     Schedule MJL-5, sir.

24          Q     Is that in your rebuttal or direct?

25          A     I'm -- oh, I'm sorry. Maybe I referred you to



1 the wrong one. Surrebuttal.

2 Q Surrebuttal. Okay.

3 A Yeah. I did refer you to the wrong one. I  
4 apologize.

5 Q Okay. So you -- so you've got -- you've got a  
6 column down there on whether or not there's a sharing of  
7 fuel and purchase power cost?

8 A (Witness nods head.)

9 Q It appears that the majority of them don't have  
10 that you've noted; is that correct?

11 A Agree, sir.

12 Q All right. Now, I want to understand a little  
13 better about this -- this proposal. Is -- this is -- this  
14 -- let me -- let me ask you this question: Does Ameren  
15 have a belief or a position regarding whether or not this  
16 Commission can order a fuel adjustment clause that's  
17 different than proposed by the company, if you know?

18 A I don't recall from the rule, sir.

19 Q So you don't know if there -- if Ameren holds a  
20 position in that regard?

21 A I would imagine we do. I'm just not sure what  
22 the position is.

23 Q That's okay. It's fair. So if -- if that -- if  
24 I -- if I look, then, at this, there's -- you're setting a  
25 level of -- of baseline of fuel and purchase power net of

1 off system sales --

2 A That is correct sir.

3 Q -- right?

4 A Yes.

5 Q And that's based in part on historic figures; is  
6 that correct?

7 A The base -- the net base would be based upon net  
8 based fuel cost determined in this case, sir.

9 Q Okay. What assumptions are made in regard to  
10 the level of off system sales in that baseline?

11 A You -- you would be making assumptions about  
12 generation levels, power prices, amongst other things.

13 Q Okay. What's -- what -- where do you -- where  
14 do you get your assumption as to the level of off system  
15 sales? How do you make that determination in your  
16 proposal?

17 A In the proposal, what we proposed to you is just  
18 the level of off system sales found by the Commission to  
19 be appropriate for inclusion in base rates.

20 Q Okay. And is -- and the -- the price at which  
21 you -- you set that level of off system sales, how was  
22 that determined? Is that from staff's figures?

23 A It -- it would, again, be based upon the  
24 Commission's decision, which, I believe the Staff has  
25 figures, the company has figures, and the others in the

1 case have figures.

2 Q And those figures aren't the same, I take it, or  
3 you would have just said there was one figure to me?

4 A Unless it's been settled, there have been  
5 different figures there.

6 Q Is Ameren's -- what is Ameren's position in  
7 regard to the setting -- if you know, the setting of that  
8 off system sales level in a -- in a revenue figure?

9 A I -- I don't know specifically.

10 Q Mr. Schukar again?

11 A That would be Mr. Schukar, yes, sir.

12 Q Okay. Your main testimony here in regard to the  
13 fuel adjustment is the general sharing mechanism itself?

14 A Yes, sir.

15 Q Okay. So you're not going to be able to talk to  
16 me much about how to come to this baseline?

17 A Sir, that -- the baseline -- I tried to explain.  
18 I'm sorry if I'm doing so inadequately.

19 Q You're not. Just -- if I have specific  
20 questions, though, about how you calculate Ameren's  
21 position based on that baseline, Mr. Schukar would be the  
22 one I should talk to about that?

23 A Yes. On the baseline of off system sales, yes,  
24 that is correct.

25 Q Okay. And the same in regard to fuel costs?

1           A     That would be, I believe, Mr. -- Mr. Neff, sir.

2           Q     Okay. Now, you start off with, once you have  
3 this baseline, that you look at whether or not you are  
4 able to -- to get a lower net cost than what the baseline  
5 was to -- to get into the sharing mechanism?

6           A     Yes. If -- if the net base fuel costs are  
7 reduced and not established in the case, you would get  
8 into the sharing.

9           Q     Okay.

10          A     And it would be if that net based fuel cost was  
11 reduced during a true-up year for purposes of the fuel  
12 adjustment clause.

13          Q     Okay. And that's done -- that's -- is that an  
14 -- an annualized figure?

15          A     That would be an annualized figure as proposed,  
16 sir. And it would be starting July 1st of this year and  
17 running till about June 30th of next year.

18          Q     And then how is the money shared if you actually  
19 beat the baseline?

20          A     If -- if we're able overcome price -- price  
21 increases in coal or nuclear fuel, then, if the net base  
22 fuel cost, as you describe, decrease, sir, then as  
23 illustrated on page 22, the company would share 75 percent  
24 of the first \$10 million of the net base fuel cost savings  
25 for 7.5 million.

1           And then for every \$25 million further reduction  
2 in the net based fuel cost, the company would share 10  
3 percent, 20 percent, 30 percent, 40 percent, and then that  
4 50 percent as illustrated up to a cap of 135.

5           And if net base -- net based fuel costs were  
6 reduced greater than 135, the company would -- the  
7 company's sharing would be capped.

8           And so in this illustration, the -- the maximum  
9 sharing by the company would be \$45 million. And the  
10 customer benefit as total there would be 90 million, plus  
11 any increase in fuel costs that we're able to overcome,  
12 sir.

13          Q     Okay. Now, when you say the company's sharing  
14 would be kept capped, you also are meaning that the  
15 customer benefit would be capped?

16          A     No, sir. I would say, to the extent that net  
17 base fuel costs could be reduced by greater than  
18 \$135 million, that would all flow to the customer. So  
19 let's say --

20          Q     All flow to the customer. Okay.

21          A     So if --

22          Q     I'm following you.

23          A     Okay.

24          Q     So -- so then at that point, the -- the  
25 incentives that you -- you are supposed to -- that you

1 have attempted to put in here for the company to -- to  
2 beat the baseline go -- with a -- with a lower net -- net  
3 cost is -- is no longer there after 135 million?

4 A I -- I would think we would have ongoing  
5 continued incentives to continue to try to manage our  
6 operations as effectively as we possibly could. But -

7 Q Because -- because of what?

8 A Because I think that in running our business, we  
9 -- we try to do so prudently.

10 Q Oh, okay. So you'd be doing it anyway?

11 A Sir, we -- we do -- I believe we do try to do  
12 the right thing in this purchasing our fuel and marketing  
13 our off system sales in running our plants. I believe  
14 that the incentive mechanism certainly provides further  
15 incentive, sir.

16 Q Was the answer to that yes?

17 A It's qualified. Yes, sir. Yes.

18 Q Okay. Now, if you -- if I look at this first  
19 zero to ten million, the company is keeping 75 percent of  
20 -- of that figure, correct?

21 A Yes, sir.

22 Q All right. Now, I'm looking for the other --  
23 the other table that appears to be missing here. And I  
24 don't -- I don't know if -- maybe it's just out of my -- I  
25 think it may be out of my book. And I -- I'll borrow

1 someone else's.

2 COMMISSIONER GAW: I don't know, Judge. Have  
3 you --

4 JUDGE WOODRUFF: Which?

5 COMMISSIONER GAW: Commissioner Clayton's  
6 doesn't seem to have it either.

7 Q (By Commissioner Gaw) I'm looking for the table  
8 that -- that has the sharing mechanism when the -- the  
9 costs are over the baseline. Is that -- is that table on  
10 page 22 and a half?

11 A No, sir, it's not.

12 Q Okay. So the proposal -- the proposal here is  
13 that if the company is unable to meet the baseline and the  
14 net costs are above baseline, that's all on the consumer?

15 A That is correct.

16 Q Okay. Now, is -- is there a -- is there  
17 something -- something -- let me ask you this: I've read  
18 significant amounts of testimony in here that -- that  
19 indicate the company doesn't believe it can meet its  
20 baseline, a baseline figure if -- if we put the -- if we  
21 don't give you a fuel adjustment clause. Would I --  
22 should I -- would -- isn't that accurate?

23 A If I understand your question to me, our fuel  
24 costs are rising such that if rates are set paced upon the  
25 current cost in this case and the fuel costs rise, again,

1 sir, baseline -- I was confused by your term baseline.

2 Q Okay. Well, if -- if you put -- and I'm using  
3 baseline here to -- to translate over to actually having  
4 all of these in -- base rates in the way that it has  
5 traditionally been done.

6 The company's testimony generally, as submitted,  
7 indicates that it does not believe that that's appropriate  
8 or that the company will be able to control its costs on  
9 fuel and purchase power, net of off system sales in a way  
10 that -- that would -- that would make having the -- having  
11 the fuel and purchase power costs in base rates  
12 appropriate.

13 A I believe that's correct, sir.

14 Q Okay. So it's fair to say, then, the company  
15 doesn't believe if this baseline's set in this case that  
16 it's going to be able to -- to meet that baseline. Isn't  
17 that a fair assumption to make?

18 A That -- that's correct, sir.

19 Q So, in essence, what we're saying here is the  
20 company believes that if we adopt this sharing mechanism,  
21 it's never going to be used?

22 A I don't know that it's never going to be used.  
23 I would say that's theorizing.

24 Q If --

25 A Fuel costs create challenges, as you say, sir.



1           Q     It would be -- it would be fair to say, if I  
2     make the assumption -- if the company's testimony is  
3     correct, it's very unlikely that this sharing mechanism  
4     will ever have any meaning?

5           A     I don't know that it's unlikely.  It -- it  
6     becomes increasingly more difficult as the coal costs  
7     rise, sir.

8           Q     So then I'm back to my prudence review.  
9     Wouldn't that be correct?  In regard to the Staff and  
10    Public Counsel and others who are concerned about -- about  
11    the fuel and purchase power decisions that Ameren might  
12    make going into the future, I'm -- I'm really back to that  
13    being the line of defense.  Wouldn't that be correct?

14          A     The -- the line of defense, sir.  I'm sorry.

15          Q     Well, I'm looking at it from outside of Ameren,  
16    not from inside at this point.  And I -- I'm asking you,  
17    isn't -- isn't it accurate that if it's unlikely that  
18    we're going to see this -- this mechanism, fuel this --  
19    this incentive mechanism actually be utilized because of  
20    the company's belief that fuel costs are rising?

21                   And I'm back to ensuring that the company is  
22    prudently managing its fuel and purchase power and off  
23    system sales by reviewing the prudence of the decisions  
24    the company has made in a retroactive manner without using  
25    20/20 hindsight?

1           A     I -- I think I understand your question.

2           Q     It was a little convoluted. Go ahead.

3           A     Well, I think that, as I said, as fuel costs  
4 rise, I think it presents an increasing challenge for the  
5 company. I think the sharing or the presence of the  
6 sharing group --

7           Q     That's -- that's not my question. My question  
8 is whether or not you think there is something else the  
9 Commission has available as a tool, assuming the company  
10 is correct, other than a prudence review to ensure that --  
11 that decisions were prudently made on purchase power and  
12 off system sales?

13          A     The prudence review, I'm sure, will be robust  
14 and will be there for the -- for a backstop. Is that your  
15 question?

16          Q     That's basically it, isn't it? I mean, that's  
17 basically the -- the backstop?

18          A     I think the sharing group would remain in place  
19 to provide incentives, sir.

20          Q     We've already talked about that. And I think  
21 we've made -- we've come to some conclusion in regard to  
22 its effectiveness in that regard. What I'm asking you is  
23 whether or not -- whether or not the -- the -- the only  
24 mechanism that's really there, assuming that you're  
25 correct about fuel and -- fuel costs is the prudence

1 review.

2 A And I think I'm answering, sir. I think it's  
3 prudence review plus the presence of the sharing grid  
4 plus --

5 Q Okay. Whatever that the -- the strength of that  
6 is in light of Ameren's position in regard to -- to  
7 raising fuel costs, correct?

8 A Agreed.

9 Q Okay. So have you ever done an audit of all of  
10 the electric transactions that are made by Ameren in a  
11 single day?

12 A I have not, sir.

13 Q Do you know how many -- based upon your dealings  
14 with Ameren as an auditor at Price Waterhouse and as an  
15 officer of Ameren, do you know approximately how many  
16 transactions take place in a single day in the Ameren  
17 system, the UE system?

18 A I believe there are numerous, but I don't know  
19 how many specifically, sir.

20 Q Okay. And then we would have to multiply that  
21 times 365 or -- unless it's a leap year or whatever we  
22 might have, to come up with the total number of  
23 transactions for a particular year, correct?

24 A I think so, sir. Yes.

25 Q And then we'd also have to think about not just

1 the transactions that were made, purchases and sales, what  
2 the market was doing, what it wasn't doing, what the price  
3 might be, what it wasn't and how it fluctuated.

4 We would also have to look at the procurement of  
5 fuel to run the generating units, correct?

6 A In -- in the conduct of -- of prudence review,  
7 sir?

8 Q Yes.

9 A Is that your question?

10 Q Yes.

11 A Yes. I would imagine that would be covered.

12 Q And -- and how many transactions in a year are  
13 completed by Ameren on decisions in purchasing fuel?

14 A I don't know specifically, sir.

15 Q And -- and who makes those decisions?

16 A Who makes which decisions, sir?

17 Q On the fuel purchases.

18 A The fuel procurement group, sir.

19 Q Is that within UE?

20 A It's within Ameren Fuel Services, sir.

21 Q Which is another affiliate of AmerenUE, correct?

22 A It is an affiliate, yes, sir.

23 Q A separate corporation?

24 A It is, sir.

25 Q Okay. Now -- do you know where it is in the

1 corporate structure?

2 A I believe, based upon the document we looked at  
3 yesterday, it's a subsidiary of Ameren Energy Resources,  
4 sir.

5 Q You also want to examine what the -- what the  
6 particulars were on the markets when those fuel prices  
7 were made if you were -- excuse me -- those fuel purchases  
8 were made if you were reviewing on a prudence review, I  
9 assume, wouldn't you?

10 A Sir, I don't know. I don't know if you'd look  
11 at the -- the bidding process that they went through and  
12 whether it was a robust process or whether you look at the  
13 specific prices on the day. I'm not sure exactly, sir.

14 Q Okay. You would know better than I being the  
15 CPA that you are, so --

16 A Sir, you know, having not conducted a prudence  
17 review but conducting audits, I mean, typically, you would  
18 look at the internal controls around the corporate  
19 function, want to know the understanding of the controls.

20 And in my experience in auditing from a -- a  
21 financial auditor's perspective, you would pick a sampling  
22 of -- of contracts, invoices and things like that to  
23 review and perform tests on.

24 Q Because it just simply wouldn't be possible to  
25 review every transaction, would it?

1           A     I think it's because you can draw conclusions  
2 from the sample, sir.

3           Q     But it wouldn't be possible to review all of  
4 those transactions, would it?

5           A     I think it would be possible.

6           Q     You do? How many people do you think it would  
7 take to conduct an audit of all of the transactions, fuel  
8 purchases, possibilities of different fuel purchases, off  
9 system sales, possibilities of off system sales, off  
10 system purchases, possibilities of other off system  
11 purchases?

12                     We're talking about a lot of transactions. How  
13 many -- how many people would it take for you to do that  
14 audit if you were doing a prudence review --

15          A     Agreed.

16          Q     -- and do every one of those transactions?

17          A     Agreed. A lot of transactions, sir. I'm not  
18 sure how many hours or individuals.

19          Q     Do you have a better idea than I would? Do you  
20 think it would take -- take a substantial amount of time  
21 to conduct that kind of a review?

22          A     Invoice by invoice, sir?

23          Q     Yes.

24          A     Yes. I think it would.

25          Q     Just a point of clarification. On -- on the

1 word volatility that was tossed around a lot yesterday, I  
2 -- I need an analogy from -- from you, if you could help  
3 me. If I'm -- and I'm going to do this if -- in regard to  
4 traveling in a car for the moment. Forgive me because I  
5 just -- I'm trying to get my arms around what you mean  
6 when you say volatility.

7           If I'm going down the road and I am accelerating  
8 at a constant rate and increasing my velocity, am I -- is  
9 that -- is that speed that I'm traveling at volatile under  
10 your definition of volatility?

11         A     No, sir. I don't think that would be volatile.

12         Q     Okay. Now, if I'm accelerating and decelerating  
13 and accelerating again, is that volatility to you?

14         A     That does sound like volatility, sir.

15         Q     Okay. So -- so what you're telling me is that  
16 volatility, in your definition has to do with -- with  
17 changes in the rate of increase or decrease rather than  
18 just whether it's increasing or decreasing at a constant  
19 rate or fairly constant rate?

20         A     Agreed.

21         Q     Okay. One of the points I think you have in  
22 your testimony with regard to the benefit of -- of fuel  
23 adjustment clause has to do with cost of capital and debt.  
24 Is that correct? Or is it just cost of debt?

25         A     I -- I think that -- I think that there are

1 impacts on cost of capping in general, sir.

2 Q Okay. Tell me how much -- how much of an  
3 adjustment should be made to the cost of capital and debt  
4 with the fuel adjustment clause.

5 A I -- I would defer to our expert cost to capital  
6 witness, sir.

7 Q Well, I'd love to do that. But you're the one  
8 that put it in your testimony about this generating  
9 benefit, and I want to know what your opinion is about  
10 what this is worth.

11 A I don't have a specific opinion about what it's  
12 worth, sir.

13 Q Okay. And in regard to this fuel adjustment  
14 clause that you're proposing, you are not offering  
15 anything in your testimony to say, Here's -- here is the  
16 benefit that we're going to pass along to consumers as a  
17 result of -- of what we believe to be a lowering of our  
18 cost of capital/data?

19 A I don't offer a specific quantification, sir.

20 Q You're not offering anything in your testimony,  
21 correct?

22 A Well --

23 Q You don't propose that Ameren, in your  
24 testimony, pass through this sure -- sure bet that we've  
25 got on this fuel adjustment clause to the consumer when --



1 when the rate case is completed?

2 A Sir, again, through the conversations with the  
3 rating agencies and the review of the documentation, I  
4 know, holding all other things equal, they perceive that a  
5 -- a futility with the fuel adjustment clause to have a  
6 higher credit quality than one without.

7 Q Well, sometimes I -- I start to believe that we  
8 -- we should -- that some of -- some of our parties in  
9 some of these rate cases, not just this one, would tell us  
10 that we should turn over our responsibility as  
11 Commissioners to the rating agencies and let them set the  
12 rates in these cases, and then everything would be  
13 hunky-dory. Do you -- that's not Ameren's position, is  
14 it?

15 A That is not my position, sir.

16 Q Okay. Well, I appreciate your qualification to  
17 that answer. Have you -- have you figured into your fuel  
18 adjustment clause a demand response?

19 A I didn't understand your question, sir.

20 Q Do you have some sort of a -- well, let -- okay.  
21 Let me ask -- let me ask you a couple of questions then.  
22 I'll re-ask that.

23 Do you know what demand response is?

24 A No, sir.

25 Q That's not a good thing. Okay. That makes it a

1 little difficult. Well, that may explain some other  
2 things as well. If a -- if a -- if you have a -- you know  
3 what load is, of course?

4 A I do, sir.

5 Q If you have a particular load out there that's  
6 willing to cut back on its power at peak times for a  
7 price --

8 A Yes, sir.

9 Q -- some people might say that is a form of  
10 demand response.

11 A I understand, sir.

12 Q Okay. So in that context, is there anything  
13 that has been discussed in -- in your presence that you  
14 can tell me about that has to do with how demand response  
15 gets into the fuel adjustment clause equation that's  
16 proposed?

17 A Are you -- are you talking about in terms of  
18 specific -- specific customers or subsequently, sir?

19 Q Just generally speaking.

20 A Just -- just generally, my thought would be that  
21 as -- prices change during the operation of the fuel  
22 adjustment clause. So as costs escalated or declined that  
23 that would send press signals to consumers. I think  
24 yesterday, we mentioned in my own household, I mean,  
25 certainly, when -- when prices of our commodities vary, it

1 influences our decision.

2 Q Okay. But -- but in regard to the fuel  
3 adjustment mechanism itself, was there any construction of  
4 how demand response might fit into that model that you're  
5 aware of?

6 A What I described to you generally, sir, was the  
7 consideration that I'm aware of.

8 Q But it's not tied into the concept of fuel  
9 adjustment itself, correct? Or not? I'm just -- just  
10 trying to understand what level of discussion there was --  
11 was with you in regard to this particular proposal.

12 A Again, my -- my general consideration was that  
13 as -- as prices change of -- of net base fuel costs and  
14 those are reflected in the adjustments to the fuel rider  
15 and adjustments to customers' rates that that would send a  
16 price signal to the consumer, which -- which might cause  
17 an adjustment in demand, sir, if I understand your  
18 question correctly.

19 Q Well, I understand your answer, but it's not  
20 really answering -- answering my -- my inquiry. And it's  
21 not that big of a deal. I'll move on. It is a big deal,  
22 the demand response is, but it's not clear to me how it  
23 fits into the fuel adjustment mechanism.

24 And I'm not hearing you tell me that there was a  
25 specific plan of how those two things interrelated. Would

1 that be accurate, that there was not a specific discussion  
2 of demand response in light of a fuel adjustment clause?

3 A I'm not sure that I understand the discussion  
4 you were hoping we'd had. So I --

5 Q It may not -- I can ask somebody else.

6 A Okay.

7 Q I mean, if you don't know, it's fine.

8 A Okay.

9 Q Would that be - would that be an answer that --

10 A That's all I know, sir.

11 Q That's fine. I think this -- this question is  
12 answered somewhere else. But in regard to the -- to the  
13 decisions about the purchases of fuel for the different  
14 generating units, is the allocation of the cost of  
15 purchasing fuel done on a pooled basis with the other  
16 Ameren affiliates?

17 A You're talking about coal purchases, sir?

18 Q Coal, natural gas, whatever is used for fuel in  
19 the generating business.

20 A Well, with coal, my understanding is -- and this  
21 is discussed in Mr. Neff's testimony and he's certainly  
22 the expert. But coal is purchased on a pooled basis. And  
23 there's an average cost determined. And then those costs  
24 -- that the coal is apportioned volumetrically based upon  
25 that, the average cost, is my understanding.

1 Q Okay.

2 A The transportation contracts, it's my  
3 understanding, are either plant or unit specific.

4 Q Specific?

5 A That's correct, sir.

6 Q Okay. Do you know about natural gas?

7 A I'm not sure of natural gas, sir.

8 Q Okay. And the company's proposal on fuel  
9 adjustment in regard to SO2 omissions can be -- is it --  
10 is it included or not included?

11 A They are not included in the -- in the fuel  
12 adjustment ryder, sir.

13 Q You would put some level of those in base rates?

14 A I believe there's been testimony filed on -- on  
15 how to handle those use allowances, sir.

16 Q Your testimony is that they are not in the fuel  
17 adjustment mechanism proposal that you have?

18 A That is correct, sir.

19 COMMISSIONER GAW: Thank you, Mr. Lyons.

20 MR. LYONS: Thank you, Commissioner.

21 JUDGE WOODRUFF: Commissioner Murray, did you  
22 have any questions for Mr. Lyons?

23 COMMISSIONER MURRAY: Yes, I do.

24 CROSS-EXAMINATION

25 BY COMMISSIONER MURRAY:

1 Q Good morning.

2 A Good morning, Commissioner.

3 Q In regard to the calculation of -- let me see  
4 how I want to start this. Your testimony in the case is  
5 that the company won't receive any benefit from OSS  
6 margins in excess of the test years level until it has  
7 completely overcome all fuel price increases; is that  
8 correct?

9 A That is correct.

10 Q And in order to arrive at that calculation, the  
11 total revenue from off system sales is deducted from the  
12 total cost of fuel; is that correct?

13 A That is correct, sir -- Commissioner. I'm  
14 sorry.

15 Q So that there is no allocation made for any of  
16 the MISO costs or other costs between the native load  
17 customers and the off system sales customers; is that  
18 correct?

19 A That -- that is correct.

20 Q And do you know what difference that would make,  
21 doing the calculation if, for example, the financial  
22 transmission rights were allocated between negative load  
23 and off system sales? Have you done any of those  
24 calculations?

25 A I -- I don't know off the top of my head

1 specifically, Commissioner.

2 Q Have you done any of the calculations?

3 A I -- I think folks at Ameren have done those  
4 calculations.

5 Q Do you know who that would be?

6 A I -- I don't know if Mr. Schukar would know or  
7 not. But we could find out for you, Commissioner.

8 Q Okay. Thank you. In order to establish the  
9 baseline as -- as it's been referenced here by  
10 Commissioner Gaw when he was questioning you earlier, do  
11 you have to know the off system sales margins for the test  
12 year as well as the fuel cost for the test year?

13 A Yes. Yes, Commissioner.

14 Q In light of the previous black box settlements,  
15 are those numbers known?

16 A I don't remember all of the terms in the black  
17 box settlements. I would imagine that they may be or may  
18 not. I'm not sure, Commissioner.

19 Q Is it possible to quantify the effect of a  
20 one-day outage for each plant on negative load versus off  
21 system sales?

22 A I think an estimation could be -- could be  
23 performed.

24 Q And I believe that it's your testimony that a  
25 plant outage would increase negative load fuel costs by a

1 relatively small amount in comparison to the impact on off  
2 system sales?

3 A That is correct.

4 Q Can you quantify the effect of the loss of the  
5 EEI power on off system sales?

6 A I have not quantified it, Commissioner.

7 Q Has anyone at Ameren?

8 A I'm not sure whether that has been quantified or  
9 not, Commissioner.

10 COMMISSIONER MURRAY: I think that's all. Thank  
11 you.

12 JUDGE WOODRUFF: Commissioner Clayton?

13 COMMISSIONER CLAYTON: No questions.

14 JUDGE WOODRUFF: Chairman Davis?

15 CHAIRMAN DAVIS: No questions.

16 JUDGE WOODRUFF: All right. Thank you. We'll  
17 go back to recross based on questions from the Bench,  
18 then. And, once again, rather than going down the list,  
19 I'll ask if there are any parties that wish to recross? I  
20 see Public Counsel is the only one that raised their hand,  
21 so come on up.

22 RECCROSS EXAMINATION

23 BY MR. MILLS:

24 Q Good morning, Mr. Lyons.

25 A Good morning, Mr. Mills.



1 Q Are you familiar with the -- the term JDA?

2 A I -- yes, sir.

3 Q What does that acronym stand for?

4 A Joint Dispatch Agreement.

5 Q Is that Joint Dispatch Agreement still in  
6 effect?

7 A No, it's not.

8 Q And when and how did it go away?

9 A My recollection is that it -- it terminated at  
10 the end of last year pursuant to agreement by the parties  
11 subject to the Joint Dispatch Agreement and approval by  
12 FERC.

13 Q At the end of the 2006?

14 A Yes, sir. I'm sorry.

15 Q Okay. And are you familiar with the term the  
16 MISO day 2 markets?

17 A I am familiar with that, sir.

18 Q And when did -- when did that -- when did the  
19 MISO day 2 market begin?

20 A I believe that was April of 2005.

21 Q Okay. And are you familiar with the -- the  
22 management changes in the Ameren family of companies that  
23 took place at the beginning of this year, January 1, 2007?

24 A I'm familiar with at least some of them.

25 Q Okay. Do all of those three events have a

1 possible impact on the level of off system sales that  
2 Union Electric is able to make compared to historical  
3 levels?

4 A A -- I don't think I see the relationship  
5 between the management changes in terms of the Joint  
6 Dispatch Agreement. I believe the -- the level of volumes  
7 will be available for off system sales, although some of  
8 those off system sales previously were -- were sold to an  
9 affiliate pursuant to the JDA which will no longer be sold  
10 to an affiliate pursuant to the JDA.

11 Q So you think that the historical level of, I  
12 won't call them sales, but power exchanges under the JDA,  
13 you think that's indicative of future levels of off system  
14 sales. It's simply the prices may be different? Is that  
15 what you're saying?

16 A I would expect the prices to be different in  
17 terms of the volumes of the sales. I personally would  
18 think they would -- be equivalent, but Mr. Schukar would  
19 be the best one to ask.

20 Q And you said you don't believe that the  
21 management organizations changes will make a difference.  
22 Can you explain to me your understanding of what the  
23 purpose of those management changes was?

24 MR. BYRNE: Your Honor, I'm going to object as  
25 being beyond the scope of anything the Commissioners

1 asked. I don't see a connection to any of the questions  
2 the Commissioners asked.

3 MR. MILLS: Your Honor, Commissioner Gaw's  
4 question had to do with the level of off system sales and  
5 establishing a baseline. And this line of questions is  
6 intended to show that establishing a baseline based on  
7 historical information is going to be somewhat difficult.  
8 And I think it --

9 JUDGE WOODRUFF: I'll allow the question. The  
10 objection is overruled.

11 Q (By Mr. Mills) The question was, what is your  
12 understanding of the purpose of those management changes  
13 that just took effect?

14 A I don't know what considerations, bottom line,  
15 Mr. Rainwater and the Board of Directors gave to -- to  
16 making those management decisions.

17 Q So you don't know why they were done?

18 A I don't remember the -- I don't remember the  
19 words that were used by Gary to describe it, sir.

20 Q Well, that was my question. I'm asking your  
21 understanding of why it was done.

22 MR. BYRNE: The question's been asked and  
23 answered. This is the third time he's asked the question.

24 MR. MILLS: And I haven't gotten an answer yet.

25 MR. BYRNE: He said he didn't know.

1                   JUDGE WOODRUFF: The objection is overruled.

2    You can go ahead and answer, if you can.

3                   A     I -- I don't recall.

4                   Q     (By Mr. Mills) Okay. And I don't believe that  
5    in your -- in your answer you address the MISO day 2  
6    markets. Will that have -- will the -- the beginning of  
7    the MISO day 2 markets about a year or so ago, will that  
8    change the -- the level of off system sales that -- that  
9    UE is able to make from before that point and in the  
10   future after that point?

11                  A     It may have impacted it. Mr. Schukar would be  
12   best to answer that question, sir. I'm sorry.

13                  Q     Okay. Now, Commissioner Gaw asked you some  
14   questions about volatility and used the analogy about a  
15   car going down the road. Let me take that a little bit  
16   further. If the car is going down the road and say it  
17   drives for 75 miles on a hundred mile trip and at every  
18   single mile marker, the odd ones speed up to 50 miles an  
19   hour, the even ones, it slows down to 40. 50, 40, 50, 40,  
20   50, 40. Would you consider that to be volatile?

21                  A     It sounds like volatility.

22                  Q     So it's -- regardless of whether or not the  
23   changes are predictable and regular, if there are changes,  
24   you consider that to be volatile?

25                  A     That would be volatile. Yes, sir.

1 Q Okay. Now, Commissioner Gaw asked you some  
2 questions about rating agencies. Do you recall those  
3 questions?

4 A I do.

5 Q Okay. Do the rating agencies follow legislative  
6 and regulatory changes that affect utilities?

7 A Yes, they do.

8 Q Okay. When Senate Bill 179 passed, was UE  
9 upgraded by any of the rating agencies?

10 A I -- I don't believe that we were.

11 Q Okay. Do you know whether any Missouri  
12 utilities were?

13 A I -- I don't know.

14 Q Okay. How about when Senate Bill 189 became  
15 law? Was Union Electric upgraded?

16 A Not to my knowledge.

17 Q Any Missouri utilities?

18 A I don't -- I don't know, sir.

19 Q How about when the PSC promulgated rules  
20 implementing Senate Bill 179? Was UE upgraded?

21 A Not to the best of my knowledge.

22 Q Okay. How about any other Missouri utilities?

23 A I don't know.

24 Q How about when those rules became effective?  
25 Was AmerenUE upgraded?

1 A Not to the best of my knowledge.

2 Q How about other Missouri utilities?

3 A I don't know the answer to that question.

4 MR. MILLS: Okay. Thank you. That's all I  
5 have.

6 JUDGE WOODRUFF: Thank you. Redirect?

7 MR. BYRNE: Thank you, your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BYRNE:

10 Q Mr. Lyons, yesterday when Mr. Coffman was  
11 cross-examining you, he talked about how AmerenUE had not  
12 had a rate case in 20 years leading up to this point. Do  
13 you remember that line of questioning?

14 A I -- I do remember a line of questioning, yes,  
15 sir.

16 Q And sort of suggested if there hadn't been a  
17 need for a rate case in the last 20 years without a fuel  
18 adjustment clause, why do you need a fuel adjustment  
19 clause now. Do you remember that line of questioning?

20 A I remember a line of questioning.

21 Q Have -- have things changed in the current  
22 environment that weren't there in the last 20 years when  
23 AmerenUE did not file a rate case?

24 A Well, I believe I answered to Mr. Coffman,  
25 really, I'd been with the company for the past five years,

1 not over that -- that entire 20 years. And, again, the  
2 causes for rate decreases over that time, whether they be  
3 fuel prices or interest rates or taxes, I'm not sure. Can  
4 you repeat your question? I think you're asking about the  
5 20 years, sir?

6 Q Yeah. If things have changed now from the way  
7 they were in 20 years when AmerenUE did not have to file a  
8 rate case without a fuel adjustment clause --

9 A Have things changed?

10 Q -- have things changed, things related to fuel  
11 commodities changed?

12 A In the past five years, I understand there to be  
13 significant changes.

14 Q And what do you mean by significant changes?

15 A Volatility in the -- the commodity markets and  
16 coal, natural gas and -- and power as well as diminished  
17 competition between the rails that transport fuel to our  
18 power plants.

19 Q And how -- what happened to prices of fuel and  
20 fuel transportation? Have they gone up or gone down or  
21 stayed the same?

22 A My understanding is that they have been volatile  
23 and increasing.

24 Q Mr. Coffman referred a couple of times to  
25 AmerenUE predicting fuel cost increases. I think he used

1 the word prognostication. Do you remember that?

2 A I don't remember specifically.

3 Q Well, are we predicting -- is it a prediction  
4 that might or might not come true that our coal prices are  
5 going on up and our other fuel prices are going up?

6 A I think that we have -- through hedging  
7 strategies, we have locked in certain increases in coal  
8 prices and transportation prices over the next few years.

9 Q So -- so is it fair to say it's a prediction or  
10 prognostication?

11 A Those are not predictions or prognostications.

12 Q When Mr. Micheel was cross-examining you, he  
13 referred to the fact that we -- that our proposal for an  
14 FAC has moved around a lot, I think is the term he used.  
15 It's changed from -- from when we filed our direct  
16 testimony to our surrebuttal testimony. Do you remember  
17 that line of questioning?

18 A I do.

19 Q And -- and can you tell me why it's changed?  
20 Have we just decided to change? Or what -- what's the  
21 reason that our -- that our proposal has changed?

22 A Our effort was to incorporate the ideas of  
23 others gleaned through testimony.

24 Q Do all the changes that we've made in  
25 surrebuttal testimony incorporate the ideas of others?



1           A     I -- I believe so, of some others.

2           Q     Okay. Mr. Mills, and I guess Commissioner Gaw  
3 also talked a little bit about the rating agencies. And  
4 in particular, Mr. Mills handed you the recent credit  
5 reports from Standard & Poors and -- and Moody's. Do you  
6 remember -- do you recall that?

7           A     Yes.

8           Q     Do you -- do you have those documents, by  
9 chance?

10          A     I'm sorry. I do not.

11          Q     Okay. And I think the point Mr. Mills was  
12 making was, gee, these -- these credit rating agencies  
13 didn't discuss fuel adjustment clauses. Do you remember  
14 that question?

15          A     The two documents that he handed me, yes, sir.

16          Q     And then you found a place in the Standard &  
17 Poor's where it mentioned fuel adjustment clauses. Do you  
18 remember that?

