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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

November 24, 2008
Jefferson City, Missouri
Volume 16

In the Matter of Union Electric)
Company d/b/a AmerenUE's Tariffs)
To Increase Its Annual Revenues) Case No. ER-2008-0318
For Electric Service)

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

JEFF DAVIS, Chairman,
CONNIE MURRAY,
ROBERT M. CLAYTON III,
TERRY JARRETT,
KEVIN GUNN,
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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APPEARANCES:

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

JAMES B. LOWERY, Attorney at Law
Smith Lewis, LLP
111 South 9th Street, Suite 200
P.O. Box 918
Columbia, MO 65201
(573)443-3141
lowery@smithlewis.com

JAMES M. FISCHER, Attorney at Law
Fischer & Dority
101 Madison, Suite 400
Jefferson City, MO 65101
(573)636-6758
jfisherpc@aol.com

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

STUART CONRAD, Attorney at Law
Finnegan, Conrad & Peterson
3100 Broadway
1209 Penntower Officer Center
Kansas City, MO 64111
(816)753-1122
stucon@fcplaw.com

DAVID WOODSMALL, Attorney at Law
Finnegan, Conrad & Peterson
428 East Capitol, Suite 300
Jefferson City, MO 65101
(573) 635-2700

FOR: Noranda Aluminum, Inc.

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

1 SHELLEY WOODS, Assistant Attorney General
P.O. Box 899
2 Supreme Court Building
Jefferson City, MO 65102
3 (573)751-3321

4 FOR: Missouri Department of Natural
Resources.

5
6 H. TODD IVESON, Assistant Attorney General
P.O. Box 899
Supreme Court Building
7 Jefferson City, MO 65102
(573)751-3321

8 FOR: State of Missouri.

9
10 HENRY B. ROBERTSON, Attorney at Law
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
11 St. Louis, MO 63101
(314)231-4181
12 hrobertson@greatriverslaw.org

13 FOR: Missouri Coalition for the
Environment.
14 Missourians for Safe Energy,

15 DIANA VUYLSTEKE, Attorney at Law
Bryan Cave, LLP
16 211 North Broadway, Suite 3600
St. Louis, MO 63102
17 (314)259-2543
dmvuyksteke@bryancave.com

18 FOR: Missouri Industrial Energy Consumers.

19
20 LISA C. LANGENECKERT, Attorney at Law
Sandberg, Phoenix & von Gontard, P.C.
One City Centre, 15th Floor
21 St. Louis, MO 63101
(314)231-3332
22 llangeneckert@spvg.com

23 FOR: Missouri Energy Group.

24

25

1 JOHN COFFMAN, Attorney at Law
871 Tuxedo Boulevard
2 St. Louis, MO 63119
(573)424-6779
3

FOR: AARP.
4 Consumers Council of Missouri.

5 LEWIS R. MILLS, JR., Public Counsel
P.O. Box 2230
6 200 Madison Street, Suite 650
Jefferson City, MO 65101
7 (573)751-4857

8 FOR: Office of the Public Counsel
and the Public.
9

KEVIN THOMPSON, General Counsel
10 STEVEN DOTTHEIM, Chief Deputy General Counsel
STEVE REED, Chief Litigation Attorney
11 NATHAN WILLIAMS, Deputy General Counsel
SARAH KLIETHERMES, Assistant General Counsel
12 ERIC DEARMONT, Assistant General Counsel
P.O. Box 360
13 200 Madison Street
Jefferson City, MO 65101
14 (573)751-3234

15 FOR: Staff of the Missouri Public
Service Commission.
16
17
18
19
20
21
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Welcome back for day three
3 of the AmerenUE rate hearing, and Mr. Dottheim, I believe
4 you had some matters you wanted to bring up before we get
5 started.

6 MR. DOTTHEIM: Yes, Judge. Thank you.
7 Friday afternoon Sherry Schroeder, who represents the
8 unions, the IBEW and the IUOE, advised me that three of
9 the four union witnesses, one of which I previously was
10 aware, would not be available tomorrow as presently
11 scheduled, so I wanted to bring that to the Commission's
12 attention. We are in discussions about rescheduling that
13 for December 3 or possibly the day prior to that, but
14 we're looking at December 3 in part because there's an
15 issue on that day that we think may come to resolution.
16 So we would start tomorrow not with the union's issues
17 testimony.

18 The other item is the first issue today
19 will be the first issue where there is a witness who is
20 responsible for a portion of the Staff Cost of Service
21 Report, and from the Staff's perspective, it would make
22 the most sense that the Staff when it offers that
23 individual's testimony, rebuttal and/or surrebuttal
24 testimony, that the Staff would offer that portion of the
25 Staff Cost of Service Report that that individual is

1 responsible for so that any party could object to that
2 section of the Staff's Cost of Service Report if that
3 party is so inclined rather than wait.

4 JUDGE WOODRUFF: So you'd be offering, say,
5 pages 10 through 12 or something of the report?

6 MR. DOTTHEIM: Yes. And the Staff
7 throughout the report has identified those individuals who
8 are responsible for the various pages of the Staff report,
9 but yes, we would be identifying by page the sections --

10 JUDGE WOODRUFF: That would be fine.

11 MR. DOTTHEIM: -- that the individual is
12 responsible for. So I don't know if any of the parties
13 might have an objection to proceeding in that manner, but
14 I thought before we started the first issue, that I'd
15 broach that subject.

16 JUDGE WOODRUFF: All right. Well, I guess
17 we'll see if anybody raises an objection when you do that.

18 MR. DOTTHEIM: Thank you.

19 JUDGE WOODRUFF: One other request I had
20 from the court reporter, to make sure when you do offer an
21 exhibit into evidence, make sure you give a copy to the
22 court reporter so she doesn't have to chase you down
23 later. Okay.

24 Well, let's go ahead and get started, then.
25 We will be starting I guess on the Pure Power program

1 issue. First witness will be Michael Ensrud. Oh, do mini
2 openings. I'm sorry. Mini opening then for AmerenUE.

3 MS. TATRO: Good morning, Commissioners,
4 Judge Woodruff.

5 The issue before you this morning is not
6 whether AmerenUE has followed its tariffs. It has. It's
7 not whether AmerenUE took an action or failed to take an
8 action that it promised to do. It's taken those actions.
9 It's not whether or not -- the issue that's in front of
10 you is whether or not a program that is still in its
11 infancy should be continued, a program that's working and
12 a program that's providing the service requested and
13 valued by over 4,000 AmerenUE customers.

14 That program, of course, is Pure Power.
15 Now, Pure Power was developed by AmerenUE in response to
16 our customers' request for more renewable energy options.
17 Putting a windmill in the ground takes time, and Pure
18 Power was a way to quickly provide an option for our
19 customers who were concerned. It's a voluntary program,
20 and it allows customers, both residential and commercial,
21 to purchase what's called renewable energy credits.
22 You'll hear them referred to as RECs.

23 RECs are measured in a single megawatt hour
24 increments and are created at the point of electric
25 generation by a renewable power generator. So the REC

1 itself represents the environmental and other non-power
2 attributes of renewable electricity generation. It is not
3 the electricity itself. It's the non-power attributes of
4 that generation.

5 But because RECs are not tied to the actual
6 electrons, they're not subject to the electricity delivery
7 constraints which exist in UE's system and, in fact,
8 everyone's electrical distribution systems. The EPA and
9 the federal government accepts RECs as perfectly valid.
10 In fact, the EPA describes them as an important choice for
11 buyers of green power nationwide and state that it
12 serves -- and they use this word currency for renewable
13 energy markets.

14 Mr. Ensrud describes RECs as having no
15 material value. I do believe that Pure Power's customers,
16 including commercial customers such as Monsanto and
17 Schaeffly, and residential customers would beg to differ.
18 These customers are happy with this program. They are
19 willingly paying an additional amount each month on their
20 bill in order to support renewable energy. For many, that
21 in and of itself is a material value.

22 AmerenUE's Pure Power program has done
23 exactly what it promised. It was approved by this
24 Commission in Case No. ER-2007-0002. That was the last
25 rate case. Customers voluntarily sign up, pay an

1 additional amount each month, and a REC is retired by Pure
2 Power for each \$15 that's received.

3 Staff does not argue that any of this
4 process is not occurring. Staff argues that more money
5 should be spent on procuring the actual REC and less on
6 education about the program. With time, AmerenUE and its
7 third-party administrator of the program, which is named
8 Three Degrees shares that goal, but they believe judging
9 Pure Power by the failure of a few other programs and
10 without giving it a shot at maturing is both unfair and
11 shortsighted.

12 This is a five-year program. It's in its
13 first year. There's a lot of education of customers about
14 Pure Power and renewable energy in general which is
15 occurring. As we move forward, the percentage spent on
16 customer education and marketing will change, especially
17 as the participation base grows. But people cannot
18 participate in a program that they don't know exists.

19 Commissioners, we ask that you don't
20 prematurely cut off Pure Power after barely 12 months of
21 existence. Now, are there or have there been programs
22 that were poorly designed and poorly implemented?
23 Absolutely. But Pure Power is not one of those programs.
24 AmerenUE has taken steps to ensure its program has the
25 highest integrity possible.

1 Pure Power is Green-e certified. The
2 certification is earned through an audit process each year
3 that ensures the RECs are purchased, that they're
4 purchased from the renewable generator, and that each REC
5 was only sold to one buyer. Green-e sets the standard for
6 material used to promote Pure Power.

7 In addition, Pure Power has set standards
8 that go above and beyond those even required by Green-e.
9 For example, Pure Power requires that 50 percent of its
10 RECs must be purchased from renewable energy generators in
11 Missouri or Illinois. Pure Power requires the RECs be
12 purchased from facilities that came online no earlier than
13 January 1, 2002. We are taking these steps to focus the
14 benefits as much as possible in our area.

15 And RECs aren't an invention of AmerenUE,
16 they're not new. In 2007 over 18 million RECs were
17 produced and sold. The United States Department of Energy
18 and the EPA both issue reports on how they work and how
19 they encourage continued and new generation of renewable
20 power.

21 On this issue, sir, we're back to
22 Mr. Lowery's opening statement mainstream and not
23 mainstream. There might have once been a debate about
24 RECs and whether or not they work, but that debate is over
25 in the rest of America. It appears to only be an issue in

1 the mind of Mr. Ensrud and staff. AmerenUE asks that you
2 allow it to continue to offer this Pure Power choice to
3 its customers.

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

6 MS. KLIETHERMES: May it please the
7 Commission, Judge?

8 Staff is not opposed to green power. Staff
9 is opposed to a utility putting forth a program that is
10 misleading and that cannot be shown to be effective. At
11 AmerenUE's last rate case, the Commission authorized them
12 to offer a voluntary green program. Staff opposed it at
13 that time, but we're not here today to refight that
14 battle. We're here today because the voluntary green
15 program that AmerenUE instituted is riddled with
16 mischaracterizations and inefficiencies.

17 AmerenUE took that Commission authorization
18 and ran. Without getting into HC, the program that
19 AmerenUE created allows Three Degrees, a financial
20 intermediary, to retain a surprising amount of the money
21 participating AmerenUE customers contribute pursuant to
22 the Pure Power program. The program that AmerenUE created
23 also allows AmerenUE to retain untariffed revenue of \$1 of
24 each \$15 collected.

25 On that point, Mr. Barbieri for AmerenUE

1 has conceded to tariff that \$1 retained, but there is
2 still concern that nonparticipating AmerenUE ratepayers
3 are subsidizing the Pure Power program's administrative
4 costs.

5 In short, the Commission allowed AmerenUE
6 to try a voluntary green program and AmerenUE did so. The
7 program is the problem. Green energy is an area where
8 plain logic and capitalistic motives are tempered with the
9 concern for the greater good. But an impassioned desire
10 for a voluntary green program cannot supplant a need for
11 that program to be effective and forthright, voluntary or
12 not.

13 Putting a windmill in the ground does take
14 time, just as Ms. Tatro said. It's taken at least a year
15 for AmerenUE to get this program up and running and it's
16 still not there. A windmill can be installed in less than
17 a year.

18 As for the debate about the effectiveness
19 of RECs nationwide, that debate is still alive and well.
20 All of this is discussed more fully in the Staff's Class
21 Cost of Service Report and in the prefiled surrebuttal
22 testimony of Mr. Mike Ensrud, and he's here available
23 today to answer any questions you might have of him.
24 Thank you.

25 JUDGE WOODRUFF: Thank you. Public

1 Counsel?

2 MR. MILLS: Just very briefly. Thank you,
3 your Honor.

4 Public Counsel opposes the green power
5 program in its current form. As -- as Ms. Tatro pointed
6 out, this program was authorized in UE's last rate case,
7 and as Ms. Kliethermes pointed out, the Staff opposed it
8 in that case and so did Public Counsel, and the main basis
9 for our opposition then and now is that the program has
10 been sold to customers in a misleading fashion.

11 Customers have been led to believe that
12 they're buying power rather than buying RECs. As a
13 result, customers are not getting what they think they're
14 getting, and they're not doing what they think they're
15 doing, and as a result, I think the program should either
16 be significantly changed or removed. Thank you.

17 JUDGE WOODRUFF: Noranda?

18 MR. CONRAD: We do not have an opening,
19 your Honor, on this issue. Thank you.

20 JUDGE WOODRUFF: I believe we're ready for
21 our first witness, which will be Mr. Ensrud. Please raise
22 your right hand.

23 (Witness sworn.)

24 JUDGE WOODRUFF: Thank you. You may be
25 seated. And you may inquire.

1 MICHAEL ENSRUD testified as follows:

2 DIRECT EXAMINATION BY MS. KLIETHERMES:

3 Q. Good morning, Mr. Ensrud.

4 A. Good morning.

5 Q. Are you the same Michael Ensrud who
6 prefiled surrebuttal testimony in this matter?

7 A. I am.

8 Q. And has that testimony been premarked as
9 Exhibit 220HC and NP?

10 A. I'm not sure, but I would assume that that
11 is the number.

12 Q. Are you the same Michael Ensrud who
13 authored the section of the Staff's report on class cost
14 of service that dealt with AmerenUE's Pure Power program?

15 A. I am.

16 Q. And to the best of your knowledge, has that
17 been premarked as 206HC and NP, that report in its
18 entirety?

19 A. Yes, I will accept that.

20 Q. Do you have any corrections to make to
21 either of those documents?

22 A. Only one. In relation to my surrebuttal
23 testimony, on page 8, line 14, it says, yes, only one of
24 the 12 testimonials provided mentioned anything about
25 RECs. That should actually say 2.

1 Q. All right. And could you please provide
2 your full name and your business address?

3 A. It's Michael Ensrud, E-n-s-r-u-d, and I
4 work for the Missouri Public Service Commission here in
5 the Governor's State Office Building.

6 MS. KLIETHERMES: Judge, I tender the
7 witness for cross.

8 JUDGE WOODRUFF: Did you wish to offer 220?

9 MS. KLIETHERMES: Yes, sir.

10 JUDGE WOODRUFF: All right. And we had
11 discussion before the start of the hearing about the Staff
12 report, that you're going to offer portions of that at
13 this point?

14 MS. KLIETHERMES: I would also like to
15 offer the portion of the Staff's report on class cost of
16 service that dealt with the Pure Power Program.

17 JUDGE WOODRUFF: Any objections to the
18 receipt of those documents?

19 MR. CONRAD: No.

20 JUDGE WOODRUFF: Hearing none, they will be
21 received into evidence.

22 (EXHIBIT NOS. 220HC AND NP AND PORTIONS OF
23 EXHIBIT NO. 220HC AND NP WERE MARKED AND RECEIVED INTO
24 EVIDENCE.)

25 JUDGE WOODRUFF: And for cross-examination

1 then we begin with Public Counsel.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. Mr. Ensrud, have you visited Ameren's Pure
4 Power website at various times throughout the course of
5 this proceeding?

6 A. I have.

7 Q. Has that website changed during the course
8 of this proceeding?

9 A. Yes, it has. I do believe when I opened it
10 up over this weekend and went back to recheck that the
11 document had -- or the web page had substantially changed,
12 the content thereof.

13 Q. Can you describe the ways in which it
14 changed?

15 A. Some of the objections, the most egregious
16 have been altered, removed, toned down, but there are
17 still some there that I would consider to be misleading.

18 Q. Have the changes in -- the recent changes
19 in the website done anything to change your position on
20 the Pure Power Program?

21 A. It's had absolutely no effect on two of the
22 issues, and only partially mitigated the third.

23 MR. MILLS: No further questions. Thank
24 you.

25 JUDGE WOODRUFF: All right. Then Noranda

1 have any questions?

2 MR. CONRAD: No questions, your Honor.

3 Thank you.

4 JUDGE WOODRUFF: And AmerenUE?

5 MS. TATRO: Thank you.

6 CROSS-EXAMINATION BY MS. TATRO:

7 Q. Good morning, Mr. Ensrud.

8 A. Good morning.

9 Q. Let's start by discussing how you came to
10 be the Staff member to review Pure Power. Okay. AmerenUE
11 doesn't make any mention of Pure Power in its direct case,
12 correct?

13 A. Correct.

14 Q. Who assigned you to investigate the Pure
15 Power Program?

16 A. The first staffer to reference -- or make
17 assignment to me was Mr. Tom Imhoff, and at that point I
18 was directed to Ms. Mantle to see what had happened in the
19 past.

20 Q. And Ms. Mantle's a senior member of Staff,
21 is she not?

22 A. Correct.

23 Q. In fact, she's the manager of the energy
24 department for the Staff?

25 A. Correct.

1 Q. And the energy department's the department
2 you work in?

3 A. Yes.

4 Q. So do you report to Ms. Mantle, or does
5 your boss report to Ms. Mantle?

6 A. Correct. Yes.

7 Q. Now, the conversation you had with
8 Ms. Mantle, she indicated to you that Staff opposed Pure
9 Power in UE's last rate case; is that correct?

10 A. She did.

11 Q. In fact, she filed testimony opposing it,
12 did she not?

13 A. Yes. I went back and was told to read all
14 testimonies that I could find in relation to the prior
15 case.

16 Q. How many testimonies would that be?

17 A. I know it was Ms. Mantle's, Barbieri. Let
18 me see if I can find it. I think I copied them and I
19 still have those here. For all the books I grabbed, I
20 hope I didn't leave the -- I seem to have left that binder
21 upstairs. My memory is that it was Ms. Mantle for Staff,
22 Mr. Barbieri, and -- and I believe one other person for
23 AmerenUE did make reference to Pure Power.

24 Q. Does the name Robert Mills sound familiar
25 to you?

1 A. Yes, I believe that was the name.

2 Q. Did you review any other testimony?

3 A. I'd have to go back and get the binders,
4 but I think there may have been one more. I'm not sure.

5 Q. Let's discuss Ms. Mantle's testimony. What
6 concerns did she raise in her testimony in the
7 ER-2007-0002 case about that program?

8 MR. MILLS: Judge, I'm going to object on
9 the grounds of relevance. I don't see what -- I mean, in
10 her opening statement Ms. Tatro pointed out that we're not
11 trying the last case, and I have no reason to believe that
12 anything that Ms. Mantle said in the last case is
13 particularly relevant.

14 JUDGE WOODRUFF: Why is there --

15 MS. TATRO: Well, your Honor, the witness
16 has already indicated that he started his research to
17 determine his position in this case by reviewing
18 Ms. Mantle's concerns from the last case. I think I have
19 a right to inquire to determine whether or not he's merely
20 reiterating the same Staff concerns or whether he did work
21 outside that.

22 JUDGE WOODRUFF: I'll allow it.

23 Objection's overruled.

24 THE WITNESS: As to my recollections of her
25 concerns in the prior case, I think she was uncertain

1 about what the end results of this would be. I think
2 there was some speculation, but until you have actual
3 execution of the program, you have nothing to back it up.

4 And I think -- I think some of the concerns
5 were about -- about the difference between the way the
6 thing was represented and what actually occurred, which is
7 the same as mine, but that's about the third issue. The
8 issue of distribution and the issue of actual
9 accountability for the funds --

10 Q. Mr. Ensrud, I'm asking you about concerns.

11 A. Yes.

12 Q. We will get to yours, trust me.

13 A. All right.

14 Q. Okay. So she raises the issue of customer
15 confusion between a REC and the actual purchase of
16 electric energy; is that right?

17 A. Right, and maybe in relation to the way it
18 was presented, if I remember.

19 Q. Mr. Ensrud, did you read the testimony in
20 that case that was presented by the Department of Natural
21 Resource witness, Rick Anderson?

22 A. I did read -- yes, Natural Resource
23 testimony was another one that was in there.

24 Q. Okay. And did DNR, which is my shorthand
25 for the Department of Natural Resources, support the REC

1 program?

2 A. They supported the concept. I don't know
3 if they -- but they had no results to judge them.

4 Q. The question was, did they offer testimony
5 in support of a REC program, yes or no?

6 A. They supported the concept.

7 Q. Okay. I'll interpret that as a yes. Now,
8 after being assigned to look into Pure Power, you went
9 back to your office and you issued some Data Requests,
10 right?

11 A. Yes.

12 Q. Do you know how many Data Requests you
13 issued?

14 A. They were fairly voluminous.

15 Q. Do you know how many you issued? You don't
16 have to look it up. You either know or you don't know.
17 It's okay.

18 A. I've got the DRs in a binder here, so I
19 could count them if need be.

20 Q. Why don't you look at Data Request No. 171
21 for me, please?

22 A. Right. That's the large one. Yes, DR 171
23 is 15 pages long.

24 Q. How many numbered questions do you have
25 there?

1 A. It was 171; 1 through 60.

2 Q. And of the 60 questions that you asked,
3 were there various subparts of many of them?

4 A. Yes, it could be construed that way.

5 Q. Can be construed that way. Did it have a
6 subpart or didn't they?

7 A. Yeah, there was follow-up information.

8 Q. Okay. So you submit as one Data Request at
9 least 60, maybe 120 different questions, right?

10 A. I don't know if it's 120, but I would
11 accept 60.

12 Q. Did others on Staff help you write these
13 questions?

14 A. No. Well, they edited them, but no one --
15 no one said -- let me think. I can't recall of anyone
16 saying write this question. I've had some that were
17 reworked by attorneys in the verbiage, but most of the
18 conceptual things were mine. I think there were some
19 cases where when we were talking about like the, you know,
20 your plan is audited, people -- Mr. Imhoff had a hard time
21 believing that when it said it was an audited plan.

22 Q. Can we stick to the questions that's asked?
23 We'll get to the auditing stuff.

24 A. Sure.

25 Q. But you wrote these questions?

1 A. Essentially, yes, the vast majority of
2 them, and a few were follow-ups because of questions that
3 were asked of me.

4 MR. MILLS: Judge, she asked him a question
5 about whether he wrote them, and he was trying to explain
6 how he had some input into the question. I think he
7 should be allowed to finish that answer. If she doesn't
8 like the answers to the questions she asked, that's
9 unfortunate, but that doesn't allow her to cut off the
10 witness when he's trying to explain who gave him input
11 into writing the questions.

12 JUDGE WOODRUFF: I'm going to overrule the
13 objection. Let's proceed.

14 BY MS. TATRO:

15 Q. Now, but the questions were actually an
16 attachment to the Data Request, and the name of that file
17 was Nathan Version Revised 3?

18 A. Right.

19 Q. Who is Nathan?

20 A. It's one of the attorneys on Staff, Nathan
21 Williams.

22 Q. So that was a reference to Nathan Williams?

23 A. He did the editing of the questions.

24 Q. Okay. What else did you do to prepare for
25 your testimony? What investigation did you undertake?

1 A. For six months I studied various sites on
2 the Internet. I have huge numbers of binders that I
3 printed out. I would estimate that for every document
4 that I printed a copy, I may have read four or five. I
5 talked with staff on -- I would estimate ten staff on six
6 state commissions. I've talked with NREL representatives.
7 Who were some of the others?

8 Q. Did you call up Mr. Anderson with DNR?

9 A. I believe I did.

10 Q. Okay.

11 A. And I think I was referenced to Laura Wolf,
12 I believe was her name. She used to work here.

13 Q. I guess -- I'm sorry. Maybe you answered
14 the question. I'm a bit confused. Did you talk with
15 Mr. Anderson about RECs and how they work?

16 A. We -- if it was, it was -- it was in the
17 brief. I think he referenced me to other parties
18 within -- within the DNR.

19 Q. Okay. And I think you indicated that you
20 spoke with someone with -- I can't remember how you
21 pronounced it, but NREL, does that sound familiar to you?

22 A. Yes.

23 Q. Do you know who you talked to?

24 A. Lori Bird and Barry Freedman.

25 Q. Okay. And you had some extensive

1 conversations with them about this?

2 A. My recollection is I had two conversations
3 with each party, somewhere between 10 and 30 minutes.

4 Q. And you traded e-mails at least with
5 Ms. Bird?

6 A. I believe, yes.

7 Q. And those e-mails were copied to various
8 other members of Staff, including Ms. Mantle?

9 A. Correct.

10 Q. And do you know what NREL stands for?

11 A. Yes. It's National Renewable Energy
12 Laboratory. It's -- I think it's associated -- some of
13 their stuff has the Department of Energy stamp placed upon
14 it, although I've saw stuff, too, with Department of
15 Energy that is separate. So I would describe them as an
16 arm, but only an arm of the DOE.

17 Q. Okay. Do you consider them knowledgeable
18 about RECs?

19 A. They seem to be fairly knowledgeable.

20 Q. Okay. You consider them reputable?

21 A. Yes. Yes. They've written quite a bit on
22 them.

23 Q. Okay. Great. Let's talk a little bit
24 about RECs. Do you know what the initials REC stands for?

25 A. It has different meanings, but it's

1 renewable energy credits or certificates, some call it. I
2 think in Florida they're TRECs which means tradable
3 renewable energy credits.

4 Q. But we we've been calling them RECs, right?

5 A. Correct.

6 Q. What is a REC? Define that for me, please.

7 A. It is the attributes of electricity. In
8 the application that you have, the energy has been sold to
9 one party. The actual energy itself has been sold to one
10 party, and this is the attributes of a produced REC that
11 was used by somebody else. And when I use attributes, it
12 means the environmental benefits associated with green
13 production as versus fuel production, fossil fuel
14 production.

15 Q. Okay. When were RECs first used in the
16 United States, do you know?

17 A. I think I saw references to them going back
18 prior to '97.

19 Q. Okay. So this was not a concept invented
20 by Union Electric in its 2007 rate case, was it?

21 A. No.

22 Q. Do you know how long RECs last?

23 A. There is a time frame. It's for 12 months,
24 and they're like three months behind, so I think it's like
25 18 months, 18 or 20 months period they will expire.

1 Q. So if I purchase a REC, I know that
2 electricity has been generated within a certain time
3 frame, is that what you're telling me?

4 A. Yes.

5 Q. Okay.

6 A. Right.

7 Q. How many utilities have REC programs
8 available to their customers, if you know?

9 A. There are considerable numbers from what I
10 read.

11 Q. Can an individual purchase a REC without
12 going through a utility program such as UE's Pure Power?

13 A. I don't know if an individual can, but a
14 business probably can. I don't think there's very many
15 people who deal with RECs on a single REC basis.

16 Q. And about how many RECs are sold each year,
17 if you know?

18 A. In the millions now. Nationwide you're
19 talking about? You're talking about not just your
20 company?

21 Q. Correct, nationwide.

22 A. Yes, in the millions.

23 Q. In the millions. Okay. Let's talk about
24 Mr. Anderson's testimony in the last rate case. You
25 already said that he supported renewable energy credits,

1 correct?

2 A. Show me his testimony. I don't -- as I
3 say, I'm sorry, that was one of the binders I left.

4 Q. Okay. Why don't we mark it as an exhibit.

5 JUDGE WOODRUFF: Okay. Your next number is
6 67.

7 MS. TATRO: May I approach?

8 JUDGE WOODRUFF: Sure.

9 (EXHIBIT NO. 67 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 BY MS. TATRO:

12 Q. Let's start with -- now, his pages aren't
13 numbered, but let's start with the fourth page of
14 testimony, so not counting the cover sheet.

15 A. The one that has what conditions do you
16 propose?

17 Q. Yeah that would be the page. Okay. The
18 first sentence on that page indicates that DNR supports
19 UE's proposed -- at that time they were calling it
20 voluntary green program, correct?

21 A. That's still what it's called in the
22 tariff.

23 Q. But that's how he's referencing it,
24 correct?

25 A. Correct.

1 Q. And DNR's offering their support of that,
2 correct?

3 A. It could be characterized as such.

4 Q. Read the first sentence on that page for
5 me, please.

6 A. Under certain conditions, Missouri DNR
7 Energy Center can support UE's proposed VGP program.

8 Q. Thank you. And he sets forth some
9 conditions. Let's talk about those. Can you read the
10 line that -- sentence that starts on line 5 and ends on
11 line 10, please?

12 A. If UE's proposed voluntary green program
13 meets all green certificates requirements and if -- and if
14 UE contracts with a reputable and experienced third party
15 to administer the plan, it should strengthen the market
16 for the renewable energy power and encourage the
17 development of renewable energy in Missouri and in our
18 region with multiple economic environmental and energy
19 security benefits.

20 Q. All right. So Mr. Anderson testified it
21 should be Green-e certified. Is UE's program Green-e
22 certified?

23 A. Yes. It's certified through CRS.

24 Q. All right. And did UE contract with a
25 reputable third party to administer the program?

1 A. Well, I would note that they were not
2 certified with the Secretary of State to do business until
3 we contacted them, so -- but they -- as I say, they're
4 considered a marketeer as opposed to a broker.

5 Q. So you doubt their credibility; is that
6 what you're telling me?

7 A. I'm just saying that they were not
8 certified with the state -- Secretary of State of
9 Missouri, and No. 2 --

10 Q. When you say certified, you mean properly
11 registered with the Secretary of State?

12 A. Correct.

13 Q. And that's been corrected, hasn't it?

14 A. I believe so.

15 Q. And the Secretary of State didn't kick them
16 out of the state or anything like that?

17 A. No.

18 Q. It was administerial paperwork that didn't
19 happen, but it's since occurred, correct?

20 A. Correct. But it is a big deal, a deal to
21 not register with the State for a business, I believe.

22 Q. I don't think there's a question pending,
23 sir.

24 Now, let's go down to line 12, and this is
25 where DNR starts talking about the conditions it would

1 have proposed, correct?

2 A. What conditions do you propose, yes, on 11.

3 Q. And on line 12, Mr. Anderson says that we
4 have to commit to educate programs about -- I'm sorry,
5 customers about the program, correct?

6 A. Correct.

7 Q. So DNR thinks education about RECs is
8 important. And line 20 says that UE should commit to a
9 good faith effort to offer certificates from generation
10 sources that are located as close as possible to Missouri,
11 correct?

12 A. Correct.

13 Q. So DNR believes these RECs should come from
14 Missouri or from an area as close as possible, correct?

15 A. Yes.

16 Q. And the reason underlying that would be to
17 bring the green power benefits to this region versus
18 supporting green power in California or Texas or some
19 other far flung state, correct?

20 A. Correct, although -- although it's -- it
21 could be -- it could dissipate the advantages to have some
22 of the benefits come from Iowa as opposed to being
23 generated here in Missouri.

24 Q. So the more RECs that come from pure --
25 from renewable energy generated in Missouri, the more

1 concentrated the benefits are for renewable energy in
2 Missouri, right?

3 A. Yes, generally so.

4 Q. Do you think the Federal Government
5 considers RECs a legitimate way to support renewable
6 energy?

7 A. They have accepted -- they have accepted
8 RECs in portfolio standards, so you could deduce that from
9 that. And what has been said by the DOE and et cetera,
10 they have given some endorsement, although it's
11 interesting. I know when you read some of the sites and
12 I've called some of them, some of them also have
13 disclaimers on their website disassociating themselves
14 from such as CSR saying that they're not really
15 responsible for what's placed upon their websites.

16 Q. CSR is not a government agency, right?

17 A. No.

18 MS. TATRO: Okay. Now, before I go any
19 farther, your Honor, I should have offered Mr. Anderson's
20 testimony into evidence.

21 JUDGE WOODRUFF: All right. Exhibit 67 has
22 been offered into evidence. Are there any objections to
23 its receipt?

24 MR. MILLS: Yes, your Honor. I object both
25 on relevance and upon the grounds that it's hearsay.

1 Mr. Anderson is not a witness in this testimony. We have
2 no idea whether he still holds this position. As far as I
3 can tell, it's being offered to prove the truth of the
4 assertions contained therein, and we have no ability to
5 cross-examine Mr. Anderson in this case about whether he
6 believes it still to be true.

7 MS. KLIETHERMES: And I would join in those
8 objections.

9 MR. CONRAD: Also on the same grounds.

10 JUDGE WOODRUFF: Your response?

11 MS. TATRO: Well, I thought Mr. Conrad was
12 going to join.

13 JUDGE WOODRUFF: DO you have anything else
14 to add, Mr. Conrad?

15 MR. CONRAD: No. I think that's an
16 excellent statement of the problem.

17 MS. TATRO: Your Honor, UE doesn't offer
18 this exhibit to prove what -- whether this program that we
19 currently have and we're asking this Commission to
20 continue should or should not be continued. We're
21 offering it to show that DNR offered their support last
22 time with some conditions, which were met, which is the
23 reason why the current program says that 50 percent of the
24 RECs have to come from the Missouri area, which later on
25 in his testimony Mr. Ensrud makes a flippant comment about

1 that as if that is not important. It's just the basis for
2 a part of the reason why the program was designed the way
3 it ended up being designed.

4 I think it's very important, but it's not
5 being offered to prove anything other than that's the
6 basis, that's part of the reason why it was designed in
7 that manner. So I don't think it's being offered for the
8 truth of the matter being whether this Commission should
9 continue this version of the Pure Power Program.

10 JUDGE WOODRUFF: It's still hearsay, and
11 you've already got the responses from the witness.

12 MS. TATRO: It was accepted into the record
13 in --

14 JUDGE WOODRUFF: The responses are in the
15 record, but that doesn't mean the entire document needs to
16 come in as substantive evidence. So I'm going to sustain
17 the objection.

18 MS. TATRO: Can the Commission take notice
19 of the testimony?

20 JUDGE WOODRUFF: I don't believe so.

21 MS. TATRO: All right. Let's continue on.

22 CHAIRMAN DAVIS: Judge, do you want to
23 collect these?

24 JUDGE WOODRUFF: It's already been marked.
25 It's nothing that needs to be withdrawn.

1 BY MS. TATRO:

2 Q. Let's go back to -- let's go back to --
3 let's go back to NREL.

4 A. Okay.

5 Q. You spoke with them, and they clearly
6 indicate -- they believe that RECs are a legitimate way to
7 support renewable energy, correct?

8 A. They do believe, and I would emphasize the
9 word believe.

10 Q. Okay. But they're associated with the DUE,
11 as you've already testified, right?

12 A. (Witness nodded.)

13 Q. What about the EPA, does the EPA think that
14 ROEs (sic) are a legitimate way to support renewable
15 energy?

16 A. Again -- again, there is information out on
17 their website where they seem to support the concept, but
18 they also have disclaimers about specific companies.

19 Q. Did you read the EPA document that was
20 attached to Mr. Barbieri's testimony?

21 A. Yes, I believe I did. Are you talking
22 about -- hold on. Let me be sure that we are indeed
23 talking the same -- the same document.

24 Q. I have an extra -- I have an extra copy.
25 If it would be easier, I can just bring it up to you.

1 A. I think I've got it here. You're talking
2 about renewable energy certificates?

3 Q. Yes, I am. EPA's green power partnership
4 renewable energy certificates, do you have that in front
5 of you?

6 A. Yes, I do.

7 Q. Okay. What's the date of that publication?

8 A. July 2008.

9 Q. And did you read this publication as part
10 of your preparation for your testimony?

11 A. Yes.

12 Q. Okay. And it's supportive of RECs,
13 correct?

14 A. I don't see anything derogatory, and I
15 would think I would have highlighted it if there had been.

16 Q. Why don't you turn to the inside? It shows
17 the second page, it would be the inside cover of the
18 document. Doesn't have a page number at the bottom.

19 A. Right, and that's --

20 Q. Can you start by reading the last sentence
21 in the second paragraph?

22 A. RECs in particular have become an important
23 choice for buyers of green power nationwide and serve as
24 currency for the renewable energy markets.

25 Q. Okay. Let's turn the page. The top of the

1 second column, could you read that first paragraph,
2 please?

3 A. The one that begins increasingly?

4 Q. Increasingly, yes.

5 A. Federal, state and governments are also
6 using RECs as a credible means to meet environmental goals
7 for renewable energy generation. For example, most states
8 have allowed utilities to use RECs to meet mandated state
9 portfolio standards. States' renewable portfolio
10 standards require a percentage of utility -- of a
11 utility's electricity generation come from renewable
12 resources. Increasingly individuals and organizations are
13 also buying RECs to satisfy a number of other
14 environmental and nonenvironmental goals.

15 Q. Okay. I won't make you read any farther on
16 that one.

17 A. No. That's all right.

18 Q. The next page, which is labeled page 2, the
19 second column has just one sentence there. Could you read
20 that, please?

21 A. Oh, the -- okay. The second column?
22 Because RECs are monitored and verified, individuals and
23 organization buyers can buy RECs and be confident that the
24 electrical generated on their behalf was done so with
25 renewable energy resources.

1 Q. And on the page 3, which is the next page,
2 the first sentence of the first paragraph right below the
3 shaded box?

4 A. On the second column?

5 Q. Yes, on the second column.

6 A. RECs are a credible and easy way to keep
7 track of who claim -- who can claim environmental
8 attributes of renewable electricity generation through
9 electronic tracking systems.

10 Q. So the EPA considers them credible,
11 verifiable, correct? Isn't that what you just read to us?

12 A. When you use the term verifiable, they can
13 track that the RECs themselves were produced. They cannot
14 track how the money, what happened to the money generated
15 for the RECs was used.

16 Q. But they can verify that only -- the REC
17 was only sold once, can they not?

18 A. If the system -- if the system is
19 sufficient, yes, and most --

20 Q. Are you testifying the system is
21 insufficient?

22 A. No.

23 Q. Okay. So they can track them to verify
24 that they're only sold once, correct?

25 A. Conceptually that's the way it's described.

1 Q. Mr. Ensrud, I'm confused. Do you believe
2 the system credibly tracks them or not?

3 A. I have -- I have no reason to conclude that
4 it does not adequately track.

5 Q. Thank you. Now, you concede in your
6 testimony that generally it's accepted that RECs
7 contribute to the expansion of green energy generation, do
8 you not?

9 A. Basically what I say in my testimony is it
10 might be some, but it's unknown and then -- and how much
11 of the money that goes to the producer is actually
12 reinvested. That is basically -- and I think I used the
13 word act of faith in some places, because there's no means
14 of tracking the dollars that were -- that were given to
15 the producer as to whether he reinvested it or used it in
16 some other means.

17 Q. Do you have your testimony in front of you?

18 A. I do.

19 Q. Your surrebuttal testimony, please turn to
20 page 10.

21 A. I am there.

22 Q. All right. Starting on line 16, you say,
23 Staff will concede it's a widely held belief that REC
24 sales eventually contribute to green generation expansion.
25 You continue on to say you don't think it's absolutely

1 been proven, but the point is you're conceding generally
2 throughout the nation that's an accepted belief, correct?

3 A. It's an unsubstantiated belief, widely
4 accepted.

5 Q. I understand that you feel like it hasn't
6 been proven to you. I'm not asking that question. I'm
7 asking if generally throughout the industry the belief is
8 that RECs contribute to the production of green energy
9 power? Isn't that what you say right here?

10 A. Yeah, but I say that it's widely accepted,
11 but everyone I've ever talked to about this issue I've
12 asked for is there a requirement, and the answer generally
13 is no. Is there an audit? The answer is generally no.

14 Q. I understand you don't agree.

15 A. And is there a study? And the answer is
16 generally no.

17 Q. Sir?

18 A. So there's no proof.

19 MS. TATRO: Your Honor, I'm asking if this
20 is widely accepted, and I even caveated that with the
21 understanding he doesn't accept that belief personally. I
22 just want a yes or no answer.

23 JUDGE WOODRUFF: All right. Mr. Ensrud,
24 just answer the questions that are asked of you, and if
25 your counsel wants to give you an opportunity to explain

1 further on redirect, you'll have that opportunity.

2 BY MS. TATRO:

3 Q. Is it a generally accepted belief?

4 A. It would appear to be.

5 Q. Thank you. You're familiar with
6 Proposition C that was voted on in the November elections
7 here in Missouri?

8 A. I am, somewhat.

9 Q. All right. And Proposition C is what's
10 commonly known as a renewable portfolio standard?

11 A. If I remember right, we called it a
12 renewable energy standard, but it certainly meets the
13 generic explanation of -- of a renewable portfolio
14 standard.

15 Q. What is a renewable energy standard, or a
16 renewable portfolio standard? Explain that for me,
17 please.

18 A. What it does is it is usually a law or
19 could be edict by a commission which says that a certain
20 percentage of a utility's electricity need come from green
21 power. Well, there are some where they set goals, which I
22 understand that the goals are to be voluntary, but some
23 have a mandatory aspect where there's a penalty applied
24 to -- to those who fail to meet the threshold, what I
25 refer to as the threshold of the goals set forth by either

1 the legislation or by commission.

2 Q. All right. So these standards essentially
3 require a certain portion of the utility's generation to
4 come from some type of renewable source in general?

5 A. Correct.

6 Q. All right. Is that what Proposition C did?

7 A. Among other things, it set a criteria where
8 over the years there would be an ever-increasing standard
9 of thresholds to be met by a utility in relation to the
10 amount of green power produced.

11 Q. Do you know what those thresholds are? You
12 don't have to look them up. If you know them, fine. If
13 you don't --

14 A. I know it starts out at 2 and I believe it
15 goes to 15, but I've got it right here. It's no less than
16 2 until 2013, no less than 5 to 2017, no less than 10
17 from 2018 through 2020, and no less than 15 for -- no less
18 than 15 in each calendar year beginning 2021.

19 Q. And does the law, does Proposition C now
20 allow a utility to meet that requirement by purchasing
21 RECs?

22 A. It does.

23 Q. Okay. Is there a restriction on the
24 amount? Could we purchase 100 percent of our requirement
25 through RECs, that threshold level?

1 A. Yes.

2 Q. It doesn't contain a restriction that says
3 only 50 percent can come from RECs or anything like that,
4 right?

5 MS. KLIETHERMES: Judge, I'm going to
6 object for relevance. We're here to talk about AmerenUE's
7 Pure Power Program.

8 MS. TATRO: Your Honor, staff's attacking
9 the credibility and validity of RECs as being supportive
10 of renewable energy. The voters in the state of Missouri
11 have said purchasing RECs is a way to meet that goal.
12 It's used in many other states. It's a mechanism.

13 JUDGE WOODRUFF: I'll overrule the
14 objection. You can proceed.

15 BY MS. TATRO:

16 Q. Mr. Ensrud, how many other states have
17 renewable portfolio or renewable energy standards?

18 A. I believe you asked me one of the DRs. I
19 believe that was batch two, and if memory serves, I
20 believe I looked it up. According to the Missouri Clean
21 Air Energy Initiative which cross references to the Annual
22 Report on U.S. Wind Power Installation, there were 26
23 states have renewable energy standards. When the Missouri
24 ballot was pending that would make Missouri No. 27 --

25 Q. Okay.

1 A. -- with passage.

2 Q. And isn't it true the majority of these
3 states allow RECs to be used to comply with the renewable
4 portfolio standard itself?

5 A. That is my understanding.

6 Q. Okay. And the purpose of Proposition C was
7 to promote renewable energy in Missouri, correct?

8 A. Correct.

9 Q. So the voters of Missouri must have had the
10 belief that RECs help promote renewable power generation?

11 MS. KLIETHERMES: Judge, I'm going to
12 object. She's asking him to infer what the belief of the
13 voters of Missouri was, and that's not a matter before us,
14 nor is it something that is --

15 JUDGE WOODRUFF: You're asking the witness
16 to speculate on what the voters of Missouri thought.

17 MS. TATRO: I withdraw the question.

18 JUDGE WOODRUFF: All right.

19 BY MS. TATRO:

20 Q. Let's talk about Ms. Mantle's testimony in
21 the last rate case. Did -- you've already testified that
22 you read that testimony, correct?

23 A. Right. A number of months ago, so it's --
24 so it's somewhat vague.

25 Q. All right. As chance would have it, I have

1 a copy for you.

2 JUDGE WOODRUFF: Do you wish to go ahead
3 and mark this?

4 MS. TATRO: Yes, could we please mark this?

5 JUDGE WOODRUFF: This will be 68.

6 (EXHIBIT NO. 68 WAS MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 BY MS. TATRO:

9 Q. I'd like to start with page 2 of
10 Ms. Mantle's testimony, please.

11 A. I'm there.

12 Q. And I would ask you to read the answer to
13 the question that starts on line 13.

14 A. RECs are a market mechanism that represents
15 the environmental benefits associated with generating
16 electricity from renewable energy resources. Staff has no
17 problem with the REC market, but it is Staff's position
18 that if Ameren is serious about the development of the
19 integration of renewable power into the -- its resource
20 portfolio, it should be spending the resources on
21 developing renewable power, not selling RECs.

22 Q. Okay. Let's start with the last part of
23 that sentence. In your counsel's opening statement, she
24 made the assertion that in a year you could put up a wind
25 farm. Do you think that's correct?

1 MS. KLIETHERMES: Judge, if I can correct
2 that, I did not make that assertion. The assertion was
3 that you could put up a windmill.

4 MS. TATRO: A windmill. Great. Can you
5 put up a windmill in a year?

6 THE WITNESS: There are all kinds of
7 different sizes of windmill. I think that the small
8 residential one possibly could be put up in a year's time.

9 BY MS. TATRO:

10 Q. Okay. Do you think UE should be investing
11 in a small residential windmill?

12 A. Probably not.

13 Q. Probably want us investing in big
14 commercial windmills that provide actual power that can go
15 to various customers, right?

16 A. Yeah.

17 Q. And that process is pretty cumbersome. You
18 have to negotiate rights to the land to put the windmill
19 on, don't you?

20 A. Yes, there can be legal proceedings to
21 gain -- to gain access to the windmill itself, which can
22 be time consuming.

23 Q. So it's not your position that UE could put
24 up a commercial windmill in a year, is it? I can see you
25 looking at your counsel. I know what she said. I want to

1 know what you said.

2 A. No. No. I -- I was just trying to think.

3 Q. Let me make it easy for you. It could
4 easily take more than a year, couldn't it?

5 A. It could take more than a year. I would
6 concede that. I don't know if it could be accomplished in
7 less than a year. It could under perhaps the right
8 circumstances also be accomplished in less than a year. I
9 don't know the zone requirements.

10 Q. I'll accept that answer. Thank you.

11 A. I don't know.

12 Q. The first part of that second sentence that
13 you read says, Staff has no problem with the REC market,
14 right?

15 A. Staff has no problem with the -- problems
16 with RECs, yes, with the REC market.

17 Q. Now I'd like you to look at lines 7 and 8.
18 See that sentence?

19 A. Several organizations attempt to ensure
20 that RECs are actually created, correctly tracked,
21 verified and not double counted.

22 Q. Okay. And I'd like you to turn to page 3
23 and read the last two sentences -- well, the sentence
24 is -- that starts on line 17.

25 A. On 17?

1 Q. Uh-huh.

2 A. In the same way, the purchase of RECs does
3 not meet -- mean that the consumer is receiving renewable
4 power. It simply means that the consumer is supporting
5 renewable power.

6 MS. TATRO: Okay. At this time I'd like to
7 offer Exhibit -- I didn't write down the number.

8 JUDGE WOODRUFF: 68.

9 MS. TATRO: -- 68 into evidence.

10 JUDGE WOODRUFF: 68 has been offered. Any
11 objections to its receipt? Hearing no objections, it will
12 be received.

13 (EXHIBIT NO. 68 WAS RECEIVED INTO
14 EVIDENCE.)

15 BY MS. TATRO:

16 Q. All right. Mr. Ensrud, let's talk about
17 UE's program specifically. Are you familiar with this
18 tariff, the voluntary green program tariff?

19 A. Yes, I am. I've read it. I thought I had
20 a copy of it, but I think I left some of the books
21 upstairs.

22 Q. Okay. Well, if we get to a question that
23 you need the answer, we'll see if we can get you a copy,
24 but if you're familiar with it, perhaps you can answer
25 these questions.

1 The Commission approved AmerenUE's program
2 charging \$15 per megawatt hour equivalent, right?

3 A. One and a half cents for residential and
4 \$15 for business was the initial one, and then I believe
5 it was expanded to anybody getting the -- there was a
6 change, and I believe that change was that anyone could
7 subscribe to that -- to the \$15.

8 Q. So a residential -- I think what you're
9 saying here is a residential customer can agree to
10 purchase an amount that's the equivalent to the
11 electricity they're actually using or to buy it in
12 megawatt hour blocks; is that what you're saying?

13 A. You're not buying electricity, but you're
14 giving credits in \$15 increments.

15 Q. For the REC?

16 A. Right, would be a more accurate way of
17 setting it.

18 Q. And did you find any evidence that the
19 program's not fulfilling that promise?

20 A. No.

21 Q. Now, the program, the tariff says that the
22 REC, that a REC will be sold, right, which is those
23 intangible attributes?

24 A. If you're going to that, can I see the
25 actual tariff page?

1 Q. Well, do you want to give him a copy of the
2 tariff? The program is designed so that RECs are
3 purchased, correct?

4 A. Yes. That's what the -- that's what the --

5 Q. Did you find any evidence that that -- that
6 the program is not fulfilling that obligation?

7 A. 1/15 of it goes to overhead, so 14/15 is
8 turned over to an entity who -- who is touted as your
9 marketer of RECs.

10 Q. Do you find any evidence that that
11 marketer is not purchasing RECs?

12 A. I found evidence that the amount of RECs
13 purchased --

14 Q. I asked you the question if you find
15 evidence that they are not purchasing the number of RECs
16 they're supposed to be purchasing. We'll get into the
17 percentages later. Are they or are they not buying the
18 RECs?

19 A. They are buying RECs.

20 Q. Thank you. This program's voluntary, is it
21 not?

22 A. Yes.

23 Q. Do you find -- did your investigation find
24 any reason to believe that customers aren't voluntarily
25 participating?

1 A. No.

2 Q. UE's not signing them up?

3 A. No.

4 Q. UE's not going door to door, you know,
5 twisting their arms to make them sign up? All right. Did
6 you find any instance where UE didn't allow a customer to
7 leave the program if they so desired?

8 A. No.

9 Q. The program's supposed to get 50 percent of
10 its RECs from renewable energy in Missouri or Illinois.
11 Did you find anything that said the program wasn't
12 fulfilling that obligation?

13 A. By the specific data provided, it would
14 seem that that criteria was being met.

15 Q. Now, in your direct testimony on page 17,
16 you say participating UE customers get nothing of material
17 value in return. Is that correct?

18 A. On page 17 of the surrebuttal?

19 Q. Yes, sir.

20 A. Which line?

21 Q. Maybe it's actually in the Staff report.
22 I'm sorry.

23 A. Yeah. I believe that line is from the
24 Staff report.

25 Q. I got confused because they happen to be on

1 the same page numbers. Did you find it in the direct
2 report?

3 A. I'm on page 17.

4 Q. All right. Look at the second to last
5 sentence in the last full paragraph. Participating UE
6 customers get nothing of material value in return. Do you
7 see that?

8 A. Yes, right there (indicating). All right.

9 Q. So RECs, which are the attributes of
10 renewable energy except for the electricity, you don't
11 consider that to be material value or to have material
12 value?

13 A. They're certainly not a physical attribute
14 of anything. It's like the benefits of a long gone unit
15 of production.

16 Q. So how do you define material value? Maybe
17 we should start there. Define the phrase material value.

18 A. To me, something having material value is
19 something that can be bought and sold in an open market at
20 a price.

21 Q. Aren't RECs bought in open market at a
22 price?

23 A. They are, but they have characteristics
24 that are closer to a contribution than they are to
25 anything of a material value.

1 Q. That's not your definition. Your
2 definition is material value, meaning something that can
3 be bought and sold, and a REC --

4 A. Can be bought and sold in the market.

5 Q. And you don't consider fulfillment of
6 customers' desire to support renewable energy to be
7 material value?

8 A. It's a goal. It's not a material item.

9 Q. Okay. So you limit that to something that
10 can be bought and sold.

11 All right. Are you aware that the Pure
12 Power Program is audited each year?

13 A. Are you talking about the RECs themselves
14 as to -- as to their green certification?

15 Q. Yes, I'm talking about that audit. You're
16 aware that occurs every year, correct?

17 A. Yes.

18 Q. All right.

19 A. But it doesn't --

20 Q. And I -- we'll get there. The audit was
21 provided to you in response to one of your Data Requests,
22 correct?

23 A. Yes.

24 Q. Did that audit identify a problem with the
25 Pure Power Program?

1 A. I don't recall.

2 Q. Okay. Did the audit confirm that RECs are
3 purchased from renewable generation sources?

4 A. Yes, I believe they did.

5 Q. Okay. Did the audit confirm that the RECs
6 were generated within the dates that were required?

7 A. I think I have the audit here somewhere.

8 Q. I can give you a copy if that would help.

9 A. All right. I'd be happy to take it. You
10 know, that was a DR response. Do you know what number it
11 was?

12 Q. I don't. I have a copy. And I'd ask you
13 to look at page 2 of the report, sub E, and does it not
14 say, for the generators listed we examined the date of
15 generation on the relevant attestation and compared with
16 the generation date shown on the workshop, we note the
17 generation date is within the range of eligibility without
18 exception, correct?

19 A. You're talking about --

20 Q. Are you looking at the document I handed
21 you? I'm sorry.

22 A. Yes, page 2.

23 Q. Yeah, 2, little E. Isn't that what I just
24 read?

25 A. Yes.

1 Q. Okay. And this audit also confirms the
2 total number of RECs that are sold by UE, does it not?
3 A. Could you point me to that?
4 Q. Sure. Page 5, C, little I, for --
5 A. Right. For Pure Power product we divide
6 the total MWH sold by a block size for the reported column
7 C. We confirmed that the results matches the total blocks
8 sold in the participant's internal sales rater without
9 exception.
10 Q. Okay. And the audit also confirms that
11 Three Degrees, who you describe as the marketer, is
12 Green-e certified, correct?
13 A. Correct.
14 Q. Now, let's talk some -- specifically about
15 some issues that you raised in the Staff report -- in your
16 Staff report and in your surrebuttal. You talk about the
17 Florida program that was canceled?
18 A. Correct.
19 Q. You're familiar with that program?
20 A. Some.
21 Q. Was the Florida -- what was the Florida
22 program called?
23 A. It was the Sunshine Program.
24 Q. Sunshine Energy Program. Was the Sunshine
25 Energy Program Green-e certified?

1 A. No. It was Green Mountain, but that had
2 nothing to do with why it was rejected.

3 Q. I didn't say it did. I asked if it was
4 Green-e certified. Did it have local or regional
5 procurement restrictions imposed in it?

6 A. I don't recall ever reading anything
7 about -- I think they would accept RECs from anywhere is
8 the way I recall.

9 Q. Do you know who the program administrator
10 was? Did it use a third party?

11 A. Green Mountain.

12 Q. And that's not Three Degrees?

13 A. Not Three Degrees.

14 Q. How long had the Florida Sunshine Program
15 been in effect?

16 A. I think in its Order where they rejected
17 the Sunshine Program, I believe there's a reference that a
18 Commissioner thought he was misled for four and a half
19 years. So I would believe that the program was in
20 existence four and a half years.

21 Q. So four and a half years. Okay. And after
22 that four and a half years, the Commission was concerned
23 about the percentage of money that actually went to the
24 power producer, correct?

25 A. That was the primary concern.

1 Q. Okay.

2 A. And also that it was misleading in relation
3 to what was said on the website compared to what was
4 actually being done. So that one's also similar to yours.

5 Q. Okay. We'll get there. I promise. I'd
6 ask you to turn to page 3 of your surrebuttal. I'm sorry.
7 Page 4. Lines 24 and 25, you indicate that this
8 Commission should measure Pure Power against its ability
9 to get money into the hands of renewable producers; is
10 that right?

11 A. Yes.

12 Q. So a program that put 100 percent of that
13 money into the green producers' hands is superior in your
14 mind to a program that puts less than 100 percent?

15 A. Yes. The more the better, although I
16 realize it's impossible to have 100 percent in a real
17 world situation --

18 Q. Okay.

19 A. -- go to it.

20 Q. Do you agree that marketing inherently
21 costs money?

22 A. Yes, it does, usually.

23 Q. And consumer education requires money?

24 A. Yes, usually.

25 Q. Okay. A program that's marketed to

1 consumers that are educated may have more awareness about
2 a program than a program in a state where that marketing
3 or consumer education doesn't occur, correct?