19          A     I do remember that line of questions.

20          Q     Let me show you Moody's, if I can.

21                 MR. BYRNE: May I approach the witness?

22                 JUDGE WOODRUFF: Yes.

23          Q     (By Mr. Byrne) And -- and I've handed you the  
24 -- the Moody's documents. And -- and doesn't that  
25 document refer to a challenging regulatory environment in

1 Missouri?

2 A It does, sir.

3 Q And -- and why do you think the environment in  
4 Missouri is deemed to be challenged by Moody's?

5 MR. MILLS: I object. That calls for  
6 speculation. This witness has no way of knowing what  
7 Moody's thought is.

8 JUDGE WOODRUFF: I'll sustain the objection.

9 MR. MILLS: Thank you.

10 Q (By Mr. Byrne) Well, isn't it possible that the  
11 fact that Missouri is one of few states that does not have  
12 a fuel adjustment clause is one of the reasons that  
13 Moody's thinks Missouri's challenged?

14 MR. MILLS: Same objection.

15 JUDGE WOODRUFF: Same result.

16 MR. BYRNE: Okay. Let me try it another way.

17 JUDGE WOODRUFF: All right.

18 MR. BYRNE: I'd like to mark an exhibit.

19 JUDGE WOODRUFF: You're up to No. 105.

20 MR. BYRNE: Okay.

21 Q (By Mr. Byrne) Mr. Lyons, I've handed you a  
22 document that's been marked Exhibit 105. Can you identify  
23 that for me?

24 A The document I'm holding is a -- a Moody's  
25 credit opinion for Union Electric Company dated December

1 16th, 2005.

2 Q Okay. And could you turn to -- well, to the  
3 second page of that document? And it says -- there's a  
4 title that is called Credit Strengths. Do you see that at  
5 the bottom of the page?

6 A I do.

7 Q And it carries over to the third page. And  
8 could you read me the second to last bullet under Credit  
9 Strengths?

10 MR. MICHEEL: Your Honor, before he starts  
11 asking the witness questions about this, I'm going to  
12 object to lack of foundation. And he hasn't moved the  
13 admission, and there may be some objections to that.

14 So before he starts asking questions without  
15 this being marked, I think he needs to lay a foundation  
16 and demonstrate that this witness knows what this is.

17 MR. BYRNE: Well, I asked the witness if he did  
18 know what it is, and he did identify the document, your  
19 Honor. I think I have laid a foundation.

20 JUDGE WOODRUFF: Do you want to go ahead and  
21 offer the document at this point, and we'll deal with  
22 objections?

23 MR. BYRNE: Okay. I'll offer Exhibit 105.

24 JUDGE WOODRUFF: All right. 105 has been  
25 offered. Are there any objections to its receipt?

1           MR. MICHEEL: I would object unless we're  
2 allowed to get cross-examination on a new exhibit that is  
3 popping up for the first time in redirect.

4           MR. MILLS: And I will object on the basis of  
5 lack of foundation. He was able to read the title to it,  
6 but he hasn't said that he's read it, that he's familiar  
7 with it, that it accurately reflects his understanding of  
8 Moody's credit opinion on this particular date.

9           MR. BYRNE: Your Honor, Mr. Mills offered a  
10 similar Moody's opinion yesterday that was received into  
11 evidence. I think it's only fair that I'm allowed to  
12 offer a similar one.

13          MR. MILLS: That's not correct. I did not offer  
14 that.

15          JUDGE WOODRUFF: Actually, I think it was Staff.

16          MR. MILLS: It was offered by another party. It  
17 was admitted into the record without any objection from  
18 AmerenUE. I simply asked questions about it.

19          JUDGE WOODRUFF: It was offered by -- by Staff.

20          MR. DOTTHEIM: By Staff.

21          JUDGE WOODRUFF: I'm going to go ahead and allow  
22 the document into evidence. As far as the State's  
23 concerned about offering cross-examination, I'm going to  
24 allow that, also. That is frequently a problem in these  
25 cases where we get new evidence in on redirect, and we'll

1 allow some leeway on that for recross examination on that.

2           So you can go ahead and -- the Exhibit 105 is  
3 admitted into evidence.

4           (Exhibit No. 105 was offered and admitted into  
5 evidence.)

6           JUDGE WOODRUFF: You can go ahead and answer the  
7 question, and we'll -- we'll deal with the cross.

8           MR. BYRNE: Thank you, your Honor.

9           Q     (By Mr. Byrne) Could you go ahead and read that  
10 second to last bullet?

11          A     New fuel, purchase power and environmental cost  
12 recovery mechanism passed in Missouri.

13          Q     And -- and that's one of the credit strengths,  
14 is that correct, under the heading Credit Strengths?

15          A     It is listed under Credit Strengths of AmerenUE.

16          Q     And what's the last bullet under Credit  
17 Strength?

18          A     Potentially improving regulatory situation in  
19 Missouri.

20          Q     Okay. And then under Credit Challenges, do you  
21 see the next heading that says Credit Challenges? Can you  
22 read the second to last bullet under Credit Challenges?

23          A     Rising coal and transportation prices are  
24 hurting the margins.

25          Q     And the final bullet under Credit Challenges?

1           A     Regularity risks with regard to potential rate  
2 case in 2006 and MPSC enactment cost recovery mechanism.

3           Q     Okay. And then finally under Rating Rationale,  
4 could you read me the second to last and last sentence  
5 under that discussion starting on July 14th?

6           A     Oh, I'm sorry. Where it says on July 14th?

7           Q     On July 14th.

8           A     Okay. On July 14th, 2006, the Governor signed  
9 legislation permitting the State's utilities, including  
10 AmerenUE, to apply to the MPSC for fuel purchase power and  
11 environmental cost recovery. With coal and coal  
12 transportation prices rising, the enactment recently  
13 passed cost recovery mechanisms by the MPSC is an  
14 important credit consideration.

15          Q     And, you know, would it be fair to say based on  
16 this document and based on your understanding and -- and  
17 discussions with credit rating agencies that Moody's cares  
18 about whether there's a fuel adjustment clause for  
19 AmerenUE in Missouri?

20                   MR. MICHEEL: I'm going to object. That  
21 question is leading.

22                   MR. BYRNE: I don't think it is, your Honor.

23                   JUDGE WOODRUFF: I'll sustain the objection.

24          Q     (By Mr. Byrne) Okay. Do you know how Moody's  
25 feels about whether AmerenUE has a fuel adjustment clause

1 available to it in Missouri?

2 A With regard to Moody's, I only know specifically  
3 what I read here, sir.

4 Q Okay. You know, the -- the documents that were  
5 entered into the record yesterday showed, I guess, a  
6 downgrade that -- that Moody's and S&P had yesterday or  
7 the day before; is that true?

8 A Moody's had a downgrade on March 12th. I  
9 believe we -- we read that, sir.

10 Q Okay. And is that -- is that downgrade a big  
11 deal for AmerenUE and its customers?

12 A The downgrade will raise the cost of borrowing.

13 Q Okay. And -- and how does that work?

14 A Well, under -- under certain of our credit  
15 agreements, it's my understanding that the downgrade will  
16 reduce the interest costs under -- under certain currently  
17 existing borrowings and would impact the cost of future  
18 borrowings.

19 Q And -- and if, for example, AmerenUE was going  
20 to spend \$3 million on infrastructure improvements and had  
21 to borrow that \$3 million, might that impact the cost of  
22 borrowing that money?

23 A It would raise the cost of borrowing the money  
24 to provide funds for those capital expenditures.

25 Q And let me ask you this: On -- if you have the

1 document from yesterday, the downgrade document, on -- on  
2 the second page, what did it -- what did Moody's say when  
3 they downgraded us? Was it just a downgrade, or was there  
4 more to it than that in Moody's statement? Isn't there a  
5 reference in that document to a negative outlook?

6 A Yes. It says ratings downgraded and assigned a  
7 negative outlook.

8 Q And -- and what does a negative outlook mean?

9 A It means there a potential for further  
10 reduction.

11 Q And if there was further reduction, what would  
12 that do to AmerenUE's ability to borrow money and cost of  
13 borrowing money?

14 A It would increase that -- that cost.

15 Q You were asked a number of questions by  
16 Commissioner Gaw and -- and others about difficulties in  
17 auditing under a fuel adjustment clause. That -- do you  
18 recall that line of questioning?

19 A I do.

20 Q And, you know, is it your understanding that the  
21 other states that have enacted fuel adjustment clauses  
22 have been able to audit the -- the documents that have  
23 been needed under those fuel adjustment clauses?

24 MR. MICHEEL: Objection. Calls for speculation.

25 MR. BYRNE: I don't -- I'm asking him if he



1 knows.

2 JUDGE WOODRUFF: I'll overrule that objection.

3 Again, you can answer.

4 A Well, I imagine they have prudence reviews. I  
5 don't know specifically.

6 Q (By Mr. Byrne) Do you have any reason to  
7 believe that Missouri is uniquely unable to conduct those  
8 audits?

9 A I have no reason to believe that Missouri's  
10 uniquely incapable.

11 Q Are there similar audits that are conducted for  
12 PGA cost recovery?

13 A I would imagine so.

14 Q And is -- is Missouri and are other states able  
15 to conduct those audits effectively?

16 A I can't speak to how effective they are or they  
17 aren't.

18 Q Well, let me ask you this: In terms of  
19 resources consumed, do you have an opinion about whether a  
20 full-blown rate case would consume more resources than an  
21 audit under AmerenUE's proposed fuel adjustment clause?

22 A Based on my experience in this rate case, I  
23 would think a rate case consumes more experience -- or  
24 consumes more resources than -- than an audit of -- a fuel  
25 mechanism -- a fuel pass through mechanism.

1 Q Would it be fair to say this rate case has  
2 consumed an awful lot of resources for all the parties?

3 A Yes. It appears to have done so.

4 Q Absent an FAC, would AmerenUE be more likely to  
5 have to file full-blown rate cases to recover its increase  
6 in fuel costs?

7 A I think more likely. Yes.

8 Q Mr. Micheel yesterday was asking you about hydro  
9 being pretty cheap power. Do you remember -- do you  
10 remember that discussion?

11 A I remember such a discussion.

12 Q And he was talking about Tomsauk. And -- and  
13 let me ask you this. Is Tomsauk cheap in the same way  
14 that other hydro, non-pump storage hydro, is cheap?

15 A I -- I think I answered that question yesterday.  
16 I -- I think that a river damn hydroplant, I believe,  
17 would be cheaper than a pump storage hydro facility.

18 Q Commissioner Gaw asked you some questions about  
19 other utilities that have fuel adjustment clauses and to  
20 what extent we'd looked at them. Do you recall that line  
21 of questioning?

22 A I -- I do.

23 Q Now -- never mind. And let me turn your  
24 attention to Schedule MJL, which is attached to your  
25 rebuttal testimony.

1 A I'm with you.

2 Q And that does have a list of -- of specific  
3 companies that do use fuel adjustment clause, doesn't it?

4 A It does.

5 Q And, also, on Schedule -- look at Schedule  
6 MJL3-3.

7 A Yes, sir.

8 Q And it -- and it does have -- I guess that's  
9 more state by state, but it does have some specific  
10 information on the qualities of the fuel adjustment  
11 clauses in different states; is that true?

12 A Yes. Some of the qualities are listed.

13 Q Okay. Do you believe -- I guess Commissioner  
14 Gaw asked you some questions about volatility, and I think  
15 you agreed that if a car is accelerating constant -- at a  
16 constant rate, there's really not volatility; is that  
17 true?

18 A I did agree with him on that.

19 Q Let me ask you this: If -- if fuel costs are  
20 accelerating at a constant rate, do you believe it's  
21 appropriate to have a fuel adjustment cause or a fuel  
22 adjustment clause would be an effective mechanism in that  
23 situation even if there was not volatility?

24 A I do believe it would be an effective mechanism.

25 Q And do you believe your sharing grid --

1 Commissioner Gaw asked you some questions about your  
2 sharing grid. I mean, do you believe your sharing grid --  
3 I think you testified that it might be challenging or  
4 difficult to achieve given the cost increases that are  
5 known, that are occurring in the future. But do you still  
6 believe that would provide an incentive for the company to  
7 reduce its fuel costs?

8 A I believe I stated that I did believe that.

9 Q And maximize off system sales revenues?

10 A We would be incentivized to do that.

11 MR. BYRNE: Okay. Thank you. That's all I  
12 have.

13 JUDGE WOODRUFF: Let me -- does anyone wish to  
14 cross-examine based on the Exhibit 105?

15 COMMISSIONER CLAYTON: Judge, I want to put  
16 everyone on notice. I have questions about this document  
17 that I'd like to ask at some time.

18 MR. MICHEEL: I have just a couple.

19 JUDGE WOODRUFF: Go ahead.

20 CROSS-EXAMINATION

21 BY MR. MICHEEL:

22 Q Mr. Lyons, I'd like to ask you some questions  
23 about Exhibit 105. Is it correct that under the credit  
24 challenge that Moody's notes that the coal -- coal and  
25 coal transportation costs are merely rising? They're not

1 volatile?

2 A It says rising coal and transportation prices.

3 Q And Mr. Byrne also had you read a sentence with  
4 coal and coal transportation costs rising. Do you see  
5 that, sir?

6 A I'm sorry. If you're referring to something for  
7 that -- that -- actually, what I was referring to, I was  
8 rereading that which was rising coal and transportation.

9 Q There's a bullet point that are rising coal and  
10 transportation costs, correct?

11 A Agree.

12 Q And -- and Moody's does not define those as  
13 volatile; is that correct?

14 A I don't see the word volatile.

15 Q And down in the body of the very last paragraph,  
16 it says, With coal and transportation costs rising, very  
17 last sentence. Do you see that?

18 A Yes, sir, I do.

19 Q They don't characterize coal cost as volatile,  
20 do they, sir?

21 A I don't see the word volatility, sir.

22 JUDGE WOODRUFF: All right. Thank you.

23 Mr. Mills, did you have some, too?

24 MR. MILLS: Just briefly. I think it was my  
25 turn; is that correct?

1 MR. MICHEEL: Yes.

2 JUDGE WOODRUFF: Yes.

3 CROSS-EXAMINATION

4 BY MR. MILLS:

5 Q Mr. Lyons, the final bullet under the Credit  
6 Challenges section states, A regulatory risk with regard  
7 to a potential rate case in 2006 and MPSC and cost  
8 recovery mechanisms. What is your understanding of MPSC  
9 in that context?

10 A I don't see it defined, but I would believe that  
11 to be Missouri Public Service Commission.

12 Q And this credit opinion was issued 16 December  
13 2005?

14 A That is correct.

15 Q Since that time, has the Missouri Public Service  
16 Commission enacted cost recovery mechanism rules?

17 A Rules? Yes, sir.

18 Q Okay. And since that time, has AmerenUE filed a  
19 rate case in 2006?

20 A Yes. We -- we filed a rate case.

21 MR. MILLS: That's all I have. Thank you.

22 JUDGE WOODRUFF: Questions from the Bench?

23 COMMISSIONER GAW: I will defer to Commissioner  
24 Clayton. I think he's -- he seems to be more interested  
25 than I am.

1           COMMISSIONER CLAYTON: I just have a handful of  
2 questions.

3           JUDGE WOODRUFF: I'm sorry. Mr. Dottheim, did  
4 you want to --

5           MR. DOTTHEIM: Yes. Just --

6           JUDGE WOODRUFF: I'm sorry.

7           MR. DOTTHEIM: Just briefly.

8           COMMISSIONER CLAYTON: You guys are killing me  
9 here.

10   CROSS-EXAMINATION

11 BY MR. DOTTHEIM:

12           Q     Mr. Lyons, referring back to the document -- the  
13 December 16th, 2005, Moody's investor service document,  
14 there is at the bottom of page 3 --

15           A     Page 3, sir?

16           Q     Yes. I -- it's a -- it's a heading. At least  
17 that's what I call it. Rating Outlook.

18           A     Yes, sir. Very bottom.

19           Q     And there's a page 4. And there's a paragraph  
20 on Ratings Outlook which refers to Ameren's Illinois  
21 utilities, does it not, and that --

22           A     You're referring to the very top paragraph?

23           Q     Yes. The very top paragraph.

24           A     Yes. Uh-huh.

25           Q     And that the likelihood that if the operating

1 cash flow of the Illinois utilities declined, Ameren would  
2 need to rely on its Missouri operations for a larger share  
3 of cash flow and upstream dividends to meet parent company  
4 obligations?

5 A I -- I see that, sir.

6 Q Okay. And there is a last paragraph with the  
7 heading What Could Change the Rating - Down. And then,  
8 again, there's a reference to the regulatory environment  
9 for Ameren's Illinois utilities, is there not?

10 A Amongst other things. Yes, sir.

11 MR. DOTTHEIM: Thank you, Mr. Lyons.

12 JUDGE WOODRUFF: Commissioner Clayton? I  
13 promise no more interruptions.

14 COMMISSIONER CLAYTON: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY COMMISSIONER CLAYTON:

17 Q Mr. Lyons, I want to talk to you about that same  
18 paragraph. And I thought Mr. Dottheim was going to steal  
19 some thunder there, but there was some additional  
20 questions that I wanted to ask.

21 First of all, I want to make sure that we're  
22 looking at the right item. And it is page 4 of the  
23 document -- the exhibit that was offered by Mr. Byrne. Do  
24 you have that in front of you?

25 A I do, sir.



1 Q And under the -- under the section Rating  
2 Outlook, which is that paragraph at the stop, can we go  
3 through that? Have you read that through?

4 A I haven't read it completely through.

5 Q Okay. Why don't -- can you go ahead and read it  
6 into the record, please? Go ahead and read it and --

7 A Yes.

8 Q -- out loud.

9 A The rating is on review for possible downgrade  
10 reflecting our expectation of some deferral, but expected  
11 rate increases for Ameren's Illinois utilities and the  
12 likelihood that if the operating cash flow of the Illinois  
13 utilities declines, Ameren would need to rely on its  
14 Missouri operations for a larger share of cash flow and  
15 upstream of dividends to meet parent company obligations.

16 The review will focus on the prospects for a  
17 resolution of the ongoing dispute in Illinois, clarity  
18 regarding the amount after and timing of any related rate  
19 increases, the mechanisms for ultimate recovery of  
20 utilities increased cost and investment outlays and the  
21 regulatory climate for the utilities going forward.

22 Q So -- so the rating decrease that occurred this  
23 week was not unanticipated. There was a possibility that  
24 there could be a downgrade in rating. Would you agree  
25 with that?

1           A     There was -- there was a possibility. I can't  
2 speak to whether it was anticipated.

3           Q     Do you know how long it has been either  
4 anticipated or a distinct possibility that Ameren would be  
5 downgraded on its credit rating?

6           A     I don't know how long that possibility was  
7 there.

8           Q     How -- how often do you review ratings --  
9 ratings, estimates or ratings opinions?

10          A     I review them periodically.

11          Q     Is it part of your job, or is it someone else's  
12 job? Is it a hobby to read them, or is a part of your  
13 work or --

14          A     Well, I do it because I'm interested. I -- as  
15 part of my job. Again, the primary relationships with the  
16 ratings are with the Treasury function.

17          Q     All right. Now, with this downgrade in credit  
18 rating, is there an impact on Missouri -- is there an  
19 impact on AmerenUE, the downgrade of the parent company?

20          A     The downgrade of the parent company?

21          Q     I guess actually each of the divisions were  
22 downgraded as well.

23          A     In the -- in the Moody's downgrade of March  
24 12th, Union Electric was downgraded.

25          Q     Okay. And you would agree that -- is there an

1 impact on credit rating on Missouri utilities?

2 A There will be, yes, sir.

3 Q Okay. And, according to this, it's because of  
4 problems in the state of Illinois. Would you agree with  
5 that?

6 A The downgrade of March 12th, I would rely on the  
7 -- the description that Moody's provided in the March 12th  
8 downgrade document, sir.

9 Q So you would not agree with the -- the document  
10 that Mr. Byrne gave you regarding problems in Illinois  
11 being a primary contributor to the downgrade?

12 A I -- I would conclude it with a consideration.

13 Q Okay. Is there any impact on Missouri  
14 ratepayers if Missouri operations have to provide a larger  
15 share of the cash flow and upstream dividends to meet  
16 company obligations?

17 A If -- if the dividends increased from the  
18 Missouri operations to the parent, it would -- it would  
19 decrease the cash flows otherwise available at Union  
20 Electric.

21 Q And what is the impact on the -- on the Missouri  
22 ratepayer or the Missouri -- the Missouri utility if that  
23 happens?

24 A It would -- it would be required to -- well, I  
25 don't know. I guess I'd have to have knowledge of the

1 overall cash flows. There would be impact on other cash  
2 flows, sir.

3 Q Okay. What does that mean? Some more cash is  
4 going to the parent in forms of dividends so does that  
5 take away from other things in AmerenUE?

6 A Yes.

7 Q Give me some examples of what that would take  
8 cash away from.

9 A I think that the company would need to  
10 potentially replace those funds, either through other cash  
11 flows, through earned revenues or by borrowing additional  
12 monies.

13 Q Okay. So, potentially, if more dividends from  
14 AmerenUE have to go to the parent to cover it's  
15 obligations at the parent company level, you're taking  
16 cash from AmerenUE from other budgeted items? Is that  
17 accurate the way I said that?

18 A If that were to occur, yes, sir.

19 Q Okay. What obligations for the Missouri utility  
20 or what cash obligations -- give me some examples of -- of  
21 where there would be a shortfall that would have to be  
22 made up somehow.

23 A Well, I wouldn't -- excuse me.

24 Q Yeah. I understand. Maybe I should move here.

25 A I couldn't say anything specific. I mean, our

1 cash obligations include our operating expenses, taxes,  
2 interest expense as well as capital expenditures for --

3 Q Let's talk about capital expenditures. So if  
4 you're taking more cash to pay dividends to make up for  
5 shortfalls in Illinois, that means that, potentially,  
6 you're going to spend less money on capital expenditures  
7 or infrastructure investment in Missouri, correct?

8 A I don't know that we would spend less money or,  
9 again, borrow or, you know, otherwise obtain those funds.

10 Q But you're taking cash from one column to go  
11 into a different column, and there is that potential that  
12 infrastructure investment could be reduced to Missouri as  
13 one example?

14 A I'm not sure how we would manage that, sir.

15 Q Is it not possible? Is it your testimony that  
16 it's not possible that money could be taken out of capital  
17 expenditures?

18 A That is not my testimony, sir.

19 Q Okay. Well, let's -- so do you agree that it is  
20 possible that money would be taken out of a capital  
21 expenditure column and put into dividends?

22 A I suppose that it's possible, sir.

23 Q Okay. So you could also reduce operating  
24 expenses, for example, in some areas, I assume, to pay  
25 dividends for the parent company. Would you agree with

1 that possibility?

2 A It's possible.

3 Q Okay. What other areas -- other than operating  
4 expenditures and capital investment, what other areas  
5 would you remove cash to go pay dividends at the parent  
6 company level?

7 A Again, if that happened, I'm not exactly sure  
8 how we'd manage it other than -- other than trying to  
9 manage those cash outflows would be to borrow more money.

10 Q Okay. So you -- I think it's your testimony  
11 that the company would try to make up that cash somehow.  
12 I think as an example you said possibly go borrow; is that  
13 correct?

14 A I did say that, sir.

15 Q Okay. What other possibilities would there be,  
16 other than borrowing, to make up those cash shortfalls?

17 A I'm not sure off the top of my head, sir.

18 Q Now, with this downgrade actually occurring,  
19 would you agree that this downgrade is higher under --  
20 under a credit downgrade?

21 A Yes, sir.

22 Q Okay. Now, would the Missouri ratepayer have to  
23 pay the higher cost of debt because of actions that  
24 occurred in Illinois to make up those cash shortfalls in  
25 Missouri?

1           A     I -- again, I -- I don't know, you know, in  
2 terms of this downgrade. I don't know personally,  
3 specifically, how much of it had to do with -- with  
4 considerations of Illinois versus other things that are  
5 cited by Moody's.

6           Q     I -- I understand you don't know why the  
7 downgrade is. But if it is because of Illinois problems  
8 you do agree that this outlook suggests that money is  
9 going to be used from the Missouri utilities to pay  
10 dividends at the corporate level? Do you agree with that?

11          A     I'm sorry. Could you repeat the question?

12          Q     The document that your attorney just supplied  
13 you --

14                   COMMISSIONER CLAYTON: What is the Exhibit No,  
15 Judge?

16                   JUDGE WOODRUFF: 105.

17          Q     (By Commissioner Clayton) The document that was  
18 presented, and you to some degree authenticated it, was  
19 offered into evidence that claims that there is a possible  
20 downgrade of rating of Ameren and/or its subsidiaries,  
21 first of all, you agree that that's what this document  
22 suggests?

23                   If you need time to read the document several  
24 minutes -- or some time has passed since I asked the  
25 question. Did you understand the question, Mr. Lyons?

1           A     I did understand the question.  I think I may  
2     have been confused which document he was looking at.

3           Q     Exhibit 105, the document that Mr. Byrne just  
4     presented you in redirect --

5           A     I have one dated December 16th, sir.

6           Q     And you read into the record the paragraph that  
7     makes reference to how Ameren was -- the rating was on  
8     review for a possible downgrade reflecting expectations of  
9     problems, and you read through that statement.  That  
10    suggests that Missouri utilities will have to be relied  
11    upon to make up for upstream dividends to meet parent  
12    company obligations.  Would you agree that that's what you  
13    read into the record?

14          A     I'm sorry, Commissioner.  Yes, I did read that  
15    into the record.

16          Q     And we also discussed that if that does occur,  
17    that was going to take cash that was potentially going to  
18    be used elsewhere in Missouri would have to be used to pay  
19    for those dividends at the parent company level.  Do you  
20    agree with that conversation we had?

21          A     Yes.

22          Q     We also talked about how when that cash is taken  
23    away from the Missouri property to pay obligations at the  
24    parent -- at the parent company level where you would make  
25    up for that cash or where you would not make up for that



1 cash. I'm not sure if that makes any sense, but do you  
2 agree with that statement?

3 A We had that discussion.

4 Q Okay. I think where we left this is what  
5 possibilities are there if you're removing cash from the  
6 Missouri utility in this instance if, indeed, cash needs  
7 to go to pay for parent company dividends? Where would  
8 you make up that shortfall? I think that's where we left.  
9 Do you recall that?

10 A I do, sir.

11 Q Okay. The question that I asked you was with  
12 this downgrade, are the costs of borrowing higher than --  
13 than if your rating is at investment grade or is at a  
14 higher grade?

15 A Yes, sir.

16 Q Okay. And I think the question I asked where we  
17 kind of got stalled is who pays for that increased cost of  
18 debt? Is it expected that the Missouri ratepayer will pay  
19 that higher cost of debt because of this downgrade?

20 A Sir, that's something I think would have to be  
21 considered in the context of a future rate case.

22 Q Well, we're -- we've got a current rate case.  
23 Now wouldn't be the appropriate to time to talk about  
24 that?

25 A Well, I -- I don't know that this downgrade and

1 the cost implications of it have been included in our cost  
2 of capital witnesses testimony, sir.

3 Q What suggestions would you make that -- do you  
4 believe that Missouri ratepayers, because of this recent  
5 action, are subject to increased cost because of actions  
6 in another state?

7 A I -- I don't -- I don't know, sir.

8 Q What steps would you recommend be taken, if any,  
9 to protect Missouri ratepayers for actions that are  
10 occurring in other states?

11 A I don't have any specific suggestion, sir.

12 Q Are you a Missouri cus -- are you a customer of  
13 Ameren?

14 A I am, sir.

15 Q Are you a Missouri or Illinois customer?

16 A I'm a Missouri customer.

17 Q Missouri. Okay. Do you believe there is any  
18 detriment to Missouri ratepayers or the Missouri customer  
19 if a larger share of cash flow has to go to the parent  
20 company to pay for its dividend obligations?

21 A I -- I -- it's a hypothetical I have not  
22 considered. I don't know, sir.

23 COMMISSIONER CLAYTON: Okay. Thank you.

24 JUDGE WOODRUFF: Any redirect?

25 MR. BYRNE: No, your Honor.

1                   JUDGE WOODRUFF: I'm sorry. Go ahead,  
2 Commissioner Gaw.

3                   -           COMMISSIONER GAW: I apologize. I won't be very  
4 long.

5                                   RE CROSS EXAMINATION  
6 BY COMMISSIONER GAW:

7           Q       Back to that same document again, if you would,  
8 for me on the last page, why don't you read the part under  
9 there about what can change the rating down for me into  
10 the record?

11           A       You want me to read the last paragraph,  
12 Commissioner?

13           Q       Yes.

14           A       "Regular -- what could change the rating down?  
15 Regulatory environment for Ameren's Illinois utilities  
16 deteriorates further. A material deferral of power costs  
17 in Illinois results in an increased reliance by Ameren on  
18 dividends from its Missouri utility.

19                   A decline in AmerenUE's cash flow coverage  
20 measures, including FFO/interest below 5.0 times FFO over  
21 debt below 20 percent an increase in debt to  
22 capitalization being above the 45 percent range,  
23 continuation of higher operating expense trends,  
24 unanticipated capital expenditure requirements, a lengthy  
25 unanticipated outage at the Callaway nuclear plant."

1 Q Okay. And then read what could change the  
2 rating up, the portion just above that?

3 A The review for downgrade limits near term upside  
4 potential for the rating.

5 Q Okay. Thank you. And what is FFO?

6 A I don't know specifically, sir.

7 Q Okay. And the -- the disclaimer at the bottom  
8 of the page, would it be fair to say that -- that Moody's  
9 does not warrant this report or any of its reports?

10 A Warrant, sir? I'm not sure it warrants. I can  
11 read this --

12 Q There's no warranty. There's specific  
13 disclaimers about warranties and the accuracy or the  
14 representations in this report?

15 A It doesn't say -- I see where it makes no  
16 representation or warranty. Yes, sir.

17 Q It also references that -- that the Moody's  
18 performs the service of doing these ratings in part  
19 because of payment for appraisal and rating services,  
20 correct? Do you see that? It's down in the next to the  
21 last paragraph --

22 A Thank you, sir.

23 Q -- of the disclaimer.

24 A Yes, sir. It says, Issuer of debt securities  
25 and preferred stock rated by Moody's have prior to

1 assignment of any rating agreed to pay to Moody's for  
2 appraisal and rating services.

3 Q Okay. Is it possible that -- that some of  
4 Ameren's shareholders or debt holders have contributed to  
5 Moody's four reports?

6 A I don't know, sir.

7 Q Is it -- is it possible?

8 A Could -- could you repeat the question?

9 Q Yes. Is it possible that some of Ameren's  
10 shareholders or debt holders have contributed to Moody's  
11 for the -- in payment for the reports from Moody's?

12 A That, I don't -- I really don't know, sir.

13 Q All right. Let me -- let me ask this question.  
14 Is -- is it -- is it Ameren's position that Missouri  
15 ratepayers should be responsible for additional costs of  
16 -- to -- that AmerenUE bears as a result of the regulatory  
17 issues AmerenUE's affiliate face in Illinois?

18 A Sir, I'm not sure when, in fact, that might be.  
19 And I don't personally have an opinion.

20 Q I'm not asking about the impact. I'm asking  
21 about the position, whether Ameren UE's position is  
22 that --

23 A I'm not aware that --

24 Q -- Missouri ratepayers should pay for additional  
25 costs that may be incurred or resulting to AmerenUE

1 because of the occurrences in Illinois?

2 A I -- I don't know, sir. I don't know what UE's  
3 position is. I don't know, again, the considerations and  
4 how it impacted the credit rating and -- and what the  
5 impact of those considerations is on the cost accounting.

6 Q Again, I'm not asking -- I'm not asking the  
7 question of what the impact is. I'm asking about whether  
8 AmerenUE has a position about protecting Missouri  
9 consumers from these things that are happening in Illinois  
10 regarding AmerenUE's affiliates.

11 A I'm not aware of a position, sir.

12 Q So you don't have a -- you're not -- you're not  
13 -- you're not willing to say that AmerenUE is -- is going  
14 to stand up and protect Missouri consumers from these  
15 events in Illinois?

16 A I'm not sure, sir, in my position that I'm the  
17 appropriate person to ask that question to.

18 Q Okay. There was no mention on that last page in  
19 that Exhibit 105 that you were reading from about  
20 impacting the rating of AmerenUE by the fuel adjustment  
21 clause, was there?

22 A Not specifically, sir. No.

23 COMMISSIONER GAW: Thank you. That's all I  
24 have.

25 JUDGE WOODRUFF: Any redirect?

1                   MR. MILLS: Judge, I have a few  
2 cross-examination questions based on questions from the  
3 bench. A very -- a very few.

4                   JUDGE WOODRUFF: Go ahead.

5                                   RE CROSS EXAMINATION

6 BY MR. MILLS:

7           Q     Mr. Lyons, the -- you understand that the  
8 December 16, 2005, report has been marked as Exhibit 105?

9           A     Yes.

10          Q     Okay. So I'll refer to that.

11          A     Thank you.

12          Q     The very last section in Exhibit 105, what could  
13 change the rating down, is it your understanding that  
14 that's a list of things that could happen that could drive  
15 the ratings down?

16          A     That -- that appears to be the case, yes, sir.

17          Q     That Moody's was looking at as of December 16th,  
18 2005?

19          A     That would be my conclusion.

20          Q     And since that time, Moody's has, in fact, done  
21 a downgrade, is that correct, just very recently?

22          A     That is also correct, sir.

23          Q     On that list, has AmerenUE's cash flow coverage  
24 of FFO funds from operations to interest, has that dropped  
25 below 5.5 times?

1           A     I don't know, sir.

2           Q     In your role as a comptroller, you don't need to  
3 know these kind of numbers?

4           A     No, sir.

5           Q     Okay. Would you know whether the -- the funds  
6 from operations to debt ratio has dropped below 20  
7 percent?

8           A     I don't know, sir.

9           Q     Okay. Do you know whether AmerenUE's capital  
10 structure has shifted to more than 45 percent equity?

11          A     I'm not sure off the top of my head, sir.

12          Q     Do you -- well, let me ask it a different way.  
13 Do you know what AmerenUE's current debt -- debt ratio is?

14          A     I would have to compute that by references,  
15 financial statements, sir.

16          Q     Do you know whether AmerenUE since December 15  
17 -- December 16th, 2005, has had any unanticipated capital  
18 expenditure requirements of a significant nature?

19          A     Certainly, the storms of last year required  
20 significant capital expenditures that were unanticipated.

21          Q     Okay. Has there been a lengthy unanticipated  
22 outage at the Callaway nuclear plant since that time?

23          A     There have been unanticipated outages.

24          Q     Lengthy?

25          A     I don't know how you define lengthy here, sir.



1           Q     Okay. Has there been a further deterioration in  
2 the regulatory environment for AmerenUE's Illinois  
3 utilities since December of 2005?

4           A     I'm not sure, again, how they define  
5 deterioration. There's certainly been changes. I'd have  
6 to think back to what the conditions were till now. I --

7           Q     Do you -- do you have positions at any of the  
8 Illinois utilities?

9           A     I do, sir.

10          Q     Okay. And your position is Controller of those  
11 Illinois utilities. Do you think that the regulatory  
12 environment has changed and you now work to its favor?