4 A. Correct.

5 Q. Mr. Ensrud, is it your contention that
6 consumer education is not a legitimate goal of the Pure
7 Power Program?

8 A. No. I believe that -- that customers
9 should be informed. Indeed, one of the points that I make
10 is that the accusations on the website do not conform with
11 reality.

12 Q. Okay. I understand that. I'm just trying
13 to figure out how we judge this program from Mr. Ensrud's
14 point of view. Okay. So consumer education is a
15 legitimate expenditure for this program to make?

16 A. As long as it's accurate.

17 Q. Right. And in fact, we established earlier
18 that DNR believed that also, didn't we?

19 A. Yes.

20 Q. Now, earlier you discussed having
21 conversations with Ms. Bird from NREL?

22 A. I did.

23 Q. And was one of the topics that was
24 discussed was the various challenges of REC programs?

25 A. Yes. When you say various challenges, I

1 think there were a number of comments from one of her
2 publications about how it was hard to represent what a REC
3 really was.

4 Q. Did you discuss that with her when you
5 talked to her on the phone or via e-mail?

6 A. We talked about the generalities, and that
7 was one of the generalities that I recall us going into.

8 Q. Okay. So educating customers is a
9 challenge?

10 A. Yes, I guess.

11 Q. Because it's difficult to communicate, you
12 want to make sure the customer understands that they're
13 purchasing a REC and not electricity --

14 A. Right.

15 Q. -- right?

16 We have the same goal here. Okay. So
17 that's an area that all programs have continual massaging,
18 wouldn't you presume?

19 A. Right. There should be an honest
20 representation of what the customer is actually getting
21 for his contribution.

22 Q. And by your testimony, you're not alleging
23 that this education did not occur? Are you alleging no
24 education occurred?

25 A. They never provided any evidence of exactly

1 what was in the amount of money that -- you did show an
2 amount going for education. You did show an amount going
3 for administration, and you can back into an amount for
4 how much was paid to the RECs. So there is in the record
5 an amount of money, but I don't know what it was spent
6 for.

7 Q. Okay. Is it your contention that UE and
8 Three Powers did not attempt to educate customers on this
9 program, or you don't know? You don't know is a fine
10 answer.

11 A. I don't know.

12 Q. All right. Thank you. When did UE start
13 offering this program?

14 A. Approximately a year ago.

15 Q. Okay. So it just passed its first year
16 anniversary, right?

17 A. Yes.

18 Q. Other than AmerenUE's program, are RECs
19 marketed in Missouri by any other utility?

20 A. I believe there's some cities and small
21 municipals who do -- who do also engage in that, but I
22 don't know of any other rate regulated program that's
23 addressed by this Commission.

24 Q. Okay. So it's still a concept where
25 customer education's pretty important? That's what you're

1 saying with your concern about whether or not it's
2 misleading, right, we need to make sure they understand
3 what they're purchasing?

4 A. Yes.

5 Q. We can agree on that, can't we?

6 A. Yes, we can.

7 Q. All right. Now, in your surrebuttal on
8 page 6, we're finally at the website discussion. And the
9 first bullet point under the snapshot of the website that
10 you have there, you say customers who participate in this
11 aren't buying green energy, right?

12 A. Correct.

13 Q. And that's true. Then the next sentence is
14 that RECs are the commodity being purchased, correct?

15 A. Correct.

16 Q. Then you say the participating customer
17 does not actually use, acquire or directly contribute to
18 the generation of renewable energy when purchasing RECs.
19 So your theory is that RECs don't support renewable
20 energy?

21 A. My contention is there is no proof as to
22 what degree of the moneys that go to the producers are
23 reinvested, is the more specific -- I am not contending
24 that the amount is zero. I would doubt -- I would highly
25 be suspicious of it being 100 percent. There's absolutely

1 nothing to do that. And if this was a betting parlor and
2 you were looking at the over/under, my estimate would be
3 that less than 50 percent of it actually goes for the
4 intended purpose, but there's no way to prove that at this
5 point, at least from what we have.

6 Q. Okay. Mr. Ensrud, you agree RECs are being
7 purchased, right?

8 A. Correct.

9 Q. And you agree that a REC represents the
10 environmental attributes of renewable power, right?

11 A. Of past generation, yes.

12 Q. But a REC could not exist if that green
13 energy hadn't been produced, right?

14 A. Because you are -- because of the audit, we
15 have some assurance that the unit produced actually was
16 produced.

17 Q. Okay. So the unit -- the green power
18 actually was produced. All right. The next bullet you
19 talk about being difficult to decipher the acquisition of
20 RECs as the stated purpose for the solicited money. So
21 you think these customers are confused?

22 A. Yeah. When they use some of the
23 terminology that was used on the website, I think they
24 think that they are buying real power as opposed to buying
25 attributes of long past electricity.

1 Q. Okay. You keep saying long past? We've
2 already established it has to be within the last year or
3 15 months, haven't we?

4 A. Right. But it's not -- but --

5 Q. So long past is not that long, is it?

6 A. For the generation of electricity, I would
7 consider -- I would consider it to be long past.

8 Q. Okay. The first sentence says, let's look
9 at -- let's look at the website. Okay.

10 A. The old one or the one that you have up
11 now? They've changed, I believe.

12 Q. They have changed, and I didn't ask you
13 that question. I asked you about the snapshot that's in
14 your testimony.

15 A. All right.

16 Q. Okay. The one that you believe is so
17 misleading. Do you see where it says in bold, available
18 for residential and small business customers?

19 A. No.

20 Q. I'm sorry. Do you not have your testimony
21 in front of you?

22 A. I have the -- I have a larger size of the
23 web shot --

24 Q. Okay.

25 A. -- here.

1 Q. Okay.

2 A. The one that begins Pure Power Ameren's
3 Voluntary Renewable Energy Program?

4 Q. No. Do you see where in bold it says,
5 available for residential and small business customers?

6 A. Available?

7 Q. It's on the right-hand side underneath Pure
8 Genius.

9 A. Available for residential and small
10 business customers.

11 Q. Yes. Do you see that?

12 A. Right.

13 Q. And the sentence under that says, Pure
14 Power blocks, each block represents a thousand kilowatt
15 hours of renewable energy generation and costs \$15, right?

16 A. Correct.

17 Q. And it says represents, correct?

18 JUDGE WOODRUFF: I'm sorry. If I can
19 interrupt for a moment for a little bit of housekeeping.
20 They're looking for the exhibit stamp next door. I'll ask
21 the court reporter if you know if it's over here?

22 THE COURT REPORTER: No, it's not.

23 JUDGE WOODRUFF: I'm sorry to interrupt.

24 Go ahead.

25 MS. TATRO: That's quite all right.

1 BY MS. TATRO:

2 Q. And it uses the word represents, correct?

3 A. Right.

4 Q. Okay. Then further down, halfway down the
5 page it says, in bold again, how does Pure Power work --

6 A. Okay.

7 Q. -- right?

8 And the sentence says, by choosing to
9 enroll, you agree to purchase blocks of power, and it has
10 the --

11 A. Blocks of power, yes.

12 Q. And then it says, AmerenUE then purchases
13 Green-e energy certificate -- renewable energy
14 certificates from renewable energy facilities, right?

15 A. Correct.

16 Q. And that's exactly what happens, isn't it?

17 A. Well, you're not buying blocks of power.

18 Q. You're buying a REC, right?

19 A. You're buying a REC, which is not actual
20 power. So I think the term blocks of power is highly
21 misleading.

22 Q. Okay. So if that phrase is modified, then
23 you'd be happier with this program?

24 A. It would be a more honest representation.

25 Q. Okay. Are you accusing UE of being

1 intentionally dishonest?

2 A. I'm just saying that -- that it's confusing
3 and I do not assign any intent to it. I'm just saying
4 that it's misleading --

5 Q. Okay.

6 A. -- and that a normal person, a reasonable
7 person could construe that as buying actual power.

8 Q. You consider yourself an arbiter of a
9 reasonable person? You can make a lot of money in courts
10 if you could do that.

11 But this is an issue with making the
12 language clear and providing the message clear, right?

13 A. Correct.

14 Q. And that's a change that could be made
15 without killing the program, isn't it?

16 A. You can straighten up at least one of my
17 problems by having a more --

18 Q. We're talking about this one.

19 A. -- pure representation.

20 Q. It's fixable? It's not an inherent flaw in
21 the program, is it?

22 A. The language could be set forth to
23 represent what actually occurs with the money collected.

24 Q. Okay. Now, another sentence, going back up
25 under that first paragraph we talked about, under the

1 available for residential and small business customers, it
2 says, supporting development of renewable energy just got
3 easier --

4 A. Right.

5 Q. -- right?

6 And it talks about buying Pure Power blocks
7 for your home or business, right?

8 A. Right. Which can be construed as real
9 electricity, renewable energy, blocks of power.

10 Q. Right. So you think that needs to be
11 cleared up, too, right?

12 A. Correct.

13 Q. But the concept isn't incorrect, is it?
14 Aren't they still supporting development of renewable
15 energy? Oh, I forgot, you don't think RECs support
16 renewable energy.

17 A. There's no proof of that.

18 Q. Got you. Got you. If we presume that
19 RECs, like the rest of the nation, that RECs promote
20 renewable generation, then it's a true statement, right?

21 A. To the percent that the money goes to RECs,
22 yes.

23 Q. So the sentence is misleading if we
24 approach it with your viewpoint, right? You start with
25 the presumption that RECs don't support renewable energy

1 generation?

2 A. And it uses terminology that's typical
3 of -- I have problems with it at both levels of the union,
4 that the language does seem to relate to real energy,
5 renewable energy, and it talks about blocks. That's one
6 level. The other thing is, if you understand that
7 there -- that what you're buying is RECs, at least there
8 is the assumption that the money that's given to the
9 producer is reinvested in future power, and from
10 everything that I've ever understood, there's no legal
11 requirement, there's no audits --

12 Q. Sir, I'm not asking you that question.

13 A. -- and there's no study.

14 Q. We already went through the first concern,
15 and I was discussing your second concern.

16 A. Okay.

17 Q. You will have a chance to give your speech
18 on redirect if your attorney thinks it's necessary.

19 Now, this screen has been changed by UE,
20 correct?

21 A. That's what I found out over this weekend.

22 Q. Okay. Do you know when that change
23 happened?

24 A. No, I don't.

25 Q. Okay. Do you know why that change

1 happened?

2 A. No, I don't.

3 Q. Okay. Let me give you a copy.

4 MS. TATRO: What exhibit number are we up
5 to?

6 JUDGE WOODRUFF: 69.

7 (EXHIBIT NO. 69 WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9 BY MS. TATRO:

10 Q. Before we talk about this specific website,
11 you don't have any reason -- does UE make changes to its
12 website on a regular basis as far as you know?

13 A. I believe they do. Most people do.

14 Q. Okay. So now this website on the first
15 page, this is the website, the same website you get, same
16 address, Ameren.com/PurePower, and it's changed
17 significantly, correct?

18 A. Correct.

19 Q. And in fact, some of the language that you
20 have concerns about doesn't appear there at all anymore,
21 right?

22 A. Some of them don't, but not all.

23 Q. Over on the right-hand side, do you see
24 where it says, how does Pure Power work?

25 A. Yes.

1 Q. And I'm talking about the exhibit I just
2 handed you. Okay. When you click on that, can you turn
3 the page? You see at the top where it says, how does Pure
4 Power work?

5 A. Right.

6 Q. Okay. And could you read the first
7 sentence under the question, how does Pure Power work?

8 A. When you enroll in Pure Power, Ameren
9 purchases renewable energy credits, RECs, equal to your
10 Pure Power participation level. The purchase of RECs
11 supports wind and other renewable resources right here in
12 the midwest.

13 Q. Do you disagree with either of those two
14 sentences?

15 A. If you don't get into the proportionality
16 of how much goes to the producer and how much the producer
17 actually reinvests, yes.

18 Q. Okay. But you agree the RECs are
19 purchased --

20 A. With those caveats.

21 Q. -- and retired?

22 Okay. So when we're dealing with your
23 concern about being misled about purchasing energy on this
24 one, it's been fixed?

25 A. It's -- for that page. When I copied it

1 over the weekend, I know a lot of the problems with the
2 questions and answers remain somewhat present from what
3 was there in the past.

4 Q. Okay. On this page, which is the one we're
5 discussing --

6 A. All right.

7 Q. -- you no longer have a concern, for this
8 page, this page only?

9 A. For this page only? You still have people
10 using renewable energy, which makes it sound like a
11 real -- real power, as people purchasing -- as opposed to
12 people actually purchasing RECs. So there's still a
13 slight --

14 Q. You don't like the slogan?

15 A. Using renewable energy gives the
16 connotation that what is being -- what is being acquired
17 is real electricity, and it's not. It's RECs.

18 Q. Okay. The second bullet back on the first
19 page, what is a REC? When you click on that you get the
20 third page in this packet. You still have it in front of
21 you?

22 A. I've got two versions. Yes, I'm going to
23 flip back to yours.

24 Q. Thank you. Can you read that for me? Does
25 that accurately describe what a REC is?

1 A. Yes, I guess.

2 Q. Okay. So this page accurately describes a

3 REC --

4 A. It's far closer.

5 Q. -- as far as you know?

6 Far closer? It's even got a pretty

7 picture.

8 A. I know.

9 Q. There's not a particular portion of this

10 that you believe is misleading? You believe this to be

11 accurate, correct?

12 A. The -- the last line where it says, as

13 renewable facilities sell their RECs, demand shifts and

14 brings more renewable energy sources online. My

15 understanding of RECs was that they -- that they were to

16 supply a revenue stream that would be reinvested. Here

17 you're going back to a demand side presentation. So

18 that's a little bit different, but -- but that's fairly

19 arca -- that's a fairly arcane difference. So with the

20 caveat on the bottom line, I guess I would not take great

21 exception to any other part of that.

22 Q. Okay. So while there may be disagreements

23 on the exact wording of that last sentence, generally you

24 agree that UE's made changes to address any concern on

25 that aspect?

1 A. Not just any concern, but it is at least
2 getting closer to -- to what a REC is, yes.

3 Q. It's getting closer to what a REC is. It
4 describes a REC, does it not?

5 A. I gave you a caveat on the -- on the last.
6 So my understanding of this --

7 Q. If the last line is gone, you agree it's
8 completely accurate?

9 A. Demand is also talked on the second line,
10 but if you eliminated those two, I would have no
11 objection.

12 Q. And by reading that, it's clear, is it not,
13 that the customer's purchasing a REC rather than specific
14 renewable energy, right?

15 A. Correct.

16 Q. Your argument is only that you don't
17 believe it's spurs further renewable energy?

18 A. There's no evidence.

19 Q. In your mind, I understand. That's your
20 contention, right?

21 A. Yes.

22 Q. It's not the generally accepted contention
23 of EPA --

24 A. People believe --

25 Q. -- or the DOE or NREL?

1 A. People believe that there is a
2 metamorphosis of the money going to the producer that is
3 reinvested, but there's no -- as I said, no studies --

4 Q. I understand that you don't --

5 A. -- no audit, no requirement.

6 Q. I understand. I really do. Let's go to
7 page 8 of your surrebuttal.

8 A. Keep flipping between pages.

9 Q. I'd like to -- you talk about the letters
10 attached to the rebuttal testimony of Mr. Barbieri.

11 A. Correct. That's where I made the
12 correction of acknowledging that one -- that one of the
13 RECs --

14 Q. I just want to make sure you're at the
15 right point.

16 A. Yes.

17 Q. Do you have those letters in front of you?
18 Do you have Bill's testimony?

19 A. They're in the book, so I should be able to
20 get them up here fairly quickly. Okay.

21 Q. And I'd like to walk through certain of the
22 letters. You see the letter that is from John
23 H-E-A-N-E-Y? You know what, I have them pulled out. Why
24 don't I just give it to you so you'll -- you won't have to
25 search.

1 A. I found it.

2 Q. What is the subject line of that e-mail?

3 A. Happy anniversary Pure Power.

4 Q. So this was a letter written to UE on the
5 anniversary of its program, correct?

6 A. I'm not sure what the anniversary of its
7 program is, but it would be seem to be somewhere close to
8 October 1st.

9 Q. Okay. And if you go to the second
10 paragraph, the second sentence says, the homespun grass
11 roots nature of the revenues being returned to rural
12 Missouri is simply brilliant, right?

13 A. Right.

14 Q. So this customer understands that the RECs
15 that are being purchased or the money that's being spent
16 is somehow staying in the Missouri area, right?

17 A. It says -- it also in the very first
18 paragraph says to offer the St. Louis region a wonderful
19 renewable, the wind. So it makes it -- it makes it sound
20 like he's actually getting either wind powered electricity
21 or that money is actually going to further wind
22 generation.

23 Q. Or maybe he fully understands that RECs
24 support renewable energy development, is that not also a
25 possible interpretation of that sentence?

1 A. That --

2 MR. MILLS: Judge, I object. She's asking
3 the witness to speculate on what this third party meant by
4 a particular sentence that is going to be in the record
5 when Mr. Barbieri's testimony is introduced, if it's not
6 objected to. It's hearsay. But in any event, she's
7 asking him to speculate on what this party meant. So I
8 object that it calls for speculation and it's speculation
9 about hearsay.

10 JUDGE WOODRUFF: I think I'll have to
11 sustain that objection, that it is calling for speculation
12 as to what somebody else might mean.

13 MS. TATRO: Are you going to strike the
14 portion of his testimony where -- where he speculates,
15 then?

16 JUDGE WOODRUFF: Well, no one's asked me
17 to.

18 MS. TATRO: Okay. It hasn't been offered
19 into evidence.

20 JUDGE WOODRUFF: Actually, I believe it was
21 and no one objected to that.

22 MS. TATRO: Let's keep going.

23 BY MS. TATRO:

24 Q. I won't ask you to speculate.

25 A. Thank you.

1 Q. I'd like to look at the letter that's from
2 Jeff Johnstone. The second paragraph starts by saying,
3 our family's thrilled. We've chosen to participate in
4 this program and know that our support is making a
5 difference in funding alternative energy sources, right?

6 A. Right.

7 MR. MILLS: Judge, I'm going to object here
8 as well to the reading of these letters into the record
9 before we even get to the question of offering them,
10 because I believe that they are all hearsay, and we can't
11 simply circumvent the portion of the routine where they
12 offer these, we object on the basis they're hearsay, by
13 getting ahead of this witness and reading portions of the
14 hearsay testimony attached to his testimony into the
15 record.

16 So I object to any questions that ask --
17 that involve reading portions of these letters into the
18 record. If she wants to ask questions about them, there
19 may be some questions that don't involve speculation about
20 hearsay. But if the questions themselves read portions of
21 these third-party statements into the record, then I
22 believe they're improper, and I ask that that last
23 question be stricken insofar as it read a portion of this
24 letter into the record.

25 MS. TATRO: That's fine.

1 BY MS. TATRO:

2 Q. Mr. Ensrud, you make the statement that
3 only 2 of the 12 testimonials mention RECs, correct?

4 A. Yes.

5 Q. Do you think the testimonial has to mention
6 the word REC for the customer to know that RECs are
7 involved?

8 A. It would be a good indication that they are
9 knowledgeable about them. But do they absolutely have to?
10 Probably not, but they shouldn't be using terms like
11 alternative energy sources and provided --

12 Q. Answer my question, please. On redirect
13 your attorney can bring out whatever is necessary.

14 The question was, if they don't mention
15 RECs, is it possible they still understand what a REC is?

16 MR. MILLS: And again, this is pure
17 speculation.

18 MS. TATRO: He's making an assertion. I'm
19 probing the basis for his assertion.

20 JUDGE WOODRUFF: I'll overrule that
21 objection.

22 THE WITNESS: The body of that letter to me
23 indicates he's more -- thinks he's getting power more than
24 he does that he's getting a REC.

25 BY MS. TATRO:

1 Q. That was not the question.

2 A. Is it --

3 Q. The question was, just because a person
4 doesn't mention the word REC in their answer doesn't mean
5 it's not conclusive proof they don't know and understand
6 the REC process; isn't that true?

7 A. That's true.

8 Q. And some of those letters are offered by
9 commercial customers, are they not?

10 A. I believe so, yes.

11 Q. Monsanto?

12 A. Right.

13 Q. So it's possible they have a pretty good
14 understanding of what program they're investing their
15 money in?

16 MR. MILLS: Judge, this --

17 THE WITNESS: I have no idea.

18 MR. MILLS: This calls for speculation
19 about what Monsanto thinks. There's no way to know what a
20 corporation thinks. At best she's asking this witness to
21 speculate what some person wrote from Monsanto about this
22 program.

23 JUDGE WOODRUFF: I'll sustain that
24 objection.

25 BY MS. TATRO:

1 Q. Did you contact any of these customers to
2 see, to explore their understanding of the program?

3 A. I did not.

4 Q. Did you talk to your customer service
5 personnel here at the Commission to inquire if the
6 Commission has received any formal complaints about the
7 Pure Power Program?

8 A. I did not.

9 Q. Okay. Have you talked with any customer
10 who's indicated to you that they're misled by this
11 program?

12 A. No.

13 Q. Okay. But you're willing to presume that
14 UE customers don't understand, and your standard is solely
15 whether or not a letter mentions the letters REC, right?

16 A. No. I also -- I also based part of that --
17 my conclusion on that my study of the Florida program went
18 from people who were ecstatically happy, award winning,
19 thinking the thing was great, to the last time I talked to
20 a Mr. Tim Devlin with the Florida Commission, they're now
21 concerned about the number of complaints of people who
22 have come back and said I would like my money back when I
23 found out actually how the money is spent.

24 So I think there is some -- some -- from
25 that was one of the impetuses to me that there's at least

1 a possibility of people who are ecstatically happy under
2 the initial version, not being happy once they found out
3 what was truly going on.

4 Q. So you're judging the UE program by the
5 Florida program?

6 A. I'm citing as an example that the similar
7 program, once the full information became available,
8 people went from ecstatic to disenchanting very quickly and
9 that --

10 Q. You've said that multiple times. So the
11 standard you're using to judge -- the fear that you have
12 that customers won't understand is not driven by anything
13 that's happened in the UE program but driven by the
14 Florida experience, right?

15 A. In relation to confusion, that was a
16 primary --

17 Q. And that's what we're talking about here.

18 A. Right.

19 Q. Okay. Thank you.

20 A. That was the primary reason.

21 Q. All right. Now, did you read the portion
22 of UE's rebuttal testimony -- well, I don't -- I'll
23 withdraw that question. Let's go on down.

24 Page 9 of your surrebuttal testimony, lines
25 21 and 22, you testify the study doesn't offer proof that

1 the money given to producers is converted to further green
2 production 100 percent of the time. Your standard is 100
3 percent of the time is necessary in order to prove the
4 program worthwhile?

5 A. No, but --

6 Q. But that's what you say, there's no proof
7 that 100 percent of the time, right?

8 A. Right.

9 Q. And you'd agree that's a pretty high
10 standard, wouldn't it be?

11 A. That would be -- that would be a very high
12 standard.

13 Q. And it's not a standard you're asking this
14 Commission to judge UE's program by, is it, the 100
15 percent?

16 A. No, but it should be substantial.

17 Q. But not 100 percent? You have 100 percent
18 in your testimony, and I just want to make sure we're all
19 on the same page here. That's not really what you meant?

20 A. Right.

21 Q. All right. Page 13. See the chart at the
22 bottom of page 13?

23 A. Yes.

24 Q. And I believe that chart is also reproduced
25 as one of the attachments to your testimony, right?

1 A. Right.

2 Q. And it talks about the REC prices?

3 A. Correct.

4 Q. Okay. Now, what UE's Pure Power
5 participants pay, you have 14, but UE customers pay 15
6 because there's that dollar that's kept by UE, right?

7 A. Correct.

8 Q. Then for Florida Power & Light, this is the
9 Sunshine Program that was discontinued?

10 A. Correct.

11 Q. And it was discontinued because -- you're
12 not saying by this \$1.91 that customers were only paying
13 \$1.91, are you?

14 A. No. They were paying -- to have an apples
15 to apples comparison where --

16 Q. I asked if that's what you were saying?

17 A. Okay.

18 Q. They were paying -- well, the \$1.91
19 represented 20 percent of what the customers were paying
20 essentially. Florida canceled the program because
21 approximately 20 percent was going to the REC; is that
22 right?

23 A. It was -- if memory serves, like 24 percent
24 was going -- was going to the --

25 Q. So you'd have to do some mathematical

1 calculation to figure out exactly what customers were
2 paying? I won't make you do that.

3 A. All right. Well, I know what the customers
4 were paying in Florida.

5 Q. Oh, what were they paying?

6 A. The equivalent of your \$15 was \$9.75. The
7 draw for -- Florida also had the draw for, just like you
8 do, yours is a dollar, their was 65 cents. So what was
9 turned over to Green Mountain was \$9.10.

10 Q. Okay. Duke Energy you listed at \$4.40.
11 That's the amount that's being paid for the REC?

12 A. Correct.

13 Q. Okay. So what is a customer of -- but
14 again, that's not the amount the Duke customer is paying
15 for participating in the program, is it?

16 A. These are programs where the utility is
17 buying the RECs directly. Well, they're using a broker.
18 They're not using a marketeer. You don't have a dual tier
19 of wholesale price and a retail price. So --

20 Q. Okay.

21 A. -- indeed there are -- there are orders for
22 the Indiana companies where the Commission, for lack of a
23 better term, blesses the purchase by the utility of the
24 RECs at the price quoted here. There's also I have an
25 Order where the Commission rejected a transaction saying,

1 no, no, we can't -- we can't accept this price. So there
2 was an overview --

3 Q. That's all very interesting, but my
4 question is, are the customers who participate in the Duke
5 Energy program only paying \$4.40 or are they paying
6 something more? Let me help you out.

7 A. They're paying something more.

8 Q. Okay. Have you gone to the Duke Energy
9 website to see what they are paying?

10 A. No, I have not.

11 MS. TATRO: Can we mark this exhibit,
12 please?

13 JUDGE WOODRUFF: This will be No. 70.

14 (EXHIBIT NO. 70 WAS MARKED FOR

15 IDENTIFICATION BY THE REPORTER.)

16 BY MS. TATRO:

17 Q. And do you see the website address at the
18 bottom of this page?

19 A. Yes, I do.

20 Q. And do you recognize Go Green as the name
21 of the Duke Energy equivalent to Pure Power?

22 A. Again, I don't know the exact name of the
23 program, but I will accept it, that Go Green is their
24 version of Pure Power.

25 Q. Okay. And the first paragraph of that

1 talks about purchasing a minimum of two 100 kilowatt hour
2 blocks of green power for only \$5 a month?

3 A. Right.

4 Q. And then beyond that, an individual could
5 purchase an additional 100 kilowatt at an additional 2.50
6 a month, right?

7 A. Right.

8 Q. So if a Duke customer were to participate
9 at the same level where UE customers participate, let's
10 say they're going to buy the one block that costs \$15,
11 what would a Duke customer be paying?

12 A. If --

13 Q. They pay \$5 for the first --

14 A. Right. For the first -- for the first --

15 Q. 200?

16 A. -- 200, so they would be paying eight times
17 2.50 plus \$5 to get to a thousand.

18 Q. \$25?

19 A. Yes.

20 Q. Okay. Do you know what Indianapolis
21 Power & Light customers pay?

22 A. I do not.

23 Q. Okay. How about the other programs you
24 testified earlier in Missouri that are offered by some of
25 the other utilities, do you know what those programs cost

1 customers?

2 A. I've got information back at my desk, but I
3 do not know.

4 Q. Does that amount vary?

5 A. Yes.

6 Q. Okay.

7 A. Considerably.

8 Q. So UE's program at \$15 is not the highest
9 nor is it the lowest?

10 A. That is true.

11 Q. Okay. Let's go to page 12 of your
12 surrebuttal, please. On lines 8 and 9, you talk about the
13 fact that the individuals of Three Degrees are thanked in
14 the acknowledgement of a report?

15 A. Right.

16 Q. Does that somehow sully the accuracy of the
17 report? Is that what you're implying?

18 A. I think it gives -- no. It gives credence
19 to the report when it comes to the fact that it talks
20 about the administrative expense that you are paying under
21 your program is three and a half times the national --

22 Q. So you accept the validity of the report
23 because you like that one phrase, right?

24 A. I'm just saying that for that portion of
25 the report, that you guys had input into that report.

1 Q. They had input into that report?

2 A. You're acknowledged.

3 Q. I'm not acknowledged in it anywhere. I'd
4 love to be acknowledged --

5 A. Right.

6 Q. -- but I'm not acknowledged anywhere.

7 A. But --

8 Q. Let's talk about acknowledgement. Does
9 that mean they can -- acknowledgement means someone's a
10 respected expert in that area and they're being thanked,
11 right?

12 A. Correct.

13 Q. Let's go -- I'm jumping all around. I
14 apologize. Go back to page 13. At the top of that page,
15 you're discussing the premium that's being paid, and I'm
16 not talking about the dollar amounts because of course
17 that's confidential, but on line 4 you say the avoided
18 risks do not justify the premium being paid, right?

19 A. What was the line again?

20 Q. 4.

21 A. On page 13?

22 Q. Yes, of your surrebuttal.

23 A. Do not justify the premiums being paid,
24 right.

25 Q. What risks are you -- the avoided risk,

1 what risks are you discussing?

2 A. I think Mr. Barbieri talks about the risk
3 of -- that RECs expire, that RECs will increase in time as
4 money goes up, and so --

5 Q. Great.

6 A. -- it's -- I view this comment as to be
7 safe, we will enter into a five-year contract at the \$14.

8 Q. All right. Let's discuss that. All right.
9 Three Degrees is responsible for the marketing of this
10 program, correct?

11 A. Correct.

12 Q. All right. Three Degrees has to buy back
13 any RECs that expire prior to the purchase by a UE
14 customer, correct?

15 A. Correct.

16 Q. Did you quantify that risk?

17 A. The \$14 rate is so high compared to the
18 wholesale level that --

19 Q. I didn't ask that question. I asked if you
20 quantified the risk of what it would cost Three Degrees --
21 what it's likely to cost them to have to buy back RECs?
22 Did you try to put a figure to that number?

23 A. I think I make a reference in there that in
24 my testimony that customers who contribute will be better
25 off if even half the RECs purchased at the -- at the

1 wholesale price expire, so yeah, a good --

2 Q. I understand that that's your assertion,
3 but did you go back and try to figure out what number of
4 RECs might have to be repurchased by Three Degrees?

5 A. No. I assumed that -- that they would be
6 better off with half --

7 Q. Okay. If you didn't, that's fine. You've
8 got to answer my question. That's all I'm asking you to
9 do. All right?

10 Now, Three Degree also has to pay for the
11 audit that's necessary to obtain the Green-e
12 certification; is that correct?

13 A. That's -- yes.

14 Q. Okay. Do you know what that cost is?

15 A. I had -- I had it again somewhere. There
16 are publications where it's shown under -- under the CSI
17 information. I think it was a multi-compartment, and I
18 think it was like 8 grand or something per -- was part of
19 it. That's subject to check and memory. I don't -- I
20 don't --

21 Q. Okay. You could put a number to that one
22 if you wanted to?

23 A. If you wanted to go back and take a look,
24 yes.

25 Q. Okay. The price for RECs changes all the

1 time, doesn't it?

2 A. There's a large variety of prices of RECs.

3 Q. Okay. Do you think Prop C might drive up
4 the demand for RECs in Missouri?

5 A. It probably would.

6 Q. Especially in the short term before a
7 utility can --

8 A. They'll --

9 Q. -- get steel in the ground as it may be?
10 Did you attempt -- let me ask you this question. Did you
11 attempt to quantify how that might impact the price of a
12 REC?

13 A. I knew it would increase the price of the
14 REC.

15 Q. Okay. Do you know by how much?

16 A. That would be a very difficult calculation
17 to make given that most REC pricing is confidential.

18 Q. Okay. And you have access to confidential
19 information, don't you?

20 A. Not from other states and other
21 locations --

22 Q. Okay.

23 A. -- so there would be a very limited base.

24 Q. So you can't quantify that risk?

25 A. No, not very easily.

1 Q. That's fair enough. Now, in return for
2 taking this risk, which we can't really quantify, Three
3 Degrees is giving AmerenUE a guaranteed price for RECs for
4 five years, right?

5 A. Correct.

6 Q. And -- but you think that your assessment
7 is more legitimate than the assessment made by AmerenUE?

8 A. I think a person can look at the prices
9 that were paid at the wholesale level for RECs as shown on
10 page 13 compared to the \$14 that you contracted for and
11 come up to a conclusion that you overpaid, yes.

12 Q. You just really don't like how much we're
13 paying for the RECs. So that means there's no risk of
14 them increasing?

15 A. No. Mr. Barbieri acknowledges that they
16 could go up to \$7, but I still don't see that the spectrum
17 of a \$7 REC in the future justifies a solid contract for
18 \$14 RECs today.

19 Q. Okay. I understand that. Thank you for
20 your answer. That's not the question I asked you.

21 All right. Let's -- page --

22 JUDGE WOODRUFF: Ms. Tatro, before we go
23 on, we've been going about two hours now.

24 MS. TATRO: I'm actually fairly close.

25 JUDGE WOODRUFF: Okay.

1 MS. TATRO: I mean, if you want to take a
2 15-minute break, that's fine.

3 JUDGE WOODRUFF: How close?

4 MS. TATRO: Maybe half hour.

5 JUDGE WOODRUFF: We better take a break.
6 We'll come back at 10:45.

7 (A BREAK WAS TAKEN.)

8 JUDGE WOODRUFF: All right. We're back
9 from break, and Ms. Tatro, you can continue with your
10 cross-examination.

11 MS. TATRO: Your Honor, I used that break
12 productively, and I decided I have no further questions
13 for Mr. Ensrud. Thank you, sir.

14 THE WITNESS: Thank you.

15 JUDGE WOODRUFF: Do you want to offer 69
16 and 70? Those are Pure Power's Green and Duke Energy's Go
17 Green.

18 MS. TATRO: I don't think I need to.

19 JUDGE WOODRUFF: All right, then.

20 MR. CONRAD: Excuse me, Judge, 69 and 70
21 were not offered?

22 JUDGE WOODRUFF: 69 and 70 were not
23 offered.

24 QUESTIONS BY JUDGE WOODRUFF:

25 Q. I had one question from the Bench, in fact,

1 Commissioner Murray had asked me to ask, and that is are
2 any administrative costs of Pure Power Program above the
3 line?

4 A. There are implicit costs that remain above
5 the line in relation to the actual billing, and
6 segregating of dollars that are collected for the plan the
7 best that can be determined from the DR responses. I've
8 asked for those specific amounts, and they've said they
9 can't supply how much was segregated out or allocated to
10 the billing function and to the segregation of funds.

11 From that, you can conclude that if you
12 don't -- if you can't determine the amount, you haven't
13 made an adjustment to drag that below the line. So that
14 is one of my issues that I've raised in my testimony. I
15 recommended the short and the long. I think they have
16 through the 1 percent or 1/15 -- dollar of every \$15 that
17 they have drawn from the monies collected to offset other
18 known expenses, I would suggest that that money be --
19 they've taken those expenses below the line.

20 I would -- I would recommend that
21 offsetting an amount of expense similar to the amount of
22 the draw that they have be also moved to below the line to
23 recognize this amount that is unknown. In the long run
24 they should do some type of study that says if I'm going
25 to continue to bill -- and this assumes the plan

1 continues. If the plan doesn't continue, this is not a --
2 a requirement. But if the plan were to continue, that you
3 would -- that you would do a study to determine how much
4 it costs to bill this and to segregate the money between
5 traditional billing and Pure Power billing.

6 JUDGE WOODRUFF: All right. Thank you.
7 All right, then. For recross based on questions from the
8 Bench, Public Counsel?

9 MR. MILLS: No questions.

10 JUDGE WOODRUFF: Noranda?

11 MR. CONRAD: No questions.

12 JUDGE WOODRUFF: AmerenUE?

13 MS. TATRO: Just one.

14 RECROSS-EXAMINATION BY MS. TATRO:

15 Q. Do you think the cost of printing the line
16 for Pure Power on the bills is a substantial cost?

17 A. The printing function? The incremental
18 cost may not, but the associated cost of doing the line
19 there for programming, et cetera could be expensive.

20 Q. Okay. Do you know what that cost was
21 charged to ratepayers?

22 A. In the DRs that I have asked about billing
23 and et cetera, you guys have asserted that there is no --
24 that you don't know what the adjustment is. If you don't
25 know what the adjustment is, I don't see how the

1 adjustment can be drug below the line without first making
2 a determination as to the amount.

3 Q. Okay. I might have more than one question.
4 You understand the concept of a services company, right?

5 A. Yes.

6 Q. So if the services company makes the
7 programming change of which you talk about, the only way
8 that cost gets passed through to ratepayers is if that
9 cost is allocated to UE, right?

10 A. Correct. If you're saying that your
11 affiliate, that National -- or Ameren Energy Fuels and
12 Services did all the billing work to drag it down below,
13 that would eliminate the programming costs. I don't know
14 the incremental cost, I don't know what did you have to do
15 with your form, your postage. I would assume that adding
16 one line could be done relatively cheaply.

17 Q. It probably doesn't add postage, right?

18 Okay.

19 A. Just the line would probably not.

20 Q. Okay. Thank you.

21 A. But there has to --

22 MS. TATRO: I have no further questions.

23 JUDGE WOODRUFF: All right. Thank you.

24 Redirect?

25 REDIRECT EXAMINATION BY MS. KLIETHERMES:

1 Q. Mr. Ensrud, just real briefly here.

2 A. Sure.

3 Q. I guess first to clear up any concerns over
4 Ms. Tatro's most recent discussion with you, are you aware
5 if AmerenUE's bill's typically a postcard or in an
6 envelope?

7 A. The one I receive at home I believe is a
8 post card.

9 Q. Do you know if there's a Pure Power insert,
10 would that then require that an envelope be used?

11 A. If there's a special insert, yes. I mean,
12 if it was anything material. I don't see how you could
13 print more than a line or two on a postcard.

14 Q. All right. Earlier you were discussing
15 with Ms. Tatro, Mr. is it -- I'll very much mispronounce
16 his last name. I'll say Barbieri. You were discussing
17 his Schedule WJB-RE3, and those were the consumer --
18 sorry, the EPA information. Do you recall that?

19 A. Yes. I believe that was the renewable
20 energy certificates, EPA Green Power Partnership.

21 Q. Does Staff dispute the RECs represent
22 energy generated with renewable energy resources?

23 A. They -- they represent past generation.
24 They don't represent current generation.

25 Q. Does Staff dispute that RECs constitute a

1 tracking mechanism for the sale of the intangible
2 attributes of past renewable energy generation?

3 A. Not all systems have a tracking, but there
4 are tracking systems. As again, CSR being one of the
5 national ones which do track the production of units and
6 who they're sold to to prevent -- but that safeguard is
7 only to prevent double counting of RECs. It has nothing
8 to do with the tracking of the monies that they receive,
9 which is -- I mean, that was a point of why there were, I
10 think, multiple DRs issued on that. I'm an accountant.
11 My boss is an accountant, and we had a hard time believing
12 that they would say audited, but in that audit, you are
13 not providing any accounting of what happened to the
14 moneys that they receive for the purchase of the RECs.

15 Q. But just in general, does Staff contend
16 that there -- sorry. Does Staff dispute that there are
17 some sort of tracking mechanisms in place for RECs and
18 that RECs do represent some form of a commodity for
19 tracking past renewable energy generation?

20 A. My understanding is that not -- that not
21 all RECs have been accurately tracked, but it's now
22 becoming very common that they are. I think there was
23 a -- there are -- been cases with a company called Crystal
24 Planet where they were not tracked, and that was a -- that
25 was a -- so you could -- so I can't say every REC that was

1 ever produced was accurately tracked. There are cases of
2 fraud, but it is certainly the norm, I think, today from
3 what I've read that they are -- that they are tracked.

4 Q. You were -- Ms. Tatro had asked you about
5 audits, and you were discussing a distinction of the audit
6 of RECs in general versus an audit of the Pure Power
7 Program in specific. Could you -- if you recall what you
8 were answering when she cut you off, could you complete
9 your answer?

10 A. Yeah. It was, basically what I was saying,
11 that -- that when you deal with the audit of RECs, the
12 audit of RECs are an anomaly or come off strange to people
13 who deal in the financial world in that the expectation of
14 what is being audited is the money received, was it
15 reinvested, and there absolutely is no proof that I can
16 discern from my six-month study that audits of what
17 happens to the money given to the producers takes place.

18 There are a few cases where it's used as
19 collateral, so there is a -- there is some tracking
20 mechanism when it's offered as a collateral. But the
21 general rule is, there is no traditional audit of what was
22 done with the money. There is an audit of the units
23 produced and tracking of the units produced. So you have
24 to -- you have to be knowledgeable enough to say this
25 audit is not the traditional audit.

1 Q. You were asked to read some lines from the
2 Staff report earlier. I believe there was a line to the
3 effect of the AmerenUE customer participating in the
4 program receives nothing of material value or something
5 very similar to that. Do you recall that?

6 A. Yes, I remember that discussion.

7 Q. Do AmerenUE customers who participate in
8 the Pure Power Program actually purchase RECs through
9 their participation?

10 A. They -- they purchase RECs but get nothing.
11 They don't even get a certificate in return for the
12 purchase, but the money is through intermediates given to
13 a producer for past production, and those units are
14 then -- are then utilized, canceled by AmerenUE.

15 Q. So the participating customer doesn't
16 actually receive an REC certificate, do they?

17 A. No, not -- no.

18 Q. Thank you. That's all. Thanks.

19 JUDGE WOODRUFF: All right. Mr. Ensrud,
20 you can step down.

21 THE WITNESS: Thank you.

22 JUDGE WOODRUFF: And the next witness is
23 Mr. Barbieri.

24 THE WITNESS: Barbieri.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may be seated. You
2 may inquire when you're ready.

3 WILLIAMS BARBIERI testified as follows:

4 DIRECT EXAMINATION BY MS. TATRO:

5 Q. Good morning. Can you please state your
6 name and your business address for the Commission.

7 A. My name is William Barbieri, and I am with
8 Ameren Energy Fuels and Service at 1901 Chouteau Avenue,
9 St. Louis, Missouri.

10 Q. And what's your position at AFS?

11 A. My position is manager of renewables.

12 Q. And how long have you held that position?

13 A. Manager for one year. Through the overall
14 renewable program, a little over four years.

15 Q. And did you file -- prefile testimony on
16 October 14th on the Pure Power issue?

17 A. Yes, I did.

18 Q. And do you have any additions or
19 corrections to make to your testimony?

20 A. Yes. First, I do have some -- two items in
21 my rebuttal testimony that I'd like to address and
22 clarify. First, I'd like to lift the highly confidential
23 notation on page 11. As of October 27th, the United
24 States Department of Energy publicly announced that the
25 AmerenUE Pure Power Program was awarded their 2008 New

1 Green Power Program of the Year.

2 And second, I would like to clarify my
3 comments on the bottom of page 11 regarding disclosure on
4 a percentage of funds going to green power producers. As
5 this information deals with confidential business
6 contracts between Three Degrees and the various green
7 power producers, this information will be provided to this
8 Commission on an annual basis and to the general public
9 after the program has been established in approximately
10 three to five years, as after that time there will be less
11 risk of propriety information being divulged.

12 Q. So the footnote that you have at the bottom
13 of that page was intended to reflect that understanding?

14 A. Correct.

15 Q. Okay. With those corrections and
16 additions, if I were to ask you the questions that are
17 contained within your prefiled testimony, would your
18 answers be the same?

19 A. Yes, they would.

20 MS. TATRO: Okay. I offer Exhibit -- I
21 think there is 9HC and 9NP into evidence and tender the
22 witness for cross-examination.

23 JUDGE WOODRUFF: All right. 9HC and NP has
24 been offered into evidence. Any objections to its
25 receipt?

1 MR. MILLS: Yes, your Honor. I object to
2 the portion of the testimony that is -- it's an
3 attachment. It's WJB-RE-1, I believe, and in particular
4 page 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, and I
5 think, in fact, through the end of Exhibit 1, although
6 it's not entirely clear to me exactly what all of this
7 marketing stuff is in the middle of about page 1-11
8 through 1-13. But in any event, I believe that even that
9 portion is part of an e-mail from someone who's not
10 testifying in this case and it's offered to prove the
11 assertions contained therein so that it's hearsay. I
12 object on that basis.

13 JUDGE WOODRUFF: In general, what are these
14 documents that you're objecting to? I don't have the
15 document in front of me.

16 MR. MILLS: I'm sorry. These are either
17 letters or e-mails from -- apparently from customers to
18 AmerenUE, most of them congratulating AmerenUE on one year
19 of Pure Power and generally expressing support for the
20 Pure Power Program.

21 JUDGE WOODRUFF: Okay. And your response?

22 MS. TATRO: I believe it qualifies for an
23 exception as a business record. These are records
24 regularly kept by the company, communications.
25 Mr. Barbieri is the individual who's the holder of those,

1 and I think it fits the exception to hearsay.

2 MR. MILLS: May I respond to that?

3 JUDGE WOODRUFF: Certainly.

4 MR. MILLS: E-mails do not qualify as
5 business records, whether they're kept or not. They may
6 be public records in government, or not as the case may
7 be, but simply by receiving an e-mail in a private
8 business does not qualify as a business record. Business
9 records are things like the books and records, the general
10 ledger, things like that. Every piece of paper simply
11 because it is a record of a business is not a business
12 record. You can't qualify something as a business record
13 simply by receiving it in e-mail.

14 MS. TATRO: Well, obviously we disagree on
15 that definition. I mean, obviously the things he cites
16 are the more common business records, but I still believe
17 it falls within the business record exception and should
18 be admitted into the record.

19 JUDGE WOODRUFF: All right. Are these
20 documents, these letters from -- apparently they're
21 letters from satisfied customers, is my understanding of
22 what they are, are these being offered for the proof of
23 what's contained in them?

24 MS. TATRO: No, they are not.

25 JUDGE WOODRUFF: What is the purpose of

1 offering them?

2 MS. TATRO: It's to show that -- they're
3 not being offered to show whether or not -- they're just
4 being offered to show that there's customers that support
5 the program and not whether or not the program continues,
6 doesn't continue, is misleading, isn't misleading. You
7 know, we went through with Mr. Ensrud and decided that
8 wasn't an appropriate use of them, and that's not the
9 purpose in this testimony.

10 JUDGE WOODRUFF: Mr. Mills?

11 MR. MILLS: The letters say, yes, we're
12 happy with the program, we think it's a great program, and
13 that's the reason they're being offered is because that's
14 what these customers say. That's exactly what hearsay is.
15 It's being offered to prove that these customers have said
16 that. And they're not here. We can't cross-examine them.
17 We don't know if that's really what they said or under
18 what basis they said it. It's hearsay.

19 JUDGE WOODRUFF: I don't believe that
20 they're a business record. I don't think they qualify as
21 a business record exception to the hearsay, and they
22 probably are hearsay. Nevertheless, I'm going to exercise
23 the Commission's discretion to admit the documents. I
24 think as an administrative body we can consider hearsay
25 under some circumstances, and I'm going to allow the

1 documents into evidence. So the objection's overruled.

2 Exhibit 9HC and NP is received into evidence.

3 (EXHIBIT NO. 9HC AND 9NP WERE MARKED FOR
4 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

5 JUDGE WOODRUFF: I assume he's tendered for
6 cross?

7 MS. TATRO: Yes.

8 JUDGE WOODRUFF: For cross then, we begin
9 with, looks like Noranda's the first one.

10 MR. CONRAD: And we have no questions, your
11 Honor. Thank you.

12 JUDGE WOODRUFF: For Public Counsel?

13 MR. MILLS: Yes, I do have some questions.
14 Thank you.

15 CROSS-EXAMINATION BY MR. MILLS:

16 Q. Good morning, Mr. Barbieri.

17 A. Good morning.

18 Q. In this case, Public Counsel submitted some
19 Data Requests and you responded to a number of them; is
20 that correct?

21 A. Correct.

22 MR. MILLS: Judge, I'd like have an exhibit
23 marked.

24 JUDGE WOODRUFF: All right. Your next
25 number is 413.

1 (EXHIBIT NO. 413 WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)
3 BY MR. MILLS:

4 Q. Mr. Barbieri, you've been handed a copy of
5 what's been marked as Exhibit 413. Do you recognize this
6 as Public Counsel Data Request 7001?

7 A. Yes, I do.

8 Q. And does this Data Request ask you to
9 please provide copies of all materials including but not
10 limited to flyers, brochures and welcome letters that have
11 been sent to the participants in the Pure Power Program?

12 A. Yes, it does.

13 Q. And does it ask for those items that have
14 been sent from the inception of that program through
15 September 30th, 2008, even if that material is no longer
16 being used?

17 A. Yes, it does.

18 Q. And did you provide materials in response
19 to this Data Request?

20 A. Yes, I did.

21 MR. MILLS: Judge, with that I'd like to
22 offer Exhibit 413.

23 JUDGE WOODRUFF: 413 has been offered. Any
24 objections to its receipt?

25 (No response.)

1 JUDGE WOODRUFF: Hearing none, it will be
2 received.

3 (EXHIBIT NO. 413 WAS RECEIVED INTO
4 EVIDENCE.)

5 MR. MILLS: I'd like to mark another
6 exhibit.

7 JUDGE WOODRUFF: Okay. And this will be
8 414.

9 (EXHIBIT NO. 414 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 BY MR. MILLS:

12 Q. Mr. Barbieri, do you have a copy of what's
13 been marked as Exhibit 414?

14 A. Yes, I do.

15 Q. And this is Public Counsel Data Request
16 7006; is that correct?

17 A. Correct.

18 Q. And was this submitted to you as a
19 follow-up to Data Request 7001?

20 A. Yes, it was.

21 Q. And did it specifically seek information
22 that was not provided in response to 7001?

23 A. Yes, it did.

24 Q. And it refers to a particular welcome
25 letter and it cites the text to that welcome letter; is

1 that correct?

2 A. Correct.

3 MR. MILLS: Judge, I'd like have another
4 exhibit marked.

5 JUDGE WOODRUFF: All right. 415.

6 (EXHIBIT NO. 415 WAS MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 BY MR. MILLS:

9 Q. Mr. Barbieri, do you have a copy of
10 Exhibit 415?

11 A. Yes, I do.

12 Q. And is that the welcome letter that was
13 referenced in Public Counsel Data Request 7006?

14 A. Yes, it is.

15 Q. And if I can get you to look right about
16 the top third of the page where there's a line that says,
17 your decision to pay a charge of 1.5 cents per kilowatt
18 hour.

19 A. Yes.

20 Q. Can you read that and the first bullet
21 following that sentence?

22 A. Your decision to pay a charge of 1.5 cents
23 per kilowatt hour above your standard electricity rate
24 allows AmerenUE to purchase the energy you consume each
25 month from an emission-free wind generation facility right

1 here in Missouri.

2 Q. Is that correct?

3 A. This letter's been amended, correct.

4 Q. Was it correct at the time it was sent out?

5 A. Yes.

6 Q. Oh, at the time this was sent out you were
7 purchasing the customers' power from an emissions-free
8 wind facility here in Missouri?

9 A. The RECs associated with that we were
10 purchasing, correct.

11 Q. Does that bullet I had you read talk about
12 RECs?

13 A. No.

14 Q. Does it talk about the energy you consume
15 each month?

16 A. Correct.

17 Q. At the time you sent out this letter, was
18 AmerenUE purchasing the energy the customer consumed each
19 month from an emissions-free wind facility?

20 A. We have no physical contract for energy,
21 no.

22 Q. So at the time this letter was sent out,
23 was that bullet correct?

24 A. Correct.

25 Q. It was correct or was not correct?

1 A. We were not purchasing renewable energy
2 generation under a contract for the direct energy, no. It
3 was just for the renewable energy credit.

4 Q. Let me try this one more time. At the time
5 this letter was sent out, was that bullet correct?

6 A. No.

7 Q. Okay. And in her opening statement,
8 Ms. Tatro mentioned that there were about 4,000 customers
9 on the Pure Power Program; is that correct?

10 A. Correct.

11 MR. MILLS: Judge, I'd like to have another
12 exhibit marked.

13 JUDGE WOODRUFF: This will be 416.

14 (EXHIBIT NO. 416 WAS MARKED FOR

15 IDENTIFICATION BY THE REPORTER.)

16 BY MR. MILLS:

17 Q. Mr. Barbieri, do you have a copy of what's
18 been marked Exhibit 416?

19 A. Yes, I do.

20 Q. And do you recognize this as Public Counsel
21 Data Request 7007 and your response to that?

22 A. Yes, I do.

23 Q. Does your response to 7007 indicate that
24 the welcome letter we were just discussing was sent to
25 approximately 3,400 participants in the Pure Power

1 Program?

2 A. Yes, it does.

3 Q. So the majority of the participants in this
4 program received that letter; is that correct?

5 A. After they had signed up, correct.

6 Q. And would that include the participants who
7 sent the congratulatory letters that are attached to your
8 rebuttal testimony?

9 A. Depends on when they signed up for the
10 program.

11 Q. Many of them were congratulating you on the
12 one year anniversary of the program, and doesn't it
13 indicate that many of them signed up for the program near
14 the beginning?

15 A. I know some of them did. Some of them did
16 not. Some of them signed up after the fact.

17 Q. So you don't know for sure which of the
18 customers got this incorrect letter and which of them got
19 a different letter?

20 A. No, I do not.

21 Q. It's possible that all of them were
22 congratulating you based on the incorrect information they
23 received in the welcome letter; is that not true?

24 A. No, that's not correct.

25 Q. So you know that some of them did not get

1 that letter?

2 A. I know some of them joined after this
3 letter went out, yes, based on the dates we were provided
4 with from Three Degrees.

5 Q. Now, with respect to the welcome letters,
6 and there has been -- the one that we were just talking
7 about was used essentially from the inception of the
8 program through roughly May of this year?

9 A. That's my understanding, correct.

10 Q. And do you know who wrote that welcome
11 letter?

12 A. The people from Three Degrees, the
13 marketing company.

14 Q. And you have a new welcome letter; is that
15 correct?

16 A. That is correct.

17 Q. And who wrote that welcome?

18 A. The people from Three Degrees.

19 Q. Now, the people at -- at AmerenUE who
20 answer phones about -- and questions about the Pure Power
21 Program, do they have any training material?

22 A. Yes, they do.

23 Q. And who prepared that training material?

24 A. The people from Three Degrees in
25 association with the Center for Resource Solutions,

1 Green-e certification.

2 Q. And for most of this program it's Three
3 Degrees that does the marketing; is that correct?

4 A. Correct.

5 Q. Is Three Degrees subject to Missouri Public
6 Service Commission regulation?

7 A. I am not aware. I don't know. I don't
8 know.

9 Q. Do you know whether the rates that they
10 charge you are set by the Missouri Public Service
11 Commission?

12 A. No. I'm an Illinois customer.

13 Q. Do you know -- well, when I say you, I mean
14 AmerenUE. The rates that they charge you to obtain
15 Green-e RECs for you, do you know whether the prices that
16 you pay, you the company pay to Three Degrees are set by
17 the Missouri Public Service Commission?

18 A. No, they are not.

19 Q. Okay. Do you know whether any of the
20 prices that Three Degrees charges any of its customers are
21 set by the Missouri Public Service Commission?

22 A. Not to my knowledge.

23 Q. Do you know whether there are terms and
24 conditions under which Three Degrees provides service to
25 its customers is regulated by the Missouri Public Service

1 Commission?

2 A. I'm not aware.

3 Q. Now, does Three Degrees make more money if
4 more customers buy RECs?

5 A. Correct.

6 Q. Can you define for me what is a REC?

7 A. Yes. The renewable energy credit
8 represents the positive environmental attributes
9 associated with electrical generation that comes from
10 defined renewable resources.

11 Q. And as you use that phrase, what exactly
12 are attributes?

13 A. Predominantly in the industry it's the
14 carbon offset. So it would represent, because these are
15 non-carbon-emitting generation facilities, that there's a
16 positive attribute. There's not pollution. There's not
17 particulate matter, no carbon emitted, things of that
18 nature.

19 Q. So can you give me just a simple definition
20 of what is an attribute?

21 A. The attribute would be a carbon offset.

22 Q. Okay. So when --

23 A. Similar to SOX and NOX. I think maybe
24 you'd be more familiar with that. SO2 certificates and
25 NOX certificates for regulation.