13          A     I'm sorry. Could you repeat the question?

14          Q     Has the regulatory environment for your Illinois  
15 utilities that you're the Controller of, has that improved  
16 since December 2005?

17          A     I'm not aware of any improvement, sir.

18                MR. MILLS: Okay. That's all I have. Thank  
19 you.

20                JUDGE WOODRUFF: Redirect?

21                MR. BYRNE: No, your Honor.

22                JUDGE WOODRUFF: All right. With that, you may  
23 step down. And we're overdue for a break. We will come  
24 back at 11:05. And I will say that, based on our progress  
25 today, you probably need to be prepared for a long night.

1           MR. CONRAD: Judge, before you break, I don't --  
2 have you ruled on 105 yet?

3           JUDGE WOODRUFF: Yes. 105 was admitted.

4           MR. CONRAD: I still would like to have a copy  
5 of that. For some reason, I did not receive it.

6           MR. LOWERY: And Mr. Conrad will be given a  
7 copy. But the extra copy that we had at that time, I  
8 believe, was given to his client who was in the room at  
9 that time. But we will get him a copy, as I have assured  
10 him.

11          JUDGE WOODRUFF: Okay. Thank you very much.  
12 We're on break.

13          (Break in proceedings.)

14          JUDGE WOODRUFF: All right. Let's come back to  
15 order, please.

16          MR. BYRNE: Your Honor, before we start with the  
17 next witness, I don't believe I've offered Exhibits 19, 20  
18 and 21, which were Mr. Lyons' testimony.

19          JUDGE WOODRUFF: All right. I assume Mr. Lyons  
20 will be back later.

21          MR. BYRNE: Yeah. I believe on Thursday. He's  
22 supposed to talk about the tariff language.

23          JUDGE WOODRUFF: Right. Contrary to what I said  
24 yesterday, let's just wait until the last date to -- to  
25 offer testimony.

1 MR. BYRNE: Okay.

2 JUDGE WOODRUFF: That seems a little bit clearer  
3 on the transcript that way. All right. Looks like  
4 Mr. Mayo has taken the stand.

5 MR. MAYO: Yes.

6 JUDGE WOODRUFF: If you'll raise your right  
7 hand.

8 JOHN MAYO,  
9 being first duly sworn to testify the truth, the whole  
10 truth, and nothing but the truth, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BYRNE:

13 JUDGE WOODRUFF: You may be seated.

14 Q (By Mr. Byrne) Mr. Mayo, do you have any  
15 corrections to your testimony?

16 A I do. One very small one. It's on page 8 of my  
17 testimony in Footnote 8. I inadvertently had a  
18 typographical error referring to Mr. Benshaw's testimony.  
19 Instead of page 1, it should read page 11.

20 Q Okay. Any other corrections?

21 A No.

22 Q Okay. Thank you.

23 MR. BYRNE: Tender Mr. Mayo for cross.

24 JUDGE WOODRUFF: Thank you. And for purposes of  
25 cross-examination, we'll begin with Aquila, Laclede, the

1 Bargaining Committee, DNR, Missouri Retailers, MO-KAN,  
2 MASW, MIEC, Commercial Group?

3 MR. CHAMBERLAIN: No questions.

4 JUDGE WOODRUFF: Okay. MAG? Noranda?

5 MR. CONRAD: No questions.

6 JUDGE WOODRUFF: The State?

7 MR. MICHEEL: Questions.

8 JUDGE WOODRUFF: And Mr. Micheel is coming  
9 forward, so I thought he might have questions.

10 CROSS-EXAMINATION

11 BY MR. MICHEEL:

12 Q Hello, Mr. Mayo.

13 A Good morning.

14 Q I note in your -- you only filed rebuttal  
15 testimony; is that correct?

16 A Yes.

17 Q Okay. And you state that in the last 20 years  
18 there's been a movement in regulated utilities in a manner  
19 that minimizes regulatory costs; is that correct?

20 A Yes.

21 Q Would you agree with me that implementing a fuel  
22 adjustment clause creates an entirely new type of  
23 regulatory cost?

24 A No.

25 Q Let me ask you this: Currently, are we doing

1 prudence reviews for fuel adjustment clauses for Ameren?

2 A No. And -- so to clarify, there would be a new  
3 auditing cost.

4 Q So I need to clarify that --

5 A Then let me correct that. But let me finish my  
6 answer, please.

7 Q And was --

8 A So, yes, in that sense, there would be a new  
9 regulatory cost, but there also would be cost savings  
10 presumably from the reduction in the need to have rate  
11 cases settled to the extent that my -- going back to my  
12 answering there would be a new regulatory cost. I think  
13 my sense is that regulatory costs would actually fall.

14 Q Have you done any studies?

15 A Any studies of that issue --

16 Q Yes.

17 A -- do you mean?

18 Q Yes. With respect to AmerenUE.

19 A I have -- I have considered that, yes.

20 Q You've done a studied analysis, sir?

21 A I have considered it. Yes, I have.

22 Q Well, did you provide work papers that indicated  
23 that analysis?

24 A No, I did not.

25 Q Did you do any written analysis?

1           A     I don't know that you would say a written  
2 analysis for formal presentation. I did carefully  
3 consider the issue, and I can tell you how I did that if  
4 you'd like. I'll be happy to do that.

5           Q     Would you agree with me that with the new fuel  
6 adjustment clause that -- that -- that Ameren is  
7 requesting there are new reporting and record-keeping  
8 requirements for AmerenUE?

9           A     Yes, I would.

10          Q     And if you could -- if you could turn to page 11  
11 of your rebuttal, and I'm focusing on lines 4 through 6,  
12 you say there, "I should also note that the adoption of  
13 facts are" --

14          A     If you'll hold on just one second.

15          Q     You let me know when you're there?

16          A     I'm -- page 11. And then now the lines, please.

17          Q     Page 9.

18          A     Oh, I'm sorry. You said page 9. My mistake.

19          Q     Sure.

20          A     Now, the lines?

21          Q     Lines 4 through 6. You say, "I should also note  
22 that the adoption of facts are typically accompanied by a  
23 specific set of regulations that include detailed annual  
24 reviews, general prudence standards and other regulatory  
25 rules unrelated to the facts itself"; is that correct?

1           A     Yes, I do.

2           Q     And then you drop to Footnote 10 there, do you  
3 not? And that says, "My understanding is that these  
4 safeguards are an intrical part of Missouri FAC  
5 regulations"; is that correct?

6           A     Yes.

7           Q     And you would agree with me that those costs and  
8 those regulations and those reviews don't currently exist;  
9 is that correct?

10          A     Yes. And as I explained, those costs I believe  
11 would be --

12                 MR. MICHEEL: You know, your Honor, we need to  
13 speed things up, and I asked is that correct. That's a  
14 yes or no question. Could you just tell the witness --

15                 JUDGE WOODRUFF: And I will instruct the  
16 witness, if you're asked a yes or no question, simply give  
17 a yes or no answer.

18                 MR. MAYO: Sure.

19                 JUDGE WOODRUFF: If counsel wants to ask you a  
20 follow-up question, he can do that, but don't volunteer  
21 information.

22                 MR. MAYO: That will be fine.

23          Q     (By Mr. Micheel) Would you agree with me that  
24 those costs don't currently exist?

25          A     Yes.

1 Q And would you agree with me that UE is going to  
2 seek to recover those costs from ratepayers?

3 A I would expect that those costs are ultimately  
4 born by ratepayers.

5 Q You note, also, in your -- your rebuttal  
6 testimony that there's a movement to regulate utilities to  
7 operate as efficiently as possible; is that correct?

8 A Yes.

9 Q Is it your view that utilities are going to pay  
10 more attention to costs that are automatically passed  
11 through than costs that they're at risk for?

12 A I would expect that costs that are  
13 uncontrollable are ones that shouldn't -- shouldn't be  
14 focused on. Costs that are controllable are ones that the  
15 company will focus on.

16 Q That wasn't my question, Mr. Mayo. My question  
17 was -- and maybe I didn't state it properly. Is it your  
18 view that utilities are going to pay more attention to  
19 costs that are automatically passed through or costs that  
20 they're at risk for? Try to answer that question.

21 A I think the answer is that it depends on the  
22 nature of the regulatory mechanism itself.

23 Q So you don't have a view on whether or not --  
24 let me just put it this way: If -- if Ameren was at risk  
25 for all of its fuel costs, would it pay more attention to



1 those costs as opposed to whether or not it had a  
2 pass-through of those costs?

3 A If its costs were all pass-through, it would  
4 have less incentive to pay attention to those -- those  
5 costs, as I --

6 MR. MAYO: May I -- Judge, may I offer one  
7 sentence there? No? In -- by way of explanation?

8 JUDGE WOODRUFF: It's up to counsel.

9 Q (By Mr. Micheel) I mean, I don't -- I want you  
10 to answer the question. And if that was your answer, if  
11 you need another sentence, go ahead.

12 A Thanks. The only point of -- of contention here  
13 is the question that -- that if costs are uncontrollable,  
14 then the fact that you aren't paying attention to those  
15 isn't particularly a productive exercise anyway.

16 Q Is it your view that Ameren's fuel costs are  
17 uncontrollable?

18 A No. They are largely uncontrollable. Not  
19 completely, but largely.

20 Q On -- on page 3, you commend the consideration  
21 of UE's alternative that would involve sharing of off  
22 system sales; is that correct?

23 And I'm focusing -- I'm not trying to trick you  
24 -- at lines 16 through 19.

25 A Yes.

1 Q You're aware that AmerenUE has abandoned that  
2 position?

3 A Yes.

4 Q So that part of your testimony is no longer  
5 relevant?

6 A No. I continue to endorse Ameren's proposed  
7 fuel adjustment clause mechanism. And, in fact, I feel  
8 more strongly about endorsing it than I did the earlier  
9 ones.

10 Q So the changes they've made have improved it?

11 A I believe so. Yes.

12 Q Let me focus you on page 6 of your rebuttal  
13 testimony. Starting at line 7, you say, "In absence of a  
14 FA -- an FAC, volatile fuel prices are likely to prove  
15 significantly disruptive to the firm's financial  
16 performance"; is that correct?

17 A Yes.

18 Q Your testimony offers no UE-specific analysis to  
19 support that theory; is that correct?

20 A No. That wasn't the purpose of my testimony.  
21 It's in other witnesses' testimony.

22 JUDGE WOODRUFF: Once again, just answer yes or  
23 no if you can.

24 A I -- I'll stand by my answer then. No, I did  
25 not do that. It wasn't the charge of my testimony.

1 Q (By Mr. Micheel) My -- my question -- let me --  
2 let me just try it again. You did no UE-specific analysis  
3 to support the theory, did you?

4 A No. I've answered that twice. No, I did not.

5 Q All right. And that's -- that's fine.

6 A Again --

7 JUDGE WOODRUFF: You can't give an explanation  
8 unless counsel asks you for an explanation or your  
9 attorney when you get a chance for redirect might have a  
10 chance to ask you to explain.

11 MR. MAYO: That's fine. I'm --

12 JUDGE WOODRUFF: If he asks for yes or no, just  
13 give him a yes or no.

14 MR. MAYO: Sure.

15 JUDGE WOODRUFF: All right. Thank you.

16 Q (By Mr. Micheel) Would you agree with me that,  
17 historically, UE's financial performance has been strong  
18 as noted in UE witness Baxter's testimony?

19 A I -- yes.

20 Q And would you agree with me that Union Electric  
21 hasn't had a rate increase case -- rate case in the last  
22 20 years?

23 A That's my understanding based on others'  
24 testimony, yes.

25 Q And you have no reason to doubt that testimony,

1 do you?

2 A No.

3 Q Okay. Could you tell me what UE's fuel mix is?

4 A Not precisely. It's largely --

5 Q That's an open-ended question.

6 A Thank you. I just didn't want to get my -- my  
7 toes stepped on again. My understanding is that it's  
8 largely coal with some nuclear and -- and other fuels as  
9 well, but -- but about 70 percent coal.

10 Q Now, on -- on page 7, lines 7 through 13, you  
11 note that if fuel costs are increasing, cost of service  
12 regulation will result in frequent rate increases that  
13 would align prices and cost. Is that correct? That's a  
14 yes or no.

15 A And I apologize. You just moved beyond my  
16 ability to catch up on the page.

17 Q Okay.

18 A Say the page number.

19 Q I'm on page 7.

20 A Thanks.

21 Q I'm sorry. I'm just trying to make up time.

22 A Okay. Page 7.

23 Q Lines 7 through 13.

24 A Yes.

25 Q You would agree with me that UE has not

1 empirically had to file frequent rate cases, correct?

2 A Yes.

3 Q You would agree with me that this is UE's first  
4 rate case in 20 years, correct?

5 A That's my understanding.

6 Q You would agree with me that, historically, cost  
7 savings elsewhere in the business or growth and customer  
8 sales can offset fuel price increases; is that correct?

9 A As far as a need to file a rate case under a  
10 traditional rate base rate of return regulation, yes.

11 Q And, empirically, that's happened with AmerenUE;  
12 is that correct?

13 A Historically, that has happened.

14 Q Okay. Would you agree with me that it's your  
15 view that fuel costs are not controllable by a utility?

16 A I'm not going to be able to answer that yes or  
17 no. I -- if I'm permitted, please.

18 Q Well --

19 A To say that I -- my testimony has been that they  
20 are largely uncontrollable, not -- so I -- I -- with that  
21 adjective, I would agree.

22 Q Fair enough. And I don't want to  
23 mischaracterize your testimony.

24 A Thank you.

25 Q You are absolutely right. It does say largely

1 uncontrollable. Would you agree with me that the  
2 Commission's fuel adjustment clause rule requires a rate  
3 case at least every four years?

4 A That's my understanding.

5 Q Would you agree with me that if UE passes  
6 through fuel costs quickly and automatically that the  
7 regulatory lag incentive to control those costs is  
8 eliminated?

9 A As far as those fuel costs are concerned, yes.  
10 However, not for the remaining part of the company's  
11 expenses, which are a very important part of regulatory  
12 lag.

13 Q And the elimination of the -- the regulatory lag  
14 is okay by you because fuel costs are largely  
15 uncontrollable; is that correct?

16 A Well, it's less of a concern to the extent that  
17 they are largely uncontrollable. However, in the  
18 particular mechanism that's being proposed, there is an  
19 incentive now in the system that would create an incentive  
20 for Ameren to reduce even those -- that controllable part,  
21 whatever amount it is, of fuel costs because if the firm  
22 can then reduce those fuel expenses headed toward that  
23 shearing mechanism, then it has the prospect at least of  
24 -- of -- of securing profits.

25 Q Well, let me you ask you this: If fuel costs

1 are largely uncontrollable, has UE been wasting time and  
2 money on a large staff involved in fuel procurement work,  
3 risk management and fuel hedging?

4 A No. I doubt it.

5 Q If a fuel adjustment clause is approved, should  
6 UE cut staff in those areas?

7 A No. Or -- let me say this. It would be  
8 presumptuous of me to say, but my sense is the answer is  
9 no.

10 Q On -- on page 8, lines 13 of your rebuttal  
11 testimony, you state, "The pass-through of fuel costs and  
12 rates is more automatic than traditional regulation and  
13 thereby, theoretically, reduces incentives for the firm to  
14 minimize fuel related costs"; is that correct?

15 A Yes.

16 Q Is the reduction in those incentives theoretical  
17 or real?

18 A Well, as I describe in -- in the testimony, I  
19 think that if you'll move down to line 18, I suggest that  
20 while there is that theoretical incentive to -- to pay  
21 less attention to those costs that they're largely -- if  
22 -- to the extent -- and this is -- this is sort of  
23 important.

24 To the extent that those costs are largely  
25 uncontrollable, they're -- those changes in wholesale

1 markets are occurring, then -- then the ability to act on  
2 any incentives is -- is -- the way I described it was  
3 inert; that is, I might have an incentive to act on that,  
4 but there's really not much I can do.

5           And I think -- I think Mr. Neff's testimony  
6 speaks directly to -- from Ameren's perspective on that.

7           Q     Does the fact that Ameren hasn't had a rate case  
8 in 20 years indicate that there was a lot they could do  
9 with respect to fuel costs?

10          A     Not necessarily. Fuel prices historically have  
11 been at the wholesale level and have been quite -- have  
12 been quite stable historically. They've not been more  
13 recently.

14          Q     Should -- let me ask you this: Should UE remain  
15 at risk for a percentage of its fuel cost recovery as an  
16 incentive to continue to manage and control those costs?

17          A     Because the costs are largely uncontrollable,  
18 the -- I believe it would be consistent with good economic  
19 policy to have those costs flow through to -- to consumers  
20 to receive accurate price signals.

21                 I would endorse the general proposition that  
22 Ameren be incented to minimize those fuel costs and its  
23 purchases. And I think that's what the fuel adjustment  
24 clause mechanism as it's designed now does.

25          Q     Now, on page 11 at lines 8 through 15 of your



1 rebuttal testimony, you take issue with Mr. Brosch, do you  
2 not?

3 A Yes.

4 Q And would you agree with me that Mr. Brosch's  
5 proposal is in the context of no -- no fuel adjustment  
6 clause where availability and efficiency of generating  
7 plants directly impacts fuel expenses that are not  
8 automatically passed through to customers?

9 A I apologize. That was a long sentence, so I --  
10 if you could rephrase it, please, or --

11 Q Would you agree that Mr. Brosch's proposal is in  
12 the context of no fuel adjustment clause?

13 A I believe so.

14 Q And in the context of a fuel adjustment clause,  
15 does Mr. Brosch offer a limited incentive?

16 A I believe that Mr. Brosch's testimony -- I don't  
17 want to mischaracterize it -- was such that deviations of  
18 off system sales would flow through directly in --  
19 whatever those deviations were directly to consumers  
20 directly, and, thereby, eliminating any incentive on the  
21 part of the company to -- to increase those off system  
22 sales. And that was -- that was my concern.

23 Q So you don't know if he recommended perhaps that  
24 a minimum maybe of a 5 percent sharing --

25 A The part of --

1 Q -- as an alternative, if there was, indeed, a  
2 fuel adjustment clause?

3 A He may have -- he may have with respect to that.  
4 I was speaking here of the off system sales margins.

5 MR. MICHEEL: Thank you very much for your time.

6 MR. MAYO: Thank you. Sorry if I was more  
7 expansive than you might have liked.

8 JUDGE WOODRUFF: All right. For Public Counsel?

9 CROSS-EXAMINATION

10 BY MR. MILLS:

11 Q Good morning, Dr. Mayo.

12 A Good morning.

13 Q Do non-regulated firms pass through every change  
14 and price in the underlying commodity and the products  
15 they sell?

16 A In the short-run, no. In the long-run, yes.

17 Q Okay. And, in that context --

18 A I'm sorry.

19 Q No. That's -- that's a perfectly adequate  
20 answer. And in that context, what do you mean by  
21 short-run?

22 A Firms may face input price changes and choose  
23 not in the shortest runs, let's say on a daily basis, to  
24 change prices at the -- at the retail level. Some do.  
25 Some don't.

1           And -- but -- but the pressure is there to  
2 change retail price -- prices when wholesale prices  
3 change.

4           Q     Okay.

5           A     So if you had a restaurant, as an example, the  
6 price of bread for making sandwiches may change on a daily  
7 basis, but probably the restaurant won't change menu --  
8 menu prices daily.

9           Q     So in that -- in your answer, you mean daily by  
10 short-term?

11          A     It -- it -- I -- in the example I gave of that,  
12 yes.

13          Q     Okay. In the utility context, what would you  
14 consider short-term and long-term changes in prices?

15          A     I'm -- I'm not wed to any particular definition.  
16 If you'll help me with a particular question, I've got an  
17 answer.

18          Q     You brought in short-term and long-term into the  
19 con -- into the answer, and I'm just trying to figure out  
20 what you're saying.

21          A     Well, I brought in short-run and long-run in the  
22 context of saying -- your question that said do firms  
23 change retail rates every time wholesale rates prices  
24 change. And my -- my answer was trying to be just as  
25 general as I possibly could and as accurate as I could.

1           And that is to say, there's always going to be  
2 pressure to change retail rates when the costs change at  
3 the wholesale level. But -- but there is also a cost  
4 associated with changing the price itself so that some  
5 firms may choose in the shortest of runs -- the example I  
6 gave was a daily basis -- to not change prices, but in the  
7 longer term to change prices.

8           In this specific instance in consideration of a  
9 fuel adjustment clause, I think that the price changes  
10 that have been discussed are on a -- either three-month  
11 and now a four-month basis.

12         Q     Okay.

13         A     So that would be the -- the context, the time  
14 frame that I think people are looking at.

15         Q     And so in your view, from the utility context, a  
16 change every three or four months is a change in the  
17 short-term. Is that a fair characterization?

18         A     It's a change -- it's a change that would  
19 reflect changes in the wholesale market over that period,  
20 yes.

21         Q     Is that short-term or a long-term?

22         A     Again, I'm not -- I'm not wed to any particular  
23 definition. It sounds like more of a short-term change  
24 than a long-term change.

25         Q     And, similarly, do non-regulated firms

1 automatically lower their prices every time their  
2 underlying commodity prices drop?

3 A Again, not -- not instantly or -- or -- or --  
4 not instantly. Some firms change on a much more regular  
5 and -- and quick basis than others.

6 Retail gasoline stations change their prices  
7 pretty much daily or even within a day based on wholesale  
8 price changes.

9 Q But not all non-regulated firms automatically  
10 pass through increases --

11 A Exactly.

12 Q -- is that correct?

13 A Exactly. Yes.

14 Q Now, in your consideration of whether the  
15 regulatory costs with and without a fuel adjustment clause  
16 are different, did you consider whether the Missouri  
17 Public Service Commission would have to add staff to deal  
18 with fuel adjustment clause filings?

19 A I did.

20 Q And how many staff did you believe that they  
21 would have to add?

22 A I -- I could back into the number of staff. But  
23 what I did was -- in terms of was -- was a dollar -- a  
24 dollar cost. And I'm -- let me -- if you'd like, I'm  
25 happy to explain it.

1 Q No. I want to talk about staff. How many  
2 people did you believe --

3 A Okay. If you'll bear with me just one moment.  
4 I think approximately six.

5 Q And is that for fuel adjustment clauses for how  
6 many Missouri utilities? Or is that just for AmerenUE?

7 A That's for AmerenUE.

8 Q Okay. And did you -- those are additional FTEs  
9 or --

10 A I don't actually know that it's FTEs. I assumed  
11 for purposes of my analysis conservatively that I think it  
12 is FTEs.

13 Q Did you perform any analysis of the frequency of  
14 future Union Electric rate increase cases with and without  
15 a fuel adjustment clause?

16 A No. I'm simply relying on the testimony of  
17 Ameren witnesses that suggest that they would need to file  
18 rate cases more -- more frequently.

19 Q Now, in your testimony, page 10, line 8, you  
20 talk about a proposed level of off system sales margins of  
21 183 million. Do you see that answer?

22 A Yes.

23 Q Have you done any analysis to determine whether  
24 that is an appropriate number for the level of off system  
25 sales margins?

1           A     No, I have not.

2           Q     Okay. In your opinion, is the effi -- efficacy  
3 of this type of incentive dependent on the accuracy of  
4 that number?

5           A     Yes. In the spirit of my earlier comments, I  
6 can explain if you'd like.

7           Q     Let me ask you a couple more questions, and  
8 maybe I will get you to explain it the way I want you to.

9           A     All right.

10          Q     If, for example, that number is off by 50  
11 million and you have a sharing grid that has increments of  
12 10 million, the sharing grid is -- is fairly useless as an  
13 incentive, is it not?

14          A     I don't see a connection between being off on  
15 that base level and the width of the bands being  
16 connected. I'm sorry. I -- if you're asking something  
17 different, then you'll have to just rephrase it.

18          Q     That's fine.

19          A     But I don't see that connection.

20          Q     Okay. The sharing grid is based on -- in sort  
21 of a break-even point of 183 million; is that correct?

22          A     My understanding now is that the company has  
23 suggested a higher number of somewhere between 200 and  
24 \$205 million per --

25          Q     Say it's 205 --

1           A     Correct.  Okay.

2           Q     -- that the sharing grid is based off of that  
3 number.

4           A     Yes.

5           Q     And it has certain levels of sharing that --  
6 that vary as you move as little as \$10 dollars off of that  
7 number.

8           A     Correct.

9           Q     If it turns out that that number was  
10 inaccurately calculated to begin with --

11          A     That number being the -- the sharing?

12          Q     The 205, whatever that number is.

13          A     Sure.

14          Q     If it turns out that that number was simply  
15 inaccurate to begin with by a matter of \$50 million, then  
16 will those sharing increments that change in \$10 million  
17 bands be somewhat meaningless?

18          A     And I'm -- I'm sorry.  I don't think that the  
19 magnitude of the bands themselves matter in that sense.  I  
20 think you're -- the fact that the number is off for the  
21 base may matter, but -- but the fact that the bands  
22 themselves are in \$10 million increments as opposed to  
23 \$15 million increments isn't so important, I think.  I  
24 don't see the importance of that.

25          Q     Is the width of the band -- and I -- in a proper



1 design, is the width of the band -- should it be dependent  
2 on the ability to accurately determine the base number?

3 A I'm -- I'm not -- I'm not sure I could say that.

4 Q What role did you have in -- in designing the  
5 AmerenUE proposal?

6 A I did not design it nor have input in the  
7 development of it.

8 Q So your role is -- is simply to support the  
9 proposal that AmerenUE designed rather than to design it  
10 or help design it yourself?

11 A No. My job was to evaluate the merits of the  
12 fuel adjustment clause proposal and to reach a conclusion  
13 about -- about its economic merits. And I've done that.

14 Q So it's not your job to support it?

15 A No. No. My job, as I understand it, is to  
16 testify as an expert witness as to what I believe good  
17 economics says about -- about this proposal and the merits  
18 of adopting a fuel adjustment clause in Missouri as a  
19 matter of good economic policy.

20 It happens to be that Ameren has proposed one,  
21 and I think it's a -- I think it does -- has some very  
22 nice attributes. But my job is not to -- my job was not  
23 to support it.

24 Q Okay. Do you suppose that AmerenUE would have  
25 put you on as a witness if you had attacked it?

1           A     I doubt it.

2           Q     Now, in your testimony at page 11, essentially  
3 the answer I'm looking at is -- is the -- the portion of  
4 the answer that -- that runs from lines 13 to 15. Could  
5 regulation substitute for this lost incentive by regular  
6 reviews of availability and efficiency?

7           A     That -- that general question is a very, very  
8 good one.

9           Q     Thank you.

10          A     That if -- if -- and I think it's central to  
11 this case is that could we in Missouri get every ounce of  
12 incentive out of Ameren to reduce its cost just simply  
13 through good regulation.

14                     Just say, by regulatory fiat, you're -- you're  
15 duty bound to minimize your fuel costs, supply safe and  
16 reliable electricity and that's it. Or might we do better  
17 by creating financial incentives for this company within  
18 the regulatory mechanism, not -- not eliminating the  
19 regulatory mechanism, but within it to get more out of  
20 Ameren's effort to reduce its cost and share those  
21 benefits with consumers? I believe the answer is the  
22 latter, not the former.

23          Q     Okay. And yet Union Electric has proposed  
24 regulation as a way to ensure that resource planning is  
25 done properly; is that not correct?

1           A     I'm less familiar with Ameren's advocacy on  
2 resource planning.

3           Q     Have you read the testimony of Mr. Lyons in this  
4 case about the fuel adjustment clause?

5           A     I did.

6           Q     Do you have a copy there with you?

7           A     No.

8           Q     Let me show you Mr. Lyons rebuttal testimony and  
9 refer to you page 23 at line 22.

10           MR. MILLS: May I approach?

11           JUDGE WOODRUFF: You may.

12           Q     (By Mr. Mills) This is in small print, so --

13           A     This is -- where do you want me to look?

14           Q     This section here.

15           A     All right. All right. Give me just a second to  
16 read it. Okay. I -- I think I'm familiar with it now.  
17 And I -- I had read it before.

18           Q     Okay. In that section of his testimony,  
19 Mr. Lyons recommended regulation as a mechanism to ensure  
20 a specific utility action; is that not correct?

21           A     Maybe you -- you and I will read this  
22 differently, but -- but I don't know that -- that I read  
23 this as -- as advocating regulation, but, rather, simply  
24 saying that -- that the fuel adjustment clause will not  
25 distort the resource planning process that's already in

1 place. I don't know that it is advocating additional  
2 regulation.

3 Q If a utility passes through all of its fuel  
4 costs to customers, what incentive does it have to  
5 construct its generating fleet in such a manner as to be  
6 indifferent to the cost of fuel?

7 A Okay.

8 Q In such a manner that it's not indifferent to  
9 the cost of fuel.

10 A Sure. I think there are a couple things. One  
11 is that the current FAC proposal, if Ameren can reduce its  
12 net fuel costs through some combination of fuel cost  
13 reductions and off system sales increases, it has a  
14 tremendous incentive because -- to -- to -- to do so  
15 because it has a chance to profit by that. And -- and  
16 profits motivate firms.

17 So in that instance -- in that instance, to get  
18 to your specific question, it would have an incentive to  
19 look for least cost energy investments that would create  
20 an opportunity to reduce those -- those expenses.

21 Q So those incentives are only in a fuel  
22 adjustment clause if a meaningful sharing proposal is  
23 contained therein?

24 A I think they are -- they are heightened by the  
25 that sharing mechanism, yes.

1 Q If there is not a sharing mechanism, what are  
2 the incentives?

3 A If there are no sharing mechanisms at all, then  
4 I think you place greater reliance on the -- on the  
5 resource planning process you just pointed out in  
6 Mr. Lyons' testimony.

7 MR. MILLS: Thank you. That's all the questions  
8 I have.

9 MR. MAYO: Thank you.

10 JUDGE WOODRUFF: Cross by Staff?

11 MR. MILLS: If I may get those couple pages  
12 back.

13 MR. MAYO: Sure.

14 MR. MILLS: Thank you.

15 JUDGE WOODRUFF: All right.

16 CROSS-EXAMINATION

17 BY MR. DOTTHEIM:

18 Q Good morning, Dr. Mayo.

19 A Good morning.

20 Q Dr. Mayo, would I be correct that your work in  
21 regulated industries is -- has been much more in the tele  
22 -- telecommunications more than it has been in energy?

23 A It has been both. But I've written more papers  
24 in telecommunications than electricity, yes.

25 Q Union Electric Company, I assume, is not the --

1 the only entity that you've performed consulting work for.

2 Am I correct?

3 A That is correct.

4 Q Okay. Have you ever performed any consulting  
5 work for Enron?

6 A Yes, I did.

7 Q Okay. What was the nature of that work?

8 A The nature of it was that I was asked whether I  
9 would -- what my opinion was with respect to creating  
10 choices for electric utility consumers and some -- some  
11 legislation that was pending in, I believe, Pennsylvania  
12 and Illinois, maybe, but certainly Pennsylvania regarding  
13 creating retail choices for electricity consumption.

14 Q Okay. And what was the -- the time period over  
15 which you were performing that work? Do you recall?

16 A This is just going to be a ballpark, but it was  
17 the late '90s, I believe. It was the late '90s.

18 Q And can you be more specific as -- regarding the  
19 nature of the work you performed?

20 A Again, I was asked to -- asked for my opinion.  
21 Enron was an advocate for creating retail choices for --  
22 for -- for electric utility customers. I happen to agree  
23 with that. I think -- I think giving consumers choices is  
24 a good thing. Competition is a good thing. So I wound  
25 up, I believe, offering testimony in the state of

1 Pennsylvania.

2 Q And the testimony that you offered, was it  
3 before the Pennsylvania Legislature, or do you recall in  
4 what context or -- before what body did you provide at  
5 that testimony?

6 A Yeah. It was before the Pennsylvania Public  
7 Utility Commission.

8 Q And what was the outcome of that proceeding that  
9 you provided that testimony in, if you recall?

10 A Well, I -- I really can't say.

11 Q Okay.

12 A I think as a general proposition, retail choice  
13 didn't go very far in a lot of states. But -- but that  
14 was -- but I can't tell you the specifics in Pennsylvania.

15 Q And you don't recall the specifics of that  
16 proceeding that you actually provided the testimony in?

17 A No. I --

18 Q Was it an investigation? Did it involve one  
19 utility in particular?

20 A I -- I don't think it was an investigation. I  
21 wouldn't characterize it that way. I believe it was a --  
22 a generic proposition or consideration by the Public --  
23 Pennsylvania Public Utility Commission as to the merits of  
24 -- of retail competition and how if retail competition was  
25 going to be forward -- forwarded in the state, how it

1 might be best designed and implemented.

2 Q And do you recall the nature of the testimony  
3 that you provided?

4 A Only to the extent that I've just described, I  
5 believe.

6 Q Dr. Mayo, are you aware whether the existing  
7 fuel adjustment clause rule requires a study or analysis  
8 that shows that a proposed incentive mechanism is  
9 structured such that anticipated benefits to customers  
10 from the incentive mechanism equal or exceed the  
11 anticipated costs of a mechanism?

12 A That is my understanding, yes.

13 Q Do you know whether AmerenUE has provided or  
14 performed such a study or analysis regarding the proposal  
15 which it now has pending before the -- the Commission?

16 A My own interpretation is that the combination of  
17 testimony and materials in those testimonies does  
18 constitute that material, that required material.

19 Q And --

20 A It's not -- I'm not a lawyer, so I can't answer  
21 whether it satisfies the legal criteria. But I will tell  
22 you that from my perspective, that body of material  
23 satisfies the -- in my mind, the determination whether the  
24 benefits exceed the cost.

25 Q And -- and you yourself have not provided any



1 study or analysis, have you? You've provided your  
2 rebuttal testimony and nothing other than that rebuttal  
3 testimony, correct?

4 A I -- my rebuttal testimony, I believe, is part  
5 of answering that -- that -- that question of whether the  
6 benefits exceed the costs. So I think I would disagree  
7 with that. I think I have provided the supporting  
8 material for that.

9 Q And is it your understanding that the proposal  
10 that AmerenUE now has pending before the Missouri  
11 Commission is the proposal with -- that is found in the  
12 surrebuttal testimony of Mr. Lyons?

13 A That is my understanding. Yes.

14 Q Dr. Mayo, based upon the -- the work that you  
15 performed in this engagement, did you make any  
16 recommendations yourself to AmerenUE regarding an  
17 incentive mechanism or fuel adjustment clause or -- or any  
18 possible modification of change to one of the proposals  
19 that AmerenUE had put forth?

20 A I made no such formal proposals. I will say  
21 that I have consistently represented to Ameren that -- the  
22 importance of -- of incentives in designing an appropriate  
23 scheme to provide incentives for the company to reduce  
24 costs as much as possible in the context of the designs of  
25 this.

1           But it -- it has been a -- it has -- has not --  
2 that didn't -- that -- those conversations were not made  
3 as part of any formal recommendation.

4           Q     Dr. Mayo, I assume you're being compensated for  
5 your work for AmerenUE?

6           A     Right this minute, I feel like it's not enough.  
7 But, yes, I am.

8           Q     And if you could please indicate what that  
9 compensation is? Are you being -- is it an hourly rate?  
10 Are you being paid a flat, a flat fee?