1 Q. So it's your testimony that a REC is the
2 equivalent for CO2 of a SOX allowance?

3 A. It is a carbon offset, correct. It has
4 that attribute in it, correct.

5 Q. I see you have a bottle of water there.

6 A. Uh-huh.

7 Q. What are the attributes of that bottle of
8 water?

9 A. Quenches my thirst.

10 Q. You can go to a store and buy a bottle of
11 water, can't you?

12 A. Correct.

13 Q. Can you go to the store and buy the
14 attributes of a bottle of water separately?

15 A. I'm not sure what you -- where you're going
16 with that.

17 Q. I'm just asking the question. Have you
18 ever --

19 A. Well, I didn't define what an attribute of
20 water was, so I'm not sure what you -- how to follow up
21 with that.

22 Q. So you can't define the attributes of
23 water?

24 A. No, I can't.

25 Q. Can you think of any other thing other than

1 electricity, other than renewable electricity in which you
2 can define the attributes?

3 A. I'm sure given enough time I could, but
4 that's all we were focused on here was the attributes of a
5 REC.

6 Q. Not something you think about a lot?

7 A. Not necessarily, no.

8 Q. Sort of an unusual concept thinking about
9 the attributes of something?

10 A. This is a unique concept, correct.

11 Q. What is a unit of renewable energy
12 generation?

13 A. In the industry, it's accepted as a term of
14 one megawatt hour of generation.

15 Q. Is that electricity or is that attributes
16 of electricity?

17 A. That is the electricity that creates that
18 attribute.

19 Q. So a unit of renewable energy generation is
20 an attribute or is the electricity itself?

21 A. The electricity itself has to be generated
22 for the attribute to come into existence.

23 Q. But that wasn't my question. My question
24 is, what is a unit of renewable energy generation?

25 A. One megawatt hour of generation from a

1 renewable resource.

2 Q. So that's the electricity?

3 A. Correct.

4 Q. Okay. Judge, I'm going to refer to
5 Exhibit 69, and I believe -- Mr. Barbieri, do you have a
6 copy of that?

7 A. Which exhibit is that? Is that my
8 testimony or Mr. Ensrud's testimony?

9 Q. No. That's the recent printout of your
10 Pure Power website that Ms. Tatro was asking you about.

11 A. I don't believe I have that up here with
12 me. No, I do not.

13 Q. Thank you. Mr. Barbieri, is this -- you
14 were here for the questioning of Mr. Ensrud this morning,
15 were you not?

16 A. Yes, I was.

17 Q. Do you agree that this is a printout of
18 three pages of the Ameren Pure Power website?

19 A. Yes, it is.

20 Q. And do you believe that this was recently
21 changed in order to clarify exactly what the Pure Power
22 Program is?

23 A. There were several reasons why it was
24 changed.

25 Q. Okay. Let's go to recent first, and tell

1 me about those.

2 A. Okay.

3 Q. Was this recently changed?

4 A. Yes, it was.

5 Q. And one of the reasons it was changed is to
6 clarify some of the aspects of RECs; is that true?

7 A. Correct.

8 Q. If I can get you to turn to the third page
9 of that.

10 A. Yes, sir.

11 Q. And there's a picture there, and we'll get
12 to that in a minute, but I'm looking at the paragraph
13 above the picture.

14 A. Uh-huh.

15 Q. Now, the first sentence says that -- at the
16 very end of the first sentence it says, no two customers
17 pay for the same unit of renewable energy generation,
18 correct?

19 A. Correct.

20 Q. And there they're talking about
21 electricity?

22 A. Correct.

23 Q. Rather than RECs?

24 A. Uh-huh.

25 Q. Okay. So the REC program as this describes

1 it is designed to ensure that no two customers pay for the
2 same actual electricity?

3 A. No. They're not -- it is to -- so that
4 they don't both get to claim the environmental attribute
5 associated with that electricity.

6 Q. But this sentence says that no two
7 customers pay for the same unit of renewable energy
8 generation. What you just said meant electricity rather
9 than RECs?

10 A. Correct.

11 Q. Now, if I can get you to look at the -- the
12 description within the picture.

13 A. Uh-huh.

14 Q. It says, a REC represents delivery of one
15 megawatt hour of renewable energy to the grid and all
16 associated environmental benefits; is that correct?

17 A. Correct.

18 Q. So the REC is the energy and the associated
19 environmental benefits?

20 A. The REC is the environmental benefits.

21 Q. But then why does this say that a REC
22 represents delivery of one megawatt of energy and the
23 environmental benefits?

24 A. Because it's the environmental benefits
25 associated with one megawatt hour of generation.

1 Q. But it doesn't say that, does it?

2 A. Yes. It says that a REC represents
3 delivery of one megawatt hour of renewable energy to the
4 grid and also significant environmental benefits of
5 displacing one megawatt of conventional power.

6 Q. So a REC represents delivery of energy and
7 the associated environmental benefits; is that correct?

8 A. It can, right.

9 Q. It can?

10 A. Right. You can bundle or unbundle the REC.

11 Q. Well, does this talk about different
12 options for bundling and unbundling RECs or does it just
13 say what a REC is?

14 A. It says what a REC is.

15 Q. Okay. How does the sale of a REC create
16 demand for renewable power?

17 A. Well, basically the -- across the country
18 and in the states that have RPS requirements, what it does
19 is it stimulates the demand in the marketplace. So as you
20 increase demand, then that sends the market signal to the
21 developers to develop additional renewable energy.

22 Q. Isn't that supply rather than demand?

23 A. No. It is -- the supply comes when the
24 developers see that there is additional demand from people
25 who want to have renewable energy and renewable energy

1 certificates. So it creates -- it creates the demand for
2 the additional supply to come online.

3 Q. Let's get a little bit more focus on
4 Missouri.

5 A. Uh-huh.

6 Q. Say you sell one REC to one of your
7 customers.

8 A. Uh-huh.

9 Q. Describe to me how that one sale creates
10 more demand for renewable power.

11 A. Because it sends a signal to the developers
12 who --

13 Q. The supplier?

14 A. Right. Well, I say the developer. The one
15 who actually generates the physical electricity. It sends
16 the market signal that there is a demand for that product,
17 and so, therefore, the more demand for the product, it
18 sends that market signal to other developers to -- they
19 should come into the state and promote and develop more
20 renewable energy in order to continue to meet that
21 increasing demand.

22 Q. So does it send a signal that there is
23 demand or does it create demand?

24 A. Both.

25 Q. Okay. Now, has UE committed to putting in

1 approximately 100 megawatts of wind power in the near
2 future?

3 A. Yes, we have.

4 Q. And UE is doing that because UE believes
5 that 100 megawatts of wind will be cost effective?

6 A. That's the overall commitment that we've
7 made to help advance renewables. We understand that in
8 some form and fashion it may not necessarily be the most
9 cost effective in comparison to other options that we
10 have.

11 Q. So you're putting in 100 megawatts of wind
12 even though you don't believe it is cost effective?

13 A. To some degree, yes, in comparison to some
14 other traditional generation resources, uh-huh.

15 Q. Now let's --

16 A. Diversification -- I'm sorry.
17 Diversification of the energy supply.

18 Q. Now, in your -- in your welcome letter that
19 we just had marked as Exhibit 415, it states that your
20 decision to pay -- and I'm going to skip one of the goals
21 because we already talked about that, but if you read this
22 through, it says, your decision to pay a charge of 1.5
23 cents per kilowatt hour above your standard electricity
24 rates prevents an average of 19,500 pounds of carbon
25 dioxide and other harmful emissions from entering the

1 atmosphere each year. Is that correct?

2 A. Correct.

3 Q. And is that -- that's what the letter says.

4 Is that a correct statement?

5 A. That is a statement issued from the
6 Environmental Protection Agency.

7 Q. I didn't ask you that. I asked you if
8 that's a correct statement?

9 A. It is a correct statement.

10 Q. Now, isn't it by definition a REC
11 represents electricity that's already been generated?

12 A. Correct.

13 Q. All right. So if a person buys a REC, what
14 will have changed in terms of generation?

15 A. The generation came on because of the RECs,
16 because of the demand for renewable electricity. What a
17 lot of the --

18 Q. Whoa, slow down. Let me clarify that
19 question. The electricity -- the renewable generation
20 came on because of RECs, is that your statement?

21 A. The renewable generation came on because of
22 the demand for renewable generation.

23 Q. For the demand for renewable generation?

24 A. Correct.

25 Q. Is that the same as the demand for RECs?

1 A. It does. It supplies -- the REC does
2 supply that option. It supplies an opportunity for the
3 market or for the developer in order to cost justify their
4 project, yes.

5 Q. Is it your testimony that no renewable
6 projects would ever be built but for RECs?

7 A. Not necessarily, no.

8 Q. Okay. So if the REC represents past
9 generation, how does the purchase of a REC change the
10 amount of carbon that is entered into the atmosphere?

11 A. Well, because what happens is when you're
12 developing these generation projects, what a lot of the
13 developers are looking at is the cost justification to
14 build the project. When they realize that the overall
15 market price for energy is not enough to substantiate the
16 building of the project, they turn to the renewable energy
17 credit market to get that additional revenue so that they
18 can cost justify putting the project in. So, therefore,
19 it stimulates that market and allows them to cost justify
20 the construction of the project, so therefore, that's how
21 the energy is actually generated.

22 Q. So this is -- this statement is based on
23 your assumption that because someone in Missouri buys a
24 REC, someone somewhere else will in the future build
25 renewable generation?

1 A. Future and existing, correct.

2 Q. Okay. Isn't it possible that that someone
3 may have built the renewable generation anyway without the
4 sale of that REC?

5 A. Possible.

6 Q. Okay. So how can you say as a certainty
7 that your decision to pay a charge of 1.5 cents per
8 kilowatt hour above your standard electricity rate
9 prevents an average of 19,500 pounds of carbon dioxide
10 from entering the atmosphere?

11 A. Because when you procure that one megawatt
12 hour, the Environmental Protection Agency says that when
13 you procure that from a renewable resource, they equate
14 that to 19,500 pounds of carbon dioxide not going into the
15 atmosphere, and that's what the REC represents is one
16 megawatt hour of renewable generation.

17 Q. By definition, hasn't that one megawatt
18 hour of renewable generation already taken place before
19 the person buys the REC?

20 A. It has to or you can't have a REC come into
21 existence.

22 Q. Exactly. Now, in terms of Exhibit 69,
23 which we talked about, that's the printouts from your web
24 page?

25 A. Uh-huh.

1 Q. Do you know when this most recent iteration
2 was put out?

3 A. I believe it hit Friday, this past Friday.

4 Q. And was that under your direction?

5 A. Well, it was something we've been working
6 on since earlier this year.

7 Q. When you say we've been working on since
8 earlier this year --

9 A. My department, which handles all the
10 renewable energy development, and Three Degrees in
11 conjunction with the Center for Resource Solutions.

12 Q. And who is the Center for Resource
13 Solutions?

14 A. They are a nonprofit organization. They
15 set the gold standard for Green-e certification. They're
16 industry accepted.

17 Q. So they are a body that certifies the
18 certificates?

19 A. They do that, and they also then review any
20 and all marketing material that we put out. They have to
21 because it has to comply to their strict standards.

22 Q. And did they review Exhibit 415 before it
23 went out?

24 A. It was done in conjunction with their
25 guidelines. I don't know if they physically reviewed

1 that, but it conforms with their guidelines.

2 Q. You don't know whether they reviewed this
3 letter or not?

4 A. They will. They haven't -- oh, I'm sorry.
5 415?

6 Q. 415.

7 A. That's the --

8 Q. The welcome letter that's no longer used.

9 A. Oh, the welcome letter, right. That would
10 have been audited by them.

11 Q. And they approved of the language there?

12 A. Correct.

13 MR. MILLS: Thank you. No further
14 questions.

15 JUDGE WOODRUFF: All right.

16 MR. MILLS: And I would like to offer
17 Exhibit 413, 414, 415 and 416 to the extent I haven't. I
18 think I offered one of them already.

19 JUDGE WOODRUFF: 413 has already been
20 offered and received. 414, 415 and 416 have been offered.
21 Any objections to their receipt?

22 MS. TATRO: No objection.

23 JUDGE WOODRUFF: They will be received,
24 then.

25 (EXHIBIT NOS. 414, 415 AND 416 WERE

1 RECEIVED INTO EVIDENCE.)

2 MR. MILLS: Even though I didn't create it,
3 I believe this witness has authenticated it. I'd like to
4 offer Exhibit 69 as well.

5 JUDGE WOODRUFF: All right. Any objections
6 to its receipt?

7 MS. TATRO: No objection.

8 JUDGE WOODRUFF: Thank you.

9 (EXHIBIT NO. 69 WAS RECEIVED INTO
10 EVIDENCE.)

11 JUDGE WOODRUFF: Cross-examination for
12 state -- or for the Staff?

13 MS. KLIETHERMES: Thank you, Judge.

14 CROSS-EXAMINATION BY MS. KLIETHERMES:

15 Q. Does AmerenUE inform customers that a
16 significant portion of the \$15 goes to customer education,
17 not to the purchase of RECs?

18 A. No.

19 Q. Does the AmerenUE voluntary green program
20 tariff, I believe that's its name as given on the tariff,
21 does that make any mention of customer education?

22 A. I don't recall. If you've got a copy? I
23 don't recall.

24 Q. If I could approach?

25 A. It appears this just pertains to the

1 financial aspects of the program.

2 Q. Is there another tariff that AmerenUE has
3 that deals with VGP?

4 A. Not to my knowledge.

5 Q. So then AmerenUE's tariffs don't reflect
6 customer education as being part of where the money goes
7 for?

8 A. No, this does not.

9 Q. All right. Thank you. In your role with
10 the Pure Power Program, do you discuss matters in the REC
11 market and the importance of REC development with anyone
12 in other industries, for example, FPL Energy?

13 A. FPL Energy has actually approached us with
14 some wind projects.

15 Q. Okay. Are you aware that the senior vice
16 president for development of FPL Energy, Michael Sullivan,
17 has been quoted as saying, the economics of wind
18 investments have to work without the green credits?

19 A. I'm not familiar with that, no.

20 Q. Are you aware that Michael Sullivan has
21 made the statement, to paraphrase the first three words
22 here, voluntary REC purchases are pure corporate marketing
23 and image management for buyers?

24 A. No, I'm not familiar with that.

25 Q. Is the slogan for the Pure Power Program

1 People Using Renewable Energy?

2 A. That's the program that Three Degrees used
3 as the promotional Pure Genius campaign. That's the
4 campaign name, uh-huh.

5 Q. Does that slogan appear on AmerenUE's Pure
6 Power website?

7 A. I believe it does.

8 Q. Does that slogan appear on other marketing
9 materials that AmerenUE puts out?

10 A. Yes, it does.

11 Q. Do participating AmerenUE customers use
12 renewable energy?

13 A. Yes, they do.

14 Q. They do?

15 A. Yes, they do.

16 Q. Because of their participation in the Pure
17 Power Program?

18 A. Well, prior to Proposition C, 4 percent of
19 our generation came from -- comes from the hydroelectric,
20 and the original Senate Bill 54 that approved the target
21 allowed for hydroelectricity to be considered as a
22 renewable resource.

23 Q. So if a customers elects to participate in
24 Pure Power, then AmerenUE takes measures to ensure that
25 the electrons delivered to their residence or business are

1 supplied from those sources?

2 A. That can't happen, correct.

3 Q. So do participating AmerenUE customers use
4 renewable energy as a consequence of their participation?

5 A. What they do is they procure the REC. I'm
6 not sure if I'm really following your question.

7 Q. Does participation in Pure Power cause that
8 participating customer to use renewable energy?

9 A. There's no physical contract for the energy
10 delivery, no.

11 MS. KLIETHERMES: That's all I have. Thank
12 you.

13 JUDGE WOODRUFF: For questions from the
14 Bench, Commissioner Clayton?

15 COMMISSIONER CLAYTON: I don't have any
16 questions right now.

17 JUDGE WOODRUFF: Commissioner Jarrett?

18 COMMISSIONER JARRETT: No questions.

19 Thanks.

20 JUDGE WOODRUFF: Commissioner Gunn?

21 COMMISSIONER GUNN: I do have some
22 questions.

23 QUESTIONS BY COMMISSIONER GUNN:

24 Q. Just some clarification. Is Ameren
25 considered a marketer under the -- under the CRS standards

1 or is that Three Degrees?

2 A. It would be Three Degrees.

3 Q. Okay. So the standard that CRS uses and
4 the things that they verify are that the supply equal
5 sales, and both are verified, that the greenhouse gas
6 reduction are the same as advertised, the greenhouse gas
7 reductions are independently certified, and that consumer
8 disclosures are accurate and follow program guidelines, is
9 that --

10 A. Correct.

11 Q. -- correct? Now,
12 So when -- you made a statement earlier
13 that CRS audited your marketing materials and approved
14 them?

15 A. Correct.

16 Q. Did they do that directly or did they do
17 that through an acceptance of Three Degrees' submissions
18 to CRS?

19 A. Well, what they do is they contact us and
20 we provide the materials, and then -- and the marketing
21 material is audited twice a year through the CRS and
22 Green-e program, and then the annual audit that is
23 conducted is based on the certification on the RECs. So
24 they actually audit the Three -- the Pure Power Program
25 itself, correct.

1 Q. Okay. So -- so is that all submitted
2 through the third party, Three Degrees, or is that done
3 directly?

4 A. We submit it to Three Degrees and then
5 they -- because they have the responsibility for the
6 audit.

7 Q. All right. And you -- that was my
8 understanding as well. I just want to make that clear.
9 And do you review those audits and -- and get them back
10 from CRS directly?

11 A. Correct. Yeah. And what they do is they
12 will send information directly to me, and then we help
13 provide some of the schedules that they -- that they audit
14 on the verification.

15 Q. Who was Three Degrees' independent auditor?
16 Do you know the answer to that?

17 A. No, I don't. I think I do have that
18 information back in the office, but I don't have that
19 right here.

20 Q. It's not that important. It seems to me
21 that the issue here is not that the RECs are a good thing,
22 it's that are we telling customers what -- are we
23 explaining enough to customers what they are?

24 A. Uh-huh.

25 Q. And I just want to clarify a couple points.

1 When a customer buys an REC and that says, you know, that
2 according to your -- well, let me take a step back.

3 The -- your website, the one that has a
4 sentence that says, the purpose of RECs is to support wind
5 and other renewable resources right here in the midwest.

6 A. Correct.

7 Q. Correct. But AmerenUE is not necessarily a
8 beneficiary of those particular wind resources?

9 A. We have not entered into a contract for the
10 power purchase agreement, correct.

11 Q. Okay. And so when we look at the picture
12 here and it says that you and your company with REC
13 purchase, it's cleaner than the -- than the one that was
14 not using traditional energy generation, I'm assuming
15 that's the -- that's the message you're trying to send?

16 A. Right. What we're trying to do with this
17 message is we're trying to explain that there's a
18 separation between the actual commodity electricity and
19 the environmental attributes. So when the commodity
20 electricity goes out into the grid, what we like to
21 explain to people when we do countless presentations to
22 communities and organizations, what we attempt to explain
23 to them is somewhat like we call the bathtub presentation,
24 where there are, as far as energy is concerned, you have
25 all these different faucets. So you have coal and gas and

1 nuclear and you have renewable, and it all goes into the
2 tub. Well, at the bottom of that tub you have your plug,
3 and when you pull the plug and that flows out to all the
4 different customers, that energy is all mixed into the
5 grid. So that's the concept as at least how the grid
6 functions.

7 So what we explain to people is you can't
8 control specifically where those electrons go, but what
9 you can do with this particular program is, by buying
10 these Green-e certified RECs, only you have the right to
11 claim the environmental attribute associated with it.
12 Very similar to SOX and NOX participation with the utility
13 industry today, only they can claim the SOX reduction and
14 the NOX reduction. Well, that's the same principle with
15 RECs, and that's why the EPA came up with this concept for
16 renewable energy credits. So it functions in the same
17 manner.

18 Q. Right. And you think that this picture
19 adequately lets a layperson know what you just explained
20 to me?

21 A. We hope that it does. We think it's one of
22 the clearest ones that's out there in the industry.

23 Q. As I look at this, what this appears to me
24 is that the consumer and my company, my electric company
25 is directly benefiting from the renewable, from the use of

1 renewable resources that I'm paying for through a REC.

2 A. Okay.

3 Q. But that doesn't actually happen?

4 A. Well, the electricity goes out on the grid,
5 so it has to -- it has to go out on the grid to create the
6 REC so --

7 Q. Right, but what I'm saying --

8 A. We just haven't -- I guess what we haven't
9 done is we haven't entered into the formal purchase of the
10 commodity electricity, but that's not what the intent is.
11 I think what happens is and what's instrumental with the
12 states that have the renewable portfolio standards that
13 allow RECs, they recognize the difficulty and the
14 physical delivery under a power purchase agreement where
15 you have to have transmission rights and things of that
16 nature.

17 So what they say is because the energy
18 flows out into the grid and you can't control where that
19 goes, okay, what you can do, though, is you can take legal
20 title to the renewable energy credit, the positive
21 environmental attribute. So that's why they allow the
22 states that have RPSs, that's why they allow them to use
23 renewable energy credits, because then that state doesn't
24 necessarily have to show physical delivery of that energy
25 into their utility that procures it.

1 Q. I mean, I get it. My concern is, and I
2 don't -- this is a new program. It seems to me very
3 similar to the Terre Pass Program that they have with
4 cars.

5 A. Right.

6 Q. Where you can buy a SUV and relieve some of
7 your guilt for buying an SUV by paying \$32, you know, and
8 then Terre Pass says what we're going to do is we're going
9 to do something, either invest in, you know, planting
10 trees or we're going to invest in -- in a wind farm, and
11 we promise you that that's going to offset the carbon
12 emission from your SUV.

13 A. Very similar, yes, sir.

14 Q. What my issue is, is whether the consumer
15 because of the unique nature of electricity generation,
16 whether they understand that you're investing in a wind
17 farm in California or Kansas that is sending power to
18 Chicago and New York and Miami or whether they think that
19 AmerenUE is taking that pool of money that they're paying
20 for and buying and upgrading the hydropower or putting
21 windmills which is going to immediately impact whether --
22 the energy that Ameren is generating.

23 That's to me the crux of this. All this
24 other stuff is, you know, I did a lot of research on CRS
25 and Three Degrees actually, and CRS is clearly the gold

1 standard in determining this. The Federal Government has
2 essentially ceded certification to CRS, would you agree
3 with that?

4 A. I would agree, yes.

5 Q. And they're funded through DOE and they're
6 funded through EPA, and they've asked them to create this
7 voluntary standard?

8 A. Correct.

9 Q. It is a voluntary standard?

10 A. Correct.

11 Q. And it's a voluntary market?

12 A. Yes.

13 Q. And no price has been put on what one ton
14 of carbon --

15 A. Not yet.

16 Q. Not yet. Has -- within the last year and a
17 half, whatever, that they did put out this voluntary
18 standard, has that been generally accepted in the market?

19 A. Right. As it stands right now, in a recent
20 report the National Renewable Energy Lab just put out in
21 October of this year, they quantified that out of -- there
22 were 16 billion kilowatt hours that were used for
23 renewable energy generation to meet the RPS requirements
24 from the states, the mandates, but at the same time there
25 was 18 billion kilowatt hours that were used for voluntary

1 programs.

2 So again, that's where we -- where we say
3 that there is a definite cause and effect relationship
4 that will cause developers to continue to develop more
5 renewable generation because of this demand, and this is
6 just an easier way for that demand to come online.

7 Q. Now, under Prop C, some of this voluntary
8 undertaking by the company becomes mandatory?

9 A. Correct. It's -- it would be different.
10 Under Prop C, we would have an actual mandate to utilize
11 2 per -- in the first year, in 2011, 2 percent of our
12 retail electric sales are to come from renewable energy
13 resources, whether it's the physical commodity electricity
14 or whether it's through a renewable energy credit that we
15 would purchase.

16 Q. The 50 percent requirement that you come
17 from Missouri, Illinois or a MISO state, that really,
18 again, those -- that generation that the RECs go for
19 doesn't directly flow through Ameren?

20 A. Not necessarily, but --

21 Q. Does any of it?

22 A. It could, yes, and that's one of the
23 reasons why the Center for Resource Solutions would allow
24 Ameren to make the comment that you are getting the
25 electrical generation because no one can control how those

1 electrons are, because we have further limited the
2 geographic region from which we procure our RECs and they
3 come from Missouri and Illinois, what the standard in
4 the -- in the nation and the industry is is because you
5 are getting it from that proximity and not from California
6 or Washington or Pennsylvania, they would allow you to
7 say, they would allow you to tell your customers that
8 you're getting that energy as well.

9 Now, we choose not to do that because we're
10 selling simply a REC program and we're trying to make sure
11 that we don't mislead customers because we have not gone
12 into the formal process of buying the energy through a
13 power purchase agreement.

14 Q. So theoretically someone in Missouri could
15 be buying a carbon offset from some of the hydropower that
16 you're generating?

17 A. Theoretically.

18 Q. But you have no proof of that, so you don't
19 want to say it?

20 A. Correct. Uh-huh.

21 Q. I want to go back to this issue about the
22 REC stimulating demand.

23 A. Uh-huh.

24 Q. What do you think will stimulate more,
25 Prop C or your voluntary REC program?

1 A. Well, as it stands right now, as I said
2 earlier, only 16 billion kilowatt hours in 2007 were used
3 to meet the renewable portfolio standards across the
4 nation, and 18 billion kilowatt hours were required to
5 fulfill these voluntary green program markets.

6 Q. Let's drill down to Missouri a little bit.

7 A. Uh-huh.

8 Q. So what -- under Prop C, what do you think
9 your mandatory -- what would be the number of kilowatt
10 hours that you would be required to do under Missouri?

11 A. I believe in the first year, in 2011 it's
12 somewhere around 860,000 megawatt hours would be required.

13 Q. And what is your voluntary program in
14 Missouri right now?

15 A. Right now, we have sold a little over
16 41,000.

17 Q. So across the nation it might be, but in
18 Missouri Prop C requires you to generate a whole lot?

19 A. But not from Missouri.

20 Q. Right. I understand.

21 A. Prop C would allow us to buy the RECs from
22 California or anywhere, but our program specifies a much
23 more concise geographic region.

24 Q. Have there been any empirical studies that,
25 you know, academic or otherwise that directly tie the

1 selling of these RECs to increased demand for renewables?

2 A. I believe the studies that the National
3 Renewable Energy Lab and the Berkeley Lab put out support
4 that.

5 Q. Support it?

6 A. Uh-huh.

7 Q. All right. Do you review -- do you review
8 the audits -- and I apologize for jumping around right
9 now. Do you review the audits that Three Degrees does
10 before they go to CRS?

11 A. Well, Three Degrees doesn't do the audit.
12 They provide the information to CRS, and then CRS conducts
13 the audit. They'll ask us for schedules and we'll provide
14 that information. Then they conduct the audit and then we
15 get a copy of the audit report when it's completed.

16 Q. I thought Three Degrees was responsible for
17 hiring a third-party auditor?

18 A. They are in conjunction with this
19 particular -- to fulfill the CRS requirement for the
20 audit, correct. Uh-huh.

21 Q. Does CRS sign off on any of the third-party
22 auditors?

23 A. To my knowledge, I assume that they do.
24 Right. Uh-huh.

25 Q. Who sets the standards for how long RECs

1 last? Is that CRS as well?

2 A. Well, if you do a Green-e certified REC,
3 CRS sets that standard. Now, some states don't say
4 anything about Green-e certification. As I recall in Prop
5 C, the RECs would be allowed to be in existence for three
6 years to meet the requirement.

7 Q. And all your RECs are Green-e's?

8 A. All of ours are Green-e certified, correct.

9 Q. Why did you change the website?

10 A. We've been working on this website since
11 probably spring. A couple of things. Green-e changed
12 their logo, was No. 1. The Environmental Protection
13 Agency changed their carbon calculator, so that was
14 another one. And then we listened to what our customers
15 are telling us, you know, as to questions that they ask
16 when we go to a variety of -- of events. Three Degrees
17 does a real good job of listening, you know to -- people
18 come up and talk about the program, have questions about
19 the program. So based on that feedback, then we take that
20 information and try to make sure that we're providing as
21 accurate information to the consumer as we possibly can.

22 Q. Are you familiar with -- and this is going
23 to sound crazy, but I just want to know. Are you familiar
24 with a website called Charity Navigator?

25 A. No, I'm not.

1 Q. It's a website that rates charities based
2 on what percentage of their contributions go to the actual
3 mission of the charity and how much goes to administrative
4 costs.

5 A. Uh-huh.

6 Q. Just wondering if you know of any -- does
7 CRS or Three Degrees rank statewide programs or is
8 there -- are there any statewide listings that compare or
9 rank these energy programs based on how much goes to
10 administrative costs and how much actually goes to buy the
11 RECs?

12 A. Not to my knowledge. I'm not familiar with
13 it.

14 Q. Do you think that Missouri's are on par
15 with the administrative costs that you guys are incurring
16 on par with other states?

17 A. Well, again, it's only been the first year,
18 so it's kind of -- it's difficult to judge it in the first
19 year. I believe what we said in our rebuttal testimony
20 was that we would really need some time in order to
21 establish that cost because the primary thing that we
22 talked about here, too, was customer education, bringing
23 people aware. So if they don't recognize that you have
24 something for sale, obviously they're not going to buy it.
25 So because it's so early on in the program, it's very

1 difficult to judge that.

2 So what we see is, because the price of
3 RECs continue to increase and we mentioned that in some
4 highly confidential area in the report, but I would --
5 what I would note is we were involved with the procurement
6 -- this is public information -- we're involved in the
7 procurement, in the assistance for the procurement of RECs
8 for the Illinois utilities because the state of Illinois
9 had a mandate, and that just happened in June of this
10 year. So we procured those first RECs.

11 Initially those RECs were significantly
12 less, but because of that standard and because of that
13 coming into existence, we actually paid close to \$29 per
14 REC for our three Illinois utilities for the wind RECs
15 that we procured for that in compliance with that, and
16 ComEd had to pay close to \$35 for their RECs. So once
17 these -- once these renewable portfolios standards come
18 in, and create additional demand, the price of RECs will
19 go up.

20 So that was considered in the overall
21 pricing scenarios that Three Degrees discussed when we
22 were looking at trying to fix a price for five years, that
23 they were going to be on the hook for. And they
24 recognized, too, you know, at that time there was
25 discussion in Missouri about a target or a standard, so

1 they recognized that there would be an increase in that
2 demand. So as the program continues on, what you will see
3 is you'll continually see the percentage on the price of
4 RECs will continually increase, which we see -- which we
5 understand is the tradition for programs like this
6 throughout the country, and then the education amount
7 actually can decrease because the word has gotten out,
8 we've explained the program, people understand what it is,
9 and we believe our customers are savvy that participate in
10 this.

11 Q. I'm going to disagree with you a little bit
12 because the administrative costs in the first year can be
13 measured against similar programs in other states if
14 you're comparing them to their first year administrative
15 costs, right? If you assume -- if you assume that -- that
16 customer education is needed and under all these programs
17 to when they start up, you probably could do an apples and
18 apples comparison between, say, the first year of the
19 Missouri program with their administrative costs as a
20 percentage of their REC to, say, Florida's --

21 A. Right.

22 Q. -- the first year?

23 A. Right. At the same time, though, what I
24 would -- what I would add to that is that those -- those
25 utilities that spend very little in the administration, in

1 the marketing and program, they have -- they have really
2 horrible participation. There's a -- I'm aware of a
3 utility out west that in the first three years spent very
4 little. They sold, I believe it was somewhere 2,500
5 megawatt hours or 2,500 RECs in a three-year total. And
6 then once they finally started to go with the third-party
7 marketer in developing this, in the following three years
8 they sold about 90,000. So our program sold basically
9 41,000 in the very first year, so we saw that as a very
10 important aspect.

11 Q. I'm not disputing that. What I'm saying is
12 that there can -- you can take those things into account,
13 but in the audits, do they -- has there been any
14 comparison to what your administrative costs are to other
15 states?

16 A. Not to my knowledge. What I've been led to
17 believe in discussions with Three Degrees is that we're on
18 par for first -- for first year --

19 Q. First years?

20 A. -- as to where we are.

21 Q. Absolutely, and they're going to be higher
22 the first year?

23 A. Correct.

24 Q. And -- and do the audits specifically
25 examine the administrative costs as being reasonable and

1 prudent?

2 A. No, because, again, it's a fixed price, so
3 they don't -- they don't -- not to my knowledge. If CRS
4 does a prudence on that overall issue, I'm not aware of
5 that.

6 Q. So they don't make any sort of judgment as
7 to whether the administrative costs are appropriate?

8 A. No.

9 COMMISSIONER GUNN: All right. I think
10 that's all I have. Thank you very much for your time. I
11 appreciate it.

12 JUDGE WOODRUFF: Mr. Chairman, do you have
13 any questions?

14 QUESTIONS BY CHAIRMAN DAVIS:

15 Q. Good morning.

16 A. Good morning.

17 Q. Good morning, Mr. Barbieri.

18 A. Good morning, sir.

19 Q. Are you familiar with a piece of
20 legislation sponsored by former State Representative Carl
21 Bearden called the Tax Me More Fund?

22 A. No, sir, I'm not.

23 Q. Okay. Well, hypothetically speaking, I
24 mean, pretty much the -- the intent of the legislation was
25 to just create a voluntary fund that people could pay into

1 if they -- if they wanted to pay higher taxes. Is that
2 what this renewable energy credit thing is here?

3 A. I don't believe so, no.

4 Q. You don't believe so?

5 A. No. I think the information that we see
6 from the Federal Government, from the EPA, the Energy
7 Information Administration, the Department of Energy, the
8 26 states that have the -- allow the utilization of RECs,
9 I believe that they all recognize that this does advance
10 the development, the physical development of renewable
11 generation.

12 Q. Okay. But you don't disagree with the
13 statement that there are other ways of developing
14 renewable generation that would probably be more
15 efficient?

16 A. There -- potentially, right. That's why
17 this is a voluntary program. Correct.

18 Q. Thank you, Mr. Barbieri.

19 A. Yes, sir.

20 QUESTIONS BY JUDGE WOODRUFF:

21 Q. I'll go ahead and ask Commissioner Murray's
22 question also. Are there any administrative costs of the
23 Pure Power Program above the line?

24 A. Not to my knowledge. My department does
25 not charge any time off or any cost associated with the

1 program to AmerenUE. So I'm not aware. And then we have
2 accounting codes where if another department is doing work
3 on that, that they're able to charge back to my
4 department. So I'm not aware that that occurs.

5 Q. If you don't charge to UE, where do you
6 charge it?

7 A. The shareholders. It's strictly
8 shareholder cost. It does not impact AmerenUE customers.
9 The whole concept on this was to ensure that those who
10 participate in the program pay for the program, and that
11 was the basis on which it was established.

12 JUDGE WOODRUFF: Okay.

13 CHAIRMAN DAVIS: Judge, can I?

14 JUDGE WOODRUFF: Go ahead.

15 FURTHER QUESTIONS BY CHAIRMAN DAVIS:

16 Q. Okay. Mr. Barbieri, have you read the new
17 state statute, what has been affectionately referred to as
18 Proposition C?

19 A. Yes, sir, I have.

20 Q. Okay. And you're not a lawyer?

21 A. No, sir, I am not.

22 Q. Okay. But is it your mental impression
23 that renewable energy credits can be used to meet the
24 mandates of Prop C?

25 A. Yes, sir. It's stated in the petition

1 further questions. Thank you.

2 JUDGE WOODRUFF: All right. I'll go then
3 to recross based on questions from the Bench, beginning
4 with Noranda.

5 RE-CROSS-EXAMINATION BY MR. CONRAD:

6 Q. Judge, I'm not really sure whether it's
7 Chairman Davis' questions, Commissioner Gunn's questions
8 or even Commissioner Murray's questions, but I just want
9 to try to get something straight with you, sir, so I can
10 at least understand what we've been arguing about here for
11 the last couple, three hours. This is first of all a
12 voluntary program, right?

13 A. Correct.

14 Q. Assume with me that I voluntarily make a
15 decision to pay, I think it's a penny and a half per KWH,
16 but let's just assume that that turns out in a given
17 billing period to be \$100.

18 A. Okay.

19 Q. And so I get a line item on my bill that
20 says pay \$100 to Ameren?

21 A. Correct.

22 Q. And Ameren gets the \$100?

23 A. Correct.

24 Q. Now, help me understand where that \$100
25 goes.

1 A. What happens then is Ameren, the
2 equivalent -- and I'm not going to have the numbers
3 because the \$100 as to what it is as far as the RECs, but
4 Ameren keeps \$1 out of the 15 for the REC, okay, for the
5 administrative costs, and the other \$14 goes towards Three
6 Degrees. So you really basically need to divide 100 by 15
7 and that will tell you how many RECs that you're talking
8 about.

9 Q. Would it be easier if instead of using 100
10 there was --

11 A. Yeah, if we just talked about the 15.

12 Q. Just talk about the 15.

13 A. Great. If we did that, then out of the \$15
14 that they pay, that the customer pays to AmerenUE,
15 AmerenUE retains \$1 and then \$14 is submitted to Three
16 Degrees.

17 Q. And of the 14, what -- what are they doing
18 with it?

19 A. Then they pay the developers they have
20 entered into contracts with for the physical renewable
21 energy credit that they generate. Then they also use the
22 additional funds to help with customer education and then
23 also have administrative operation costs associated with
24 that.

25 Q. Okay. We've worked it down to 14?

1 A. Uh-huh. Right.

2 Q. Out of the 14 that goes to this Three
3 Degree outfit, how much goes into their pocket?

4 A. Well, that's highly confidential right now.
5 We've listed that in my testimony. So if we're going to
6 talk about those numbers, that would be highly
7 confidential. Right now those are business decisions, so
8 if we want to discuss that, I think we want to go off
9 camera.

10 Q. Well, I'm just trying to figure out. I
11 don't want to belabor the point. I'm just trying to
12 figure out how much -- let me try it another way. Let's
13 see if this gets to it. Out of the 14, how much goes to
14 the developer that's building the windmills and the wind
15 turbines?

16 A. Right. Again, that's the confidential
17 information. They enter into three party -- third-party
18 contracts for that, and so those are -- there are
19 disclosure agreements and confidential contracts that
20 Three Degrees enters into with that wind developer, and so
21 that's proprietary information. That's why we're talking
22 about the highly confidential nature of that. That's
23 third party.

24 AmerenUE does not enter into that contract.
25 Part of the responsibility of Three Degrees is to enter

1 into that contract. So we are not privy to that as far as
2 the actual contract is concerned. So that's why it's
3 highly confidential.

4 JUDGE WOODRUFF: Mr. Barbieri, if I can
5 step in here, I think you said the actual numbers are in
6 your testimony?

7 THE WITNESS: Yes, sir.

8 JUDGE WOODRUFF: Highly confidential?

9 THE WITNESS: Yes, sir.

10 BY MR. CONRAD:

11 Q. That's just actually what I was going to
12 ask. The actual numbers --

13 A. For the first year.

14 Q. Of the 14?

15 A. Uh-huh.

16 Q. Are you in your testimony or --

17 A. Marked highly confidential, yes, sir.

18 MR. CONRAD: Okay. I'm done. Thank you.

19 JUDGE WOODRUFF: Thank you. Public
20 Counsel?

21 RECROSS-EXAMINATION BY MR. MILLS:

22 Q. Just a few. You were talking to
23 Commissioner Gunn about the picture that appears on the
24 third page of Exhibit 69?

25 A. Yes, sir.

1 Q. And I think you made the statement that
2 that's about the clearest picture you've ever seen of the
3 way this works?

4 A. Yes, sir.

5 Q. Okay. Let's go through this picture. On
6 the left-hand side there's two sources of energy?

7 A. Uh-huh.

8 Q. Clean one and dirty one?

9 A. Correct. Uh-huh.

10 Q. Then coming out of the power pool, there
11 are two streams of energy, two separate streams. See
12 you've got two arrows?

13 A. Uh-huh.

14 Q. One of those is clean energy, one of those
15 is dirty energy?

16 A. Going into the --

17 Q. Coming out of?

18 A. Oh, coming out of?

19 Q. Out of the power pool. There's not one
20 stream of energy, there's two separate streams of energy;
21 is that correct?

22 A. Right.

23 Q. Is one of those streams clean and one
24 dirty?

25 A. What this basically represents is one of

1 the streams has been stripped of the renewable energy
2 credit. All they're basically saying is when the energy
3 comes out, the credit has already been taken by the local
4 utility that owns that claim for the renewable energy
5 credit. So that's -- that's why it's depicted in that
6 form and fashion.

7 Q. In this picture, isn't there an arrow
8 coming out of the stream going into the power pool that
9 shows the REC coming out?

10 A. Correct. And they show that then going
11 into the -- to the utility, correct.

12 Q. So the REC comes out before the energy goes
13 into the power pool, correct?

14 A. Correct.

15 Q. Then you've got the energy going into the
16 power pool and you've got some clean energy coming out and
17 some dirty energy going out as well; is that correct?

18 A. No. I think it just says energy, doesn't
19 it? Just says energy.

20 Q. Well, there are two streams?

21 A. Right, they both say energy.

22 Q. Is one clean and one dirty?

23 A. Well, one is clean because it contains the
24 REC. When it goes back into this utility, you see, it's
25 clean because the REC is part of that. And this one goes

1 up here, and they're classifying that as dirty because it
2 doesn't include the REC and so, therefore, it's not --
3 it's not -- does not have the environmental attribute.
4 That utility cannot claim the environmental attribute.
5 Only the utility that has ownership of that attribute can
6 claim it, so, therefore, it becomes clean in that regard.

7 Q. And that's -- that's the clearest picture
8 you've ever seen of this whole concept?

9 A. That's one of the best that we have seen,
10 yes, sir.

11 Q. Okay. Now, I think in response to one of
12 Commissioner Gunn's questions, and perhaps again in
13 response to Chairman Davis, you made the point that this
14 is a voluntary program; is that correct?

15 A. Correct.

16 Q. Does UE have any other programs that
17 customers can participate in if they're interested in
18 environmental benefits?

19 A. In environmental benefits, I'm not aware
20 of.

21 Q. So if you're an AmerenUE customer and you
22 want to do something that appears to you as a customer to
23 be green, this is your choice?

24 A. Well, you could do our program or you could
25 go out on a website and do somebody else's program.

1 Q. But as far as what you can do with your
2 utility customer, if you're an AmerenUE customer, this is
3 it; is that correct?

4 A. If you want it on your UE bill, this is it.

5 Q. Well, what else do you offer as AmerenUE to
6 customers that could be considered green?

7 A. Well, again, it's voluntary. So anybody
8 could just go out on a website and contact any of these
9 marketers and do it directly without the utility. That's
10 my point.

11 Q. My question is, if they want to do
12 something with their utility, they're an AmerenUE customer
13 and they want to do something with AmerenUE, do they have
14 any other choice other than that?

15 A. This program is our voluntary, correct.

16 Q. There is no other AmerenUE program?

17 A. Not for renewable energy no, sir.

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

20 JUDGE WOODRUFF: Staff?

21 RE-CROSS-EXAMINATION BY MS. KLIETHERMES:

22 Q. Good afternoon. Commissioner Gunn was
23 asking you some questions about audits. Do you recall
24 that?

25 A. Yes, I do.

1 Q. Did Staff ask you for information about
2 audits?

3 A. I believe they did, uh-huh.

4 Q. Okay. Did Staff DR 171-38 ask for some
5 support or proof that AmerenUE customer contributions
6 actually stimulated green production?

7 A. I believe that was correct. That was a
8 question, correct.

9 Q. And did AmerenUE's response say that
10 AmerenUE does not possess any specific data that are
11 capable of showing the incremental benefit to a producer's
12 operation?

13 A. At that time, correct. Uh-huh.

14 Q. And did Staff submit DR --

15 MS. TATRO: I'm going to object. If she
16 wants him to verify some Data Requests and answers, could
17 she maybe provide copies so that he doesn't have to rely
18 on his memory?

19 JUDGE WOODRUFF: Well, if he has -- if he
20 has an inability to remember, he can say so. Otherwise
21 we'll proceed this way. So your objection's overruled.

22 MS. TATRO: Okay. Thank you.

23 BY MS. KLIETHERMES:

24 Q. Did Staff ask a very similar question to
25 that in DR 280-3, do you recall?

1 A. No, I don't recall.

2 Q. Well, let me ask it this way. Did you --
3 were you the AmerenUE person responsible for answering
4 Staff's DRs on Pure Power?

5 A. Yes, I was.

6 Q. Did you at any point provide the Staff any
7 audit related to how a generator of an REC used the money
8 that they received for the REC?

9 A. No. That doesn't exist in the industry.

10 MS. KLIETHERMES: That's all I have. Thank
11 you.

12 JUDGE WOODRUFF: Any redirect?

13 MS. TATRO: Just a couple.

14 REDIRECT EXAMINATION BY MS. TATRO:

15 Q. Just to clarify, there's been a lot of
16 discussion about what audits did or didn't happen and were
17 or weren't provided. Can you clarify, what is audited?
18 What was audited and what was provided to Staff?

19 A. Right. It's not a financial audit in the
20 terms of financial accounting standard boards type audits.
21 The audit that -- that -- actually that CRS conducts
22 through Green-e certification is simply to verify that the
23 renewable energy credit was obtained from a reputable
24 renewable energy supplier, that it was certified, that it
25 was not double counted. They also verify and audit the

1 material from marketing, and they do that twice a year to
2 ensure program integrity, to ensure that it meets the
3 standards that they have set for the industry.

4 Q. Okay. And very early on, Mr. Mills, who's
5 Office of Public Counsel, handed you that welcome letter.

6 A. Yes.

7 Q. Do you recall that?

8 A. Uh-huh.

9 Q. Now, it's a welcome letter. What does that
10 mean? What does that provide?

11 A. It's really after the fact. Someone has
12 already signed up for the program before they're going to
13 get this letter. This letter is simply something that is
14 sent to the customer after they signed up for the program,
15 the vast majority of customers having attended either a
16 function or again we've done numerous presentations to
17 community groups across the state explaining about RECs,
18 what programs like this are, what renewable energy is.

19 And so then they'll go back and usually do some
20 research and then they'll sign up for the program. And
21 after they have signed up for the program, then we submit
22 this letter to them, just to welcome them. It's just a
23 formality, just to welcome them. They're provided with
24 some additional information, like a window cling and
25 things of that nature. It demonstrates that they are a

1 supporter of the program.

2 Q. And to be clear, is that letter still being
3 used?

4 A. No. This letter was updated in May.

5 Q. Okay. And there's been a lot of discussion
6 today about RECs and whether they actually do encourage
7 additional renewable generation. Can you explain to me
8 what your belief is and why you believe that?

9 A. Well, again, you know, I believe the EPA
10 puts it very well. RECs are the currency for the
11 industry. The information, the support from the U.S.
12 DOE, from the U.S. EPA, from the National Renewable Energy
13 Lab, from the Berkeley Lab, from all the states that have
14 renewable portfolio standards, I believe they sent a very
15 loud and clear message that renewable energy credits are a
16 way to help stimulate the growth of renewable energy
17 development. And it adds a very easy way for these
18 utilities to comply with the state laws that have now been
19 enacted without being burdened with the issue of power
20 purchase agreements and transmission rights in order to
21 show the delivery of the commodity electricity.

22 Q. And Mr. Mills asked you several questions
23 about the fact that the RECs come from power that was
24 generated historically. Do you remember that?

25 A. Correct.

1 Q. Okay. Do you believe that the purchase of
2 RECs today influences generation of electricity in the
3 future?

4 A. Yes, definitely. It sends the price
5 signal. It's a supply and demand issue. As these
6 developers see that there is going to be increasing demand
7 for their product, they are out in front with this and try
8 to go ahead and -- and build additional renewable
9 generation projects in order to meet that.

10 So as they look at trying to justify their
11 projects and they see that the price that they're going to
12 physically get for the commodity electricity is not enough
13 to justify the financial community's requirements on
14 funding these types of projects, they can turn to the
15 renewable energy credit market and see these are
16 additional funds that can now come in and cost justify a
17 price that will allow them to develop these projects.

18 MS. TATRO: Thank you. I have no further
19 questions.

20 JUDGE WOODRUFF: All right. You can step
21 down.

22 THE WITNESS: Thank you.

23 JUDGE WOODRUFF: And I believe that's all
24 the witnesses on the -- on this issue, on the Pure Power
25 Program issue, and we're due for lunch. Before we go to

1 lunch, however, I do have one thing I want to bring up
2 with Ameren attorneys. There was a motion filed this
3 morning to allow admission of designated portions of
4 depositions into evidence. Mr. Lowery, if you want to
5 come up.

6 MR. LOWERY: Yes, your Honor.

7 JUDGE WOODRUFF: I have read that. I
8 assume several other people in the room have not seen that
9 yet.

10 MR. LOWERY: Well, your Honor, we did serve
11 it electronically to the lawyers in the room. I did also
12 have paper copies, too. Obviously there's other parties
13 that aren't here today.

14 JUDGE WOODRUFF: My question is, is this
15 something that you need an answer on today or tomorrow
16 because --

17 MR. LOWERY: What I was hoping, your Honor,
18 is that we could take it up tomorrow after folks have been
19 served with it this morning because, as the motion
20 indicates, I think it would be helpful if the Commission
21 would give us some guidance. Obviously we believe that
22 the process laid out in the motion is exactly what the
23 rules contemplate, but we're trying to be as efficient
24 with the hearing, with our cross-examination as possible.
25 Some of these issues could come up next week, because

1 there's been depositions taken of those witnesses, so it
2 would be very helpful to know where we're going with that
3 so that perhaps we could expedite cross-examination next
4 week. So my hope is that we could take it up tomorrow.

5 JUDGE WOODRUFF: Anybody here have an
6 objection to taking it up tomorrow?

7 MR. CONRAD: Well, it would appear that it
8 took them the weekend to put it together. I think I'd
9 like to have more than 24 hours to take a look at it. I
10 appreciate counsel's problem with trying to do that. I
11 don't know. I might agree with it. But I just haven't
12 had a chance to look at it. And he has provided a copy
13 here. I saw it come in on the web. I don't -- I just
14 don't know. I don't know what kind of time we're going to
15 have today to look at it.

16 JUDGE WOODRUFF: Well, bring it up tomorrow
17 and we'll discuss it then.

18 MR. LOWERY: I would point out, your Honor,
19 that essentially all the motion says is, would like some
20 guidance from the Commission essentially and then we
21 would, of course, file deposition designations, as others
22 who have taken depositions can do, as the motion indicates
23 there would be, of course, an opportunity to object to
24 specific items based on a proper objection.

25 JUDGE WOODRUFF: What I'd like to do is get

1 the parties -- if there's a possibility for parties to
2 agree on exactly how this should be handled, that would be
3 helpful. And I will say that my concerns on it was the
4 idea of taking a 2 or 300-page deposition and saying here
5 it all is and not telling us what is important about it.

6 MR. LOWERY: And we understand that, your
7 Honor, and I think our motion reflects that we understand
8 that, and I think our motion -- and Mr. Conrad
9 indicated -- I'm hopeful that Mr. Conrad, in fact, would
10 agree to it because I think the motion just reflects not
11 only what the Missouri Rules of Civil Procedure provide
12 but what is standard practice in every circuit court in
13 the state, and that's really all we're -- and I certainly
14 understand the Bench's concern about the entire
15 deposition, and we're just simply trying to address that
16 concern in accordance with the rule.

17 We'd be happy to talk to anybody about it,
18 but I would urge the Commission to take it up tomorrow
19 because I think the efficiency of the hearing process
20 really would be benefitted by doing so.

21 JUDGE WOODRUFF: Bring it up again tomorrow
22 and then we'll decide tomorrow.

23 MR. CONRAD: We'll certainly try to take a
24 look at it. Unlike Mr. Lowery, I'm not able to testify as
25 to what the practice is in every circuit court in the

1 state.

2 JUDGE WOODRUFF: All right. With that,
3 then, we'll take a break for lunch. We'll come back at
4 1:30.

5 (A BREAK WAS TAKEN.)

6 JUDGE WOODRUFF: Let's come to order,
7 please. Welcome back from lunch, and I believe we're
8 ready to move into the MISO Day 2 issue. Go on to mini
9 openings with that, beginning with AmerenUE.

10 MR. LOWERY: Thank you, your Honor. May it
11 please the Commission?

12 This issue involves Midwest ISO expenses
13 incurred by AmerenUE in connection with the energy market
14 with the energy AmerenUE takes under the Midwest ISO FERC
15 approved energy market tariff. These particular Midwest
16 ISO expenses arrived from the tariff's provisions related
17 to what's called revenue sufficiency guarantees, sometimes
18 abbreviated as RSG.

19 As the Commission may be aware, the RSG
20 provisions relate to instances where the Midwest ISO
21 dispatches one of its members' generating units for
22 reliability reasons as opposed to economic reasons.
23 Because the dispatch of those units is by definition
24 uneconomic, the Midwest ISO through charges collected from
25 all of its members makes RSG payments to the generators

1 whose generation was dispatched so that the generator's
2 costs for running that unit are covered.

3 AmerenUE's share of those expenses are
4 what's at issue here. This issue arose solely because of
5 the Midwest ISO's failure to follow its tariff for roughly
6 the first two years of the operation of its Day 2 energy
7 markets.

8 This failure existed from the first day of
9 the operation of those markets, which started back in
10 2005. Ultimately the FERC ordered the Midwest ISO to go
11 back and correct that error, essentially resettle these
12 RSG transactions, with the result being that the Midwest
13 ISO ended up sending the company a bill during the test
14 year for approximately \$12.43 million. There's no dispute
15 about whether that bill was owed and, in fact, that bill
16 has been paid during the test year. The question is how
17 should that \$12.43 million be paid or be treated for
18 ratemaking purposes.

19 The company's position on this issue is
20 really quite simple. But for the Midwest ISO's mistake,
21 its failure to follow its tariff, AmerenUE would have
22 incurred higher RSG expenses from the Midwest ISO in the
23 test year in the last rate case, which ended just about 18
24 months ago. Had the Midwest ISO done what it should have
25 done, what its tariff required it to do, these higher RSG

1 expenses would have been included in the company's last
2 rates -- rate case, and the company's rates from that rate
3 case would necessarily have been higher. But solely
4 because of the Midwest ISO's mistake, the rates AmerenUE
5 has been charging since the end of that rate case have
6 been lower than they should have been.

7 Now, Staff says that these legitimate
8 expenses which AmerenUE had to pay which arise directly
9 from AmerenUE's participation in the Midwest ISO, that
10 participation was approved by the Commission on the basis
11 of a Stipulation and the Commission found -- on the basis
12 of a Stipulation that found that participation to be
13 prudent and reasonable, Staff says that these charges
14 should be thrown out.

15 The effect of Staff's position is to tell
16 AmerenUE's shareholders that it should eat this
17 \$12.43 million that it had to pay because of its
18 participation in the Midwest ISO. What's more is the fact
19 that Staff asks this Commission to force shareholders to
20 eat this 12.43 million even though it's undisputed that
21 AmerenUE has been underearning since that last rate case.
22 This unfairly shifts the burden of Midwest ISO membership
23 to the company's shareholders even though the company's
24 ratepayers received the energy upon which these charges
25 are based and received the benefits of Midwest ISO

1 membership.

2 Now, Staff tries to justify this proposed
3 disallowance on the grounds that the expense is, quote,
4 nonrecurrent. First of all, MISO charges go up and down
5 all the time. Whether a particular MISO charge, RSG
6 charges or not, will or will not turn out to be
7 nonrecurring is far from clear. But regardless, the
8 Commission has a long history of recognizing that material
9 costs -- and 12.43 million, which would represent about 25
10 basis points of return on equity, is clearly material --
11 should not just be thrown out, particularly when fairness
12 dictates that they out be recognized. These expenses
13 should have been recognized in the last rate case.

14 The Midwest ISO's failure to follow its
15 tariff prevented that from happening. This Commission can
16 correct that mistake by including these legitimate costs,
17 which by the way AmerenUE has absolutely no control over,
18 in AmerenUE's revenue requirements in this case. Thank
19 you.

20 JUDGE WOODRUFF: Opening for Staff.

21 MR. DOTTHEIM: May it please the
22 Commission?

23 During the test year, the expense
24 associated with the participation in the Midwest ISO Day 2
25 market was increased due to MISO revenue sufficiency

1 guaranty resettlement for years 2005 and 2006 that ended
2 in November 2007. AmerenUE adjusted the expenses to
3 amortize the costs \$12.4 million over two years. Since
4 AmerenUE proposes to amortize the \$12.4 million expense
5 over two years, this item is quantified on line 15 of the
6 reconciliation at an annual revenue requirement of
7 \$6.2 million.

8 The Staff did not include the expense level
9 for AmerenUE -- the Staff did not include in the expense
10 level for AmerenUE any of the amount of the RSG
11 resettlement because the resettlement of the RSG costs
12 relates to the 2005-2006 period, is complete and
13 nonrecurring and is no longer in effect as of November
14 2007, which is well before the end of the test year and
15 the true-up period.