11          A     I'm being paid an hourly rate plus sandwiches at  
12 breaks.

13          Q     And that hourly rate is --

14          A     \$525 an hour.

15          Q     And to date, can you provide an indication of  
16 how many hours you have expended on this engagement for  
17 Ameren UE?

18          A     I'm -- I'm not meaning to be evasive here, but  
19 I'm just telling you, the gospel truth is that I've been  
20 focused more on this testimony than keeping track of my  
21 hours. I do do that, but I haven't looked at it. And so  
22 I can't give you that precise answer.

23                   I've been here since the beginning of the  
24 hearing. And I spent enough time to read testimonies and  
25 write my testimony, and it did take some hours.

1           Q     Have you submitted any statements to AmerenUE to  
2     date?

3           A     No.  Again -- again, I, honestly, I -- I've not  
4     submitted a single bill.  But I -- I intend to do so.  But  
5     -- don't get me wrong.  But -- but I have not done so.  I  
6     really feel like the important thing right now is for me  
7     to focus on this testimony.

8           Q     Can you give us just some idea as to the -- the  
9     numbers of hours that you've expended?  What -- what have  
10    you done to date as far as --

11          A     Sure.

12          Q     -- as far as the work you have performed in this  
13    engagement?

14          A     What I have done is -- is read a whole host of  
15    testimony in this case from the various parties.  I've  
16    read various background pieces, lots of pieces that are  
17    the same pieces that I suspect you've been reading.

18          Q     When you say background pieces, what do you mean  
19    by background pieces?

20          A     Testimonies filed in this proceeding.  There was  
21    discussion of financial market materials that were  
22    floating around an hour ago.  So I read -- I've read that  
23    -- those sorts of things.  I've looked at economic  
24    literature, that -- those sorts of things.  And, again,  
25    I'm not meaning to at all be evasive.

1           Q     And, again, you've performed no study or  
2 analysis yourself? You have no work papers --

3           A     No.

4           Q     -- is that correct?

5           A     I -- I have my testimony. That's -- that's my  
6 -- everything I really would like to say is in the  
7 testimony apart from explaining perhaps answers to  
8 questions that are asked.

9           Q     So your answer is there -- there is nothing more  
10 than -- and when I say nothing more, I don't mean to -- to  
11 slight your testimony in the least.

12          A     Sure.

13          Q     But there is nothing -- other than the testimony  
14 that's been filed, which is your rebuttal testimony, there  
15 is no further analysis of other than what is contained in  
16 -- in your rebuttal testimony?

17          A     The only reason I paused there just for a second  
18 was that -- that as part of thinking about this testimony,  
19 and -- and the conclusions that I have, I have thought  
20 about -- about things, and I don't have anything else to  
21 submit for the consideration of the Public Service  
22 Commission at this point.

23                     But -- but it's not as though my mind turned off  
24 when I filed this testimony.

25          Q     No. And I don't mean to suggest that. In fact,

1 I've noticed that when you get either by me or by other  
2 counsel and are asked about work papers or work product,  
3 you make reference to thinking. And although it's not  
4 reflected in the transcript, there are breaks where you  
5 stop, and it appears that you are giving considerable  
6 thought to -- to this subject matter.

7           So it would appear that what work papers you  
8 have are your thoughts on this subject matter, your --  
9 your thinking, but there is nothing on paper either  
10 handwritten -- there's nothing electronic in the way of  
11 analysis other than your rebuttal testimony itself?

12           A     I have nothing that I formally have for the  
13 Commission's consideration beyond my testimony. I think  
14 that's exactly right.

15           MR. DOTTHEIM: Thank you, Dr. Mayo. You've been  
16 very patient.

17           MR. MAYO: Thank you.

18           JUDGE WOODRUFF: Thank you, Mr. Dottheim.  
19 Looking for questions from the Bench. Commissioner  
20 Murray?

21           COMMISSIONER MURRAY: No questions.

22           JUDGE WOODRUFF: Commissioner Gaw?

23                           CROSS-EXAMINATION

24 BY COMMISSIONER GAW:

25           Q     As -- as I understand it, you did do work for

1 Enron in Pennsylvania, and did you say Illinois?

2 A There was a consideration -- there was a matter,  
3 I believe, under consideration at the Illinois State  
4 Legislature about the same time that I was doing that work  
5 in Pennsylvania.

6 Q Did you -- did you have any --

7 A I did not travel to or testify in the state of  
8 Illinois.

9 Q Do you know -- but what was it that you did in  
10 regard to Illinois?

11 A Commissioner, I think the best -- to the best of  
12 my recollection, I may have offered some opinions  
13 regarding some of the proposed legislation that was  
14 happening at that time.

15 But it was -- it was very much of a matter of  
16 providing informal feedback to Enron. My sense was, and  
17 this is going back a few years now, that Illinois had a  
18 bill that -- and you may be quite familiar with this, and  
19 you can maybe jog my memory, regarding customer choice in  
20 that state and -- and -- and the conditions under which  
21 that would be implemented.

22 Q Okay.

23 A And that was -- that was the point of  
24 contention, I think, in Illinois.

25 Q And would you have provided information or

1 advice to Enron advocating for retail choice in Illinois?

2 A Yes, I would have. I think competition is a  
3 very good thing.

4 Q And do you -- do you know whether or not the  
5 customers of -- of Ameren's system in Illinois today would  
6 -- would think that your opinion advocating for that was  
7 -- well, that's speculative.

8 Let me ask you whether you have seen anything  
9 that indicates what the reaction might be in Illinois to  
10 the choice legislation that was passed by Illinois  
11 Legislature a few years ago?

12 A I have an -- a -- I generally know that -- that  
13 the movement didn't fair so well. And in terms of -- the  
14 -- the move to retail competition occurred in a very  
15 awkward way around -- around the country, it's my  
16 understanding. And I don't know that the result was  
17 particularly favorably viewed by anybody. But I haven't  
18 followed the details of that.

19 Q Are you familiar with whether or not that issue  
20 is at this very moment an issue of hot contention within  
21 the state of Illinois?

22 A I am not.

23 Q Okay. And -- and if consumers had just recently  
24 been exposed in the Ameren territory to significant  
25 increases in their rates as a result of the final

1 implementation of the Illinois legislation that you  
2 referred to earlier, would that surprise you?

3 A I -- I guess I want to -- it suggests that --  
4 I'm going to back up a little bit from that --

5 Q Okay.

6 A -- in the following sense. I'm going to stand  
7 by my -- from my advocacy position of choice and  
8 competition being a good thing. But because I don't -- I  
9 have no idea what was implemented in the state of Illinois  
10 and I don't know what's in that legislation, and I think  
11 your representation to me was that prices went up as a  
12 result of a piece of legislation, my general sense is if  
13 it was --

14 Q That -- that wasn't my question.

15 A I apologize. I thought I heard you say prices  
16 went up as a result of the legislation.

17 Q As a result of the final implementation of that  
18 legislation.

19 A And -- and --

20 Q All right.

21 A We're in agreement. My point is that I don't  
22 know what got implemented and whether I would advocate any  
23 legislation as it was implemented that -- if that got  
24 implemented. I will tell you that if you do things right,  
25 consumers benefit from choice and competition. And you



1 can screw that up.

2 Q Well --

3 A And it may have been screwed up. But  
4 competition serves consumers well. It has for 225 years  
5 in America.

6 Q Okay. Well, that's -- that's something we --  
7 we've -- we could get advice from consumers in Illinois,  
8 I'm sure, if we sought it. But thank you very much. I  
9 appreciate you being here.

10 COMMISSIONER GAW: That's all I have.

11 MR. MAYO: Thank you.

12 JUDGE WOODRUFF: Commissioner Clayton?

13 CROSS-EXAMINATION

14 BY COMMISSIONER CLAYTON:

15 Q Good afternoon, Doctor. I wanted to ask you --  
16 first, Doctor -- are you -- what kind of doctor are you?  
17 I've heard references to Doctor, and I can't remember in  
18 your testimony.

19 A I have a Ph.D. in Economics.

20 Q In Economics. Okay. And you said that you  
21 testified in favor of some sort of legislation in the  
22 state of Illinois. Did I hear that correctly?

23 A No.

24 Q When you -- you said that you were advocating on  
25 behalf of competition in some way, shape or form, how were

1 you doing that?

2 A I believe in response to Commissioner Gaw's  
3 question, he asked me whether I -- I -- what my  
4 involvement was in Illinois. And I mentioned to him at  
5 that time that it was in -- there was a proceeding going  
6 on in Illinois, a consideration of legislation.

7 I did not testify in the state of Illinois. I  
8 did have discussions with Enron regarding that particular  
9 legislation.

10 Q Let me ask the question this way.

11 A Sure.

12 Q Did you advocate on behalf of changes in the  
13 state on -- to -- to pursue electrical competition or  
14 retail electrical competition?

15 A I -- I would and did advocate that customer  
16 choice can be, if properly implemented, a very good thing.  
17 Yes.

18 Q So you were advocating for some sort of change  
19 in policy on behalf of competition? Yes or no?

20 A Yes.

21 Q Okay. And you don't recall whether it was  
22 before the legislature or what body it was before?

23 A I believe I answered earlier that it was just  
24 internal to -- to Enron. I provided that advice to Enron.

25 Q But if you were -- were you trying to convince

1    them the competition was good?  Who were you trying to  
2    convince?

3           A     Well, I believe they asked for my opinion  
4    regarding the merits of -- particular versions of  
5    legislation that were floating around at that time.  And I  
6    advocated at that point that -- that if done properly, I  
7    believed that customers would --

8           Q     I under -- I understand that.  But who was your  
9    audience?  Who were you trying to convince?  You said you  
10   were advocating.  So you're trying to convince somebody.  
11   You're trying to argue for somebody.  Who were you trying  
12   to convince?  Who was your target audience?  Enron?

13          A     I was -- I was asked for advice from Enron.  And  
14   that's the advice that I gave to Enron.

15          Q     So Enron -- did they hire you?

16          A     I was hired for purposes of Pennsylvania, and I  
17   believe, as I indicated, that the questions came up  
18   regarding Illinois along the way.

19          Q     Okay.

20          A     And so yes.

21          Q     So En -- so Enron hired you, and Enron was  
22   paying your bill --

23          A     Yes.

24          Q     -- is that correct?  Okay.  And they hired you to  
25   convince them that retail consumer choice was positive?

1 A No. For --

2 Q I'm -- I'm sorry, doctor. I'm really confused.  
3 Who were you trying to convince that competition was such  
4 a positive thing?

5 A Maybe I'm -- maybe I'm just not being clear. I  
6 was hired as an -- as an economic consultant by --

7 Q Okay.

8 A -- by Enron.

9 Q Okay.

10 A Principally, as I described, it was in the state  
11 of Pennsylvania. Along the way, there was some  
12 considerations of some legislation that was going on in  
13 Illinois.

14 Enron asked me for my economic advice regarding  
15 various bills that were pending. So I offered that  
16 advice. So I may have -- to the extent that I used the  
17 word advocate, I wasn't trying to convince Enron of  
18 anything other than my own particular perspective.

19 I think Enron was probably pretty sold on the  
20 proposition of -- of trying to introduce retail  
21 competition in Illinois already.

22 Q Okay. Let's start with Pennsylvania. In  
23 Pennsylvania, did you -- did you ever visit Pennsylvania?

24 A I did.

25 Q You did. And did you ever appear before their

1 Public Service Commission?

2 A Yes.

3 Q You did. And did you ever appear before the  
4 Pennsylvania Legislature?

5 A No.

6 Q You did not. Okay. Did you participate -- did  
7 you participate in the drafting of legislation in the  
8 state of Pennsylvania?

9 A No.

10 Q You did not. Okay. And then the testimony that  
11 you gave before the Public Service Commission in  
12 Pennsylvania, what was the nature of that testimony and in  
13 what type of proceeding?

14 A As I described earlier, it was -- is -- my  
15 recollection was it was a general consideration by the  
16 Public Utility Commission of whether to implement retail  
17 competition, and, if so, how to design it efficiently so  
18 that consumers would benefit.

19 Q Okay. And then would you presume that was a  
20 rule-making proceeding? Was it a -- was it a rate case?  
21 Do you recall?

22 A I don't recall, Commissioner.

23 Q Do you remember what year that was in  
24 Pennsylvania?

25 A As I mentioned earlier, I can only narrow it

1 down to -- my recollection would be that it would be the  
2 late 1990s.

3 Q Was retail competition present when you were  
4 there, or was it just in the -- under debate of whether it  
5 should be pursued?

6 A Under debate. Or under consideration.

7 Q Okay. Would you have records back in your  
8 office that -- that could -- if we needed could get more  
9 information on the type of testimony that you gave?

10 A No, sir.

11 Q You just destroyed everything?

12 A I -- threw away.

13 Q Threw away, destroyed. Frankly, in light of  
14 events, it may be --

15 A You know what? I understand that Enron's got a  
16 great big black brush across them, and properly so. But  
17 -- but what I guess I would emphasize is the principle I  
18 was advocating, I believe, was -- was economically  
19 meritorious.

20 And so I want to make sure that you understand  
21 that what I was -- what I was proposing was, I believe,  
22 consistent with good, sound economics.

23 Q I understand. I just wanted to see the  
24 background and the analysis that led to that conclusion.  
25 The statements you're giving are very conclusory. They

1 don't suggest the analysis that went along with it.

2           Now you suggest that you threw away all the  
3 documents that would support that analysis. Are you  
4 correct?

5           A     I -- I did not retain a copy of the testimony.  
6 There may be a -- I'm sure it's a matter of public record.  
7 So -- so if -- if need be, if it's important to you, then  
8 we can -- we could probably -- I could probably unearth  
9 it, or you could.

10          Q     Yeah. You could unthrow it away?

11          A     No. I'm -- no. Of course not, Commissioner. I  
12 -- as I said, I didn't retain it in my office. But -- but  
13 we could go back to the Public Utility Commission at  
14 Pennsylvania. You have resources, and I do, too, and we  
15 could both get that. And if it's important to you, I may  
16 do it.

17          Q     Well, it may be. I haven't decided if it's  
18 important to me yet.

19          A     Let me -- let me know.

20          Q     And on your way from Georgetown, Pennsylvania,  
21 you passed through Illinois. Did you ever visit Illinois  
22 in doing your consulting work for Enron?

23          A     Not to my knowledge. No.

24          Q     Okay. Do you recall how much time that you  
25 devoted to your consulting with Enron in the state of

1 Illinois?

2 A No. I think it was -- my -- as I indicated, I  
3 think it was relatively minor, but I wanted to be as  
4 comprehensive to Commissioner Gaw's questions as I  
5 possibly could.

6 Q Do you recall what the purpose of Enron's  
7 project was? Were they seeking retail competition  
8 throughout the country and you were just working on  
9 Illinois, or was it a specific piece of legislation you  
10 were working on?

11 Can you -- and you probably already said this,  
12 and I apologize for being repetitive. But focus me in on  
13 -- on what they were doing and how you were participating  
14 in that effort.

15 A I don't know what Enron was doing nationwide, to  
16 answer the first part of that question.

17 Q Okay.

18 A My involvement with Illinois was, as I  
19 suggested, have just indicated earlier, was rather  
20 peripheral. But -- but was asked, I believe, my opinion  
21 regarding -- again, this goes back to the '90s, so I'm  
22 going to be as accurate as I can given that several years  
23 have passed now -- is that I was asked about various  
24 pieces of legislation that were floating around and the  
25 merit -- their merits in terms of creating retail choices



1 for consumers.

2 Q okay. So --

3 A And that's -- that's pretty much all it was.

4 Q This predated passage of retail competition in  
5 the state of Illinois --

6 A Correct.

7 Q -- we can be clear on the time period that your  
8 participation predated the legislature passing a bill that  
9 authorized it?

10 A That's right.

11 Q Okay. Do you remember how many bills were  
12 actually placed in front of you for review and  
13 consideration, how many versions?

14 A No.

15 Q Do you recall whether you found a good version  
16 versus a bad version or -- or particular schemes or  
17 methods of -- of market design that -- that you testified  
18 in favor or maybe in opposition?

19 A No, I did not. And as I said, I didn't testify  
20 at all in -- in the state of Illinois.

21 Q I understand. But did you provide advice to  
22 Enron on which pieces of legislation were better than  
23 others?

24 A I did offer my opinions. But as I -- as I said,  
25 I can't recall the specifics of any of those particular

1 bills that were floating around.

2 Q Okay. Did -- in doing your work, was your work  
3 performed or -- did you basically convey information to  
4 your client -- and Enron would have been your client at  
5 this point, correct?

6 A Yes.

7 Q How would you convey your conclusions? Would  
8 you call someone on the telephone? Would you give a  
9 Powerpoint? Would you write a paper, write a book? How  
10 would you convey your opinions?

11 A On the telephone.

12 Q Just on the telephone?

13 A Yes.

14 Q So -- so you didn't prepare a written report  
15 with your analysis on the differences in legislation?

16 A No. No. As I said, my involvement was -- was  
17 strictly peripheral in the state of Illinois. I was asked  
18 for -- for some opinions. I probably offered those almost  
19 certainly on the telephone. Never visited the state.  
20 Never wrote anything down. Never did a Powerpoint  
21 presentation.

22 Q Who was your contact person that you dealt with  
23 at Enron?

24 A I don't recall.

25 Q Do you remember anyone at Enron with whom you --

1 you worked?

2 A They didn't make much of an impression, I guess.

3 No, I do not. I'm sorry.

4 Q Did their check clear?

5 A It did. It did at the moment. Yes.

6 Q So you recall that?

7 A I'm glad I went to the bank in a hurry.

8 Q Do you recall how much they paid you?

9 A No. I have no idea.

10 Q Is that some information that you'd be able to  
11 find?

12 A No.

13 Q No?

14 A No. No.

15 Q Sir, did you destroy everything or lose  
16 everything associated with your affiliation with Enron?  
17 It seems like you haven't kept any records. You have no  
18 knowledge of -- of anything specific from this time  
19 period, and it just seems curious to me. Do you have any  
20 explanation?

21 A Yes, I do. And -- and I don't mean to be glib  
22 about that. But -- but I've got a lot of things going on  
23 in my life. I've got a limit -- I've got an office just  
24 like you have an office. I like to keep it as clean as  
25 possible.

1           And when things get really dated, I throw them  
2 away. And there was nothing about that -- that particular  
3 endeavor that I feel like, for professional reasons, I  
4 needed to -- I needed to retain.

5           So I -- it wasn't that I thought, Oh, my gosh,  
6 I've got to get rid of these documents. But -- but I have  
7 retained very, very little from -- from the late 1990s  
8 that I -- that I -- by way of work papers or -- or  
9 analyses or what have you.

10          Q     How many cases regarding electricity have you  
11 testified on in your career, testified before a Public  
12 Service Commission?

13          A     I -- I don't recall.

14          Q     Could you give me a ballpark estimate?

15          A     Five.

16          Q     Fi -- five?

17          A     Five.

18          Q     Okay. Is that in recent years, or would it span  
19 over, say, 20 years?

20          A     It would span back to the late 1970s, actually.

21          Q     So back to the late 1970s. And I guess that  
22 would have -- so, basically, about once every five years  
23 if you were to average it out over -- from 1975 to the  
24 present?

25          A     That's probably about right if you -- if you

1 want to use an average.

2 Q Do you have any other involvement in electricity  
3 dereg -- excuse me -- electricity regulatory matters? I  
4 know in your testimony there's a reference to at least one  
5 book and a few articles. Page 2, there's a reference to a  
6 book, Government and Business. Did you author that?

7 A Yes, I did.

8 Q And is that regarding electricity regulation?

9 A It -- it does involve a lot of work on the  
10 economics of regulation including electricity, but not  
11 limited to electricity.

12 Q What other topics would it get into with regard  
13 to regulation?

14 A Oh, gosh.

15 Q Just -- I don't need the whole list, just a -- a  
16 sampling of what would be included. Telecommunications?

17 A Sure.

18 Q Trucking? Railroad? Airlines?

19 A Yes, yes.

20 Q Each of those things?

21 A Yes.

22 Q Okay.

23 A The text is meant to look at the economic  
24 principles associated with regulation and as they apply to  
25 electricity, telecom, trucking, airlines and so on.

1 Q Okay.

2 A Other works in electricity are in my published  
3 work dating until even most recently in the Journal of  
4 Economics in 2005. I also am on the Editorial Board of  
5 the Journal of Regulatory Economics. And in that  
6 capacity, I review a number of submissions by other  
7 scholars regarding electricity.

8 I was on the Research Advisory Board for the  
9 National Regulatory Research Institute at Ohio State.  
10 There's a variety of other ways I look at electricity  
11 issues and have for the last 25, 30 years.

12 Q Have you ever consulted or advocated on behalf  
13 of either retail competition or deregulation of the  
14 electricity industry in any other state aside from  
15 Pennsylvania and the -- the consulting associated with  
16 Illinois?

17 A No.

18 Q No other states?

19 A (Witness shakes head.)

20 Q Okay. You said that your hourly rate was \$525  
21 per hour --

22 A Yes.

23 Q -- is that correct?

24 A Yes.

25 Q No problem remembering that figure, correct?

1 Are you aware of how many hours that you've put into this  
2 case so far?

3 A No. As I -- as I mentioned to --

4 Q I know. I'm asking the question. And I -- just  
5 please answer the question.

6 A I -- I believe I answered that I can't tell you  
7 exactly the number of hours. I'm happy to provide that.  
8 I'd rather provide you an accurate number. I'm happy to  
9 provide that to you.

10 Q Okay. Have you been here in the hearing room  
11 the last three days?

12 A Yes, I have.

13 Q And how many hours a day would you bill for  
14 association with your testimony here?

15 A It depends on the number of hours. The sooner  
16 you let me go, the sooner I'm off the clock.

17 Q I understand. You're here till Monday. I  
18 understand. How many hours do you plan on billing for  
19 Monday?

20 A Well, I billed -- or I billed -- that's not  
21 right. I was here -- I got up -- let's see. On Monday.  
22 What did I do on Monday?

23 Q Just give me an estimate. I don't need your  
24 daily routine, what you did during the day.

25 A I'm trying to figure that out. If you'll bear

1 with me just a minute, I -- I thought we were trying to --

2 Q I've got as much time as you like.

3 A Okay. On Monday, I flew here. So I got up  
4 early. I flew here, stayed here in -- or -- yes. Quit  
5 about 8:00. So whatever -- whatever those hours.

6 Q You can think out loud. Don't feel like you  
7 need to -- I'm just looking for a total number of hours,  
8 so you don't have to give me a full explanation.

9 A I spent three full days here.

10 Q Three full days. Will that be 24 hours a day or  
11 eight hours, ten hours a day?

12 A No. No. Probably ten.

13 Q Ten hours a day. And do you recall how much  
14 time prior to the hearing, how much time you spent in  
15 preparation of your testimony?

16 A No, I do not. Again, I'm happy to provide that.

17 Q Could you give me an estimate within five or ten  
18 hours?

19 A No, I cannot. And I -- I'm not meaning to be  
20 evasive. I can give you --

21 Q Less than a hundred? More than a hundred?

22 A Certainly, for purposes of getting to the  
23 hearing, less than a hundred. And probably more than 30,  
24 I'd say.

25 Q Okay. Have you done any analysis of retail



1 competition in the states where it was implemented, say,  
2 five or ten years after implementation?

3 A No.

4 Q So -- so in your analysis of the electricity  
5 market, you've never gone back to see what happened in  
6 Texas or Illinois or -- or Pennsylvania?

7 A I have not done that study, no.

8 Q And -- and nothing -- nothing occurring in any  
9 of those states like in Maryland or Illinois or  
10 Pennsylvania would suggest to you to go back and  
11 re-evaluate the work or the things that occurred in those  
12 states?

13 A The only reason I would do so is in the context  
14 of an academic inquiry to see if I could answer a basic  
15 economic research question at this point. And -- and I  
16 haven't seen that that question is -- that a particular  
17 paper or study that -- that really warrants my attention  
18 relative to some other things.

19 It's not to say that it's not an important  
20 issue. There are a number of people I suspect that are  
21 focusing on those issues. But at this point, it just  
22 isn't the subject of my academic pursuit.

23 Q Is it your testimony that you're not aware of  
24 what's going on in the state of Illinois with their  
25 electricity prices?

1           A     I am not aware of electricity prices in  
2 Illinois. That's correct.

3           COMMISSIONER CLAYTON: Okay. Thank you very  
4 much. Appreciate your patience.

5           JUDGE WOODRUFF: All right.

6           COMMISSIONER MURRAY: Judge, just a little bit.

7           JUDGE WOODRUFF: Go ahead.

8                                CROSS-EXAMINATION

9 BY COMMISSIONER MURRAY:

10          Q     Dr. Mayo, I'm just going to follow up a little  
11 bit because it was my understanding that from an economic  
12 perspective you believe that competition is good; is that  
13 -- is that accurate?

14          A     Yes, I do.

15          Q     And I did hear you say earlier that there is a  
16 -- a vast difference in how it is applied or how it --  
17 different states can go about attempting to do retail  
18 competition? Is that accurate as well?

19          A     Sure. More generally, in -- in moving from a  
20 regulated world to a deregulated world, there are many  
21 paths to take. And public policy can either get that  
22 right or get it wrong.

23          Q     And it can very definitely get it wrong; is that  
24 correct?

25          A     No doubt about it. I think it doesn't -- and

1 the point I was trying to make a moment ago is that I  
2 don't think it -- it in any way overturns or mitigates the  
3 fundamental economic proposition that competition has a  
4 variety of beneficial effects if you do it right.

5 Q That was what I was going to ask you and follow  
6 up on because I was going to ask you if it would surprise  
7 you at all that retail competition would not be successful  
8 if it were implemented in such a way that there were price  
9 caps put on as it was beginning, and then at the time  
10 those price caps were to expire, the legislature started  
11 hearing from constituents about price increases and passed  
12 a law that those caps still had to remain in place, and  
13 things of that nature.

14 Would that surprise you that retail competition  
15 were royally messed up by that kind of policy?

16 A Well, I can't -- I can't speak to the -- to the  
17 specifics. And -- but -- but along the way of moving to  
18 competition, your question sort of evokes the general  
19 proposition that lots of -- there are lots of cooks in the  
20 kitchen.

21 And -- and in that world, it's no different than  
22 the world of this particular public hearing, this rate  
23 hearing. You've got lots of cooks in the kitchen here,  
24 and everybody advocates what is in their own particular  
25 interest.

1           It's the job of policy makers to -- to cling to  
2 the good, solid economic principles, I would say, and not  
3 be swayed by narrow advocacy positions.

4           Q     And if --

5           A     No matter who that is.

6           Q     And there is a popular movement that the  
7 politicians are buying into and ignoring economic policy,  
8 then that can, indeed, cause retail competition to look as  
9 if it would be unsuccessful. Would you agree?

10          A     Again, I can't speak to the specifics. But --  
11 but if the presumption is that -- that policy makers might  
12 deviate from -- from smart -- the implementation of smart  
13 economic policy, then, of course, as I was suggesting  
14 earlier, things can get really screwed up in the  
15 implementation.

16                  And the concern that I have is that -- that --  
17 that the principle of -- of competition, which is so  
18 well-served in this nation and our economy, gets the black  
19 eye as opposed to bad implementation of a good economic  
20 policy.

21          Q     And -- and your testimony that you have given in  
22 the past would have been in support of good economic  
23 policy; is that correct?

24          A     From my perspective, it is, yes.

25          Q     And, also, I think it was made -- and I hear

1 this frequently with people who have in some way been  
2 associated with Enron that they get a black eye just by  
3 association. And I am assuming that -- that that is not a  
4 -- a valid characterization of your connection with Enron.

5           If your connection with that company was for  
6 purposes of giving sound economic advice, would you agree  
7 with that?

8           A     I -- I do. I -- what I tried to do with that  
9 particular endeavor, as I do in every single time I step  
10 out of the academic realm to provide economic policy  
11 advice, is to provide that advice as consistently as I  
12 possibly can with the discipline of economics as I know it  
13 today.

14           And that's it pure and simple. And -- and so my  
15 loyalty there is not to Enron or Ameren or any other  
16 party, but to good economic principals. And we may  
17 disagree on -- agree or disagree on the merits of that.

18           But it would be a bit of a shame to -- to, I  
19 think, sort of suggest that -- that -- that the -- the  
20 fact that I had an advocacy or a position with -- with  
21 providing economic advice to Enron somehow diminishes my  
22 credibility in this particular context unless someone  
23 wants to talk to me about the good economic principles.

24           COMMISSIONER MURRAY: Thank you.

25           JUDGE WOODRUFF: All right. Does anyone wish to

1 recross based on questions from the Bench? Mr. Mills, go  
2 ahead.

3 MR. CONRAD: Judge, I started to raise my hand,  
4 but I would have to acknowledge that on a microeconomic  
5 basis that my marginal propensity to consume has already  
6 been exceeded by this witness, and I can't afford to ask  
7 him anything.

8 JUDGE WOODRUFF: All right. Thank you very  
9 much, sir. All right, Mr. Mills.

10 RECROSS EXAMINATION

11 BY MR. MILLS:

12 Q I believe it's been your testimony in response  
13 to questions from the bench that you believe retail  
14 competition in the electric utility industry is a good  
15 idea; is that correct?

16 A Let me say that I believe that competition, if  
17 properly implemented -- and that I think was the nature of  
18 the questions that I received -- competition, if properly  
19 implemented is a -- is and can be a very good thing.

20 Q So you're -- you're caveating, if I may create a  
21 word, your answer with the if properly implemented phrase;  
22 is that correct?

23 A Yes.

24 Q Okay. And I understand that you -- that you  
25 don't -- that you're not following political developments.

1 But assume for the purposes of my question that things  
2 have gone fairly far awry in Illinois and that prices are  
3 considerably higher as a result of electric competition  
4 than they would have been -- the way it was implemented in  
5 Illinois than they would have been otherwise. What could  
6 have gone wrong?

7 A That -- that's a very big question. And I -- I  
8 don't mean to -- to duck it, but it -- but -- but I don't  
9 know.

10 Q Okay.

11 A I don't know what could have gone wrong in that  
12 particular context. I will say that -- that, as a general  
13 proposition, if you, as a consumer, are given a choice  
14 between Company A and Company B that that's a very healthy  
15 thing because it gives you control as a consumer that you  
16 didn't have in -- in a monopoly era.

17 Q When you advocated for retail competition in  
18 Pennsylvania and Illinois, did you analyze the possible  
19 pitfalls of improper implementation?

20 A I think the answer is yes. It was not an  
21 ideologically -- simply an ideological position, but,  
22 rather, it would have been tempered by implementation  
23 issues.

24 Q What were some possible pitfalls that you looked  
25 at in those two states?

1           A     The only thing that I can remember -- and I'm  
2 trying very hard. The only thing that I can remember is  
3 that I -- there was a mismatch, if I recall. And this may  
4 have been in Illinois. There may have been a mismatch in  
5 the -- in the deregulatory process and the implementation  
6 of competition.

7                     And allow me just to describe it in sort of  
8 generic terms. But -- but if you move from a monopoly era  
9 and you say, okay, we're going to introduce choice, and if  
10 we get competition, then competition can be the  
11 disciplinary force in the market place, hopefully, instead  
12 of regulation. And that would be -- that would be --  
13 holding everything else equal, that would be a very good  
14 thing.

15                    But if what happens is -- and if what happens is  
16 you relax regulation before you implement the competition,  
17 that's a screw-up. And I -- and I would have advocated  
18 against that.

19                    And as I recall, there was some mismatching  
20 principles going on there, a mismatching of the timing in  
21 that regard. And, again, I think -- I gather I'm the only  
22 person in this room that hasn't followed this, so -- so --  
23 so -- but that's -- that's the general -- that's the best  
24 I can recall about implementation issues that I had at the  
25 time.



1 Q So assume -- assume with me that things have not  
2 gone well in Illinois. Does that point out a lesson that  
3 it is somewhat risky to make changes to regulatory regimes  
4 that have been working fairly well?

5 A Yes. I think so.

6 Q Okay.

7 A Yes.

8 MR. MILLS: Thank you. That's all I have.

9 JUDGE WOODRUFF: All right. Redirect then?

10 MR. BYRNE: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. BYRNE:

13 Q Dr. Mayo, earlier, Mr. Micheel was asking you  
14 some questions about the fact that AmerenUE hadn't had a  
15 rate case in 20 years and historically cost savings have  
16 offset fuel costs. Do you remember those questions?

17 A Yes.

18 Q And -- and let me ask you this. "Does the fact  
19 that that happened historically suggest that that's what's  
20 going to happen in the future?"

21 A No, it does not.

22 Q Are -- are there reasons to believe that  
23 AmerenUE can't go 20 years without a rate case, without a  
24 fuel adjustment clause in the future?

25 A My reading of the testimony is yes, that -- that

1 Ameren is, in the face of input price changes, quite  
2 likely to need to press forward with -- with additional  
3 rate cases that could be mitigated by the adoption of a  
4 fuel adjustment clause. And that -- from my perspective,  
5 that has a number of economic benefits.

6 Q Mr. Micheel also asked you about regulatory lag.  
7 And I think specifically he asked you if there was a fuel  
8 adjustment clause, wouldn't that take away the regulatory  
9 lag aspect of -- of fuel costs. Do you remember that  
10 question?

11 A Yes.

12 Q And I -- and I think you started to say -- you  
13 might have been stopped, but -- but are there benefits to  
14 regulatory lag that come with having a fuel adjustment  
15 clause?

16 A Yes, there are. These -- the benefits of  
17 regulatory lag and then -- acknowledged in the economic  
18 literature going back to the -- to the early 1980s. And  
19 the -- as a -- as a general matter, if -- if -- what  
20 happens is the time between rate cases is -- is elongated.

21 Then for the period of -- between those -- those  
22 rate cases, then the utility realizes that they didn't  
23 make benefit from cost reductions that it might undertake.

24 And that incentive to do that is in everybody's  
25 interest. It's in the company's short-run interest to get

1 those costs down. And it's in consumers' interest because  
2 once that rate case does happen, costs can be adjusted if  
3 costs are -- if regulation is rate base rate of return  
4 regulation, then those costs can be adjusted downward. So  
5 that incentive mechanism will -- will motivate firms to  
6 reduce their costs.

7 Q And even if you have a fuel adjustment clause,  
8 that incentive would apply to non-fuel costs; is that  
9 correct?

10 A That is absolutely true. Now, I understand that  
11 fuel costs may be a third of Ameren's cost. So there's a  
12 large chunk of cost out here over which Ameren the  
13 adoption of a fuel adjustment clause mechanism would --  
14 would allow for that regulatory lag extending the period  
15 between rate cases and -- and create that incentive on  
16 those non-fuel costs.

17 Q Okay. I -- I think also in response to a  
18 question from Mr. Micheel you referred to fuel costs as  
19 largely uncontrollable. Do you remember that question and  
20 answer?

21 A Yes, I do.

22 Q And -- and let me ask you specifically about  
23 some of the fuel costs. Are the costs of Powder River  
24 Basin coal within AmerenUE's control?

25 A Let me say that I'm going to rely on Mr. Neff's

1 testimony in this regard. But my understanding, based on  
2 Mr. Neff's testimony, is that -- that -- and my own  
3 general understanding of economics is that prices --  
4 prices for these, whether it's coal or gas or what have  
5 you, are largely or are completely out of the control of  
6 -- of Ameren.