16 Separately the Staff would note that both
17 it and AmerenUE eliminated a meter error that would
18 otherwise have caused the test year RSG expense level to
19 be lower than actual on a going forward basis. Thank you.

20 JUDGE WOODRUFF: Thank you. Public Counsel
21 wish to open?

22 MR. MILLS: I have no opening statement.
23 Thank you.

24 JUDGE WOODRUFF: For Noranda?

25 MR. CONRAD: Nor do we. Thank you.

1 JUDGE WOODRUFF: Let's call the first
2 witness, then. That would be Mr. Weiss?

3 MR. LOWERY: That's correct, your Honor.

4 JUDGE WOODRUFF: Would you please raise
5 your right hand.

6 (Witness sworn.)

7 JUDGE WOODRUFF: You may be seated. You
8 may inquire.

9 GARY WEISS testified as follows:

10 DIRECT EXAMINATION BY MR. LOWERY:

11 Q. Could you please state your name for the
12 record.

13 A. My name is Gary S. Weiss, W-e-i-s-s.

14 Q. Mr. Weiss, am I correct that you caused to
15 be prepared and filed in this docket what's been premarked
16 as Exhibits -- UE Exhibits 10, 11, 12 and 13, direct
17 testimony, supplemental direct testimony, rebuttal
18 testimony and surrebuttal testimony? I'm sorry. I've got
19 one too many. 10, 11 and 12?

20 A. That is correct.

21 Q. That's why you hesitated, isn't it?

22 A. Right. I had no surrebuttal testimony.

23 Q. You didn't have surrebuttal. Mr. Weiss, if
24 I were to pose the same questions reflected in
25 Exhibits 10, 11 and 12 to you, would your answers be the

1 same today?

2 A. Yes, they would.

3 Q. And so those answers are true and correct
4 to the best of your knowledge?

5 A. Yes, they are.

6 Q. Do you have any corrections to any of those
7 testimonies?

8 A. No, I do not.

9 MR. LOWERY: Your Honor, with that I would
10 offer Exhibits 10, 11 and 12 into the record and tender
11 the witness for cross-examination.

12 JUDGE WOODRUFF: 10, 11 and 12 have been
13 offered. Any objections to their receipt?

14 MR. CONRAD: None.

15 JUDGE WOODRUFF: Hearing no objections,
16 they will be received.

17 (EXHIBIT NOS. 10, 11 AND 12 WERE RECEIVED
18 INTO EVIDENCE.)

19 JUDGE WOODRUFF: For cross examination,
20 beginning with Noranda?

21 MR. CONRAD: And we have no questions, your
22 Honor.

23 JUDGE WOODRUFF: Public Counsel?

24 MR. MILLS: No questions.

25 JUDGE WOODRUFF: For Staff?

1 MR. DOTTHEIM: Yes, thank you.

2 CROSS-EXAMINATION BY MR. DOTTHEIM:

3 Q. Good afternoon, Mr. Weiss.

4 A. Good afternoon, Mr. Dottheim.

5 Q. Mr. Weiss, your testimony on MISO Day 2 RSG
6 resettlement is contained only in your rebuttal testimony;
7 am I correct?

8 A. That is correct.

9 Q. I'd like to refer you to your rebuttal
10 testimony, page 6, lines 12 to 13 --

11 A. I'm there.

12 Q. -- where you state, as a result, FERC
13 ordered MISO to -- excuse me. As a result of the FERC
14 order, MISO resettled these transactions in 2007. Could
15 you please identify over what period did the FERC orders
16 cause the \$12.43 million resettlement from AmerenUE to
17 occur?

18 A. The 12.4 million resettlement covered the
19 period of April 1st, 2005 through December 2006.

20 Q. And within 2007 that you identified, on
21 lines 12 and 13 in the sentence on those lines, what dates
22 within 2007 were those resettlements charged to AmerenUE?
23 Could you identify dates more specifically than just 2007?

24 A. I believe the main portion of the
25 resettlement was recorded on the books of the company in

1 April of 2007.

2 Q. And when you say the main portion, can you
3 identify the amount?

4 A. Well, the total 12.4 would have been
5 recorded in April of 2007.

6 Q. Does any of the true-up period in this case
7 cover when the resettlements occurred?

8 A. The true-up for this case went through from
9 October of '07 through September of '08, so the actual
10 receipt of the resettlement and payment was before the
11 true-up period occurred during the test year.

12 Q. I'd like to refer you to page 8 of your
13 surrebuttal testimony, line 11, where you refer to the
14 MISO resettlement of the RSG expenses as extraordinary, do
15 you not?

16 A. Yes, I do.

17 Q. Okay. Are you using the term extraordinary
18 based on the definition of extraordinary in the Uniform
19 System of Accounts?

20 A. I have to admit, I did not read the
21 definition in the Uniform System of Accounts, but -- and
22 my -- and my definition of extraordinary, it's something
23 that was out of the ordinary, it wasn't ordinary ongoing
24 level of expense.

25 Q. The Missouri Public Service Commission has

1 adopted for accounting purposes the Uniform System of
2 Accounts, has it not, for electrical corporations?

3 A. Yes, it has.

4 Q. Do you recall whether there is a percentage
5 figure percent -- a percentage figure of net income that's
6 defined within the Uniform System of Accounts for the term
7 extraordinary?

8 A. I'm not aware of that. In my mind,
9 \$12 million is extraordinary.

10 Q. Do you know whether the Missouri Public
11 Service Commission has adopted for ratemaking purposes the
12 Uniform System of Accounts?

13 A. Is that a trick question? I assume it has
14 if it's adopted the FERC accounting for its normal
15 operation, so I would assume that would also apply to
16 other areas. But the Commission does have the discretion
17 of making rulings and ordering the company to do things
18 that are not exactly the same as what's in the Uniform
19 System of Accounts.

20 MR. DOTTHEIM: May I approach the witness?

21 JUDGE WOODRUFF: Certainly.

22 BY MR. DOTTHEIM:

23 Q. Mr. Weiss, I'm going to hand you several
24 pages from the FERC Uniform System of Accounts which I'm
25 going to ask you to take a look at. And I've only handed

1 to you just several pages, the beginning Part 101 Uniform
2 System of Accounts prescribed for public utilities and
3 licenses -- licensees subject to the provisions of the
4 Federal Power Act, and I'd like to direct you to page 5 of
5 the document that I've handed to you where there's a
6 section headed general instructions. And then the very
7 last page of the document, the excerpt that I've handed to
8 you, under general instructions there's a subsection,
9 extraordinary items, and I'd like to ask you to take a
10 look at that -- at that section.

11 A. I've read that, Mr. Dottheim.

12 Q. Do you recognize this excerpt as coming
13 from the FERC Uniform System of Accounts?

14 A. Yes, I do.

15 Q. And on that subsection 7 under general
16 instructions that's titled Extraordinary Items, I'd like
17 to ask you to read into the record the second and the
18 third sentences, if you would.

19 A. Starting with those items?

20 Q. Yes, sir.

21 A. Those items related to the effects, the
22 events and transactions which have occurred during the
23 current period and which are of unusual nature and
24 infrequent occurrence shall be considered extraordinary
25 items. Accordingly, they will be -- they will be events

1 and transactions of significant effect which are abnormal
2 and significantly different from the ordinary and typical
3 activities of the company and which would not reasonably
4 be expected to reoccur in the foreseeable future.

5 Q. And later in that -- that same paragraph,
6 I'd like to ask you to read the last two sentences that
7 are in the next column before the parenthetical.

8 A. To be considered as extraordinary under the
9 above guidelines, an item should be more than
10 approximately 5 percent of income, computed before
11 extraordinary items. Commission approval must be obtained
12 to treat an item of less than 5 percent as extraordinary.

13 Q. Thank you. Mr. Weiss, do you know whether
14 the \$12.5 million of -- which is the amount of the RSG
15 resettlement, is 5 percent, less than 5 percent or greater
16 than 5 percent of AmerenUE income computed before the
17 extraordinary item, assuming that the RSG resettlement
18 amount is the -- is an extraordinary item?

19 A. It is less than 5 percent of the operating
20 income.

21 Q. What would --

22 A. However, this section here is only applying
23 to how you report your net operating income on your FERC
24 income statements and records that you file with FERC.

25 Here we're talking about an extraordinary item for a rate

1 case proceeding and not for filing our income statements.

2 Q. And what would be the -- that 5 percent
3 income figure, how much would that be? What would be that
4 amount?

5 A. It would be -- depending on what level of
6 net operating income you're looking at, it would be closer
7 to \$20 million.

8 Q. And there is provision within the Uniform
9 System of Accounts for Commission approval for items of
10 less than 5 percent?

11 A. Right. And since it was less than
12 5 percent, we did not request permission to alter our
13 income statements that we filed with the FERC.

14 MR. DOTTHEIM: May I approach the Bench?

15 JUDGE WOODRUFF: You may.

16 BY MR. DOTTHEIM:

17 Q. Mr. Weiss, I'm going to hand you a copy of
18 the Commission's Rule 4 CSR 240-20.030, Uniform System of
19 Accounts - Electrical Corporations. And certainly you're
20 free to look at the entirety of the rule. I'd like to
21 direct you in particular to the second page, subsection 4,
22 which is the second to last section or second to last
23 subsection.

24 A. Is that on the first column on the second
25 page, Steve?

1 Q. Yes, sir.

2 A. Thank you. I've read that.

3 Q. Would you read that into the record,
4 please.

5 A. Hopefully I'm on the right one. In
6 prescribing the System of Accounts, the Commission does
7 not commit itself to the approval or acceptance of any
8 item set out in any account for the purpose of fixing
9 rates or in determining other matters before the
10 Commission. This rule shall not be construed as waiving
11 any recordkeeping requirement in effect prior to 1994.

12 Q. Thank you. Mr. Weiss, I'd like to direct
13 you again to your rebuttal testimony, page 8, lines 10
14 to 12, where you state, there are numerous cases where
15 this Commission has allowed nonrecurring extraordinary
16 expenses to be recovered by companies. Have I read that
17 correctly?

18 A. That is correct.

19 Q. And then you go on to state that the
20 various storm Accounting Authority Orders, paren, AAOs,
21 close paren, are examples. Have I read that correctly?

22 A. Yes, you have.

23 Q. Do you recall, did those various storm AAOs
24 entail amortizations? Were there amortizations associated
25 with those storm Accounting Authority Orders that you were

1 referring to?

2 A. The ones I'm aware of, they do have
3 amortization periods.

4 Q. Do you recall the number of years
5 associated with those amortizations of those various storm
6 AAOs?

7 A. I believe in most circumstances it was a
8 five-year amortization period for storm costs.

9 Q. I'd like to refer you again to page 8 of
10 your testimony, lines 19 to 22 where you state, do you
11 not, since the approved rates from Case No. ER-2007-0002
12 have been in effect, AmerenUE has only earned its allowed
13 return on equity one time as shown by the update of the
14 table appearing on page 29 of my supplemental direct
15 testimony shown below. Have I read that accurately?

16 A. Yes, you have.

17 Q. If AmerenUE had earned its authorized
18 return on equity since the approved rates from Case No.
19 ER-2007-0002 had been in effect, would AmerenUE still be
20 seeking recovery of the RSG resettlement costs?

21 MR. LOWERY: I'm going to object, your
22 Honor. Calls for speculation.

23 JUDGE WOODRUFF: I'll overrule that
24 objection. You can answer if you can.

25 THE WITNESS: In my opinion, the RSG

1 number will be 228.

2 BY MR. DOTTHEIM:

3 Q. Mr. Weiss, I'm going to hand you a copy of
4 a document that's been marked as Exhibit 228, and I'm
5 going to represent to you that it is a copy of one of your
6 work papers that the Staff received on November 7th or as
7 a result of the materials that the Staff received relating
8 to the true-up materials that the Staff received on
9 November 7th as specified in the Commission's procedural
10 order that was issued on May 29 of this year.

11 (EXHIBIT NO. 228 WAS MARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 BY MR. DOTTHEIM:

14 Q. Mr. Weiss, have you had an opportunity to
15 take a look at what's been marked Exhibit 228?

16 A. Yes, I have.

17 Q. Do you recognize that document?

18 A. Yes, I do.

19 Q. Can you identify it?

20 A. It's a comparison of the MISO Day 2 costs
21 for the test year, what's a 12 months ending March of
22 2008, versus a true-up test year, which is 12 months
23 ending September 2008.

24 Q. Is that a work paper of yours that was
25 supplied to the Staff, or could you otherwise identify the

1 document?

2 A. Yes, it was provided as part of true-up
3 information that we provided to the Staff.

4 Q. And there is a footnote on the lower
5 portion of the -- of the page labeled parenthetical one,
6 total RSC resettlement for 2005-2006; is that correct?

7 A. That's correct. That's a typo. It should
8 have been RSG, but it did say RSC, but --

9 Q. Thank you. And that's the \$12.4 million
10 that is the value of the issue that we're talking about,
11 is it not?

12 A. That's correct.

13 Q. And then if we go up three lines or so,
14 there's eliminate meter error for RSG, which is
15 approximately \$1.6 million?

16 A. That's correct.

17 MR. DOTTHEIM: At this time I'd like to
18 offer Exhibit 228.

19 JUDGE WOODRUFF: All right. Exhibit 228
20 has been offered. Any objection to its receipt?

21 (No response.)

22 JUDGE WOODRUFF: Hearing none, it will be
23 received.

24 (EXHIBIT NO. 228 WAS RECEIVED INTO
25 EVIDENCE.)

1 MR. DOTTHEIM: If I could just have a
2 moment, please?

3 JUDGE WOODRUFF: Sure.

4 MR. DOTTHEIM: By the way, we do thank you
5 for your patience, Mr. Weiss.

6 THE WITNESS: Thank you.

7 MR. DOTTHEIM: No further questions.

8 JUDGE WOODRUFF: Come up for questions from
9 the Bench, then. Commissioner Murray?

10 COMMISSIONER MURRAY: I have no questions.
11 Thank you.

12 JUDGE WOODRUFF: Commissioner Jarrett?

13 COMMISSIONER JARRETT: No questions.

14 JUDGE WOODRUFF: Commissioner Gunn?

15 COMMISSIONER GUNN: No questions.

16 JUDGE WOODRUFF: Mr. Chairman?

17 CHAIRMAN DAVIS: Yes. Thank you.

18 QUESTIONS BY CHAIRMAN DAVIS:

19 Q. Just with regard to MISO, do you find that
20 the -- I mean, is it fair to -- for me to have the
21 perception that the resettlements are constant or just a
22 fairly ongoing thing, I guess would be more of a -- it
23 seems like every six months or a year that there is a
24 resettlement, and then there are new winners and losers
25 that we didn't know about, you know, six months or a year

1 prior; is that a fair statement?

2 A. Yes, Chairman Davis, there are
3 resettlements going on almost constantly, but nothing of
4 the magnitude of \$12 million. This is a very unusual and
5 very high resettlement. The normal resettlements are
6 probably less than a million dollars or in that ballpark,
7 but not of the \$12 million nature.

8 Q. Okay. So you're saying that that's over
9 and done with and MISO's got it figured out and it's not
10 going to happen again?

11 A. I would not swear to that. Hopefully
12 they're getting a lot better.

13 Q. All right. So you're okay with Staff's
14 number?

15 A. What Staff number?

16 Q. Well, are you okay with the Staff position?

17 A. Not allowing the amortization of
18 \$12 million?

19 Q. Uh-huh.

20 A. No, I'm not.

21 Q. And would you restate for me again why not?

22 A. The MISO resettlement RSG charges, they are
23 as a result of a FERC approved tariff, and so the
24 company -- it's a prudent cost that the company has
25 incurred and has to pay. The MISO charges in the last UE

1 electric case in 2007 included a true-up of the RSG
2 charges through December of '06, and so if MISO had been
3 billing UE correctly, those higher charges would already
4 be reflected in the current rates our customers are
5 paying.

6 And so this is an extraordinary expense.
7 It's a prudent expense. It was incurred for the benefit
8 of our ratepayers. They received the full benefit of MISO
9 membership, and so they should be required to pay the full
10 cost to receive those benefits.

11 Q. Okay. But this is a one-time event, is it
12 not?

13 A. Right, and that's why we ask for
14 amortization of two years to reflect that it is a one-time
15 event, and one-time events like this are normally
16 amortized over a period of time.

17 Q. Okay. And is Ameren going to file a rate
18 case in 13 months after this case is concluded?

19 A. I would say -- I wouldn't say within 13
20 months, but I would say, based on my knowledge and the
21 comments made by Mr. Voss, I would not think it would be a
22 long period of time before AmerenUE would be required to
23 file another rate increase.

24 Q. So -- but you don't want to say that with
25 absolute certainty?

1 A. That is correct, because circumstances can
2 change, but based on our current knowledge, these rates
3 aren't effective until March of '09, so -- and if they ran
4 for two years, that would be 2011.

5 Q. So they go into effect March of '09 and we
6 adopt your position, then you will be made whole within
7 two years, correct?

8 A. That is correct.

9 Q. Anything over that you'd be overearning on
10 this issue, would you not be? So if -- so if you go
11 through April, May, June 2011, you'd be overearning,
12 wouldn't you, on this particular issue?

13 A. On this one particular issue, but there are
14 other issues and cost expenses that are constantly
15 changing. So in total, I would say AmerenUE would not be
16 overearning. It's not overearning today.

17 Q. Conversely, if you came back in in, say,
18 September 2009 and filed a rate case that had to be
19 adjudicated within 11 months, you know, if we adopted your
20 two-year amortization, then you'd still -- you'd have to
21 be seeking additional recovery of this expense, would you
22 not?

23 A. If it was due to expire during the test
24 year, we would not.

25 Q. Okay. If it was due to expire during the

1 test year, but if it wasn't due to expire during the test
2 year?

3 A. We could ask for additional recovery or we
4 could ask for a different amortization period, which has
5 occurred in other amortization periods of costs where
6 we've come back in for another rate case and they've
7 extended the amortization out for a few more years.

8 CHAIRMAN DAVIS: All right. Thank you.

9 JUDGE WOODRUFF: Does anyone wish to
10 recross based on those questions from the Bench?

11 (No response.)

12 JUDGE WOODRUFF: I don't see any heads
13 saying yes, so we'll go to redirect.

14 REDIRECT EXAMINATION BY MR. LOWERY:

15 Q. Mr. Weiss, Mr. Dottheim asked you a number
16 of questions about Uniform System of Accounts. I assume
17 you remember those?

18 A. Yes, I do.

19 Q. Do you have an understanding of whether
20 accounting authority is needed for an item like this 12.43
21 million that falls into the test year as opposed to
22 outside the test year?

23 A. No. It would be my understanding since
24 this charge occurred during the test year, that we'd
25 request recovery and get recovery as part of the normal

1 rate case procedure and not require an Accounting
2 Authority Order for that.

3 Q. Mr. Weiss, you've been in regulatory
4 accounting for how long?

5 A. Approximately 30 years.

6 Q. I didn't mean to embarrass you.

7 A. You can tell by the color of my hair, I
8 think.

9 Q. Given that accounting authority wouldn't be
10 needed because this fell under the test year, do you have
11 an opinion about whether the provision that Mr. Dottheim
12 had you read from the Uniform System of Accounts even
13 applies to a test year expense?

14 A. I didn't think it applied to the test year
15 expense. I thought it applied only to if you were going
16 to change the numbers on your income statements that you
17 were filing with the FERC, that you had to seek approval.

18 Q. Do you know whether the Commission in any
19 event is entitled to vary from the Uniform System of
20 Accounts for ratemaking purposes?

21 A. That is correct. The Commission has the
22 authority to deviate from the Uniform System of Accounts
23 for ratemaking purposes.

24 Q. Have you seen that happen in your 30 years
25 of experience at AmerenUE?

1 A. Yes, I have.

2 Q. Mr. Dottheim asked you some questions about
3 the return on equity impact of this 12.43 million, I
4 believe. Do you recall that?

5 A. Yes, I do.

6 Q. Did UE have to pay at all in 2007?

7 A. What was --

8 Q. When did UE have to pay this bill?

9 A. The bill was paid in 2007.

10 Q. The whole 12.43 million was paid in 2007?

11 A. Yes, it was.

12 Q. Do you know, were you here earlier, I think
13 on Friday there was a lot of testimony involving ROE, and
14 I believe Mr. Thompson asked a number of questions and
15 pointed to this a number of times that each basis point is
16 about \$500,000 revenue requirement. Do you remember that?

17 MR. DOTTHEIM: I object. I believe this --
18 this -- Mr. Lowery is now testifying himself. I think
19 he's also asking leading -- leading questions. So I
20 object on the nature of Mr. Lowery's questions. I think
21 it's also going far afield of leading Mr. -- Mr. Weiss.

22 JUDGE WOODRUFF: I don't think he's
23 completed his question yet. I'll overrule the objection
24 at this time and hear the rest of the question.

25 BY MR. LOWERY:

1 Q. Mr. Weiss, do you know how much revenue
2 requirement equates to one basis point of ROE?

3 A. Well, 100 basis points is 50 million, so --

4 Q. So --

5 A. -- you can work it on down from there.

6 Q. Could you tell the Commission what the ROE
7 impact of paying this 12.43 million is in 2007?

8 A. Would you repeat your question?

9 Q. Yes. Could you tell the Commission what
10 the ROE impact of paying 12.43 million in 2007 would be?

11 A. It would be approximately \$12 million.

12 Q. Could you tell the Commission what that
13 equates to in basis points?

14 A. That would be approximately 24 basis
15 points.

16 Q. And finally, Mr. Weiss, Commissioner Davis
17 asked you a question about what would happen if you went
18 into the next rate case and this amortization was
19 scheduled to end. If the amortization was scheduled to
20 end before the next rate case would be decided, what could
21 the company do to make sure it didn't over-recover this
22 amount?

23 A. It would be pro forma down to the test year
24 expenses.

25 MR. LOWERY: That's all I have, your Honor.

1 Thank you.

2 JUDGE WOODRUFF: And Mr. Weiss, you can
3 step down.

4 I believe the next witness is
5 Mr. Hagemeyer. Please raise your right hand.

6 (Witness sworn.)

7 JUDGE WOODRUFF: Please be seated. And you
8 may inquire when you're ready.

9 JEREMY HAGEMEYER testified as follows:

10 DIRECT EXAMINATION BY MR. DOTTHEIM:

11 Q. Would you please state your full name for
12 the record.

13 A. Jeremy Keith Hagemeyer.

14 Q. Would you please state your business
15 address.

16 A. 9900 Page Avenue, Suite 103, Overland,
17 Missouri 63132.

18 Q. And would you please state the nature of
19 your employment.

20 A. Utility regulatory auditor with the Staff.

21 Q. Do you have with you a copy of what has
22 been premarked as Exhibit No. 200, the Staff Cost of
23 Service Report?

24 A. Yes.

25 Q. And do you also have with you what has been

1 premarked Exhibit No. 222, your surrebuttal testimony in
2 this proceeding?

3 A. Yes.

4 Q. In Exhibit No. 200, did you author the
5 section starting on page 23, going to page 26 on the
6 subject MISO Day 2?

7 A. Yes.

8 Q. Do you have any corrections to the MISO
9 Day 2 section on pages 23 to 26 of the Staff Cost of
10 Service Report?

11 A. None that I'm aware of.

12 Q. Is the information therein true and correct
13 to the best of your knowledge and belief?

14 A. Yes.

15 Q. In Exhibit No. 222, do you have any
16 corrections to the section MISO RSG resettlement expense
17 which begins on page 6 and continues to page 7?

18 A. No.

19 Q. Or do you have any corrections to the
20 section revenue sufficiency guaranty payments that appears
21 on page 8 of Exhibit 222?

22 A. No.

23 Q. Is the information contained therein true
24 and correct to the best of your knowledge and belief?

25 A. Yes.

1 MR. DOTTHEIM: I offer those -- that
2 section of the Staff report on MISO Day 2 and those pages
3 of Exhibit No. 222 on MISO Day 2 RSG resettlement expense,
4 RSG payments and tender Mr. Hagemeyer for
5 cross-examination.

6 JUDGE WOODRUFF: Just let me be clear.
7 You're only offering portions of 222 at this time?

8 MR. DOTTHEIM: Yes. Mr. Hagemeyer will be
9 back for incentive compensation. I could offer, but I
10 think probably the -- the best thing given that in
11 particular he will be back next week for incentive
12 compensation, that the rest of the -- of in particular the
13 surrebuttal testimony and there are other sections, the
14 incentive compensation section in particular of the
15 report, which will be offered next week.

16 JUDGE WOODRUFF: All right. Well, portions
17 of 222 and 200 have been offered. Are there any
18 objections to those portions?

19 (No response.)

20 JUDGE WOODRUFF: Hearing no objections
21 those portions will be admitted.

22 (PORTIONS OF EXHIBIT NOS. 200 AND 222 WERE
23 MARKED FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

24 JUDGE WOODRUFF: For cross-examination,
25 beginning with Public Counsel?

1 MR. MILLS: No questions.

2 JUDGE WOODRUFF: Noranda?

3 MR. CONRAD: No questions.

4 JUDGE WOODRUFF: AmerenUE?

5 CROSS-EXAMINATION BY MR. LOWERY:

6 Q. Good afternoon, Mr. Hagemeyer.

7 A. Good afternoon.

8 Q. Am I saying your name correctly?

9 A. Yes.

10 Q. I had a 50/50 chance. Mr. Hagemeyer -- now
11 I'm going to mess it up. Just for clarification, section
12 2A in the Staff report, Exhibit 200, that deals with
13 revenues, there is no issue between the company and the
14 Staff or, in fact, between any of the parties about the
15 item discussed in section 2A; is that correct?

16 A. Do you have a page number?

17 Q. Sure. It's page 23. I just want to make
18 sure the Commission knows what part of the Staff report
19 we're actually focusing on today.

20 A. Yes. It goes through page -- all the way
21 through page 25.

22 Q. Right. The section 2A starting on 23
23 through the end of 25, that's not an issue in this case?
24 There's been a resolution acceptable to the Staff and the
25 company regarding that issue, right?

1 A. That's my understanding.

2 Q. So all we're talking about in Exhibit 200
3 is this short paragraph labeled B, expenses, at the top of
4 page 26, right?

5 A. Two paragraphs.

6 Q. Or two paragraphs. You're right. Correct?

7 A. Yes.

8 Q. And then the portions of the surrebuttal
9 testimony that Mr. Dottheim has admitted into evidence,
10 right?

11 A. Correct.

12 Q. Mr. Hagemeyer, during the test year, it's
13 undisputed that AmerenUE was charged this additional
14 12.43 million, correct?

15 A. Correct.

16 Q. And paid those amounts during -- and paid
17 those amounts during the test year, correct?

18 A. Yes.

19 Q. And AmerenUE was required to pay those by
20 the MISO tariff, didn't have any choice, didn't have any
21 control over that, right?

22 A. That's my understanding.

23 Q. AmerenUE's requirement to pay those wasn't
24 due to any fault or neglect on AmerenUE's part whatsoever;
25 is that correct?

1 A. Yes.

2 Q. In fact, the reason AmerenUE had to pay
3 12.43 million during the test year is because the MISO
4 didn't do what it was supposed to do and follow its tariff
5 during 2005 and 2006; isn't that right?

6 A. That's my understanding.

7 Q. And as I understand it, what happened is a
8 complaint was filed with FERC and the FERC ordered MISO to
9 go back and resettle those transactions, correct?

10 A. Yes.

11 Q. Now, the company concluded a rate case back
12 in May of 2007, correct?

13 A. I don't have the date in front of me, but
14 that -- I would agree with that.

15 Q. And AmerenUE has been a MISO participant
16 from the start of the Day 2 energy markets back in 2005;
17 is that right?

18 A. That's my understanding.

19 Q. And if the MISO had followed its tariff
20 back at that time, then the level of RSG related expenses
21 from the MISO to AmerenUE would have been higher in that
22 last rate case, wouldn't they?

23 A. I'm sorry. Could you repeat your
24 question?

25 Q. Sure. If the MISO had followed its tariff

1 and charged the RSG expenses as it was required to do back
2 in 2005 and 2006, the RSG expenses considered in the
3 company's last rate case would have been higher than they
4 actually were at that time, correct?

5 A. I believe so.

6 Q. The period over which the MISO failed to
7 follow its tariff was a little bit less, but almost two
8 years, correct?