7 Q How about nuclear fuel assemblies? Do you think  
8 the cost of nuclear fuel assemblies is within the control  
9 of Ameren?

10 A I'm not an expert with that. It's my  
11 understanding that those prices are, again relying on  
12 Mr. Neff's testimony, largely, if not completely, outside  
13 of the control of Ameren.

14 MR. MICHEEL: I'm going to ask that that answer  
15 be stricken because I don't think that Mr. Neff talks at  
16 all about nuclear fuel at all. He talks about coal.

17 JUDGE WOODRUFF: I'll sustain that objection.

18 Q (By Mr. Byrne) Okay. In response to another  
19 question from Mr. Mills, you suggested that it might take  
20 six people to -- to -- six staffers at the Public Service  
21 Commission. Do you remember that question and answer to  
22 administer --

23 A Yes.

24 Q Or -- yeah. Administer a fuel adjustment clause  
25 and the prudence and things. Is it possible that staff

1 could be reassigned who would otherwise be doing  
2 full-blown rate cases to that function?

3 MR. DOTTHEIM: Objection. That's speculation.

4 JUDGE WOODRUFF: Sustained.

5 Q (By Mr. Byrne) Well, let me ask you this: Do  
6 you have any reason to expect that Missouri is uniquely  
7 incapable of administering a fuel adjustment clause?

8 A No. My understanding is that a number of states  
9 have adopted fuel adjustment clauses and have done so  
10 successfully. And the question that -- that I think  
11 people are wrestling with here is what will happen to --  
12 to the totality of regulatory costs in the event that a  
13 fuel adjustment clause mechanism is adopted.

14 And what I've heard over the first couple of  
15 days of the hearing is a focus strictly on the added  
16 auditing and surveillance costs associated with  
17 implementing the fuel adjustment clause.

18 And I -- that's fine. You can look at that.  
19 But the -- the real -- the real key is if you are burying,  
20 let's say, \$500 worth of additional cost -- regulatory  
21 cost to implement a fuel adjustment clause, but if you're  
22 saving \$6 million by a deferred rate case, then it's a bit  
23 of a no-brainer as to what happens to the regulatory cost  
24 there. It's a smart thing to do in terms of reduced  
25 regulatory cost.

1           MR. BYRNE: Thank you. That's all the questions  
2 I have.

3           COMMISSIONER GAW: Okay. I've got to ask a  
4 question after that. I'm sorry, Judge.

5                           RE CROSS EXAMINATION

6 BY COMMISSIONER GAW:

7           Q     What are you basing that -- that last answer on?  
8 Where do you get that information?

9           A     The -- the short answer, I think, is -- is this:  
10 That the -- I'm -- I think I said maybe half a million  
11 dollars on -- added costs for auditing and surveillance.

12                   And the way I got to that is -- is by thinking  
13 of, say, six or seven people at about 70 -- \$50,000 worth  
14 of salary plus 40 percent sort of -- of overhead, not  
15 fully loaded costs --

16          Q     And you came up with those figures how?

17          A     -- is how -- I asked the folks at -- when this  
18 issue came up. I think actually part of the questions  
19 that you had asked yesterday prompted me to say, well,  
20 gee, I wonder what those -- how many people does it -- did  
21 it cost because I think you're -- you're boring in on an  
22 interesting and useful piece of information.

23                   How much is it going to cost? Well, if it cost  
24 -- I didn't know what an auditor cost, so I -- so I asked  
25 the folks at Ameren. I said, Can you tell me what it

1 costs for those auditors? There's an auditor over on the  
2 gas side. So let's take their salaries. The numbers that  
3 they floated back to me were about \$50,000. And I  
4 thought, well, gee, let's use a loading factor of about 40  
5 percent. And that gets you to about \$70,000.

6 Q So your calculation of the 500 million was --  
7 was based upon your back of the envelope calculations from  
8 things you heard in the hearing room yesterday?

9 A It was motivated by things I heard in the  
10 hearing room yesterday, but --

11 Q But you did research last night after we got out  
12 of the hearing?

13 A Correct.

14 Q And your research was done where?

15 A Down the hall -- down the -- down the road at  
16 Ameren's office.

17 Q What research did you do at their office last  
18 night?

19 A I -- I asked how much does an auditor cost.

20 Q Who did you ask that of?

21 A Will. I -- I don't know his last name.

22 Q Okay. And he gave you that information so that  
23 -- and that -- and this Will, is he -- is he an employee  
24 of Ameren?

25 A My understanding is that's right.

1 Q You're not sure?

2 A He -- I presume he is an employee. In fact, he  
3 indicated to me that he had -- he was with Ameren, yes.

4 Q Okay. Is he testifying in this case?

5 A No. Not to my -- well, I don't know is the  
6 answer.

7 Q It might be a little difficult to discern  
8 whether -- what research he did in coming up with those  
9 figures; is that correct?

10 A Let me -- yes. Let me say that I -- I guess  
11 more than --

12 Q What else did you do as research last night  
13 besides talk to Will?

14 A The -- the -- well, to get to that particular  
15 answer that we were just talking about, I thought, well,  
16 let's try to get to a point of understanding of the added  
17 regulatory costs associated with auditing relative to the  
18 costs associated with the forgone rate case. That's how  
19 it was.

20 Q You came up with these figures based on the  
21 auditing cost of salaries based upon Will telling you what  
22 he thought the figure was. And then what other  
23 information did you get in regard to the -- to the total  
24 number that you -- that you have on the fuel adjustment  
25 mechanism being aud -- implemented and audited? What



1 other research did you do?

2 A The -- the process that I went through was that  
3 I was aware that there are -- there is a fuel adjustment  
4 clause mechanism on the -- on the gas side in Missouri.

5 And my understanding is -- and so I thought, well, I  
6 think there are -- there was some testimony in this  
7 particular case that -- and I think it's in Mr.  
8 Trippensee's testimony. I can't -- I'm not sure which  
9 particular testimony, but I believe that's correct that on  
10 the gas side there are six auditors.

11 And those six auditors audit a volume of gas  
12 business that is on the nature of, I want to say, a  
13 billion eight or something like that worth of gas  
14 revenues. Or there's -- or gas revenues are that in the  
15 state.

16 I looked at gas revenue and then assumed that --  
17 I think that about two-thirds of the costs of gas revenues  
18 were -- were -- were -- were fuel costs. So I said okay.  
19 Well, that -- that -- so six auditors gets you to -- to  
20 audit -- call it \$1.2 billion worth of -- of gas.

21 So -- so I used that ratio applied to Ameren  
22 with its revenues to try and turn back into a thought of  
23 how much additional auditing costs or manpower would be  
24 necessary --

25 Q Okay.

1           A     -- for -- in the event of an adoption of a fuel  
2 adjustment clause mechanism, and that's what he thought.

3           Q     Okay.

4           A     And that gets you to about half a million  
5 dollars.

6           Q     Okay. You were doing a comparison of revenues  
7 between gas and electric with Ameren?

8           A     And scaling it -- and scaling it back by a  
9 portion of costs that are fuel related. That's right.

10          Q     I see. I see. And did you also consider the  
11 fact that off system sales and purchases were going to be  
12 a part of the review that would have to be done by the --  
13 by the Staff?

14          A     Yes, I did.

15          Q     Okay. And that's not something that -- that --  
16 well, let me ask you this: Do you think that the nature  
17 of reviewing all of the electric transactions that occur  
18 during a year's period of time on off system sales that  
19 were made or that could have been made and purchases that  
20 were made or could have been made are in any way  
21 comparable to the number of -- or type of transactions  
22 that occur on the gas system by an LDC?

23          A     You're -- you're boring in too much for me. I  
24 don't have that expertise. I can't answer that. I don't  
25 remember -- I'm -- I'm using --

1 Q You didn't take that in --

2 A I'm using dollars.

3 Q You didn't take that into consideration,  
4 correct?

5 A I did not know how to -- whether it cost more to  
6 audit on the electricity side or on the gas side. It was  
7 using dollars as the denominator.

8 Q Okay. Now, on the other side, you said you  
9 threw out a figure of \$6 million. How did you come up  
10 with that? That's -- that's for a rate case expense?

11 A Again, just the sort of general thought here was  
12 how much does a rate case cost? I -- for the  
13 out-of-pocket, my understanding is from Ameren that the  
14 sort of costs are roughly 3 to \$4 million for putting on a  
15 rate case.

16 Q Did you get this from Will?

17 A No.

18 Q Who -- who did you get that from?

19 A I -- honestly, I don't recall who floated that  
20 number to me.

21 Q Somebody with Ameren?

22 A That's correct.

23 Q Last night?

24 A Yes. Yesterday evening after the hearing.

25 Q Now, what assumption did you make about the

1 frequency of -- of the rate case filings in your weighing  
2 of these two alternatives, fuel adjustment or not?

3 A What I tried to -- what I assumed was, and it  
4 may or may not be accurate, but for purposes of trying to  
5 get a number -- a number that would be useful to you, I  
6 assumed that if you had a fuel adjustment clause  
7 mechanism, you would incur those costs, let's say, three  
8 years.

9 And -- and so let's call it half a million  
10 dollars a year for three years. That's a million and a  
11 half dollars that you would incur. And you would compare  
12 that and say, well, if -- if the adoption of that fuel  
13 adjustment clause mechanism eliminates the need for one  
14 rate hearing that costs you -- you put in the number you  
15 like if you don't like the number that I've gone with, but  
16 let's say four to \$6 million.

17 Then you get a regulatory reduction associated  
18 with the fuel adjustment cost mechanism that's pretty  
19 pronounced.

20 Q And your assumption is based upon -- is it pace  
21 based upon anything in the history of Ameren's filing for  
22 rate cases that we have seen in the last 20 years?

23 A I don't understand what you asked.

24 Q I'll ask it again.

25 A Thanks.

1           Q     Maybe I'll do it differently.  Is that  
2     assumption about the extra rate case filing that might  
3     occur based upon Ameren's actions in filing rate cases in  
4     the last 20 years?

5           A     It is not based on historical filing of rate  
6     case.  It's based on the testimony.  The Ameren officials  
7     in this case that have suggested they will, absent a fuel  
8     adjustment clause, need to come in more frequently for  
9     rate cases.

10          Q     More frequently than once every 20 years?

11          A     You'll have to look at specific testimonies that  
12     may have been offered, but I believe they're -- they  
13     suggest that they would have to come in, and, again, I  
14     don't want to mischaracterize their testimony, either --  
15     regularly, annually, quite frequently are the terms that  
16     come to my mind.  I don't want to injustice to say that's  
17     what they testified to.

18          Q     You made an assumption about how often they  
19     would come in.  And the thing you threw out just a while  
20     ago is -- can you point to something specifically in the  
21     testimony that -- that supports your assumptions?

22          A     I -- I can't point to a line and a -- a page and  
23     a line.  But my best recollection is --

24          Q     That's -- that's okay.  If you --

25          A     -- that it's included in Mr. -- in the testimony

1 of the Ameren witnesses.

2 Q Something that supports your -- your assumption  
3 that they'd be in here --

4 A More frequently.

5 Q -- more frequently than -- than what is required  
6 under Missouri statute with the fuel adjustment clause?

7 A That is my understanding.

8 Q Where is that?

9 A And, again, I can't point to the particular --

10 Q Did you look at it last night while you were  
11 talking to the Ameren people?

12 A No, I did not. It was based on my -- my  
13 understanding based on having read the article -- the  
14 testimony earlier.

15 Q But you're not sure exactly what it said as you  
16 sit here today?

17 A What -- what I --

18 Q Is that correct or not?

19 A I can't quote you their testimony, but I believe  
20 it is quite accurate to say that -- that Ameren witnesses  
21 indicated that in the absence of an ability to adjust  
22 their prices consistent with changes in wholesale prices  
23 that they would to be back in here filing a rate case more  
24 frequently.

25 And I think the difference is you're saying it

1 is more frequently than 20 years or -- or is it my  
2 interpretation, meaning they're more likely to file it in  
3 a year or two? My understanding -- my understanding --  
4 again, I don't have the testimony right here in front of  
5 me, but is there will be more -- that my understanding is  
6 -- is right.

7 Q But you can't point to me anything that -- that  
8 says that that's correct, No. 1, correct?

9 A I --

10 Q You can't sit there and point it to me -- out to  
11 me now?

12 A No, sir.

13 Q And, No. 2, this is based entirely upon Ameren's  
14 suggestion that they would come back in here more  
15 frequently if they didn't get what they wanted in the fuel  
16 adjustment clause?

17 A It is -- it is based on the testimony of --

18 Q Is that accurate, what I just said?

19 A Could you repeat it, please, then?

20 Q I'll have the court reporter read it back.

21 A Thank you. I just want to be as accurate as I  
22 can.

23 (The previous question was read back.)

24 A I believe the answer is no. It's based on my  
25 understanding that there is testimony, not a suggestion,

1 but that there's testimony from Ameren. And that's why I  
2 wanted you to repeat it is that -- is that -- and I can't  
3 -- and I'll go back and say again that -- that I can't  
4 point to that testimony right this minute, but I believe  
5 it exists.

6 And -- and I'm happy perhaps as a -- as a  
7 late-filed exhibit to -- to suggest -- or something to go  
8 back and read their testimony, and I'll be happy to stand  
9 corrected if it does not exist.

10 Q What part of that -- of that question do you  
11 disagree with?

12 A The word suggestion.

13 Q Is that the only disagreement you have with it?

14 A Yes.

15 Q Change the word and tell me if you agree with it  
16 then.

17 A I'll ask for her help again.

18 (The question was read back again.)

19 A As the court reporter just read that, you and I  
20 are in complete agreement.

21 COMMISSIONER GAW: Okay. I think I'm done  
22 Judge. Thank you.

23 JUDGE WOODRUFF: All right. Any recross based  
24 on those questions from Commissioner Gaw? Any redirect  
25 based on those questions?



1 MR. BYRNE: Just one question, your Honor.

2 JUDGE WOODRUFF: I hope you're not going to  
3 bring up any new information.

4 MR. BYRNE: No.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. BYRNE:

7 Q I've just got -- I've got Mr. Lyons' surrebuttal  
8 testimony in connection with what Commissioner Gaw was  
9 just asking you. Could you take a look at -- and I'm on  
10 his surrebuttal testimony, page 8, line -- well, maybe  
11 starting at line 4, if you could read that couple of  
12 sentences.

13 A Okay. It begins, "Those increases alone  
14 ignoring likely increases in labor and other operating and  
15 maintenance costs simply due to the operation of normal  
16 inflationary pressures would significantly and quickly  
17 erode Ameren's rate of return and absent adoption of a FAC  
18 would very likely necessitate one or more additional rate  
19 cases in the near term."

20 Q Is -- is that perhaps the testimony you were  
21 thinking of when you were talking to Commissioner Gaw?

22 A Yes.

23 MR. BYRNE: Thank you.

24 JUDGE WOODRUFF: Is there anything else?

25 MR. BYRNE: No.

1                   JUDGE WOODRUFF: And this is -- I believe is  
2 Mr. Mayo's only appearance today? Or in this proceeding?  
3 Or will he be back later?

4                   MR. LOWERY: No. Your Honor, this is his only  
5 appearance.

6                   JUDGE WOODRUFF: Then we need to offer his  
7 testimony.

8                   MR. BYRNE: I would offer Exhibit 22, your  
9 Honor.

10                  JUDGE WOODRUFF: All right. 22 has been offered  
11 into evidence. Are there any objections to its receipt?  
12 Hearing none, it will be received into evidence.

13                  (Exhibit No. 22 was offered and admitted into  
14 evidence.)

15                  JUDGE WOODRUFF: And, Mr. Mayo, you can step  
16 down.

17                  MR. MAYO: Thank you.

18                  JUDGE WOODRUFF: And it is time for lunch.

19                  MR. CHAMBERLAIN: Judge, could I take care of  
20 one housekeeping matter before we take a break? Kevin  
21 Higgins, the Commercial Group's witness, is scheduled for  
22 today. Judging from where we're -- where we are at in the  
23 list of witnesses, I'm thinking we're probably not going  
24 to get to him today.

25                  And he -- he is going to be back to testify on

1 the EEI issues next week or whenever those come up. So I  
2 have suggested to some of the counsel that perhaps we  
3 release my witness today. And then when he comes back,  
4 they can cross him on fuel adjustment cause issues or off  
5 system sales issues if they have any cross.

6 JUDGE WOODRUFF: Does anybody have any objection  
7 to doing that?

8 MR. BYRNE: No objection, your Honor.

9 JUDGE WOODRUFF: All right. We will do that,  
10 then. So Mr. Higgins will be excused for today, and we'll  
11 see him again next week.

12 MR. CHAMBERLAIN: Thank you, your Honor.

13 JUDGE WOODRUFF: All right. Thank you. Let's  
14 take a short lunch break. We'll come back at 1:30.

15 (Break in proceedings.)

16 JUDGE WOODRUFF: All right. Let's come to  
17 order, please. All right. Before we get started on the  
18 -- the witnesses, I do have a little bit of information  
19 that may be of help to some of you.

20 We spoke late yesterday about reserving a couple  
21 of conference rooms for the use of the parties for  
22 discussions and various things going on outside the  
23 hearing. We can get those two rooms across the hallway  
24 for the rest of this week. I'll leave 305 open if anybody  
25 asks me to. But I do have a schedule for rooms we have

1 reserved for the next two weeks starting on March 19th.

2 So I'll pass these -- if somebody would pass  
3 these out for me. They're available if you'd like use  
4 them.

5 MR. LOWERY: Thank you.

6 JUDGE WOODRUFF: All right. And I see Mr. Neff  
7 has taken the stand. If you'll raise your right hand,  
8 I'll swear you in.

9 ROBERT NEFF,  
10 being first duly sworn to testify the truth, the whole  
11 truth, and nothing but the truth, testified as follows:

12 JUDGE WOODRUFF: All right. You may inquire.

13 MR. BYRNE: I tender Mr. Neff for  
14 cross-examination.

15 JUDGE WOODRUFF: Okay. And Mr. Neff will be  
16 testifying again later, also?

17 MR. BYRNE: (Mr. Byrne nods head.)

18 JUDGE WOODRUFF: Okay. Well --

19 MR. MICHEEL: This is it?

20 MR. BYRNE: I think this is it. Yeah.

21 JUDGE WOODRUFF: All right. Do you want to go  
22 ahead and offer his testimony now?

23 MR. BYRNE: Sure. I guess so, your Honor. I  
24 would offer the direct testimony, which is Exhibit 14-HC  
25 and NP, and then two sets of rebuttal testimony. The

1 first set of rebuttal testimony is Exhibit 15-HC and  
2 15-NP. And then the second set of rebuttal testimony is  
3 Exhibit 16-HC and Exhibit 16-NP. So I would offer all  
4 those exhibits.

5 JUDGE WOODRUFF: All right. Exhibits 14, 15 and  
6 16 HC and NP on all of those have been offered into  
7 evidence. Are there any objections to its receipt?  
8 Hearing none, they will be received into evidence.

9 (Exhibit Nos. 14-HC, 14-NP, 15-HC, 15-NP, 16-HC  
10 and 16-NP were offered and admitted into evidence.)

11 JUDGE WOODRUFF: And for cross-examination,  
12 begin with Aquila, Laclede, Joint Bargaining Committee,  
13 DNR, Retailers Association, MO-KAN, MASW, MIEC, Commercial  
14 Group, MEG, AARP, Noranda?

15 MR. CONRAD: Judge, I just have one question.

16 JUDGE WOODRUFF: All right.

17 CROSS-EXAMINATION

18 BY MR. CONRAD:

19 Q Mr. Neff, is your hourly rate less than \$525 an  
20 hour?

21 A Much less. Yes.

22 MR. CONRAD: Thank you. That's all.

23 JUDGE WOODRUFF: All right. For the State?

24 CROSS-EXAMINATION

25 BY MR. MICHEEL:

1 Q Hello, Mr. Neff.

2 A Good afternoon.

3 Q Just bear with me while I get situated.

4 A Go right ahead.

5 Q I've got bit of a cold. Is it correct,  
6 Mr. Neff, that you view -- you view UE's hedging problem  
7 as highly effective procurement?

8 A Yes, I do.

9 Q Would you agree with me that the vast majority  
10 of the entire year 2007 coal needs were locked in at fixed  
11 prices and hedged?

12 A That's correct. Would you agree with me that  
13 prices for the hedged 2007 PRB coal are known with  
14 certainty?

15 A That's correct.

16 Q Would you agree with me that UE knows exactly  
17 how much higher the 2007 PRB coal costs will be?

18 A Yes.

19 Q Would you agree with me that rate case fuel  
20 expense is going to be trued up to include all locked-in  
21 prices for the 2007 PRB coal?

22 A Yes. It will be true as of the January 1, 2007,  
23 price.

24 Q Just for the record, when I say PRB, you and I  
25 understand that's Powder River Basin?

1           A     Yes.

2           Q     And that's a basin out in the Wyoming area?

3           A     That's correct.  South of Gillette, Wyoming.

4                   MR. MICHEEL:  I think these are all HC, your  
5 Honor.  I'm going to have a lot of HC, just given the  
6 nature of this witness's testimony.

7                   JUDGE WOODRUFF:  All right.  So we need to go  
8 in-camera?

9                   MR. MICHEEL:  Yes.  I think we do.

10                  JUDGE WOODRUFF:  All right.  At this point,  
11 then, we will go in-camera.

12                  REPORTER'S NOTE:  At this point, an in-camera  
13 session was held, which is contained in Vol. 18, pages 882  
14 through 899.

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1 CONTINUED CROSS-EXAMINATION OF ROBERT NEFF

2 BY MR. MICHEEL:

3 JUDGE WOODRUFF: We will come back into regular  
4 session, then.

5 Q (By Mr. Micheel) Would you agree with me, Mr.  
6 Neff, that you expect the coal costs will increase  
7 steadily over the next five years?

8 A Yes, we do.

9 Q And is that knowledge primarily based because of  
10 your hedging program and -- and the way it's operated --

11 A Yes.

12 Q -- without getting into the HC specifics?

13 A Correct. Correct.

14 Q And so at least for the next five years, that  
15 program has got some things in place to work on those coal  
16 prices; is that correct?

17 A On a declining basis as you move further out  
18 into the future.

19 Q And -- and let me just check here in your  
20 testimony where I'm asking.

21 A Okay.

22 MR. MICHEEL: I'm sorry, your Honor. This is  
23 HC.

24 A I'm --

25 JUDGE WOODRUFF: Okay. I don't think anybody



1 else came back into the room, so we will go back to the  
2 confidential in-camera section. Just let me get in here  
3 first.

4 MR. MICHEEL: Sorry.

5 THE COURT REPORTER: I need to change paper  
6 before we start.

7 JUDGE WOODRUFF: Okay. It's a good time to do  
8 it.

9 REPORTER'S NOTE: At this point, an in-camera  
10 session was held, which is contained in Vol. 18, page 902  
11 through 910.

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1 CONTINUED CROSS-EXAMINATION OF ROBERT NEFF

2 BY MR. MICHEEL:

3 JUDGE WOODRUFF: We're back in general session.

4 Q (By Mr. Micheel) And this -- and this chart on  
5 page 4 of your February rebuttal testimony shows the price  
6 history of natural gas and oil; is that correct?

7 A Page 4 shows the price history and volatility of  
8 natural gas.

9 Q Oh, I'm sorry. I'm on --

10 A Page 5 shows crude oil and heating oil price and  
11 volatility.

12 Q And would you agree with me that UE uses very  
13 little oil and gas for its generation?

14 A I believe our gas purchases for generation are  
15 around 40 million versus roughly 550 million for coal,  
16 so --

17 Q Well, in terms of percentages, you use very  
18 little oil and gas; isn't that correct?

19 A For generation percentages, yes. That's  
20 correct.

21 Q I mean, you didn't even mention oil and gas  
22 volatility in your direct testimony, did you, Mr. Neff?

23 A No, I did not.

24 Q But you did -- you did mention in your direct  
25 testimony that 79 percent of the generation is coal fired

1 and most of the rest is nuclear purchase or purchased  
2 power, did you not?

3 A May I look back, please?

4 Q Yes, sir. And I'm not -- maybe my recollection  
5 of that is wrong, but -- line -- page 3.

6 A I do mention on line 14 on page 3 that AmerenUE  
7 will generate 79 percent of its electricity from coal  
8 fired power during the test year.

9 Q And how much during the test year will be nukes?

10 A I don't think I know the exact number for that.

11 Q You do or do not?

12 A I do not.

13 Q Well, let me ask you this: Do you know if  
14 Callaway is a base load plant?

15 A Yes, it is.

16 Q Is it one of the lower order of dispatch plants?

17 A Yes, it is.

18 Q So would it run as often as it could?

19 A That's correct.

20 Q So if I told you in other people's testimony or  
21 I've seen documents that show it's like 10 percent of your  
22 generating capacity, you wouldn't quibble with me?

23 A I would believe that, yes.

24 Q So would you accept the 10 percent number so  
25 that would put us at 89 percent?

1 A Right.

2 Q And the purchase power, what do you know about  
3 that, if anything? And if you don't, that's okay.

4 A No. I'm not really involved with purchase  
5 power.

6 Q Okay. Lucky you.

7 A Yeah.

8 Q Would you agree with me that the prices are  
9 actually paid by UE for coal after hedging and risk  
10 management have not doubled or tripled within the last few  
11 months like natural gas and oil?

12 A Yes. I would agree with that.

13 Q Now, on page 6 of your February rebuttal  
14 testimony, sir, you indicate that the charts indicate that  
15 coal prices have been about as volatile as heating oil,  
16 crude oil but less volatile than natural gas; is that  
17 correct?

18 A Let me get there, please.

19 Q Yes, sir.

20 A Page 6?

21 Q Yes, sir. The question starts on line 1, sir,  
22 and goes through to line 5.

23 A Yes. I did say that.

24 Q And there you're talking about, and correct me  
25 if I'm wrong, spot coal prices, not contractually hedged

1 prices that UE actually pays, correct?

2 A Yes. That's comparing the spot coal volatility  
3 chart to natural gas and heating oil volatility charts.

4 Q So the volatility charts are misleading,  
5 intending to imply that actual prices of coal are  
6 volatile; isn't that correct?

7 A I wouldn't term it misleading.

8 Q Incorrect?

9 A I don't know if I'd even term it incorrect. The  
10 -- the only available public data for the coal market is  
11 the spot market data. There is no public data available  
12 for coal contract costs. However, the coal spot price is  
13 an indicator of what the market is doing, and there's  
14 certainly a proxy for contract prices.

15 Q But we know for '07 and '08 you've got your  
16 price locked in, correct?

17 A We do on that. Yes.

18 Q And we know that your hedging strategy dampens  
19 price swings; is that correct?

20 A Yes. That is correct.

21 Q And we know that those increases are going to be  
22 captured in this rate case in the true-up, at least for  
23 '07; is that correct?

24 A For '07, that is correct.

25 Q So on page 7 at line 24 where you talk about the

1 -- the cost increases over the 2006 test year average,  
2 that doesn't matter as they're being captured in the rate  
3 case true-up; isn't that correct?

4 A Those numbers had been captured, yes.

5 Q So that number's really not meaningful in terms  
6 of the rate? I mean, it's a meaningful number. I don't  
7 -- I'm not trying to belittle you, sir, but that number's  
8 going to be captured in this rate case?

9 A You are correct. That number will be captured.

10 Q You, also, on -- on page 8, line 1 of your  
11 testimony talk about -- or not line 1. On the  
12 transportation costs and the rate changes there, those  
13 will be captured in the rate case true-up; isn't that  
14 correct?

15 A Yes. That is correct.

16 Q And the only potential -- okay. I'm not talking  
17 about the number. Sorry. Let me think about this to make  
18 sure it's not going to be an HC. Or if it is, we can go  
19 in.

20 Let me ask you this: The only potential  
21 volatile in freight is the diesel fuel surcharge; is that  
22 correct?

23 A That is correct. For the period that we have  
24 under contract.

25 Q For the period. And that's the last -- next --

1           A     Three years for three plants and five years for  
2 one.

3           Q     Okay. And then you also have a full range of  
4 exposure cited from lowest to highest there for the -- and  
5 this is an HC number -- let me just -- I guess we should  
6 go in. I can't figure out a way to not say it.

7           JUDGE WOODRUFF: All right. We're going to go  
8 back in camera, then.

9           REPORTER'S NOTE: At this point, an in-camera  
10 session was held, which is contained in Vol. 18, pages 917  
11 through 921.

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1 CROSS-EXAMINATION OF MR. ROBERT NEFF

2 BY MR. MILLS:

3 JUDGE WOODRUFF: And we're back in -- we're back  
4 in regular session. While we were in -- in-camera, the  
5 State of Missouri completed its cross-examination, and now  
6 we've gone to cross-examination by the Office of Public  
7 Counsel.

8 MR. MILLS: Thank you.

9 CROSS-EXAMINATION

10 BY MR. MILLS:

11 Q Good afternoon, Mr. Neff.

12 A Good afternoon.

13 Q I'm going to talk primarily about your February  
14 7th rebuttal testimony that Mr. Micheel just finished up  
15 with. The chart that you show on --

16 MR. BYRNE: Excuse me. Before you start, Mr.  
17 Mills, your Honor, I think one thing that was confidential  
18 that we may not have been in-camera for the whole time and  
19 -- and maybe we could mark the record as highly  
20 confidential is the -- the portion of our coal that's  
21 hedged for each year.

22 I think there were a couple times we were out of  
23 camera when portions -- you know, percentages and stuff  
24 like that for '07 and '08 were mentioned. I don't -- I'm  
25 not sure there's coal industry people in the room, but



1 maybe if we could have a chance to --

2 JUDGE WOODRUFF: They could get it off there  
3 Internet, certainly, in which case it's too late. But I  
4 don't know if --

5 MR. BYRNE: Well, I thought I should mention it  
6 before Mr. Mills started, so -- just in case that comes up  
7 in this line of questioning. Maybe we can't -- perhaps we  
8 can't unring the bell before --

9 JUDGE WOODRUFF: Maybe we'll be able to adjust  
10 the transcript, but we can't really do that until we get  
11 the transcript.

12 MR. BYRNE: Sure. I know you can't recall the  
13 Internet broadcast, but I thought I ought to mention it.

14 JUDGE WOODRUFF: It does become a problem later  
15 on, once we get the transcript, let us know, and we may be  
16 able to take care of it then.

17 MR. BYRNE: Okay. Thank you, Judge.

18 JUDGE WOODRUFF: Go ahead, Mr. Mills.

19 Q (By Mr. Mills) Okay. Looking at the chart on  
20 page 2, I'm really just going to focus on the bottom line.  
21 That's for the -- the -- the generic 800 Powder River  
22 Basin coal?

23 A Yes.

24 Q And that line does not include any -- any  
25 transportation prices?

1           A     That's coal price at the mine.

2           Q     Okay.  So for example, on page 6, line 21, your  
3 reference to rail capacity, how will that affect coal  
4 prices?

5           A     Rail capacity issues can affect the market in  
6 many ways.  I guess the -- the primary thing they do is  
7 constrain -- if there's capacity issues, they could strain  
8 the distribution of coal from a particular region to the  
9 market.

10          Q     And if buyers have a difficult time getting the  
11 product to market, does that increase or decrease the  
12 price of that commodity?

13          A     That can actually go either way.  I've seen it  
14 where the -- the capacity is constrained and that creates  
15 a glut of coal at the mines, and they reduce prices.  
16 However, it also creates a shortage at the utilities who  
17 want to go then and buy more coal and bid up the price  
18 just because their stockpiles are getting low.

19          Q     So that -- that issue could cut either way?

20          A     Yes.  That's correct.

21          Q     Now, do you know what the spot price of Powder  
22 River Basin coal will be a year from now?

23          A     I do not know.

24          Q     Two years from now?

25          A     No, I do not know.

1 Q Three years from now?

2 A No.

3 Q If you did, you'd be getting at least 525 an  
4 hour, wouldn't you?

5 A I don't think I'd be sitting in this chair if I  
6 knew.

7 Q So if -- if you were to take that -- that bottom  
8 line on the chart on page 2, there's no way that you could  
9 accurately extend the line out into the future?

10 A That's correct.

11 Q All right. Could go up? Could go down?

12 A That's correct.

13 Q But you do know that for the next two years your  
14 cost for that coal is going to go up?

15 A That's correct.

16 Q All right. Now, if you were to extend the line  
17 back into the -- into the past, say, back to -- to the  
18 year 2000 or 1995, would it look more like the section  
19 from 2002 till 2005, or would it look like the volatile  
20 period in -- in 2005 and 2006?

21 A There was a volatile period around 2000, 2001,  
22 which looked more like the right-hand portion of the  
23 graph. Prior to that, it would look more like the center  
24 portion of the graph.

25 Q And if you were to go back 20 years or so, it

1 would look relatively non-volatile; is that correct?

2 A The price has fluctuated up and down. I'm not  
3 sure if I could call it non-volatile, but it -- it is not  
4 as volatile as the period that we see starting in 2004 and  
5 certainly not as volatile as what we saw in 2000 and 2001.

6 Q Bear with me a minute. I think Mr. Micheel  
7 asked a lot of these questions. Let me -- let me check  
8 with your counsel just a second to see if this question is  
9 going to be highly confidential.

10 Let me see if I can get at this without asking  
11 anything highly confidential. Mr. Neff, you do buy some  
12 coal on -- on the spot market; is that correct?

13 A That's correct. Yes.

14 Q And I won't go into the percentage. But in  
15 response to one of Mr. Micheel's questions, you did give a  
16 specific percentage?

17 A I gave an average -- approximate average  
18 percentage, yes.

19 Q Okay. Was that for all coal, or was that just  
20 for Powder River Basin coal, that figure that you give  
21 him?

22 A Well, the percentage of all coal.

23 Q Okay. So the percentage of spot Powder River  
24 Basin coal would be somewhat lower than the percentage you  
25 gave him?

1           A     Depending on the year. Sometimes we buy more or  
2 less of other basins as well, like Illinois spot coal.  
3 But overall, that percentage would probably be good for  
4 either basin on an average basis.

5                     Now, on -- on page 6 of your February rebuttal  
6 testimony, down at the bottom line 24 and continuing on to  
7 the top of Line 2, is it your expectation that the  
8 availability of liquefied natural gas will increase or  
9 decrease in -- in the next few years, in the next five  
10 years?

11           A     Generally, it's believed -- the forecast I've  
12 seen is that it will be more available in the next five  
13 years.

14           Q     Will the increasing availability of LNG tend to  
15 reduce or increase the price of competing commodities?

16           A     Depends what the price of LNG is. It generally  
17 follows the natural gas markets, so it may be higher or  
18 lower as it comes in.

19           Q     So on, under -- under what scenario would  
20 increased availability of liquefied natural gas push up  
21 coal prices?

22           A     I don't believe I said it would increase, but it  
23 would cause the price to fluctuate or could possibly cause  
24 the price to fluctuate.

25           Q     Do you think that the increased availability of

1 liquefied natural gas will increase the price of coal?

2 A It could -- it could increase it. It could  
3 decrease it.

4 Q Okay. Under what scenario would it increase it?

5 A If the increased natural gas -- liquid natural  
6 gas came into the country at a higher price than the  
7 current natural gas, it would raise the natural gas market  
8 that would tend -- and when you raise the natural gas  
9 market, that tends to raise power prices which increases  
10 the demand for coal generation. So that would be one  
11 scenario where that -- that could happen.

12 Q And do you -- do you view that as a likely  
13 scenario?

14 A I don't -- I don't have an opinion on whether  
15 that's likely or not. I was just mentioning the fact that  
16 that could cause the prices to continue to fluctuate.

17 MR. MILLS: I have no further questions.

18 MR. NEFF: Thank you.

19 JUDGE WOODRUFF: Thank you. Mr. Dottheim?

20 MR. DOTTHEIM: No questions.

21 JUDGE WOODRUFF: All right. We'll come up for  
22 questions from the Bench. Commissioner, I'll warn you  
23 that we do need to break at 3:00 for the -- for the gas  
24 portion. I'll tend to break at about 2:45.

25 COMMISSIONER GAW: Thank -- thank you, Judge. I

1 have just a few questions, I think.

2 CROSS-EXAMINATION

3 BY COMMISSIONER GAW:

4 Q Mr. Neff, in regard to the coal that's -- that  
5 is purchased from Powder River Basin in Illinois, and I  
6 think you -- you might have included Appalachian coal in  
7 some of your grasp. What I'm curious about, from Ameren's  
8 standpoint, what is the general mix of purchases from the  
9 different areas?

10 A We're primarily Powder River Basin coal, about  
11 96 percent of our coal coming from Powder River Basin.

12 Q All right. And so the other part is Illinois  
13 coal?

14 A Yes. That's correct.

15 Q And in regard to the coal commodity itself,  
16 again, I just want a little bit additional clarification.  
17 But I think this is -- this is that HC information that  
18 you were referring to earlier.

19 COMMISSIONER GAW: So, Judge, if you could --

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

21 COMMISSIONER GAW: I think, so I -- I don't get  
22 into that without --

23 JUDGE WOODRUFF: That's fine. We've gone in and  
24 out several times. We can do it again.

25 REPORTER'S NOTE: At this point, an in-camera

1 session was held, which is contained in Vol. 18, pages 931  
2 through 939.

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1           JUDGE WOODRUFF: We're back in regular session  
2 and we'll take a break at this time for -- to deal with  
3 the -- the gas case in GC-2007-0003, which is scheduled to  
4 begin at 3:00. We'll plan on resuming this case at 5:00.

5           I'll represent to you that it won't be any  
6 sooner than 5:00. Well, I'm not sure what's going to  
7 happen with -- all right. So anyway, we'll resume this  
8 hearing at 5:00 unless the earlier case isn't finished, in  
9 which case we'll have to delay this. But we won't start  
10 before 5:00, so you can plan accordingly.

11           MR. MICHEEL: Judge, do you know any idea how  
12 late we'll be going tonight?

13           JUDGE WOODRUFF: I don't anticipate going past  
14 8. All right. At this point, we are in recess.

15           (Break in proceedings.)

16           JUDGE WOODRUFF: Well, let's come to order,  
17 please. Welcome back from our break for the -- the gas  
18 case. We are ready to resume the electric case hearing.

19           When we left off, we were on -- on the Bench for  
20 questions. I believe Commissioner Gaw may have been  
21 finished with Mr. Neff. He has not returned yet. And,  
22 Commissioner Murray, did you have any other questions?

23           COMMISSIONER MURRAY: I -- I don't have any  
24 questions for Mr. Neff.

25           JUDGE WOODRUFF: Okay. Maybe this is

1 Commissioner Gaw. No. Commissioner Clayton, do you have  
2 any questions for Mr. Neff?

3 COMMISSIONER CLAYTON: Let me look real quick.  
4 Let me turn off my cell phone.

5 JUDGE WOODRUFF: Thank you. We were interrupted  
6 constantly during the gas case with the cell phone  
7 interference.

8 CROSS-EXAMINATION

9 BY COMMISSIONER CLAYTON:

10 Q Good evening. Is it Mr. Neff or Dr. Neff?

11 A No, no. Just Mr.

12 Q No doctor? Seems like everybody is a doctor.

13 A No. I'm not a doctor.

14 Q You get to charge a lot more if you're a doctor.

15 A That's what I understand.

16 Q I want to go over just a few quick things  
17 because there are some gaps in my notes. First of all,  
18 you said for your 2007 that Ameren -- Ameren has 100  
19 percent of its coal supplies hedged or purchased or  
20 whatever; is that correct?

21 A That's correct.

22 Q And -- and for the current year, is the -- the  
23 band ever -- ever hedging is a hundred percent?

24 A I guess it's not really a band for within the  
25 12-month --

1           MR. BYRNE: Your Honor, we may be getting into  
2 HC territory.

3           JUDGE WOODRUFF: Oh, I'm sorry. Did I -- did I  
4 -- tell me which part is HC, and maybe I can --

5           MR. BYRNE: The amount hedged is what's --

6           Q     So did I already violate it? Everybody  
7 listening, ignore what I just said.

8           MR. BYRNE: If we could make -- just go into --

9           JUDGE WOODRUFF: Okay.

10          REPORTER'S NOTE: At this point, an in-camera  
11 session was held, which is contained in Vol. 18, pages 943  
12 through 952.

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1                   JUDGE WOODRUFF: And that completes the  
2 questions from the Bench. Does anyone wish to recross  
3 based on the questions from the Bench? I don't see any  
4 hands going up. All right. Any redirect?

5                   MR. BYRNE: Yes, your Honor, just a little bit.  
6 I'm -- I'm afraid I need to go in-camera, too, your Honor.

7                   JUDGE WOODRUFF: All right. That's fine.

8                   REPORTER'S NOTE: At this point, an in-camera  
9 session was held, which is contained in Vol. 18, pages 954  
10 through 959.

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1                   JUDGE WOODRUFF: All right. We are out of  
2 thein-camera session. And while we were in-camera,  
3 Mr. Neff completed his testimony and was excused.  
4 Mr. Birk is taking the stand. Will you please raise your  
5 right hand?

6                   MARK BIRK,  
7 being first duly sworn to testify the truth, the whole  
8 truth, and nothing but the truth, testified as follows:

9                   DIRECT EXAMINATION

10 BY MR. BYRNE:

11                   JUDGE BYRNE: And is this his only appearance  
12 also?

13                   MR. BYRNE: I --

14                   MR. BIRK: Yes, it is.

15                   MR. LOWERY: Yes, it is.

16           Q       (By Mr. Byrne) Do you have any corrections to  
17 any of your testimony?

18           A       I do not.

19                   MR. BYRNE: I tender the witness for cross

20                   JUDGE WOODRUFF: Do you want to offer his  
21 testimony at this point?

22                   MR. BYRNE: I would like to. Yes, I could. I  
23 would like to offer -- I would like to offer --

24                   JUDGE WOODRUFF: Looks like 25, 26 and 27.

25                   MR. BYRNE: Yes. I would offer all three of

1 those.

2 JUDGE WOODRUFF: All right. Exhibits 25, 26 and  
3 27 have been offered into evidence. Are there any  
4 objections its receipt?

5 MR. CONRAD: None.

6 JUDGE WOODRUFF: All right. They will be  
7 received into evidence.

8 (Exhibit Nos. 25, 26 and 27 were offered and  
9 admitted into evidence.)

10 JUDGE WOODRUFF: And for cross-examination,  
11 we'll run down the list. Aquila, Laclede, Joint  
12 Bargaining Committee, DNR, Missouri Retailers, MO-KAN,  
13 MASW, MIEC, Commercial Group, MEG, AARP?

14 MR. COFFMAN: No questions.

15 JUDGE WOODRUFF: Noranda?

16 MR. CONRAD: No questions.

17 JUDGE WOODRUFF: State?

18 MR. MICHEEL: No questions.

19 JUDGE WOODRUFF: Public Counsel?

20 MR. MILLS: No questions.

21 JUDGE WOODRUFF: Staff?

22 MR. DOTTHEIM: Yes.

23 CROSS-EXAMINATION

24 BY MR. DOTTHEIM:

25 Q Good evening, Mr. Birk.

1           A     Good evening.

2           Q     Now, Mr. Birk, do you have a copy of Exhibit --  
3 I believe it's 19, what's been marked as Mr. Lyons' direct  
4 testimony?

5           A     No, I do not, sir.

6           MR. DOTTHEIM: May I approach the witness?

7           JUDGE WOODRUFF: You certainly may.

8           Q     (By Mr. Dottheim) I want to hand you, Mr. Birk,  
9 part of Mr. Lyons' direct testimony, his Schedule MJL-2,  
10 which are the minimum filing requirements. And I'm going  
11 to direct you to part of those minimum filing  
12 requirements.

13                     Earlier in the proceeding, I asked Mr. Lyons a  
14 question or two from the minimum filing requirements  
15 respecting heat rate tests, sufficiency tests of AmerenUE  
16 generating facilities, and he indicated that you were the  
17 best person for me to direct those -- those questions to.

18           A     Okay.

19           Q     Mr. Birk, do you recognize that document?

20           A     I do not recognize this document. I have seen  
21 parts of this document, though.

22           Q     Okay. If -- let me direct you to -- to the --  
23 the page that's -- that's marked as Schedule MGL-2-10.

24           A     I have seen that part of the document.

25           Q     And I want to direct you to the bottom of that

1 page, the section that begins with P, the letter P in  
2 parentheticals. Is that the section that you've seen  
3 previously?

4 A Yes. I am familiar with that.

5 Q Okay. Let me first ask you a few, oh,  
6 preliminary questions. Can you identify what a heat rate  
7 is?

8 A Basically, my interpretation of a heat rate,  
9 sir, is based upon the inputs into units over what you get  
10 out of a unit.

11 Q Okay.

12 A It's the fuel input in, energy out.

13 Q And -- excuse me. And is the heat rate of a  
14 power plant important?

15 A Yes, it is. It's very important.

16 Q Is it generally a measure of how efficiently a  
17 power plant converts fuel to electric energy?

18 A Generally, that's correct. Uh-huh.

19 Q Does AmerenUE have a financial interest in how  
20 efficiently its power plants convert fuel to electricity?

21 A Yes, sir, we do.

22 Q Does AmerenUE have programs in place for  
23 assessing the efficiency of its generating facilities?

24 A Yes, we do.

25 Q Could you identify those programs?



1           A     Yes.  Yes, I can.  Basically, there's a couple  
2 different approaches that -- that we take to look amount  
3 the overall efficiency of our facilities, one of those  
4 being what we call a real time approach.

5                     And by that, we actually monitor real time the  
6 efficiency of our units.  And we're doing that through  
7 what we call our ETA PRO system.  Prior to using -- do you  
8 want me to spell it?

9           Q     Yes, would you please, both for my benefit and  
10 for the benefit of the transcript?

11          A     Okay.  It's spelled E-T-A, and there's a space,  
12 P-R-O.  And, basically, what it is, it's a performance  
13 monitoring program.  We -- we also had one that was  
14 developed by Black & Veatch that we've used in the past.

15          Q     Does ETA PRO stand for anything in particular?

16          A     Not that I'm aware of, sir.  It may, but not  
17 that I'm aware of.  And, basically, what that program does  
18 is it looks real time at aux. power.

19          Q     When you say aux. power?

20          A     Auxilliary power.

21          Q     And how would you spell that?  Is that a-u-x?

22          A     Yeah.  The abbreviation is a-u-x period power.  
23 And, really, what that is is if you're running motors,  
24 fans in the plant, they use some of the power that is  
25 generated by the plant to -- to -- you know, to obviously

1 run the process. So there's a measurement of aux. power.  
2 Typically, the aux. power on our units runs about 6  
3 percent. So it's looking at real time aux. power. It's  
4 looking at turbine efficiencies. It's looking at feed --  
5 water heater performance. It looks at air heater  
6 performance. It looks at a number of things like that.  
7 And the operators have that available to them in real  
8 time.

9 Q Are there other programs that AmerenUE has in  
10 place for assessing the efficiency of its power plants?

11 A Yes. We -- we also -- and I think you've  
12 referenced it -- me to it here in MJL-2-10, which is the  
13 efficiency deviation factor. And, basically, that's a  
14 longer term look at it where an operator may use the ETA  
15 PRO is system hour to hour.

16 The efficiency deviation factor is more of an  
17 annual look where you would look at the fuel input coming  
18 into a unit or a plant and -- and then calculate what you  
19 believe the theoretical BTU output of that plant should  
20 be. And then you have a rough idea what the efficiency of  
21 the unit is.

22 Q Okay.

23 A Or of the plant is.

24 Q Does AmerenUE have programs in place for  
25 assessing the major equipment in its power plant in terms

1 of their contribution to overall plant efficiency?

2 A As far as -- can you -- can you rephrase that?

3 The ETA PRO system does look at the independent stuff as

4 far as if we have a piece of equipment that has a problem

5 or something. Is that what you're asking?

6 Q Yes.

7 A Typically, what will happen is that will be

8 identified by the ETA PRO system.

9 Q Okay.

10 A So it will identify it. And then an operator

11 will take action to try and correct whatever that anomaly

12 may be. Sometimes it's something that can be corrected by

13 an operator relatively quickly. Sometimes it may an

14 equipment deficiency such as a valve leaking through that

15 you may have to wait until the next unit shutdown to fix.

16 Q Okay. Mr. Lyons indicated that you were the

17 proper person for me to ask questions respecting the

18 Section P of the minimum filing requirements, Schedule

19 MJL-2-10 regarding the AmerenUE fossil fuel, fossil fired

20 generating units of AmerenUE.

21 He directed me to Mr. Naslund respecting the

22 Callaway unit. Are you able to answer any questions

23 regarding the applicability of the efficiency deviation to

24 Callaway, or should I direct any questions I have

25 regarding the efficiency deviation factor regarding

1 Callaway to Mr. Naslund?

2 A You should refer those to Mr. Naslund. I have  
3 interests and knowledge of the fossil fire plants. I do  
4 not have the knowledge on the nuclear plant.

5 Q In reference to the efficiency deviation factor,  
6 you remember -- you mentioned, I believe, the BTU  
7 consumption of the generating unit for which the  
8 efficiency deviation factor is -- is being determined.

9 A Uh-huh.

10 Q How will the -- the actual -- or how is the  
11 actual BTA -- BTU consumption determined over the course  
12 of -- of a year for a generating unit?

13 A It's based on the fuel receipts at that plant  
14 for the year. Not only the fuel receipt, but the type of  
15 fuel and -- and the BTUs in that fuel.

16 Q Is there some frequency of the fuel sampling?

17 A Typically, and -- I'm not an expert on this,  
18 but, typically, the sampling is done at the mine. And I'm  
19 not familiar exactly with what the frequency is.

20 Q And as far as the sampling, what does the  
21 sampling entail?

22 A I'm not an expert on the details of the  
23 sampling, sir.

24 Q Okay. Can you provide any information on what's  
25 entailed regarding the sampling?

1           A     No, I cannot. I cannot.

2           Q     Okay. Okay. I'd like to direct you in  
3 particular to schedule MJL-2, in particular, page  
4 MJL-2-11.

5           A     Okay.

6           Q     And in particular, the -- the second paragraph,  
7 the -- excuse me. The -- the third paragraph, the one  
8 sentence which is the third paragraph, which states, Where  
9 unit fuel burn data is not available and plant data is  
10 available, the EDF will be calculated on a plant basis  
11 rather than on a unit basis. Can you identify which  
12 specific plants, units are covered for which the data is  
13 available?

14          A     I cannot identify that. But I -- I can get you  
15 that information. We -- we have generally better fuel  
16 burn data at plants such as Labadie and Rush Island than  
17 we do at Meramac and Sioux.

18          Q     And why is that?

19          A     Just the way -- the types of feeders that are  
20 used and the way -- the way we measure the coal input.

21          Q     I'd like to direct you to the -- the second  
22 paragraph on that page identified as Schedule MJL-2-11.  
23 And, in particular, the -- the second sentence states, The  
24 estimated fuel consumption is escalated -- excuse me -- is  
25 calculated using the hourly generation data for the period

1 and the current input/output (I/O) curve used for the  
2 economic dispatch of the generating unit. Can you  
3 identify what the input/output curves are?

4 A Basically, the in -- the input/output curve  
5 would be the BTU input on the unit and the actual megawatt  
6 output of the unit.

7 Q And how are those developed for each unit?

8 A Those are developed based upon -- on testing of  
9 the unit.

10 Q Have any of the units been modified such that  
11 the unit deficiency has been changed since the development  
12 of their respective input output curves?

13 A We have had efficiency improvements on the -- on  
14 some of the units, sir. I can't tell you that every curve  
15 has been changed on every unit. I'd have to --

16 Q What --

17 A Yeah. I'd have to get you a list of the ones  
18 where we modified. Generally, when you go in the  
19 modifications, what I would be talking about would be  
20 change-out of HPIP turbines, LP turbines. And in that  
21 case, generally we try and model those and get it  
22 included. Now, I would not say emphatically that these  
23 curves have been updated for every unit.

24 Q That hasn't changed? And why would not the  
25 curve be updated?

1           A     It depends upon when the -- the acceptance  
2 testing was done.  And, really, what I'm -- what I'm  
3 thinking and what I'm hesitant on is -- is the Meramac 4  
4 unit, which was the last one that we've -- that we've  
5 actually changed turbines on.

6           I -- I can't be positive that the curve has been  
7 changed at this point.  That job was done in the -- in the  
8 spring of '05, and the unit came back in around June of  
9 '05, so I can't be sure on that one.

10          Q     Okay.  I'd like to refer you on to page -- to  
11 the reference to the baseline EDF.  Has the -- has the  
12 company attempted to ensure that the baseline EDF captures  
13 optimum operating conditions for each generating unit?

14          A     I believe we have.

15          Q     And -- and how has the company attempted to  
16 ensure that the baseline EDF captures optimum operating  
17 conditions for each of the units?

18          A     Well, what you have to realize is that the EDF  
19 -- it's -- it's calculated on a yearly period.  Now, it's  
20 an annual basis based upon hourly information.  And one of  
21 our prime objectives when we -- when we operate the fossil  
22 plants and our combustion turbines is to run them as  
23 efficiently as we can.

24                 I believe I stated that earlier in the testimony  
25 -- or earlier in our discussion.  So ideally, we try to

1 run as efficiently as possible all the time. That's why  
2 we have the real time performance monitoring information  
3 available.

4 Q Efficiency deviation factors are going to be  
5 determined for subsequent period to the baseline period;  
6 is that correct?

7 A That's correct.

8 Q If the efficiency deviation factor determined  
9 during one of the subsequent true-up period indicates that  
10 the generating unit is operating more efficiently during  
11 the true-up period than the baseline, EDF period, will the  
12 baseline EDF be reestablished at the value of the true-up  
13 period?

14 A That is something we would have to do. Yes.

15 Q Is that -- are you indicating that that is what  
16 would actually occur?

17 A Yes, sir.

18 Q And, again, you may have already answered this,  
19 but if -- if a generating unit is modified after a  
20 baseline EDF is determined such that it's efficiency is  
21 affected, will a new baseline EDF have to be determined?

22 A Yes, it will. Yes, it will.

23 Q If a generating unit is modified such that that  
24 unit efficiency is affected, will new input/output curves  
25 used for economic dispatch of the generating unit be



1 developed?

2 A Yes, sir.

3 Q Okay. I'd like to -- to direct you to your  
4 surrebuttal testimony that's been marked as Exhibit 27,  
5 and I'd like it refer you to page 3, lines 3 to 4 where  
6 you state, AmerenUE has installed performance monitoring  
7 systems on all of its major generating units.

8 A Yes, sir.

9 Q Which -- which of the AmerenUE generating units  
10 are you referring to when you refer to all of its major  
11 generating units?

12 A All of the major fossil units. That would be  
13 the four units at Labadie, the two units at Rush Island,  
14 the two units at Sioux and the four units at Meramac.

15 Q What performance monitoring systems exist for  
16 the other units?

17 A Are you talking about the combustion turbine  
18 units, sir?

19 A Yes.

20 Q We are -- we are working to get systems on those  
21 units, also. Ironically, those -- those appear to be more  
22 straightforward because you can -- in any type of  
23 performance monitoring system, the hardest part is to  
24 measure the fuel input, typically. And with gas units and  
25 oil units, it's much easier to measure the fuel.

1 Q Like those we're working across the street?

2 A Those typically run a lot less than our fossil  
3 units. And we typically see more things on the fossil  
4 units that could be deviations from a performance  
5 monitoring standpoint.

6 Q Can you be more specific as far as the  
7 performance monitoring systems that you're trying to get  
8 in place for the combustion turbines?

9 A I cannot at this time. I -- I've had some  
10 discussions with our combustion turbine folks, and I know  
11 they're working on it. But I can't tell you the specific  
12 systems, sir.

13 MR. DOTTHEIM: Mr. Birk, thank you. You have  
14 been very, very patient.

15 MR. BIRK: Thank you, sir.

16 JUDGE WOODRUFF: Thank you, Mr. Dottheim.  
17 Commissioner Murray left me a couple of questions for you  
18 from the Bench here --

19 MR. BIRK: Okay.

20 JUDGE WOODRUFF: -- that she asked me to ask  
21 you.

22 CROSS-EXAMINATION

23 BY JUDGE WOODRUFF:

24 Q You may have already explained this with  
25 Mr. Dottheim's questioning, but I'll ask the question

1 again. And if -- you can just give me a brief answer if  
2 you need to. Please explain the efficiency deviation  
3 factor that AmerenUE uses to track unit efficiency.

4 A Okay. Basically, again, this is a factor that  
5 is calculated on an annual basis and looks at  
6 theoretically -- I'll use a lavity unit, let's say. It  
7 looks at the total fuel input to that unit for a year and  
8 it compares it to the output of that unit for an entire  
9 year, hour by hour.

10 And then it really tells you kind of over the  
11 entire year, how efficient the unit's been. That's in  
12 contrast to what you call a performance monitoring test  
13 where it would be a -- a single point in time typically  
14 run for four hours where you instrument the unit pretty  
15 heavily.

16 And then you look at it for a four-hour period.  
17 So this would be a calculation that would be done on an  
18 annual basis over an entire year as opposed to a single  
19 point in time.

20 Q Okay. And the -- how does that differ from the  
21 heat rate test that the Staff is recommending? Is it --

22 A The -- pardon me? I think what I described as  
23 far as a -- a -- what I believe Staff to be recommending  
24 -- and I don't want to -- I don't want to speak for Staff,  
25 but I believe they're recommending a test that's done once

1 every two years, and it would be a --

2 Q (By Judge Woodruff) It would be the single  
3 point that you were talking about?

4 A Correct. It would be a typical, what we call,  
5 heat rate test.

6 JUDGE WOODRUFF: Okay. That's all her  
7 questions. Commissioner Gaw?

8 CROSS-EXAMINATION

9 BY COMMISSIONER GAW:

10 Q I -- just -- just continue along that path for a  
11 moment and then --

12 A Uh-huh.

13 Q -- explain to me what it is that you're going to  
14 use that -- that solution for. How does that play into  
15 the fuel adjustment clause?

16 A Actually, Commissioner, what -- what we've used  
17 the efficiency deviation factor for is to determine  
18 relative differences from year to year on our units.

19 Q Okay.

20 A So -- so we can tell from one year to the next  
21 on a -- kind of on a macro basis if -- if we're seeing  
22 declines in the efficiency of the unit.

23 Q And -- and what do you do with that?

24 A Well, I think, in reality, from an operating  
25 perspective, we rely more on the ETA PRO real time system

1 because that will tell us pretty much, you know -- I'm not  
2 going to say instantaneously, but pretty close to it if  
3 we're having some kind of problem on a unit and we would  
4 take corrective action right away. It's more of a check  
5 for us on a big picture macro basis.

6 Q And I'm -- I'm just trying to see a big picture  
7 here with how this piece fits into the rest of it, and I'm  
8 having a little trouble with that, so bear with me for a  
9 moment.

10 A No. I --

11 Q How does that -- how does that fact that the  
12 unit may have something wrong with it play into the -- the  
13 fuel adjustment mechanism? Is it because that is --  
14 that's some sort of an indication that it needs to go  
15 offline so you have to do some work on it? Is it a  
16 dispatch issue? I'm looking -- I'm trying to see how that  
17 all fits together.

18 A Let me tell you the way I see how it fits  
19 together.

20 Q That would be helpful.

21 A To me -- as the person that's over the operating  
22 side, it gives me a much better indication how the unit is  
23 operating over a year period than a four-hour test that  
24 you would run on it every two years because --

25 Q Okay.

1           A     -- you know, when you run a specific four-hour  
2 test, you've got to determine when you're going to run it.

3           Q     Right.

4           A     If you're going to run it in the spring, summer  
5 or fall. The unit parameters tend to change pretty  
6 significantly when you're in the summer or spring or fall  
7 and things do change. You make adjustments for that -- on  
8 that -- on that single point test when you do it based  
9 upon the time of the year. You make temperature  
10 adjustments and everything else.

11                     The efficiency deviation factor which we've used  
12 basically allows us to kind of negate some of that stuff  
13 and look at it at a higher level.

14          Q     Okay.

15          A     Does that answer your question?

16          Q     Not completely, but I think I need to ask  
17 somebody else about how this -- this piece fits in with  
18 some of the rest of it. That's okay.

19                     The other -- the other piece, then, is that --  
20 none -- does -- does any of this have anything to do with  
21 order of dispatch?

22          A     No. It really does not.

23          Q     Okay. What about heat rate? Does that have an  
24 impact on order of dispatch?

25          A     Yeah. It's that, obviously, you need the heat

1 rate curve and then you need your overall fuel costs. And  
2 in that, there's also -- we look at order of dispatch.  
3 There's also a little bit of incremental maintenance  
4 included in that and some environmental costs. So you  
5 look at all of that. And I think fuel costs are by far  
6 the majority of what you look at. And you rack the units  
7 up, and that's how you dispatch them.

8 Q And when we talk about heat rate. As far as  
9 dispatch is concerned, is that a name plate, or is that as  
10 a result of a heat rate test?

11 A It a result of a heat rate test. Uh-huh.

12 Q So you all -- you all are doing heat rate tests  
13 on these units?

14 A Typically, yes. And, typically, when we've done  
15 them, as Mr. Dottheim brought up, when we've done a  
16 turbine change-out or something, it's part of the factory  
17 acceptance test.

18 You have to run -- I have to run a test on the  
19 unit. And that's when we've treated these curves up.

20 Q How often do you run them? You may have already  
21 said. I'm sorry if that's the case.

22 A Typically, in the past, you know, we -- we've  
23 had a number of change-outs on turbines that -- in our  
24 units recently. So we've done the test after those.

25 In the past, I would say that I couldn't -- you

1 know, there isn't a two-year -- it's two years we do it.  
2 Typically, we've -- we've probably gone longer than that.  
3 It may be five years.

4 Q Okay.

5 A You usually can watch some of the real time  
6 performance monitoring, and you can -- it gives you a  
7 pretty good idea of where the unit is at.

8 Q Okay. And did you or anyone else testify in the  
9 case that you -- if you're aware about the order of  
10 dispatch of the units that you have?

11 A I did not testify to it as far as the order of  
12 dispatch.

13 Q Do you know if someone else has done that?

14 A I am not aware of that. Huh-uh.

15 Q You probably know that information.

16 A If have you a question, you can ask me the  
17 information, and I'll respond.

18 Q Is it HC?

19 A That's --

20 COMMISSIONER GAW: It would probably be better  
21 if we're to ask about it. I won't spend much time on it,  
22 Judge. I think he can probably rattle it off pretty  
23 quickly.

24 JUDGE WOODRUFF: We'll go in-camera, then, just  
25 a second while we get off the Internet.



1                   REPORTER'S NOTE: At this point, an in-camera  
2 session was held, which is contained in Vol. 18, pages 981  
3 through 985.

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1 JUDGE WOODRUFF: All right. We've come out of  
2 the in-camera, and Commissioner Gaw indicated that he has  
3 no more questions, so we'll go to recross. Does anyone  
4 wish to recross based on the questions from the Bench?  
5 Hearing none, any redirect?

6 MR. BYRNE: No, your Honor.

7 JUDGE WOODRUFF: All right. Then, Mr. Birk, you  
8 can step down.

9 MR. BIRK: Thank you.

10 JUDGE WOODRUFF: And the next name on the list  
11 is Mr. Wood, and he's coming forward. All right.  
12 Mr. Wood, if you've please raise your right hand?

13 WARREN WOOD,  
14 being first duly sworn to testify the truth, the whole  
15 truth, and nothing but the truth, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. DOTTHEIM:

18 JUDGE WOODRUFF: All right. And I believe  
19 Mr. Wood will be back several times throughout the  
20 process; is that correct?

21 MR. DOTTHEIM: He'll be back one more time --

22 JUDGE WOODRUFF: Okay.

23 MR. DOTTHEIM: -- on depreciation.

24 MR. WOOD: Callaway plant life.

25 MR. DOTTHEIM: The Callaway plant relicensing

1 or --

2 JUDGE WOODRUFF: Okay.

3 MR. DOTTHEIM: I also have at this time the --  
4 the Staff had previously premarked as the other parties  
5 had their exhibits, but we had run into some difficulties,  
6 and we've remarked our exhibits. And I have copies that I  
7 could distribute --

8 JUDGE WOODRUFF: Please do so.

9 MR. DOTTHEIM: -- At this time.

10 MR. LOWERY: Is the testimony different somehow  
11 or --

12 MR. DOTTHEIM: I'll explain. If -- if anyone  
13 had taken a close look at the list, they would have seen  
14 that in certain instances, the non-public version was --  
15 was given a number, and then the highly confidential was  
16 given a different number.

17 And there wasn't a complete set in a box from  
18 which all the testimony was numbered, so there may not  
19 have been both a highly confidential and a non-proprietary  
20 number listed.

21 So there is -- there is no change in -- in the  
22 testimony it -- itself. It's just that it's -- that it's  
23 -- it's renumbered. And as -- as a consequence, there's a  
24 -- actually a gap whereas -- as originally numbered,

25 MR. LOWERY: I'm -- pardon me, Steve. You're

1 just saying that your exhibit list has been redone because  
2 it --

3 MR. DOTTHEIM: Yes.

4 MR. LOWERY: Okay.

5 JUDGE WOODRUFF: You don't need to go into that  
6 detail.

7 MR. MICHEEL: That's all it is, Jim.

8 MR. LOWERY: I just --

9 MR. BYRNE: Just to summarize, your exhibit list  
10 has been redone.

11 JUDGE WOODRUFF: Just go ahead and pass it out.  
12 That's fine.

13 MR. DOTTHEIM: Well, I mean --

14 MR. DOTTHEIM: And where -- whereas previously  
15 the -- the Staff's exhibit list went up through 253, it --  
16 it now only goes up through 247. So we started -- we  
17 started marking exhibits with the -- the beginning of the  
18 hearings at 254, so there's a gap between 240 and --

19 JUDGE WOODRUFF: We won't worry about it.

20 MR. DOTTHEIM: All right.

21 MR. LOWER: Sorry.

22 MR. DOTTHEIM: It's -- and we're providing  
23 copies to the court reporter?

24 JUDGE WOODRUFF: Yes, please.

25 MR. DOTTHEIM: I've got Mr. Wood's direct

1 testimony is Exhibit No. 243. He has two rebuttal  
2 testimonies. One rebuttal testimony is vegetation  
3 management, infrastructure inspection and maintenance,  
4 service reliability and Callaway plant life is Exhibit  
5 244.

6 Fuel adjustment clause is Exhibit 245, which is  
7 also rebuttal testimony. And his surrebuttal testimony is  
8 Exhibit 246, which is Callaway plant life and fuel  
9 adjustment clause.

10 JUDGE WOODRUFF: All right. And I assume you're  
11 ready for cross?

12 MR. DOTTHEIM: We're waiting to offer exhibits,  
13 or can I offer those at --

14 JUDGE WOODRUFF: Well, we can -- I decided we  
15 were going to --

16 MR. DOTTHEIM: Wait.

17 JUDGE WOODRUFF: -- offer those the last time he  
18 testifies. So --

19 MR. DOTTHEIM: Fine. Fine.

20 JUDGE WOODRUFF: At this point, then, for  
21 cross-examination, we begin with Public Counsel.

22 MR. MILLS: No questions.

23 JUDGE WOODRUFF: For the State?

24 MR. MICHEEL: No questions.

25 MR. CARLSON: No questions.

1 JUDGE WOODRUFF: DNR?

2 MR. OVERFELT: No questions.

3 JUDGE WOODRUFF: MIEG? They're not here. MEG?  
4 They're not here. Commercial Group? Noranda?

5 MR. CONRAD: No questions.

6 JUDGE WOODRUFF: AARP?

7 MR. COFFMAN: No questions.

8 JUDGE WOODRUFF: Missouri Retailers? No  
9 questions? MO-KAN, MASW, Laclede, Aquila, Joint  
10 Bargaining Committee? Ameren?

11 MR. BYRNE: A few questions. Yes.

12 JUDGE WOODRUFF: All right.

13 CROSS-EXAMINATION

14 BY MR. BYRNE:

15 Q Good evening, Mr. Wood.

16 A Good evening.

17 Q I guess I'm going to be asking you -- since this  
18 is a fuel adjustment case, I'm going to be asking you  
19 about your rebuttal testimony and surrebuttal testimony?

20 A Okay.

21 Q Because I think your direct is -- deals with  
22 depreciation.

23 A Yes.

24 Q Okay. Turning to your rebuttal testimony, I  
25 guess one of the themes of your rebuttal testimony is the

1 Staff is opposed to AmerenUE having a few fuel adjustment  
2 clause. Is that true?

3 A Yes.

4 Q You haven't changed your mind since you filed  
5 your testimony?

6 A Sorry. No.

7 Q Okay. I guess you've got three reasons, and I'd  
8 like to walk through them if we could. The first reason  
9 -- I guess you mentioned it -- well, you have all three of  
10 them listed on page 4. But the first reason says at -- at  
11 line 1 on page 4, AmerenUE does not need an FAC or an IEC  
12 since its revenue opportunities in off system sales  
13 mitigates much of its fuel price risk. Is that right?

14 A Yes.

15 Q And -- and I guess my first question to you is,  
16 did you do any studies or analyses to support that  
17 statement?

18 A There were plenty of analyses by Staff witness  
19 Dr. Proctor.

20 Q So he's your support for that?

21 A He's done the heavy lifting on the analysis  
22 there.

23 Q Okay. I need to ask him rather than you about  
24 what analysis was done. Well, let me ask you this: I  
25 have -- I have limited understanding of power price

1 markets. But one of the things I understand to be true is  
2 that gas prices impact on peak power prices. Do you know  
3 if that's true?

4 A That is my -- well, no, I don't know if that is  
5 true. I would leave that to Dr. Proctor.

6 Q Okay. So you don't know if there's -- you don't  
7 know if there's a correlation between natural gas prices  
8 and power peak prices?

9 A It's my understanding that that may be the case.  
10 But for a statistical analysis and my understanding, I  
11 would defer to Dr. Proctor.

12 Q Okay. And, similarly, it's my understanding  
13 that spot coal prices are correlated with off peak power  
14 prices. Do you -- do you know that to be true?

15 A That, I do not know.

16 Q Okay. Okay. Well, let me ask you this: Could  
17 you assume those two facts to be true, that there's a  
18 correlation between natural gas prices and on peak power  
19 prices and a correlation between spot coal prices and off  
20 peak power prices?

21 A For purposes of your analysis, yeah. Let's  
22 assume that's true.

23 Q Okay. And -- and are you aware that AmerenUE is  
24 -- is primarily a coal and nuclear fired generating  
25 company, and they -- they get most of their power from



1 coal fired and nuclear plants?

2 A Yes. The vast majority of their energy is from  
3 those resources.

4 Q Okay. And so if -- if my assumption is true and  
5 gas prices are driving the on peak power prices and -- and  
6 gas prices go up or down and then the on peak power prices  
7 go up or down, that wouldn't necessarily have anything to  
8 do with the fuel costs for AmerenUE's primary generating  
9 units, would it?

10 A Depends on your assumptions regarding  
11 correlations between natural gas prices, coal prices and  
12 the correlations to market prices due to both of those  
13 commodities.

14 Q Okay.

15 A So I wouldn't necessarily assume that's --  
16 there's no correlation there.

17 Q Okay. Okay. But there isn't necessarily a  
18 correlation, is there?

19 A I do not know.

20 Q Okay. I can ask Dr. Proctor, I guess.

21 A Yes.

22 Q Okay. Fair enough. All right. Well, let's  
23 move on to Reason No. 2, which is -- and, again, I'm  
24 looking at page 4. AmerenUE does not need an FAC or an  
25 IEN in order to have a reasonable opportunity to achieve

1 its authorized rate of return. Is that -- did I read that  
2 correctly?

3 A You did.

4 Q And, again, what kind of analysis did you do to  
5 support that statement?

6 A The analysis in terms of the dollar levels, the  
7 percentage changes, the expectations or the -- the known  
8 quantities for '07 and '08, those analysis were conducted  
9 by John Cassidy, which is a Staff witness as well.

10 And in looking at Staff witness Cassidy's  
11 numbers and also looking back to the first point that is  
12 its revenue opportunities and off system sales relative to  
13 fuel price risk and potential future increases in off  
14 system sale revenues associated with possible increases in  
15 fuel, I -- I arrived at the conclusion, although I defer  
16 to the pricing analysis conducted by staff witness  
17 Cassidy, I made Point No. 2 in my testimony.

18 Q Well, were you here when Mr. Neff was testifying  
19 earlier this afternoon?

20 A I was.

21 Q And -- and would you agree with me that AmerenUE  
22 is facing significant fuel cost increases in the next  
23 several years?

24 A I -- I'd have you define significant, please.

25 Q Tens of millions of dollars in each of the next

1 several years.

2 A It depends on what percentage that represents,  
3 and it represents -- and it also depends on the potential  
4 increases and corresponding increases in off system sales  
5 revenues.

6 Q Okay. So -- so, again, for this -- this reason  
7 as well, it's all contingent on the correlation between  
8 off system sales revenues and fuel costs, right?

9 A And if the percentage increase represents a  
10 significant increase.

11 Q But if there's no correlation, that really hurts  
12 your theory that we shouldn't get a fuel adjustment  
13 clause?

14 A Depends on the percentage, what it represents as  
15 an overall percentage of your cost and to the degree you  
16 can control it or not.

17 Q Well, let me ask you this: What if -- what if  
18 AmerenUE was not a utility that relied on coal fired power  
19 plants and nuclear power plants? What if we relied on  
20 natural gas fired units? Would -- in your opinion, would  
21 we be more qualified to have a fuel adjustment clause?

22 A Depends on a lot of factors that haven't been  
23 given in your example. I'm not prepared today to say that  
24 if Ameren went to all gas fired generation then a fuel  
25 adjustment clause would be more appropriate. There are a

1 lot of other issues that I would come into the discussion.

2 Q You're not recommending that we go to all gas  
3 fired units, are you?

4 A No. I'm certainly not.

5 Q I didn't think so. And you're not in a position  
6 to say here whether you think Aquila or Empire or other  
7 utilities that are more dependent on gas fired units are  
8 qualified -- more qualified to have a fuel adjustment  
9 clause?

10 A Depends on a lot of factors that aren't in the  
11 record here. I -- you know, I can't say, yeah, Aquila or  
12 Empire should have or not have a fuel adjustment clause.  
13 Depends on the details.

14 Q Do you know if AmerenUE's nuclear fuel costs are  
15 increasing significantly?

16 A Once again, I don't know how you're defining  
17 significant. And when I look at Witness Cassidy's  
18 testimony, I'd leave that to the decision-makers if that's  
19 significant or not.

20 Q How about coal transportation costs? Are they  
21 increasing significantly?

22 A I do not know.

23 Q Okay. Again, you didn't do any analysis of  
24 that? That's all Mr. Cassidy?

25 A Mr. Cassidy and Mr. -- Dr. Proctor are aware of

1 some of those increases.

2 Q Okay. Is there anything in Senate Bill 179 of  
3 the Commission's rules that suggest that fuel adjustment  
4 clauses are not available to utilities like AmerenUE that  
5 rely on coal fired power and nuclear power?

6 A No.

7 Q And I -- you know, I know you participated in  
8 those round tables. In fact, you headed up the round  
9 tables on the rule-making proceedings that stretched out  
10 over a year. I think there were -- how many of those  
11 round tables did we have?

12 A Seventeen. But they weren't all directed at  
13 only the fuel adjustment clause.

14 Q That's true. How many of those 17 do you think  
15 were directed at the fuel adjustment clause?

16 A Today, I would guess somewhere in the 12 to 14  
17 range.

18 Q Okay. Nobody ever really -- nobody suggested  
19 that coal fired electric utilities wouldn't be eligible  
20 for a fuel adjustment clause at any of those round tables,  
21 did they?

22 A I do not recall that issue as a specific topic  
23 for discussion at any of those round tables.

24 Q Okay. And you'd agree with me, wouldn't you,  
25 that -- that there are a number of coal fired utilities,

1 primarily coal fired utilities in other states that have  
2 access to a fuel adjustment clause, if you know?

3 A I would agree.

4 Q Okay. Okay. Reason No. 3. Again, at the top  
5 of page 4 --

6 A Uh-huh.

7 Q -- looks like, Although it is not sufficient  
8 reason alone -- so I guess that means if the first two  
9 aren't true, we should get a fuel adjustment clause? Is  
10 that what that means?

11 A I would not concur that's what that means.

12 Q Okay. On those -- not sufficient reason alone,  
13 not providing AmerenUE with FAC or IEC preserves strong  
14 incentives for AmerenUE to be able to purchase fuel and  
15 power; is that right?

16 A Yes.

17 Q And, I mean, I guess that's -- isn't that an  
18 argument against ever giving any utility a fuel adjustment  
19 clause?

20 A I see it more as an argument that if you're  
21 going to go down the road of providing electric utilities  
22 with a fuel adjustment clause, you need to very carefully  
23 look at what counter incentives you're putting in place to  
24 maintain continued efficient operations.

25 Q Well, let me ask you this: Aren't there a

1 number of monitoring provisions in the -- in the rules  
2 that were recently developed? I mean, I know you've  
3 testified on heat rate, all the complaints.

4 I mean, aren't there a bunch of surveillance and  
5 monitoring requirements that are designed to insure that  
6 utilities use a fuel adjustment clause and don't let the  
7 efficiency of the plant slip?

8 A The rule does have quite a few reporting and  
9 surveillance requirements. Would I say that they are  
10 sufficient to assure that utilities will continue its  
11 freight in a prudent manner? I -- I won't say that is the  
12 case.

13 Q I mean, wasn't that one of the goals in  
14 designing these? I mean, you participated in defining  
15 these requirements, didn't you?

16 A One of the goals was to make more readily  
17 available the information to perform such an assessment.  
18 It doesn't -- you know, there's still prudence  
19 requirements in those rules as well, despite having all  
20 those surveillance and reporting requirements.

21 Q And I guess the prudence examination would also  
22 be another opportunity to make sure that the utility is  
23 operating efficiently, make sure that it's doing a good  
24 job and --

25 A That's what it's structured to accomplish.

1 Q Okay. And let me ask you this: You know, there  
2 have been some discussions about incentives. I know  
3 AmerenUE has proposed an incentive in connection with its  
4 current proposed FAC and OSS mechanism.

5 Would you agree that a properly designed  
6 incentive would -- would resolve at least part of the  
7 problem with Reason No. 3 for not -- that you get for not  
8 giving AmerenUE an FAC?

9 A You used the term properly structured, and I  
10 would emphasize that, yes, properly structured, I do  
11 believe you could address some of the concerns of Bullet  
12 No. 3.

13 Q So if the Commission was able to properly  
14 structure a -- an incentive mechanism, that would help?

15 A It would certainly be a step in the right  
16 direction, yes.

17 Q Let me ask you this: Are you familiar with the  
18 changes that AmerenUE made in -- in its fuel adjustment  
19 clause when it filed surrebuttal testimony?

20 A I have had the opportunity to look over the  
21 tariffs that were provided only briefly.

22 Q Well, let me ask you this: One thing that we  
23 have proposed to do is to net off system sales against  
24 fuel costs in applying the fuel adjustment clause. Does  
25 that -- in your opinion, is that a better fuel adjustment



1 clause? Is that -- does that help resolve some of your  
2 concerns about the fuel adjustment clause?

3 A We still have concerns regarding how that  
4 benchmark is set and how the sharing -- sharing mechanism  
5 is structured. I would indicate that the surrebuttal  
6 position that was provided is a step better from where it  
7 was in the earlier -- the two positions taken earlier by  
8 the company.

9 Q Okay. Fair enough. Now, you know, we've  
10 proposed some mitigation. I guess it wasn't Staff, but it  
11 was Noranda and perhaps the Office of Public Counsel. We  
12 proposed some mitigation measures where I -- I think one  
13 it's a cap and defer 4 percent by rate class. And then,  
14 secondly, we proposed to spread any changes over 12  
15 months.

16 Are those -- in your view, are those positive  
17 improvements to the -- to the fuel adjustment clause?

18 A I consider the spreading over 12 months to be  
19 more advantageous than the 4 percent cap, cap and defer  
20 because I have some concerns with the cap and defer as we  
21 talked about in the round table where, you know, what  
22 we're really doing is we're just -- if the real prudence  
23 incurred costs are 6, 7 percent, you're just rolling that  
24 into a future period of applied interest and you're hit  
25 with another increase. You may just be making the

1 situation worse later to enjoy a short-term benefit.

2 Q But at least it would dampen the impact on  
3 customers? It would mitigate to some degree?

4 A At least in the short term.

5 Q Okay. Let me ask you about this heat rate  
6 testing issue. My understanding is you and Mr. Birk  
7 disagree on the type of testing that we should do, the  
8 efficiency testing; is that right? And I guess I'm  
9 looking at your rebuttal testimony on -- toward the end.

10 A Yeah.

11 Q Like starting on page 6.

12 A Do you want me to delve into a full description  
13 of how I think we agree and disagree, or do you have a  
14 specific question for me?

15 Q Sure. How do you agree? Let's start  
16 positively. How do you and Mr. Birk agree?

17 A Okay. You know, frankly, when I read through  
18 Mr. Birk's surrebuttal, I was somewhat surprised. And  
19 having listened to the cross-examination today, I'm more  
20 surprised.

21 Frankly, you know, I indicated four  
22 possibilities if an electric utility is going to have a  
23 fuel adjustment clause. I said, one, require testing of  
24 generators operation no less frequently than every two  
25 years.

1           What I'm hearing is that there's almost  
2 continuous monitoring of all of the major elements and  
3 there's upgrades being made to the units to provide  
4 continuous monitoring where they don't have it now. And  
5 so I don't know that that's really that big of a  
6 disagreement. Okay?

7           It's -- you know, I didn't say every two years.  
8 And it almost sounded like Ameren was suggesting, well,  
9 that's not sufficient, we should do it more often. I  
10 certainly didn't mean to imply that. It was providing a  
11 minimum of you've got to do it at least every two years.  
12 Okay.

13         Q     Okay. So you think he probably --

14         A     I don't know that we're that far apart quite  
15 frankly.

16         Q     Okay.

17         A     No. 2, generally conformed industry standard  
18 performance testing methodologies. You know, there was  
19 the reference in Mr. Birk's surrebuttal on page 2 at lines  
20 5 and 6 where he says, Moreover, the rules do not  
21 prescribe the use of ASME performance test codes, PTC and  
22 do not require their plant component replacement program.  
23 My -- my surrebuttal specifically states, We were not  
24 requiring the ASME PTCs. It was a recommendation to  
25 Ameren that if you don't have something to work from, we

1 do believe there are some good industry standard practices  
2 to start from development.

3 Q Okay.

4 A What I'm hearing is you believe you have  
5 industry standard practice available or you're  
6 implementing through ETA PRO. Third, you required -- I  
7 was saying we required identification of plant components  
8 that are dimension over all plant heat rates. You know,  
9 what I heard is we have continuous monitoring of the  
10 equipment and all the major elements of the equipment that  
11 -- that affect unit efficiency.

12 And that -- now, that is an appropriate step.  
13 Okay? And, finally, require cost effective maintenance  
14 replacement activities to plant components that have been  
15 identified as diminishing overall plant heat rates.

16 It sounded to me like in his surrebuttal he  
17 indicates on page 3 that -- you know, they identify what  
18 remedial actions are required. And they either -- if  
19 they're cost effective, they're tying them in between when  
20 the unit is operating if they can or they schedule it for  
21 the next available outage.

22 So I don't know that we're that far apart. And  
23 I noticed there was -- there was testimony to the effect  
24 that we've set heat rate. And Ameren has said, Well, that  
25 -- you know, really, you're doing that and you're saying

1 we're not allowed to do efficiency testing. To the  
2 engineers in the room, you know, efficiency equals 3,413  
3 BTUs per kilowatt hour divided by your heat rate.

4           There's a direct equation that applies the two  
5 together. You really can't say one or the other. You're  
6 point in saying heat efficiency was while you talk about  
7 overall plant unit heat rates, when you talk about, you  
8 know, there's quite a bit of -- quite a few different  
9 elements of equipment.

10           You don't generally talk about heat rate. You  
11 talk about the efficiency or how well a particular unit is  
12 doing. How well does it take the pressure down to a  
13 vacuum? How well does it work against strain? There's  
14 those aspects. You don't generally talk about heat rate.

15           That's why I said both. The two elements are  
16 really synonymous with one another in talking about how  
17 efficiently a unit converts fuel to electricity. And, you  
18 know, frankly, I was somewhat -- as I said, I was somewhat  
19 surprised in the surrebuttal when the position came across  
20 that we were on such different pages.

21           Really, you know, I think if you look at  
22 Mr. Birk's surrebuttal and you look at the four steps we  
23 said would be necessary for unit operation for a utility,  
24 for the fuel adjustment clause, I really think we're  
25 really very close to one another.

1           Q     Would it be fair to say if the Commission does  
2 order a fuel adjustment clause for AmerenUE, you think  
3 this piece of it can be worked out based on Mr. Birk's  
4 surrebuttal testimony with maybe with some tweaking?

5           A     I think Ameren, without much difficulty, could  
6 comply with the four items that I've identified as being  
7 one of the requirements in any surrebuttal.

8           Q     Okay. Great.

9           A     Or my rebuttal. I'm sorry.

10          Q     Your rebuttal.

11                 MR. BYRNE: Okay. I think that's all I have.

12 Thank you, Mr. Wood.

13                 MR. WOOD: Thank you.

14                 JUDGE WOODRUFF: All right. Thank you. Come up  
15 for questions from the Bench. Commissioner Gaw?

16                 THE COURT REPORTER: Excuse me. I need to  
17 change paper real quick.

18                 (Break in proceedings.)

19                 JUDGE WOODRUFF: We're back on the record.

20                 COMMISSIONER GAW: Thank you, Judge.

21                                 CROSS-EXAMINATION

22 BY COMMISSIONER GAW:

23           Q     Mr. Wood, can you give me the big picture here  
24 on how this -- this question that you were just discussing  
25 with Mr. Byrne about heat rates and other efficiency

1 testing -- how -- how does that fit in with the fuel  
2 adjustment clause? Why is that a requirement in the -- in  
3 the rule, in your opinion?

4 A The first time that an electric fuel adjustment  
5 clause was brought up as a -- you know, at least when I  
6 was with Public Service Commission, we went out and looked  
7 at some of the statutes and rules in other states, and we  
8 noticed in Kansas rules, there was a provision for unit  
9 monitoring.

10 And it -- we found that to be one possible  
11 approach for looking at addressing the reduction in  
12 incentives to appropriately -- to efficiently operate  
13 units if -- if utilities are no longer responsible for --  
14 or no longer bears the risk for changes in its fuel -- its  
15 fuel cost.

16 Q Okay. So help me to understand what the next  
17 step -- after you do -- if you come to some sort of a  
18 measurement, whether it's heat rate or efficiency or  
19 whatever it is, what -- what do you do with that  
20 information in a fuel adjustment clause situation?

21 A Two things. First of all -- and I would agree  
22 that the EDL that has been proposed by Ameren is probably  
23 a good high level -- first -- first high level sanity  
24 check that the units are operating. You know, there's  
25 been some significant deviations in the unit's efficiency.

1 Where it really comes into play is when you talk about the  
2 prudence of the units, you know, the prudence of the  
3 operations of the units.

4           If you've seen a continuous decline in the  
5 units, you've seen, you know, certain maintenance  
6 operations replacements not taking place. You've seen a  
7 decline. You would want to have some monitoring  
8 capability to say, you know, why is this unit continuing  
9 to not operate as it's operated historically?

10           And that would be something you would bring up  
11 in a prudence audit. Actually, in the Kansas tariff that  
12 I was looking at recently on this, they have a provision  
13 that, you know, if their coal units are not operating  
14 within some range that they've operated historically at,  
15 they would impute the difference in the generation source  
16 as they were using the general electricity versus the coal  
17 that would have been operating historically and take that  
18 out of the fuel adjustment clause. Basically, putting  
19 some of the risk back on the utility for not operating in  
20 an efficient manner or having a disproportionate number of  
21 outages in its lowest cost units.

22           Q     So let me see if I can bullet this real quickly.  
23 You'd be utilizing it to ensure that the company was  
24 properly maintaining its units. That would be one?

25           A     Uh-huh.



1 Q Would that be correct?

2 A Yes.

3 Q And, also, that -- to evaluate the order of  
4 dispatch that had been being used by the company? Would  
5 that be another thing you would look at?

6 A Yes. Yes.

7 Q It's a reason for looking at it, I suppose.

8 A You look at your heat rate and cost by unit and  
9 figure out your variable dispatch.

10 Q Anything else besides those two bullets that you  
11 can think of that you may have said already that I just  
12 missed?

13 A Well, the first bullet you had was directly  
14 related to prudency audits.

15 Q Yes.

16 A And the second, I guess, is also tied to the  
17 prudency audits, so those would be the two big elements.

18 Q Okay. As a -- as a corollary, is there any  
19 study on the length of outages for maintenance in a  
20 prudency review?

21 In other words, if the unit is taken out, is  
22 there some sort of a -- of a determination in prudency  
23 review to determine whether or not there was sufficient  
24 action taken to -- to bring it back online in a timely  
25 fashion?

1           A     I would say associated with a prudency audit, if  
2 there was a unit that, you know, some of the low cost  
3 units seemed to have been down, they were taken down or  
4 went offline for -- you know, unanticipated causes right  
5 over a significant peak period of energy need, and they  
6 had to purchase power and bring that in to serve customers  
7 during a peak period, and they came in with a big fuel  
8 adjustment clause increase as a result, I would -- I would  
9 have to think that would be an issue in a prudency audit.

10          Q     Is the timing ever a --

11          A     How long the unit was out and why, yes.

12          Q     Right.

13          A     But I'm not aware of any standards.

14          Q     I'm actually going to a different question.  
15 It's okay. Finish your answer. The other question was  
16 related, though. The timing of an outage, a planned  
17 outage, would that be something to have to review on a  
18 prudency audit?

19          A     Yes.

20          Q     In other words, if they took a big base load  
21 unit down in the summertime and had to buy a bunch of  
22 natural gas purchase power on that wholesale market, would  
23 that be something you'd have to review?

24          A     There are certain recommended practices or  
25 standard industry practices on when you take -- schedule

1 units for maintenance.

2           And if it looked like they were scheduling units  
3 at times that were not optimal, then that would certainly  
4 be an issue in a prudency audit.

5           Q     You don't worry about those kinds of things  
6 right now, do you, with Ameren's current situation with --  
7 with its units -- excuse me -- with its fuel cost built in  
8 base rates? You don't worry about that too much, do you?

9           A     No.

10          Q     Probably don't examine it too closely when  
11 you're doing a rate case, do you?

12          A     Forced and -- forced and planned outage rates  
13 are something brought up in the case, but you're not  
14 typically dealing with the timing of those outages and  
15 their reductions in off system sales.

16          Q     Or the prudency of the decision about when to do  
17 that maintenance and how long it took, for instance?

18          A     True.

19          Q     Or the order of dispatch of their units. You  
20 might look at that, but you're not going to be -- are you  
21 going to be too concerned about the prudency of -- of when  
22 the units were dispatched under the current -- under the  
23 current rate structure?

24          A     I would not anticipate so. But that is not a  
25 subject I have worked on in this rate case.

1 Q Well, that's okay.

2 A Okay.

3 Q Just to the extent that you know.

4 A Okay.

5 Q What I'm getting at is that the -- the reason  
6 why you might not be as concerned about that with the  
7 current rate structure, if you know?

8 A That's true. I would expect that is the case.

9 Q Why is that?

10 A Because there are strong incentives to operate  
11 the units as efficiently as they can to keep the unit  
12 operating for as much as they can for off system sales.

13 Q And are some of those systems diminished or  
14 perhaps then -- well, diminished -- I hate -- I don't want  
15 to use the word significantly. You've already been --  
16 you've already forewarned me about that.

17 A It's significant. Yeah.

18 Q Are some of those incentives diminished when you  
19 go to a fuel adjustment clause?

20 A Yes.

21 Q All right. And that creates a need to have a  
22 closer review on -- on prudence of those decisions?

23 A Yes.

24 Q All right. You were asked a question in regard  
25 to Senate Bill 179. Or maybe more than one. But I

1 believe you were, correct?

2 A Yes, I was.

3 Q I'm just curious about this one provision in  
4 179. And there may be more. But in regard to -- to  
5 whether the Commission should look at -- at the cost of a  
6 utility in deciding whether or not a fuel adjustment  
7 clause is -- should -- should -- may be -- may be  
8 authorized. I was wondering if you have 179 in front of  
9 you?

10 A It was Schedule WW3-2 or WW Schedule -- WW-3 --

11 Q Yes. I have -- I have it.

12 A -- in my rebuttal. Yes.

13 Q I have it in your testimony.

14 A Okay.

15 Q Would you look down at subsection 4 in the  
16 second sentence? And would you --

17 A Yes. I have it.

18 Q Where it says, The Commission may?

19 A I have it.

20 Q Would you mind reading that?

21 A The Commission may approve such rate schedules  
22 after considering all relevant factors which may affect  
23 the cost or overall rates and charges of the corporation  
24 provided that it find that the adjustment mechanism set  
25 forth in the schedules, colon.

1           Q     Okay.  Would you -- would you agree that there  
2     is a difference between utilities in regard to the costs  
3     that they may incur regarding fuel as a result of their --  
4     of their generation mix?

5           A     Yes.

6           Q     And so would you say that -- that there is some  
7     specific mention of -- of provision -- provision in 179  
8     that -- that might cause the Commission to -- or to hear  
9     arguments about things that may vary from one utility to  
10    another?

11          A     Yes.

12                    COMMISSIONER GAW:  Okay.  That's all I have.  
13    Thank you.

14                    JUDGE WOODRUFF:  Thank you.  Chairman Davis, do  
15    you have any questions?

16                    CHAIRMAN DAVIS:  No questions for Mr. Wood.

17                    JUDGE WOODRUFF:  Thank you.  Anyone wish to  
18    recross based on questions from the Bench?

19                    MR. BYRNE:  No, your Honor.

20                    JUDGE WOODRUFF:  Any redirect?

21                    MR. DOTTHEIM:  No redirect.

22                    JUDGE WOODRUFF:  All right.  Well, we've been  
23    going to about two hours now, so we need to take a short  
24    break.  We'll come back at 7:05.

25                    (Break in proceedings.)

1           JUDGE WOODRUFF: All right. Let's come to  
2 order, please. And we are back from break. And while we  
3 were on break, Dr. Michael Proctor took the stand. Please  
4 raise your right hand.

5                           MICHAEL PROCTOR,  
6 being first duly sworn to testify the truth, the whole  
7 truth, and nothing but the truth, testified as follows:

8                           DIRECT EXAMINATION

9 BY MR. DOTTHEIM:

10           JUDGE WOODRUFF: I may -- you may proceed.

11           MR. DOTTHEIM: Dr. Proctor has direct rebuttal  
12 and surrebuttal testimony. His direct testimony is  
13 Exhibit No. 227-HC and NP. His rebuttal testimony is  
14 Exhibit 228-HC and NP. And his surrebuttal testimony is  
15 229-HC and NP.

16           JUDGE WOODRUFF: And he will be testifying later  
17 on?

18           MR. DOTTHEIM: Yes. He will be -- the very next  
19 issue, he will --

20           JUDGE WOODRUFF: Off system sales.

21           MR. DOTTHEIM: On off system sales, he will also  
22 be testifying. He does have some corrections --

23           JUDGE WOODRUFF: All right. Go ahead --

24           MR. DOTTHEIM: -- to his -- to his testimony.

25           JUDGE WOODRUFF: -- and do the corrections.

1           MR. DOTTHEIM: I will give the court reporter  
2 the -- the exhibits that have been premarked.

3           JUDGE WOODRUFF: Very good.

4           MR. DOTTHEIM: And, Dr. Proctor, on most of the  
5 corrections he has, I don't know that I'd call them an  
6 errata sheet, but we had some sheets which he's marked  
7 with the corrections. He'll -- he'll go through those.  
8 But for -- for the ease as far as people following it --

9           JUDGE WOODRUFF: All right. Are they simply  
10 typos?

11          MR. DOTTHEIM: No. No. They're -- they're more  
12 than typos.

13          JUDGE WOODRUFF: Okay. All right. Well,  
14 proceed. Mr. Dottheim, did you want to mark those pages  
15 as a separate exhibit or anything?

16          MR. DOTTHEIM: Should we mark them as an  
17 exhibit, or would they become part of the --

18          JUDGE WOODRUFF: However you want to do it. I  
19 guess -- if I just want to have him testify about the  
20 changes, that -- that would be sufficient.

21          MR. DOTTHEIM: Okay. Just have him testify.

22          JUDGE WOODRUFF: These are just for visual aid?

23          MR. DOTTHEIM: Yes.

24          JUDGE WOODRUFF: All right. Go ahead.

25          MR. DOTTHEIM: Has Dr. Proctor been sworn?



1 JUDGE WOODRUFF: I think I did. Yeah.

2 MR. DOTTHEIM: Excuse me. Excuse me, Judge.

3 Q (By Mr. Dottheim) Dr. Proctor, you have copies  
4 of your rebuttal, surrebuttal -- excuse me, rebuttal,  
5 surrebuttal and your direct testimony?

6 A I do.

7 Q Do you have corrections to make to any of your  
8 -- your testimony, direct, rebuttal or surrebuttal?

9 A Yes, I do. On the, rebuttal testimony, at page  
10 9 at the top of that page, there are two tables. And in  
11 the first table, the second row of that table has a  
12 heading, Dollars Per Megawatt Hour, Percent Difference,  
13 Dollars Per Megawatt Hour, Percent Difference, Cents per  
14 Million BTU Percent Difference, and Dollars per Million  
15 BTU percent difference.

16 And in the lower table, that table should have  
17 those same headings in the second row. It says Currently,  
18 and it says From and To in each of those column headings.  
19 And they should read the same as the table above. So  
20 going across, again, it should be -- instead of From and  
21 To, it should read Dollars per Megawatt Hour, Percent  
22 Difference, Dollars per Megawatt Hour, percent Difference,  
23 Cents Per Million BTU, Percent Difference and Dollars per  
24 Million BTU, Percent Difference.

25 In the rebuttal testimony, at page 29 at the

1 bottom of the page, lines 24 through 27, it currently  
2 reads, Merengues's 207 fuel budget is 31 --

3 MR. LOWERY: Your Honor. Your Honor, I believe  
4 these are highly confidential numbers that he's about  
5 ready to testify to.

6 JUDGE WOODRUFF: All right. They are marked as  
7 highly confidential on the document, it looks like. We'll  
8 go in-camera.

9 REPORTER'S NOTE: At this point, an in-camera  
10 session was held, which is contained in Vol. 18, pages  
11 1018 through 1019.

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1 CONTINUED DIRECT EXAMINATION OF MICHAEL PROCTOR

2 BY MR. DOTTHEIM:

3 JUDGE WOODRUFF: All right. We're back in  
4 regular session.

5 A On -- on page 30, starting at line 10, I have  
6 several corrections on lines 10, 11 and 12. And I'll read  
7 it the way it should read, I think is the easiest way to  
8 put it in the record. And people have a copy of this.

9 lines 10 -- 10, 11 and 12 should read as  
10 follows: I found that on peak prices for AmerenUE average  
11 \$1.04 per megawatt hour lower than the Cinergy hub price.  
12 And for off peak prices, AmerenUE's prices averaged -- and  
13 it's 78 cents per megawatt hour lower than the Cinergy hub  
14 prices.

15 And then starting at line 16 through line 18, I  
16 will -- will read that as it's corrected. A few months  
17 where AmerenUE's off peak prices were higher than the  
18 Cinergy hub off peak prices four of fifteen, the dominant  
19 numbers were in the same direction as the averages; that  
20 is, AmerenUE on peak and off peak prices are lower than  
21 the Cinergy hub.

22 And those are the corrections I have on -- to  
23 page 30 of my testimony. Let me simply say that on this,  
24 the calculations I did for the Cinergy hub off peak  
25 prices, I used a simple average of Saturdays, Sundays and

1 weekdays.

2           And the company pointed out to me that I needed  
3 to weight those with the hours. And the hours were not  
4 the same for -- for weekdays off peak as for Saturdays and  
5 Sundays.

6           And when I did the reweighting, to do it so that  
7 we're comparable with Mr. Schukar's prices, which I'm  
8 comparing to here, that the results changed. And that's  
9 all the corrections that I have to my surrebuttal  
10 testimony.

11           I'm just going to point out -- and I don't know  
12 if -- on the direct testimony, the word "wholesale" is  
13 misspelled on the title page. It's not part of my  
14 testimony, but I thought I'd just point it out anyway.

15           Q     Okay.

16           A     Those are all the changes.

17           MR. DOTTHEIM: Okay. Thank you, Dr. Proctor.

18           JUDGE WOODRUFF: All right. Do you tender him  
19 for cross at this point?

20           MR. DOTTHEIM: Yes. At this point, I tender  
21 Dr. Proctor for cross-examination.

22           JUDGE WOODRUFF: All right. Thank you. First,  
23 for Public Counsel?

24           MR. MILLS: No questions.

25           JUDGE WOODRUFF: For the State?

1 MR. MICHEEL: No.

2 JUDGE WOODRUFF: DNR? MIEC? MEG? Commercial  
3 Group? Noranda? AARP?

4 MR. COFFMAN: No questions.

5 JUDGE WOODRUFF: Missouri Retailers?

6 MR. OVERFELT: No questions.

7 JUDGE WOODRUFF: MO-KAN, MASW, Laclede, Aquila,  
8 Joint Bargaining Committee? Ameren?

9 MR. BYRNE: No questions, your Honor. We're  
10 just going to question Dr. Proctor in connection with off  
11 system sales tomorrow. Well, we hope tomorrow.

12 JUDGE WOODRUFF: Well, this kind of progress  
13 helps. I have no questions from the Bench. So there's  
14 know need to --

15 MR. DOTTHEIM: Judge, we have a  
16 Commissioner who is approaching.

17 JUDGE WOODRUFF: All right.

18 COMMISSIONER GAW: Oh, my God.

19 JUDGE WOODRUFF: Commissioner, there was no  
20 cross from the parties. They're going to cross -- they're  
21 going to cross him tomorrow in connection with the off  
22 system sales.

23 COMMISSIONER GAW: Hm-mm.

24 JUDGE WOODRUFF: So if you have questions for  
25 him regarding fuel adjustment, you can ask them at this

1 time, or you can wait until tomorrow.

2 COMMISSIONER GAW: If I don't ask him now, does  
3 he get excused for the evening?

4 JUDGE WOODRUFF: I believe so.

5 COMMISSIONER GAW: Dang. I hate to do that.  
6 But I -- if it's all right, those two issues are so  
7 intermingled together, I -- I think it would be just as  
8 well if I waited.

9 JUDGE WOODRUFF: All right.

10 COMMISSIONER GAW: I'm sure if I start asking  
11 him questions, I'm going to get into off system sales.  
12 And I might as well let you all have that first.

13 JUDGE WOODRUFF: Okay. And since there are no  
14 questions on cross or the from the Bench, there is no  
15 recross, no redirect. And, Mr. Proctor, you can step  
16 down.

17 MR. PROCTOR: Thank you.

18 JUDGE WOODRUFF: And the next witness, I  
19 believe, is Mr. Cassidy. All right. Mr. Cassidy, if you  
20 would please raise your right hand?

21 JOHN CASSIDY,  
22 being first duly sworn to testify the truth, the whole  
23 truth, and nothing but the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. DOTTHEIM:

26



1 JUDGE WOODRUFF: You may be seated.

2 Q (By Mr. Dottheim) Mr. Cassidy, do you have any  
3 corrections to your testimony?

4 A I do.

5 Q Okay.

6 MR. DOTTHEIM: Let's first provide the court  
7 reporter with copies. Mr. Cassidy's direct testimony is  
8 207-HC and NP. His rebuttal testimony is 208-HC and NP.  
9 And his surrebuttal testimony is 209-HC and NP.

10 Q (By Mr. Dottheim) Mr. Cassidy, if you could,  
11 please, identify the -- the corrections you have to your  
12 testimony.

13 A I have a correction to my highly confidential  
14 version of my rebuttal testimony. Page -

15 Q Is the correction itself highly confidential?

16 A I don't believe so.

17 Q So the correction is to -- to Exhibit No. 208?

18 A It is my rebuttal testimony.

19 Q Which is Exhibit 208?

20 A Yes.

21 Q Okay.

22 A Yes.

23 Q Yes. Please identify the correction, please.

24 A It is on page 7, line 7. After the first dollar  
25 amount identified on that line, the word "million" should



1 be inserted. That's all the corrections that I have.

2 MR. DOTTHEIM: I tender Mr. Cassidy for  
3 cross-examination.

4 JUDGE WOODRUFF: Okay. Very good. And Public  
5 Counsel?

6 MR. MILLS: No questions.

7 JUDGE WOODRUFF: The State?

8 MR. MILLS: No, sir.

9 JUDGE WOODRUFF: I'm going to skip down to  
10 Noranda?

11 MR. CONRAD: No questions.

12 JUDGE WOODRUFF: AARP?

13 MR. COFFMAN: No questions.

14 JUDGE WOODRUFF: Missouri Retailers?

15 MR. OVERFELT: No questions.

16 JUDGE WOODRUFF: Laclede and Aquila? Joint  
17 Bargaining? Ameren?

18 MR. BYRNE: No questions.

19 JUDGE WOODRUFF: Okay. Commissioner Gaw, we're  
20 up to you again already.

21 COMMISSIONER GAW: Goodness gracious.

22 CROSS-EXAMINATION

23 BY COMMISSIONER GAW:

24 Q Well, I hate to ask anything after everyone else  
25 has passed, but, if you would, Mr. Cassidy, could you

1 explain to me, since there are no questions, what the  
2 differences are in regard to your testimony on the fuel  
3 adjustment now and -- and the company's, if you -- if you  
4 can do that? Or is that too -- too broad a question?

5 A Well, I believe the purpose of my testimony was  
6 just to identify the quantity of fuel increases and the  
7 timing of those increases. So --

8 Q Okay.

9 A -- the -- the purpose of my testimony isn't  
10 really to testify to the appropriateness of the -- the  
11 fuel adjustment clause.

12 Q I understand that. But in regard to the  
13 testimony that you did -- that you do offer here, is there  
14 a -- a disagreement on the numbers that you've supplied in  
15 your testimony?

16 A I don't believe so.

17 COMMISSIONER GAW: Okay. Well, if that's the  
18 case, then I won't have any questions either, Judge.  
19 Thank you.

20 JUDGE WOODRUFF: Any recross or redirect?

21 MR. BYRNE: No, your Honor.

22 JUDGE WOODRUFF: All right. With that, then,  
23 Mr. Cassidy, you can step down. And I believe the next  
24 witness is Mr. Kind. Mr. Cassidy, you'll be testifying  
25 later on again, won't you?

1 MR. CASSIDY: Yes.

2 COMMISSIONER GAW: So I can save some of this.

3 JUDGE WOODRUFF: Good evening, Mr. Kind.

4 MR. KIND: Good evening.

5 JUDGE WOODRUFF: Please raise your right hand.

6 RYAN KIND,

7 being first duly sworn to testify the truth, the whole

8 truth, and nothing but the truth, testified as follows:

9 JUDGE WOODRUFF: You may be seated.

10 MR. MILLS: I tender the witness for

11 cross-examination.

12 JUDGE WOODRUFF: Okay. And for Public Counsel

13 witnesses, we start with Staff.

14 MR. DOTTHEIM: No questions.

15 JUDGE WOODRUFF: For the State?

16 MR. MICHEEL: No questions.

17 JUDGE WOODRUFF: Noranda?

18 MR. CONRAD: No questions.

19 JUDGE WOODRUFF: AARP?

20 MR. COFFMAN: No questions.

21 JUDGE WOODRUFF: Missouri retailer?

22 MR. OVERFELT: No questions.

23 JUDGE WOODRUFF: Ameren?

24 MR. BYRNE: No questions.

25 JUDGE WOODRUFF: They're not giving you enough

1 time to look at it, Commissioner.

2 COMMISSIONER GAW: No, they're not.

3 CROSS-EXAMINATION

4 BY COMMISSIONER GAW:

5 Q Mr. Kind, do you view that lack of questions as  
6 an acquiescence to your position in your testimony?

7 A I was viewing it more of an endorsement of the  
8 recommendations made in my testimony, yes.

9 Q The purpose of your testimony on this  
10 appearance, please narrow it for me so I -- I want to make  
11 sure that I'm not going to miss an opportunity here.

12 A Okay. It's just to address fuel adjustment  
13 clause issues. And I -- I filed two pieces of testimony  
14 that address those issues. I think I have a total of five  
15 pieces of testimony in this case.

16 Q Okay.

17 A I've got direct testimony that I filed on  
18 December 29th addressing this issue. And then I also have  
19 rebuttal testimony filed on February 2nd addressing this  
20 issue.

21 Q Okay. Is -- is -- the issue on the fuel  
22 adjustment, do you consider that as a separate and apart  
23 issue from off system sales --

24 A Yes, I do.

25 Q -- in -- in regard to your appearance this

1 evening?

2           A     Yes. I'm scheduled to appear also on off system  
3 sales.

4                   COMMISSIONER GAW: In that event, I will do the  
5 same with this witness as I have done with Dr. Proctor,  
6 Judge. Thank you for the opportunity.

7                   JUDGE WOODRUFF: Thank you. Any recross?  
8 Redirect? Mr. Kind, you can step down. And the next  
9 witness is Mr. Trippensee. And if you'd please raise your  
10 right hand.

11                               RUSSELL TRIPPENSEE,  
12 being first duly sworn to testify the truth, the whole  
13 truth, and nothing but the truth, testified as follows:

14                   JUDGE WOODRUFF: Thank you. You may be seated.

15                   MR. MILLS: I tender the witness for  
16 cross-examination.

17                   JUDGE WOODRUFF: Very good. Staff?

18                   MR. DOTTHEIM: No questions.

19                   JUDGE WOODRUFF: Let me save a little time here.  
20 Does anyone want to cross-examine this witness?

21                   MR. LOWERY: I have a few questions, your Honor.

22                   JUDGE WOODRUFF: All right. Please come  
23 forward.

24                               CROSS-EXAMINATION

25 BY MR. LOWERY:

1 Q Good evening, Mr. Trippensee.

2 A Good evening, Mr. Lowery.

3 Q Mr. Trippensee, in your rebuttal testimony, I  
4 think you made a concern about the original proposal that  
5 the company had made to recover or return any variance  
6 between fuel and purchase power costs actually experienced  
7 during an early third quarter and the fuel and purchase  
8 power costs that would be charged in the FAC over the  
9 later quarter rather than over a 12-month period, right?

10 A That is correct.

11 Q And the company, in Mr. Lyons' surrebuttal  
12 testimony, has agreed that instead of recovering those  
13 differences over a later quarter that they would spread  
14 that recovery or it could be a return if there was a  
15 decrease in the FAC rate over a 12-month period; is that  
16 right?

17 A That's my understanding.

18 Q And, Mr. Trippensee, I think you also objected  
19 to the possibility that there would be four FAC  
20 adjustments per year?

21 A I pointed out some concerns with having four per  
22 year. That is correct.

23 Q Mr. Trippensee, are you familiar with the  
24 Commission's fuel adjustment clause rules?

25 A Yes, I am.

1 Q And are you familiar with the provisions of  
2 4 CSR 240-20.090(4)(a)? Do you happen to have a copy of  
3 the rules there with you?

4 A Yes, I do.

5 Q Have you found that particular provision?

6 A Could you refer to the paragraph again, please?

7 Q Yeah. It's 20.090(4)(a).

8 A Yes. I have paragraph 4.

9 Q Could -- could you read subparagraph A that  
10 begins, An electric utility, into the record, please?

11 A An electric utility with fuel adjust -- with a  
12 FAC shall file one -- one in a parens -- mandatory  
13 adjustment to its FAC in each true-up year coinciding with  
14 the true-up of its FAC. It may also file up to three --  
15 three in parens -- additional adjustments to its FAC  
16 within a true-up year with the timing and number of such  
17 filings to be determined in the general rate proceeding  
18 establishing the FAC and in general rate proceedings  
19 thereafter.

20 Q Would you agree, Mr. Trippensee, that the  
21 Commission's rules did contemplate depending on what the  
22 Commission decided in the rate case that up to four  
23 adjustments per year might be appropriate in the fuel  
24 adjustment clause?

25 A They contemplated that possibility.

1           Q     And you mention in your testimony that there was  
2 one mandatory adjustment but didn't make mention of the  
3 fact that the rules contemplated that there might be up to  
4 four; is that true?

5           A     The one mandatory adjustment is what I mentioned  
6 in my testimony because if a fuel adjustment was approved,  
7 that's what Public Counsel believes would be appropriate  
8 for AmerenUE.

9           Q     My question was whether or not you mentioned to  
10 the Commission and pointed out to the commission that the  
11 rules actually contemplated that there could be up to four  
12 adjustments. Did you mention that in your testimony?

13          A     No, I did not.

14          Q     Mr. Trippensee, have you read Mr. Lyons'  
15 testimony in this case?

16          A     Yes, I have.

17          Q     Do you happen to have a copy of it there,  
18 Mr. Trippensee?

19          A     Which testimony?

20          Q     Mr. Lyons' surrebuttal testimony.

21          A     Yes, I do.

22          Q     Could you turn to schedule MJL-5 of Mr. Lyons'  
23 surrebuttal testimony?

24          A     MJL-5?

25          Q     Yes.



1           A     I have that.

2           Q     Have you -- do you have any evidence,  
3 Mr. Trippensee, that the information on Schedule MJL-5 is  
4 inaccurate?

5           A     No, I do not.

6           Q     And I take it you have not independently  
7 investigated the operation or the features of the fuel  
8 adjustment clauses that are in place in the states that  
9 are discussed in Schedule MJL-5; is that correct?

10          A     I have not looked at each of their fuel  
11 adjustment clauses.  No.

12          Q     Have you looked at any of them?

13          A     I have looked over -- over my career, I've  
14 looked at some, but not specifically for this case.

15          Q     Mr. Trippensee, if we had a fuel adjustment  
16 clause and we only had one adjustment per year as opposed  
17 to, say, three adjustments, isn't it correct that whatever  
18 fuel cost changes occur during that year -- let's assume  
19 that there are fuel cost increases over the prior year  
20 period.

21                     Isn't it correct that whatever fuel cost changes  
22 occur during that year are going to all take place at one  
23 time as opposed to being spread out throughout the year?

24          A     The net effect of all activity during that year  
25 would result in a fuel -- change in the fuel adjustment

1 clause on a one-time basis. That's correct.

2 Q Let's assume that fuel costs are rising  
3 throughout the year and that we wait until the end of the  
4 year to make one adjustment. Is that one adjustment going  
5 to be larger at that time as opposed to having smaller  
6 adjustments in the interim?

7 A Without looking at the other items that go in to  
8 determine total fuel costs, unit performance, potentially  
9 off system sales, if they're included, I can't answer that  
10 question.

11 Q Let's hold unit performance constant, and let's  
12 assume we're looking at net fuel costs -- or we're looking  
13 at fuel purchase power net off system sales, and it's all  
14 being run through the FAC, through the fuel adjustment  
15 clause. Do you have those assumptions in mind?

16 A Yes.

17 Q If we -- if we don't make adjustments in the  
18 interim periods during the year and wait till the end of  
19 the year and fuel costs are rising throughout the year,  
20 we're going to have one larger adjustment as opposed to,  
21 say, three or four smaller adjustments, correct?

22 A Given your assumptions, which are probably not  
23 reasonable, that is correct.

24 Q Given those assumptions, we're going to have one  
25 larger adjustment; isn't that correct?

1           A     I believe I just answered that.

2           Q     And under Senate Bill 179, the Commission's  
3 rules, interest, of course, accrues on under-recovery; is  
4 that correct?

5           A     That is correct.

6           Q     And so we're going to add the interest for the  
7 full year to that one adjustment, correct?

8           A     That's correct.

9           Q     And if we had a decreasing cost environment  
10 throughout the year with -- under the same set of  
11 assumptions, we're going to have one larger decrease at  
12 the end of the year, too, correct?

13          A     That is correct.

14          Q     And -- and customers would also be entitled to  
15 interest on that over-recovery during the year, correct?

16          A     That's my understanding.

17          Q     And it will delay -- will delay returning some  
18 of that interest until the end the year as opposed to  
19 returning some of it throughout the year, correct?

20          A     Could you say that again? Delay returning the  
21 interest?

22          Q     The interest -- rather than the customers  
23 getting -- let's say we had three adjustments per year.  
24 Rather than the customers getting any interest on the  
25 first four month period at that adjustment, on the next

1 four-month period at that adjustment and so on, all of the  
2 interest for that year will be returned at the end of the  
3 year along with whatever fuel decrease occurred at that  
4 point in time, correct?

5 A Actually, I think there would be differences in  
6 depending on how often you flow it back. The longer wait  
7 to flow it back, the larger the interest amount that would  
8 actually have to be flowed back or in turn paid by the  
9 ratepayer.

10 Absent that mathematical calculation, flowing it  
11 back to the ratepayer in a -- or charging the ratepayer  
12 would serve to make the incremental amounts smaller under  
13 your set of assumptions that you have placed.

14 Q But whatever that balance is, the customer is --  
15 in a decreased environment, the customers are going to  
16 experience a delay of getting some of that money back as  
17 opposed to having interim adjustments throughout the year,  
18 correct?

19 A I believe that's correct. Yes.

20 Q What -- Mr. Trippensee, what if you don't have a  
21 fuel adjustment clause at all, but let's assume you have  
22 rate cases every two years? And I want you to also assume  
23 that there are no other offsetting costs or revenues, but  
24 that the only substantial change in the cost of service  
25 over that two-year period is that there have been sharply

1 higher fuel costs. Do you have those assumptions in mind?

2 A Well, I can't quite do that because there's one  
3 cost that will be different no matter what you do.

4 Q And what cost would that be?

5 A All things else being equal, your rate base will  
6 be lower. Therefore, your earning and your interest  
7 coverage will also be lower because of depreciation  
8 expense. That doesn't change. There's nothing the  
9 company can do to avoid that.

10 Q Well, let's assume that the net investments that  
11 the company makes offset any depreciation that takes place  
12 during that two-year period and so that the rate base is  
13 the same in that assumption.

14 A Then you're going to have to make an assumption  
15 about new investment usually comes with new customers. So  
16 I -- I have -- you're making --

17 Q I understand.

18 A You're making assumptions --

19 Q I understand,

20 A -- that don't happen in the real world.

21 Q I understand that you may not agree with the  
22 assumptions. But based upon the set of assumptions I gave  
23 you -- do you have those assumptions in mind?

24 A Would you restate your -- your assumptions?

25 Q Assuming you don't have a fuel adjustment clause

1 at all, assuming that the rate base is the same because  
2 the investments have offset any depreciation that's taken  
3 place and that there are no other costs or revenue changes  
4 of any significance during that two-year period, the only  
5 significant cost changes are sharply higher fuel costs.  
6 Do you have those assumption -- that set of assumptions?

7 A I have those assumptions in mind.

8 Q Based on that set of assumptions, if you don't  
9 have a fuel adjustment clause and then you have a new rate  
10 case and you have to rebase rates, you're going to have an  
11 even larger jump in rates at the end of that two-year  
12 period than if you had a fuel adjustment clause and were  
13 making adjustments along the way, correct?

14 A If you're comparing the jump in rates at the end  
15 of two years versus the incremental changes that would  
16 equal the same number, if you're making that, yes. The --  
17 the incremental changes will be different, but the total  
18 would be the same.

19 Q The total would be the same, but you're going to  
20 have a one-time jump in rates at the end of two years as  
21 opposed to a series of smaller rate increases, correct?

22 A That is correct.

23 Q Now, you argue that since rates are set based  
24 upon a 12-month test year that makes some quarterly FAC  
25 adjustments inconsistent with how rates are set. Is that

1 the argument that you make?

2 A I believe that's what Mr. Lyons had in -- in  
3 either his -- in his surrebuttal testimony. I would  
4 appreciate -- I couldn't find in my testimony where  
5 exactly -- I think he misunderstood my testimony, so I'm  
6 -- I'm a little curious where he was pulling that from.

7 Q Take a look at your rebuttal testimony at page  
8 5, lines 6 to 8.

9 THE COURT REPORTER: I need to stop for just one  
10 second.

11 JUDGE WOODRUFF: All right. Off the record.

12 (Break in proceedings.)

13 JUDGE WOODRUFF: All right. Back on the record.

14 Q (By Mr. Lowery) Mr. Trippensee, can you find  
15 your rebuttal testimony at page 5, lines 6 to 8?

16 A Yes, I did.

17 Q And there's a sentence there that begins, A rate  
18 case does not develop. Do you see that?

19 A Yes, I do.

20 Q I ask you again, don't you argue in your  
21 rebuttal testimony that since rates are set based upon a  
22 12-month test year that having quarterly FAC adjustments  
23 is somehow inconsistent with how rates are set? Isn't  
24 that the import of your statement at page 5, lines 6 to 8?

25 A The purpose of that statement is somewhat

1 two-fold. The one is -- it's getting into the --  
2 addressing the -- the way the company calculated the  
3 actual cost, which I believe the company has corrected in  
4 their surrebuttal testimony.

5           The second part of this that I'm developing --  
6 discussing is that events can occur throughout a year,  
7 that while costs may go up, fuel costs, there's other  
8 events -- other decisions that the company can make to  
9 offset those costs or to offset things that can change.

10           An outage could change fuel costs during a  
11 period, but the subsequent outage that -- that may have  
12 been planned for that unit would not occur. You could  
13 have a change in a fuel cost that drives fuel costs up  
14 within a quarter that will be offset by actions in the  
15 subsequent quarter, and there's no reason, therefore, to  
16 have a fuel cost go up and then have a fuel adjustment  
17 charge go back down.

18           Q     Mr. Trippensee, but you do say, do you not, that  
19 a rate case does not develop cost structures on a  
20 quarterly basic. They use an annual historic test year,  
21 right?

22           A     That's true. And that's why.

23           Q     And, therefore, you do say that -- that -- you  
24 do then criticize based upon that a quarterly adjustment  
25 or I guess any multiple adjustment within a year as being



1 inconsistent with the annual setting of test -- of rate  
2 case revenue requirement in a rate case based on annual  
3 test year, correct?

4 A I do that because --

5 Q No. That wasn't my question. Do you do that or  
6 not?

7 A Yes, I do.

8 Q And rates are set in natural gas cases based on  
9 a 12-month test year as well, correct?

10 A Yes, they are.

11 Q And PGAs in Missouri typically allow for us up  
12 to four adjustments per year; is that not correct?

13 A That is correct. There's a fundamental  
14 difference.

15 Q My question -- my question was whether that was  
16 correct or not.

17 A That is correct.

18 Q And it's not uncommon for a gas utility to come  
19 in and adjust their PGA rates three or four times per  
20 year, is it?

21 A For the difference in cost of the finished  
22 product they purchase to resale, that is correct.

23 Q Now, you don't think ash costs should be  
24 included in the FAC, do you?

25 A Excuse me.

1 Q Ash cost.

2 A Excuse me?

3 Q Ash cost.

4 A I thought you set gas cost.

5 Q I understand. Ash cost.

6 COMMISSIONER GAW: We all heard something a  
7 little different.

8 A We do not include post-production handling costs  
9 in the FAC.

10 Q (By Mr. Lowery) Now, ash is created at a  
11 coal-fired power plant as a result of burning the coal, is  
12 it not?

13 A That is correct.

14 Q And coal is the primary fuel I would get --  
15 venture to say burned at a coal fired plant, correct?

16 A Most of the time.

17 Q And does the amount of ash burned vary -- or  
18 excuse me -- does the amount of ash produced vary with the  
19 amount of coal burned?

20 A I would have to -- I don't know if there's a  
21 one-for-one relationship.

22 Q Do you know if it varies with the amount of --  
23 the coal burn, the amount of the ash that's produced,  
24 whether it's one-to-one or not?

25 A It would only be an assumption on my part that

1 there is some variance.

2 Q Ash is a commodity; is that correct?

3 A There is some market for resale of it.

4 Q Market price for ash -- ash fluctuates up and  
5 down; isn't that correct?

6 A I'm not sure.

7 Q You don't really know much about the market for  
8 ash; is that correct?

9 A I know -- I believe it's used in concrete, sold  
10 to concrete plants. As far as knowing a lot more about  
11 that market, no, I do not.

12 Q AmerenUE doesn't control the market for ash,  
13 does it, if you know?

14 A I have no opinion on that.

15 Q You don't know one way or -- one way or the  
16 other; is that correct?

17 A I have no opinion.

18 Q Now, you also don't think rail car repair costs  
19 and depreciation for AmerenUE owned rail cars should be  
20 included in the fuel adjustment clause either; is that  
21 correct?

22 A That is correct.

23 Q Am I correct that in railroad transportation  
24 contracts for the coal that the railroads have to move the  
25 power plants that the railroads include such costs in

1 their transportation contracts?

2 A For their own facilities?

3 Q For their own rail cars. Correct.

4 A That is correct.

5 Q Now, if AmerenUE were unwilling to sign those  
6 contracts with the railroads, would AmerenUE be able to  
7 move its coal to the plants?

8 A No.

9 Q In fact, there are just two viable railroads  
10 available to move coal from the Powder River Basin; isn't  
11 that correct?

12 A That's my understanding.

13 Q So AmerenUE doesn't really have the choice to  
14 tell railroads to leave those costs out of your  
15 transportation rates, correct?

16 A That is correct.

17 Q And it's more economic for AmerenUE to own its  
18 rail cars versus using the railroad cars, then AmerenUE is  
19 avoiding that railroad owned car cost which are then not  
20 being charged to AmerenUE and are not being included in  
21 rates, correct?

22 A Could you say that again, please? You --

23 Q If it's more of an effort to AmerenUE to own,  
24 say, a unit train that's AmerenUE's own train than it is  
25 to pay the railroad repair and depreciation costs that are

1 part of, say, Burlington Northern's transportation rate,  
2 then that's a decision AmerenUE should make, correct?

3 A If it's more economic, that is correct.

4 Q Now, Mr. Cassidy testifies at page 21, lines 3  
5 to 15 of his direct testimony that rail car repair costs  
6 and depreciation are directly related to fuel  
7 transportation and should not be separated from other coal  
8 transportation costs. Is it your testimony that you're  
9 disagreeing with Mr. Cassidy?

10 A I do not believe that direct -- fixed costs are  
11 not directly related to variable commodity.

12 Q That wasn't my question. Is it your testimony  
13 that you're disagreeing with Mr. Cassidy?

14 A Yes, I am.

15 Q You oppose the inclusion of broker costs and  
16 complications related to hedging in the fuel adjustment  
17 clause, also, do you not?

18 A Office of Public Counsel does, yes.

19 Q Well, do you --

20 A Yes.

21 Q -- Mr. Trippensee? Hedging costs including  
22 broker costs and commissions are included in the PGA  
23 adjustments in Missouri, are they not?

24 A I believe hedging costs are included in the PGA.

25 Q Do you know whether broker costs and commissions

1 are included in the PGA, Mr. Trippensee?

2 A At this moment in time, no I do not.

3 Q And, if, in fact, they are, wouldn't your  
4 position with respect to the fuel adjustment clause be  
5 inconsistent with how those costs are handled for PGAs in  
6 Missouri?

7 A PGA and fuel adjustment are two different  
8 things.

9 MR. LOWERY: Your Honor, I believe that was a  
10 yes or no question.

11 JUDGE WOODRUFF: It was a yes or no question.  
12 Please answer yes or no.

13 A Could you repeat your question, please?

14 Q (By Mr. Lowery) If, in fact, broker costs and  
15 commissions are included in the PGA in Missouri, isn't it  
16 a fact that your position on those costs with respect to  
17 fuel adjustment clause will be inconsistent with how  
18 they're treated in Missouri for the PGA?

19 A They would appear to be inconsistent. Yes.

20 Q Now, Mr. Trippensee, when an ACA filing -- an  
21 ACA filing is an actual cost adjustment proceeding  
22 involving the PGA. You understand that, correct?

23 A Yes, I do.

24 Q When an ACA filing is made, the Commission staff  
25 sends a large -- sends the company a large set of data

1 requests, and the company provides the Commission staff  
2 with a large amount of material. Are you aware of that?

3 A I've seen reams of paper. Yes, I have.

4 Q And included in that reams of paper, as I think  
5 you described it, are all of the gas contracts and  
6 numerous other materials and data, correct?

7 A That's my understanding.

8 Q And the staff then follows up with more data  
9 requests if needed. IS that your understanding?

10 A That's my understanding.

11 Q The company doesn't send that large stack of  
12 material to OPC, does it?

13 A We have the right to look at it if we wish.

14 Q But does the company typically send all that  
15 information to the Office of the Public Counsel?

16 A I'm trying to think if there's one company that  
17 does. But I don't believe AmerenUE does.

18 Q And OPC typically doesn't look at that  
19 information and doesn't send AmerenUE DRs related to its  
20 cost adjustment filings, does it?

21 A We normally do not send DRs on all ACA cases.  
22 We have lawyers who monitor those cases or myself will  
23 talk with the Gas Procurement Department of the Public  
24 Service Commission. There's no reason to kill trees  
25 twice.

1           Q     Indeed, Mr. Trippensee, isn't it a fact that it  
2 is Staff who conducts the ACA audit almost all the time  
3 and it is the Staff that files recommendations with the  
4 Commission, not the office of Public Counsel?

5           A     Staff normally does have a department that deals  
6 with that. That is correct.

7           Q     And, typically, the Public -- Office of Public  
8 Counsel does not conduct its own audit; isn't that  
9 correct?

10          A     Typically, it does not.

11               MR. LOWERY: Thank you, Mr. Trippensee.

12               JUDGE WOODRUFF: Thank you. It's now ten till  
13 eight. And I believe it's just about time to quit for the  
14 night. There are acclaims in the audience.

15               MR. MILLS: Do you want to finish up with  
16 Mr. Trippensee?

17               JUDGE WOODRUFF: I'll ask Commissioner Gaw, how  
18 far do you want to go? Do you have any questions for  
19 Mr. Trippensee?

20               COMMISSIONER GAW: Do I have?

21               JUDGE WOODRUFF: Yes.

22               COMMISSIONER GAW: Maybe. Do you want them now  
23 or tomorrow?

24               JUDGE WOODRUFF: Well, my question is, would you  
25 be looking at in the next ten minutes, or would you be



1 looking at longer than that?

2 COMMISSIONER GAW: I don't think it would take  
3 very long. But I don't have any interest in delaying  
4 people's departure here. So --

5 JUDGE WOODRUFF: Well, if it's not going to take  
6 very long, it would be nice to finish Mr. Trippensee.

7 MR. TRIPPENSEE: Save my seat.

8 CROSS-EXAMINATION

9 BY COMMISSIONER GAW:

10 Q Mr. Trippensee, real quick, would you please  
11 explain to me, just very briefly, what it is that your  
12 testimony on page 2 and 3 of your surrebuttal is -- is --  
13 is intending to explain?

14 A I -- what I was trying to explain there is what  
15 the company was -- in their original proposal or their  
16 secondary proposal, fuel adjustment was -- they were  
17 calculating actual costs based on a unit cost per KWH, and  
18 then they were applying the estimated sales taking that  
19 time to estimated sales for some future unknown period.

20 That would not give you actual costs of revenues  
21 received -- well, actual revenues received to cover the  
22 actual costs during the period of those rev -- those KWHs  
23 were told sold.

24 Q And why not?

25 A Because they were applying the -- the revenue

1 factor times a future sales level and not the actual sales  
2 that were incurred -- or that were sold and -- and  
3 resulted in the generation during that period and the cost  
4 thereof of that generation. I believe they have -- it's  
5 my understanding they have corrected that.

6 Q So you don't --

7 A In their third -- in their third rendition of  
8 the fuel adjustment.

9 Q Okay. Let me just stop on that, then. So in  
10 regard to your -- to your next answer, then, on -- from  
11 line 16 down on 3, would that also have been addressed?

12 A Yes. They -- it said their new -- their new  
13 formula, when I glanced at it, had two different sales  
14 factors allowed.

15 Q Okay. And -- and your -- your initial position  
16 on this is that no fuel adjustment should be allowed,  
17 correct, just generally?

18 A Yes. That -- Mr. Kind handled the policy side  
19 of that. But that is --

20 Q I'm not going to ask you any -- any more detail  
21 on that. I just wanted to know if that's correct. And  
22 then the next -- my next question is in regard to -- to  
23 SO2 allowances and costs how -- how do you -- how does  
24 Public Counsel view that in regard to the fuel adjustment  
25 clause? Did you address that?

1           A     No. Mr. Kind would be happy to discuss that  
2 with you tomorrow.

3           COMMISSIONER GAW: Okay. That's all I have.  
4 Thank you.

5           JUDGE WOODRUFF: All right. Any recross based  
6 on those questions from the Bench?

7           MR. LOWERY: No, your Honor.

8           JUDGE WOODRUFF: Any redirect?

9           MR. MILLS: Just a -- a few.

10          JUDGE WOODRUFF: And is this Mr. Trippensee's  
11 only appearance?

12          MR. MILLS: Yes. And I plan to offer his  
13 testimony as soon as we are done.

14          JUDGE WOODRUFF: I understand why you wanted to  
15 finish him tonight.

16          MR. MILLS: Yes.

17                                   CROSS-EXAMINATION

18 BY MR. MILLS:

19           Q     Mr. Trippensee, why are you against developing  
20 quarterly data for a FAC?

21           A     Because unlike a purchase gas adjustment clause  
22 where the company has purchased -- has acquired the  
23 finished product and they're simply transporting it from a  
24 pipeline to the customer, fuel costs are -- is a very  
25 complex calculation because of the fact there are multiple

1 inputs. There's a lot more than just fuel costs.

2           And I gave an example, I believe, in my  
3 testimony that an outage in one period that wasn't  
4 scheduled could result in a higher fuel cost in that  
5 period, but there would be subsequent adjustments made in  
6 the company's operations in the next quarter that would  
7 offset it.

8           You'd have the fuel costs going. And,  
9 therefore, a fuel adjustment clause charge. And then in  
10 the next period it would go down, and you'd just have  
11 rates fluctuating up and down.

12           Q     You touched on this, but can you elaborate?  
13 What are some differences between an FAC and a PGA?

14           A     The primary difference is fuel adjustment clause  
15 is looking at fuel costs, which are the result of not only  
16 the cost of the coal, the nuclear, natural gas, oil,  
17 whatever the case may be, the transportation charges that  
18 go into it, it's also the fact of the different types of  
19 generation plants that utilize those fuels, how those are  
20 loaded and what order, as was discussed earlier today, the  
21 demand placed on the system, which can affect those -- the  
22 loading order.

23                     It's just an extremely complex calculation -- or  
24 operational thing to look at to determine fuel costs  
25 because it's a fall-out after all these different factors,

1 whereas a purchase gas adjustment clause deals with the  
2 costs of the finished product that the company does  
3 nothing with.

4           It does not provide any enhanced value. It can  
5 make no decisions. All it can do it make sure they don't  
6 lose it from the time they put it in -- get it from the  
7 pipeline until it goes through the customer's regulator on  
8 the side of their house.

9           Q     Out of an LDC's cost, what percentage is natural  
10 gas generally for an LDC?

11          A     Depending on the current price of natural gas,  
12 it's been as low as 60 percent of total costs, probably up  
13 to around 90 percent.

14          Q     For a typical electric utility, what percent of  
15 the electric's Ace cost is fuel?

16          A     Somewhere, I've heard a 35 percent number. I've  
17 seen down as low as 20 percent.

18          Q     Now, how long does an ACA audit take, typically?

19          A     Anywhere from six to eighteen months, depending  
20 on the work load of the department that's looking at it  
21 for Staff. And that is after the ACA year has occurred,  
22 so it's -- anywhere from two to three and a half years  
23 removed from the period of time it occurred.

24          Q     And an ACA -- if you're an -- analogizing a PGA  
25 to an FAC, an ACA is essentially the prudence true-up

1 audit?

2 A That's one component of it, yes.

3 Q Now, turning to the question of rail cars, are  
4 you proposing that UE not recover the cost of the rail  
5 cars that it owns?

6 A No. Public Counsel is not proposing that  
7 whatsoever. It's simply a cost that the company has  
8 control over as a fixed cost that is not volatile. And  
9 while it may flow through the system of accounts under  
10 fuel expense, it is nothing more than a rate base item and  
11 a depreciation expense.

12 Q So it's not a question of non-recovery. It's  
13 simply a difference of opinion on how to recover between  
14 Public Counsel and the company?

15 A It's a difference -- and it has to do with  
16 ownership, investment costs. It's a rate base item. It's  
17 not volatile. They make the decision to purchase a train  
18 or not to purchase a train.

19 MR. MILLS: That's all I have. Thank you.

20 JUDGE WOODRUFF: All right. Thank you. Do you  
21 wish to offer his testimony?

22 MR. MILLS: Yes, please. I'd like to offer  
23 Exhibits -- I'd like to offer Exhibits 415 and 416.

24 JUDGE WOODRUFF: All right. 415 and 416 have  
25 been offered. Any objection to their receipt?

1 MR. LOWERY: No.

2 JUDGE WOODRUFF: Hearing none, they will be  
3 received into evidence.

4 (Exhibit Nos. 415 and 416 were offered and  
5 admitted into evidence.)

6 JUDGE WOODRUFF: And it's now 8:00.

7 MR. LOWERY: Your Honor, I had one housekeeping  
8 matter I wanted to mention to you, and I think I've talked  
9 to some of the counsel in the room. But as you recall,  
10 Mr. Lyons is going to come back, and I think some of the  
11 other parties may want to put on some direct testimony  
12 about the tariff language that was admitted into the  
13 evidence the other day.

14 And my thought, which at least a couple of  
15 counsel said they have no problem with, was we ought to go  
16 ahead get off system sales, do those witnesses, and then  
17 take up that tariff issue at the end of that so we'd have  
18 all the evidence about off system sales. Since the two  
19 issues are intertwined to a great degree, it seemed to  
20 make more sense to me.

21 JUDGE WOODRUFF: That will be fine.

22 MR. LOWERY: Thank you.

23 JUDGE WOODRUFF: I also wanted to ask the  
24 parties -- I'm looking ahead a little bit about the issues  
25 that are on for Friday, which I believe are income tax,

1 wind power and demand-side management. Do we anticipate a  
2 large amount of cross-examination?

3 MR. BYRNE: Income tax is resolved.

4 JUDGE WOODRUFF: I'm sorry. Wind power,  
5 demand-site management and --

6 MR. DOTTHEIM: We also have rate design.

7 JUDGE WOODRUFF: Low income and voluntary green  
8 power on there.

9 MR. MICHEEL: The State will have no questions  
10 on that issue, your Honor, if that helps.

11 JUDGE WOODRUFF: Okay. Mr. Conrad, we also  
12 talked about when we were going to put Mr. Schukar on.

13 MR. CONRAD: Yeah. I think he was kind of  
14 hoping that we would be far enough along with Mr. Lyons --  
15 Lyons that we could get him on and off tomorrow.

16 JUDGE WOODRUFF: We will certainly --

17 MR. CONRAD: What it sounds like is it might be  
18 tomorrow afternoon rather than tomorrow morning. I can't  
19 speak for Mr. Schukar. He's here, but --

20 JUDGE WOODRUFF: We can do it as needed, I'm  
21 sure.

22 MR. CONRAD: I think probably of more  
23 significance is the sequence.

24 JUDGE WOODRUFF: Okay.

25 MR. COFFMAN: Your Honor?



1 JUDGE WOODRUFF: Yes.

2 MR. COFFMAN: You raised the question earlier,  
3 too, about the point of giving AmerenUE an opportunity to  
4 provide, I think, some live rebuttal to the local public  
5 hearing testimony.

6 JUDGE WOODRUFF: Yes. The safety net program.

7 MR. COFFMAN: Consumer credits. I just didn't  
8 know if we --

9 JUDGE WOODRUFF: Have the parties discussed  
10 that?

11 MR. COFFMAN: I've not heard anything from  
12 Ameren.

13 JUDGE WOODRUFF: Discuss it and bring it up when  
14 you -- you get a chance. Anything else while we're on the  
15 record? With that, then, we're adjourned until 8:30  
16 tomorrow.

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