9 A. Yes.

10 Q. Now, given that the total at issue is
11 12.43 million and it arose over approximately two years, I
12 take it that a rough approximation of the annual level of
13 the undercharge would be about half of that or about
14 \$6.2 million, right?

15 A. Meaning had they charged their tariff
16 throughout April 1, 2005 through 2006, each year would be
17 roughly 6.2 million?

18 Q. That's my question, yes.

19 A. Yes.

20 Q. And what that means is that an additional
21 approximately 6.2 million, may be slightly different, but
22 close to that would have been included in UE's cost of
23 service in the last rate case had they been charging
24 correctly; isn't that right?

25 A. I believe so.

1 Q. Now, I want you to assume, and the
2 Commission can take official notice of the Order in the
3 last rate case, but I want you to assume that rates in
4 that case went into effect on June 4th, 2007.

5 A. Okay.

6 Q. And I want you to assume that rates will go
7 into effect from this case on or about March 1, 2009,
8 which would be your understanding; isn't that right?

9 A. I'm sorry. Could you repeat that last
10 date?

11 Q. I want you to assume that rates in this
12 case would go into effect on or about March 1, 2009, and
13 that's your understanding of when rates will likely go
14 into effect in this case; isn't that right?

15 A. Yes.

16 Q. So that's about -- that's right at 22
17 months between the effective date of rates from the last
18 case and effective date of rates in this case; does that
19 sound about right?

20 A. That sounds about right.

21 Q. So had MISO not made a mistake and had UE
22 had rates from the last case that were properly higher by
23 6.25 million, UE between the rate cases would have
24 collected about \$11.3 million, and -- do you have a
25 calculator? If you don't, I can --

1 A. No.

2 MR. LOWERY: May I approach, your Honor?

3 JUDGE WOODRUFF: You may.

4 BY MR. LOWERY:

5 Q. If we divide 6.2 million by 12 and we
6 multiply that by 22 months, the period of time between the
7 rate -- between the effective dates of rates in those two
8 rate cases, we're going to get about 11.3 or 11.4 million;
9 isn't that correct?

10 A. 11.36 it would be.

11 Q. And that's pretty close to the actual
12 undercharges that the MISO made because of not following
13 its tariffs. It's 12.43, and you came up with 11.36.
14 We're about a million dollars off, right?

15 A. I believe so, yes.

16 Q. So if MISO had just done this right, UE
17 would have gotten rate treatment in the last rate case and
18 UE and the ratepayers would have come out just about
19 right, wouldn't they?

20 A. Can you repeat your question, please?

21 Q. Sure. If, as you calculated, if the
22 company would have collected an additional
23 11.43 million -- excuse me, 11.36 million over that 22
24 months between the effective date of rates in the last
25 rate case and the effective date of rates for this rate

1 case, that 11.43 would have been within about a million
2 dollars of the 12.43 that AmerenUE had to pay, right?

3 A. Yes.

4 Q. And the company would have collected that
5 11.36 million from ratepayers over that 22 months, right?

6 A. It would have been within -- in the
7 expenses included in the rate case had they known at the
8 time.

9 Q. Right. So the rates that went into effect
10 on June 4th, would have included enough so the company
11 would have collected about \$11.36 million since June 4,
12 2007; is that right?

13 A. I believe so.

14 Q. And if that had happened, then the company
15 would have collected from ratepayers as a result of the
16 last rate case order just about the right amount of MISO
17 RSG charges, would they not?

18 A. If -- I'm sorry. I just want to make sure
19 I understand your question.

20 Q. Absolutely.

21 A. You're saying had that been built into
22 rates for the last case, for the time period between the
23 cases, they would have collected 11.3 to 11.4 million?

24 Yes.

25 Q. And we know the undercharges were

1 12.43 million, right?

2 A. The resettlement was about 12.4 million,
3 yes.

4 Q. It's not every day that the FERC orders the
5 MISO to go back and adjust charges under its tariff for
6 failing to follow the tariff, is it?

7 A. You mean does that event occur with some
8 frequency or not? No, that doesn't happen too often.

9 Q. It's unusual?

10 A. It's out of the ordinary.

11 Q. It's out of the ordinary. Under your
12 proposal, UE shareholders bear the entire 12.43 million,
13 don't they?

14 A. The point of my adjustment is not to
15 just --

16 Q. Mr. Hagemeyer?

17 A. Yes.

18 Q. I think it was a yes or no question. Do
19 the shareholders or do not the shareholders bear all
20 12.43 million if none of that 12.43 million is recognized
21 in rates in this rate case? And we've already agreed that
22 none of it was recognized in the last rate case, so isn't
23 it a fact that the shareholders are going to bear all of
24 it if your position is adopted?

25 A. Yes.

1 Q. And in that last rate case, the Commission
2 found that the company was under-earning and granted the
3 company rate increase, didn't it?

4 A. I believe so.

5 Q. And, in fact, Mr. Weiss and Mr. Voss have
6 both included information in their direct and rebuttal
7 testimonies in this case that shows UE has continued to
8 under-earn since June of 2007; isn't that right?

9 A. You said in Mr. Weiss' rebuttal. I believe
10 that's on page 9, is that correct?

11 Q. I believe that's right.

12 A. My understanding of these are raw numbers
13 and don't include any adjustments for annualizations or
14 normalizations that would occur.

15 Q. Well, let me ask you this, Mr. Hagemeyer.
16 I don't see one word in Staff's Cost of Service Report or
17 in your rebuttal testimony that takes any issue with the
18 numbers presented on page 9 of Mr. Weiss' rebuttal
19 testimony. There isn't any, is there?

20 A. In my -- in my surrebuttal, no, there is
21 not.

22 Q. Is there any in the Staff Cost of Service
23 Report to your knowledge, Exhibit 200?

24 A. I don't know. I'm sorry.

25 Q. You're not here telling the Commission that

1 a 12.43 million dollar hit to earnings is immaterial, are
2 you?

3 A. No.

4 Q. 25 basis points is a fairly significant
5 amount if ROE to be lost, is it not?

6 A. It is significant.

7 Q. Mr. Hagemeyer, are you aware that the
8 Commission approved the company's participation in the
9 Midwest ISO and in its Order indicated that the parties to
10 the stipulation that underlie its approval all agreed that
11 that participation was prudent and reasonable?

12 A. You're saying is it my understanding that
13 everybody agreed that it was prudent and reasonable? Yes.

14 Q. Are you aware the Commission recently
15 reapproved the company's continued participation on
16 essentially the same -- under a similar, not exactly same,
17 but a similar agreement?

18 A. Yes.

19 Q. When Staff decided to throw out these
20 charges from your cost of service, which you admit were
21 not UE's fault, did Staff consider what was fair and
22 equitable under the circumstances?

23 A. Yes.

24 Q. So by implication, the Staff decided that
25 the shareholders eating \$12.43 million of RSG related

1 expenses was fair and equitable; is that right?

2 A. I wouldn't characterize it like that. I
3 would say that the Staff is considering the impact of
4 ongoing rates, which truly matches the revenues, the rate
5 base, and the expenses, you know, to what we expect in the
6 year or the time at which rates will be in effect.

7 Q. Let me ask you about this. You justify
8 your decision to at least attempt to throw these charges
9 out by citing to what you characterize as a metering or
10 billing error; is that right?

11 A. Could you repeat your question, please?

12 Q. Sure. You justify your decision to propose
13 to throw these charges out of UE's cost of service by
14 citing, I believe in your surrebuttal testimony, to what
15 you characterize as a metering or billing error. Do you
16 remember that?

17 A. I wouldn't say that I justify it on the
18 basis of treatment of the meter error. I'm just pointing
19 out the similarities.

20 Q. Isn't it true that there's no -- there's no
21 error or meter reading error or billing error by the MISO
22 relating to the 1.6 million that you referenced on page 7
23 of your surrebuttal testimony?

24 A. Could you repeat your question, please?

25 Q. Did the MISO make a mistake relating to the

1 issue that you cite at lines 11 to 15 on page 7 of your
2 surrebuttal testimony, or did the company simply make an
3 internal bookkeeping error?

4 A. I don't believe it was -- I'm sorry.

5 Q. Perhaps I can refresh your recollection.
6 Isn't it a fact that the company during the test year had
7 misallocated charges from the MISO between Union Electric
8 Company and between the Illinois utilities and corrected
9 that error during the test year as well, and that it was
10 not a MISO mistake at all?

11 A. May I refer to my notes, please?

12 Q. Sure. To what notes are you referring?

13 A. Notes from a phone call, a phone
14 conversation with Jeff Dodd, Mr. Weiss, Mr. Proctor,
15 Mr. Guderman. There was another gentleman whose name I
16 didn't catch.

17 Q. All right. Please go ahead.

18 A. I'm sorry. I don't have any information on
19 the -- from the notes, but I -- what you're saying sounds
20 similar to what I understood.

21 Q. That was your understanding, that there was
22 an allocation error, an internal bookkeeping allocation
23 error made by Ameren Services in allocating these charges
24 between the companies, right?

25 A. My understanding was that Ameren's

1 expense -- AmerenUE's expense levels were understated by
2 1.6 million, and so that had to be increased for the test
3 year.

4 Q. But Mr. Hagemeyer, on line 12 of your
5 surrebuttal testimony, you say that a one-time, quote,
6 MISO meter error decreased UE's expense levels, and that's
7 not accurate, is it? I'm not meaning to suggest you
8 intended to mislead, but the statement's not accurate, is
9 it?

10 A. If it -- if the meter error is reflective
11 of misallocation between the Ameren companies, then I
12 suppose that would be incorrect.

13 Q. Fair enough. And it's an error that
14 happened in the test year and was corrected in the test
15 year. It had nothing to do with 2005 and 2006, which
16 were -- which encompassed the test period for the last
17 rate case, did it?

18 A. When you say corrected, could you
19 elaborate, please?

20 Q. Well, the \$1.6 million misallocation took
21 place in the test year, right?

22 A. Yes.

23 Q. And you've discovered it and it's been
24 changed. You indicate in your testimony the company and
25 you agreed that it should be -- the books should be

1 reflected to correct that misallocation error, right?

2 A. We did agree that the books should be
3 corrected to --

4 Q. And all that's taken place in the 2007-2008
5 time frame, right?

6 A. Yes.

7 Q. And it had nothing to do with what charges
8 should have been or what should have been allocated back
9 in 2005 and 2006, did it?

10 A. That's my understanding.

11 Q. And the dollars involved are far smaller
12 than the 12.43 million we're talking about here, aren't
13 they?

14 A. They're 1.6.

15 Q. About a tenth as much impact on UE's ROE,
16 right?

17 A. I haven't performed that calculation. I'm
18 sorry.

19 Q. Well, can you divide 1.6 million into
20 12.43 million and tell me what proportion that is if you
21 don't like my one-tenth number?

22 A. It's about 13 percent.

23 Q. All right. Not one-tenth but 13 percent,
24 not 10 percent?

25 A. Correct.

1 Q. The impact is only 13 percent as much,
2 right?

3 A. Correct.

4 Q. Now, you indicated a minute ago that you
5 did consider what Staff thought was fair. Who on the
6 Staff considered what was fair and equitable in making the
7 decision to throw this \$12.43 million out of your cost of
8 service?

9 A. I'm sorry. Could you --

10 Q. Who was involved in the discussions about
11 what was fair and equitable in terms of deciding to throw
12 out this 12.43 million from your cost of service?

13 A. Having looked at it, I decided that it
14 would be appropriate to -- since it was not a long -- was
15 no longer in effect and was not an ongoing expense, I
16 decided --

17 Q. I don't think I asked you why. I asked you
18 who was involved, who did you discuss this with and who
19 was involved in the decision about what was fair and
20 equitable. Was it just you?

21 MR. DOTTHEIM: I object. Mr. Hagemeyer was
22 attempting to respond to Mr. Lowery's question, and
23 Mr. Lowery has cut him off.

24 MR. LOWERY: I asked who, your Honor.

25 JUDGE WOODRUFF: He cut him off

1 appropriately because he asked who, not why. So he can
2 answer the question of who.

3 THE WITNESS: I made the decision, and I
4 approved it with my supervisor, Steve Rackers.

5 BY MR. LOWERY:

6 Q. Did you have any other discussions? And
7 I'm not asking you for privileged conversations with your
8 counsel, but did you discuss your decision, discuss how
9 you were going to get there, why you reached that decision
10 or what decisions you should reach, did you discuss it
11 with other Staff members?

12 A. I don't recall. Are you -- are you asking,
13 you know, did we have discussions where other Staff
14 members were present?

15 Q. Yes, about this issue. Did you have other
16 Staff members -- other discussions where Staff members
17 were present about how this issue should be handled in the
18 Staff's cost of service?

19 A. I believe there were others in the area
20 when we had discussions of this.

21 Q. When you say in the area, were there
22 meetings or conferences or conference calls where you were
23 actually discussing this issue, or did it just happen to
24 be in the hallway near where you were talking?

25 A. There were conference calls where others

1 were present and participating in the call, but the
2 decision ultimately rested with me.

3 Q. Did other Staff members comment on what was
4 fair and equitable?

5 A. When you say comment on what is fair and
6 equitable, I mean, what I meant was that I reached the
7 decision, I explained myself, and they either -- and they
8 agreed.

9 MR. LOWERY: That's all I have, your Honor.
10 Thank you.

11 JUDGE WOODRUFF: We'll come up for
12 questions from the Bench, then. Commissioner Jarrett?

13 COMMISSIONER JARRETT: No questions.
14 Thanks.

15 JUDGE WOODRUFF: Commissioner Gunn?

16 COMMISSIONER GUNN: I think it's been
17 asked, but I just want to -- and I just want to get a
18 clarification question.

19 QUESTIONS BY COMMISSIONER GUNN:

20 Q. The issue as to whether these charges are
21 allowed is essentially a timing issue, is the fact that
22 they weren't -- that they were outside of what Staff
23 believes is the appropriate time is the reason why they
24 are being disallowed?

25 A. No. Staff's basis for its disallowance

1 proposal is that it doesn't represent an ongoing cost. If
2 this cost were or if these expenses were continuing, we
3 would not be proposing this disallowance.

4 Q. Okay. Let me ask another question. If
5 MISO had not made the mistake in their tariff and there
6 was no settlement, would those costs have been
7 appropriately recovered by the company? Are they
8 recoverable costs, kind of bottom line?

9 A. If they represented ongoing levels of
10 expense, yes.

11 COMMISSIONER GUNN: Thanks. I don't have
12 any further questions.

13 JUDGE WOODRUFF: Mr. Chairman?

14 QUESTIONS BY CHAIRMAN DAVIS:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Good afternoon, Mr. Hagemeyer.

18 A. Good afternoon.

19 Q. Is this your first time testifying in front
20 of the Commission?

21 A. No, but it's the first time I've had the
22 privilege of Commissioners being present, I believe.

23 Q. No questions, Mr. Hagemeyer.

24 A. Thank you, sir.

25 Q. Thanks for stopping by.

1 JUDGE WOODRUFF: I don't have any
2 questions. Any recross based on those questions from the
3 Bench?

4 (No response.)

5 JUDGE WOODRUFF: Redirect?

6 MR. DOTTHEIM: No questions.

7 JUDGE WOODRUFF: Mr. Hagemeyer, you can
8 step down.

9 THE WITNESS: Thank you.

10 JUDGE WOODRUFF: We're due for a break.
11 Let's take a break now and come back at 3:10, and I
12 believe we'll be on depreciation.

13 (A BREAK WAS TAKEN.)

14 (EXHIBIT NOS. 400 AND 401 WERE MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 JUDGE WOODRUFF: Let's come to order,
17 please. Welcome back from the break, and we're ready to
18 begin on a new issue on depreciation. I'm sorry. Public
19 Counsel's not back yet. We'll be doing mini openings.

20 MR. BYRNE: Does that mean the issue's
21 dismissed?

22 JUDGE WOODRUFF: Afraid not.

23 MR. BYRNE: Rats.

24 JUDGE WOODRUFF: We'll go back off the
25 record until Mr. Mills gets back.

1 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

2 JUDGE WOODRUFF: Everyone's back, so we'll
3 go ahead and get started with the mini openings on the
4 depreciation issue, beginning with -- I guess Public
5 Counsel's witness is going first. Should we have Public
6 Counsel do the mini opening first?

7 MR. MILLS: Judge, I'd be happy to. As you
8 notice, my witness is listed first. I'm perfectly willing
9 to put him on first. I'm perfectly willing to go first on
10 opening, but I don't concede anything in terms of burden
11 of proof by these concessions.

12 JUDGE WOODRUFF: Go ahead.

13 MR. MILLS: Public Counsel's recommendation
14 on this depreciation issue is that the Commission use the
15 actual book reserve amounts for nuclear production
16 depreciation rates. The depreciation rates that UE
17 proposes to use are the ones that were determined in Case
18 No. ER-2007-0002. But a major change has occurred since
19 those rates were set. Since that time UE has announced it
20 will be filing for a 20-year extension of the Callaway
21 license, thereby taking that question off the table.

22 The largest remaining problem with the
23 Callaway depreciation rates is the use of theoretical
24 reserve amounts instead of the actual book reserve
25 amounts. As of the end of 2007, the difference between

1 theoretical and actual was over \$250 million. Correcting
2 this difference results in the approximately \$7 million of
3 annual revenue requirement shown in the recommendation.

4 Thank you.

5 JUDGE WOODRUFF: For AmerenUE?

6 MR. BYRNE: Thank you, your Honor. May it
7 please the Commission?

8 The depreciation issue in this case is
9 relatively simple. The Office of the Public Counsel
10 doesn't like the depreciation rates set by the Commission
11 in the company's last rate case for five accounts related
12 to the Callaway nuclear plant. As you may recall, in the
13 last case the Commission significantly lowered the
14 company's depreciation rates related to the Callaway
15 nuclear plant, over the company's objection, to reflect a
16 20-year license extension for the plant that the Nuclear
17 Regulatory Commission has not yet granted and that the
18 company has not yet even applied for.

19 In this case, the Office of the Public
20 Counsel wants those depreciation rates applicable to the
21 five Callaway accounts lowered even further to reflect an
22 amortization of the difference between the book reserve
23 and the theoretical reserve, a type of difference that
24 exists for every account AmerenUE has.

25 The Staff and the company both oppose the

1 selective adjustment of the depreciation rates applicable
2 to these few accounts in the absence of a complete
3 depreciation study. In the experience of the company and
4 the Staff, the Commission has never selectively adjusted
5 depreciation rates of particular accounts in the absence
6 of a comprehensive depreciation study. Indeed, if it was
7 appropriate to adjust depreciation rates for individual
8 accounts, AmerenUE believes the rates for steam plant
9 accounts are far too low and should be adjusted
10 significantly upward, as explained in Mr. Wiedmayer's
11 testimony.

12 If and when AmerenUE files another rate
13 case after July 2009, it will be required to submit a
14 comprehensive depreciation study in which OPC's as well as
15 AmerenUE's concerns about the company's existing
16 depreciation rates can be fully addressed. But in the
17 meantime, the Commission should not take the unprecedented
18 step of adjusting rates for only accounts selected by the
19 Office of the Public Counsel.

20 One other point raised in rebuttal
21 testimony of Staff witness Guy Gilbert is worth the
22 Commission's consideration, and that is, as there has been
23 much discussion, AmerenUE has a huge capital investment
24 program under way. We are investing over \$1 billion in
25 our system in 2008 alone and have significant levels of

1 capital investment budgeted for each of the next five
2 years.

3 Due to regulatory lag, the increases in
4 depreciation costs associated with these capital
5 investments will not be immediately reflected in the
6 company's rates. These increases in costs will dwarf the
7 decrease in depreciation rates Public Counsel proposes.
8 For that reason as well, Public Counsel's proposed
9 adjustment should be rejected.

10 JUDGE WOODRUFF: Staff?

11 MR. WILLIAMS: Thank you. May it please
12 the Commission?

13 The Staff's position in this case on this
14 particular issue regarding depreciation is that the
15 Commission should not, based on the Callaway plant
16 accounts, make an adjustment to depreciation rates absent
17 a review of all of the plant accounts for AmerenUE because
18 there may be some offsetting considerations in other
19 plants that would impact the overall depreciation rate.
20 Thank you.

21 JUDGE WOODRUFF: Thank you. Noranda wish
22 to make an opening?

23 MR. CONRAD: No, sir.

24 JUDGE WOODRUFF: Then we'll go to the first
25 witness, who is already on the stand, and I assume you are

1 Mr. Dunkel?

2 THE WITNESS: Yes.

3 JUDGE WOODRUFF: Please raise your right
4 hand.

5 (Witness sworn.)

6 JUDGE WOODRUFF: All right. You may
7 inquire.

8 WILLIAM DUNKEL testified as follows:

9 DIRECT EXAMINATION BY MR. MILLS:

10 Q. Would you state your name for the record,
11 please?

12 A. William Dunkel.

13 Q. And are you the same -- and by whom are you
14 employed and in what capacity?

15 A. I am independent consultant working as a
16 consultant to the Office of the Public Counsel in this
17 case.

18 Q. And have you caused to be filed in this
19 case direct testimony which has been marked as Exhibit 400
20 and surrebuttal testimony which has been marked as
21 Exhibit 401?

22 A. Yes.

23 Q. And I will take you through your errata
24 shortly, but barring the two changes that are shown on the
25 errata sheet that I passed out, do you have any additional

1 changes to either of those pieces of testimony?

2 A. Yes, I do. To the direct testimony, page
3 8, line 21 -- well, let's start at line 20. It talks
4 about 145 million above the theoretical reserve. After
5 the word reserve, add the words at Staff proposed rates,
6 or 219 million at Commission approved depreciation rates.

7 Q. Can you say that one more time so people
8 can get it down?

9 A. Yes. After the word reserve, add at Staff
10 proposed rates, or 219 million at Commission approved
11 depreciation rates.

12 Q. Thank you. Do you have any additional
13 changes?

14 A. No.

15 Q. Do you have a copy of your errata sheet
16 there?

17 A. Yes, I do.

18 Q. Okay. And am I correct that the first
19 changes listed on your errata sheet is on Schedule WWD-1
20 to your direct testimony?

21 A. Yes.

22 Q. And can you explain how that change fits
23 into that sheet, please?

24 A. Yes. If you have these errata sheets, all
25 these relate to the way the Commission treated the net

1 salvage for one account. It treated it in a nonstandard
2 way. We did do the calculations properly, but some of the
3 text discussing that was not clearly stated.

4 Q. So in your first correction, you're
5 correcting the note on Schedule WWD-1?

6 A. Yes.

7 Q. Page 2?

8 A. Correct.

9 Q. And could you read the change as the note
10 should read?

11 A. Should read? The net salvage depreciation
12 rate for Account 322 was set at 0.20 -- 0.20 percent on
13 page 96 in May 22, 2007 Report and Order in Case No.
14 ER-2007-0002.

15 Q. And then the following sentence would be
16 stricken; is that correct?

17 A. That's correct, yes.

18 Q. And could you take us to your next change,
19 please?

20 A. Yes. This was listed at zero. Again, this
21 is the same account and it's the same issue, the treatment
22 of net salvage. Zero is correct, however, that does
23 not -- that's -- there was no net salvage factor
24 established, but there was a .02 percent depreciation rate
25 for net salvage, which is a nonstandard way of doing it.

1 We had done it correctly in the calculations. We're
2 putting in a footnote to explain this treatment.

3 Q. And could you read how the footnote would
4 read?

5 A. Yes. The footnote reads, the net salvage
6 depreciation rate for Account 322 was set as -- at 0.20
7 percent on page 96 in the May 22, 2007 Report and Order in
8 Case No. ER-2007-0002.

9 Q. And do you have any further corrections?

10 A. No.

11 Q. With those corrections, if I were to ask
12 you the questions contained in your two pieces of
13 testimony here today, would your answers be the same?

14 A. Yes.

15 Q. And are those answers true and correct to
16 the best of your knowledge?

17 A. Yes.

18 MR. MILLS: Your Honor, with that I would
19 offer Exhibits 400 and 401 and tender the witness for
20 cross-examination.

21 JUDGE WOODRUFF: Exhibit 400 and 401 have
22 been offered. Any objections to their receipt?

23 (No response.)

24 JUDGE WOODRUFF: Hearing none, they will be
25 received into evidence.

1 (EXHIBIT NOS. 400 AND 401 WERE RECEIVED
2 INTO EVIDENCE.)

3 JUDGE WOODRUFF: For cross-examination then
4 we begin with Staff?

5 MR. WILLIAMS: No questions.

6 JUDGE WOODRUFF: Noranda?

7 MR. CONRAD: No, sir, no questions. Thank
8 you.

9 JUDGE WOODRUFF: AmerenUE?

10 CROSS-EXAMINATION BY MR. BYRNE:

11 Q. Good afternoon, Mr. Dunkel.

12 A. Good afternoon.

13 Q. Looking at page 3 of your direct testimony,
14 and particularly I'm looking at the sentence on line 7 and
15 8, and when I read that, it's my understanding that you --
16 your testimony is that the rates that we're using in this
17 filing are the rates that were approved in the last rate
18 case; is that correct?

19 A. That's correct.

20 Q. Okay. Secondly, on your surrebuttal
21 testimony, and specifically I'm looking at page 3 -- I'm
22 sorry, page 5, and there you talk on line 18, you -- you
23 say you sought some depreciation information, but AmerenUE
24 objected; is that correct?

25 A. That's correct.

1 MR. BYRNE: Okay. I'd like to mark an
2 exhibit if I could.

3 JUDGE WOODRUFF: Your next number is 71.

4 (EXHIBIT NO. 71 WAS MARKED FOR
5 IDENTIFICATION BY THE REPORTER.)

6 BY MR. BYRNE:

7 Q. Mr. Dunkel, the document I've given you,
8 which is marked as Exhibit 71, is that the objection to
9 which your testimony refers?

10 A. Yes.

11 Q. And Mr. Dunkel, could you just read the
12 body of that, which is really only one sentence long?

13 A. Which sentence would you like me to read?

14 Q. Starting the company objects.

15 A. The company objects to DR Nos. 5026 and
16 5027 because they improperly seek to require AmerenUE to
17 engage in research, to compile data, and to perform
18 analysis rather than seeking the discovery of facts known
19 or existing documents or data, and are thus beyond the
20 proper scope of discovery.

21 Q. And what's the next sentence say?

22 A. Commission rules do not require the company
23 to conduct an updated depreciation study for this case,
24 nor can be -- discovery be utilized to require the company
25 to conduct a depreciation study in whole or in part.

1 Q. And the last sentence?

2 A. Please feel -- well, fee, it's misspelled,
3 but anyway, please feel free to contact me should you wish
4 to discuss the matter.

5 Q. And it's my understanding that the Office
6 of the Public Counsel did not pursue this objection by
7 either contacting the company or, you know, responding to
8 the objection in any way; is that correct?

9 A. I do not know about that, but this did not
10 affect the Callaway depreciation calculations which we
11 have presented.

12 MR. BYRNE: Okay. Thank you very much,
13 Mr. Dunkel. I would offer Exhibit 71.

14 JUDGE WOODRUFF: Exhibit 71 has been
15 offered. Any objections to its receipt?

16 (No response.)

17 JUDGE WOODRUFF: Hearing no objection, it
18 will be received.

19 (EXHIBIT NO. 71 WAS RECEIVED INTO
20 EVIDENCE.)

21 JUDGE WOODRUFF: Did you have anything
22 else?

23 MR. BYRNE: Nothing else, your Honor.

24 JUDGE WOODRUFF: Come up for questions from
25 the Bench then. Commissioner Jarrett, do you have any

1 questions?

2 COMMISSIONER JARRETT: No questions.

3 JUDGE WOODRUFF: No questions, so no need
4 for recross. Any redirect?

5 MR. MILLS: No questions.

6 JUDGE WOODRUFF: All right. You can step
7 down.

8 I believe Mr. Wiedmayer is the next
9 witness. Please raise your right hand.

10 (Witness sworn.)

11 JUDGE WOODRUFF: Thank you. You may
12 inquire.

13 MR. BYRNE: Thank you.

14 JOHN F. WIEDMAYER testified as follows:

15 DIRECT EXAMINATION BY MR. BYRNE:

16 Q. Good afternoon, Mr. Wiedmayer. Could you
17 please state your name and business address for the
18 record.

19 A. My name is John F. Wiedmayer, Junior. My
20 business address is 1010 Adams Avenue, Audubon,
21 Pennsylvania 19403.

22 Q. And by whom are you employed,
23 Mr. Wiedmayer?

24 A. I'm employed by Gannet Flemming,
25 Incorporated.

1 Q. And are you the same Mr. Wiedmayer that
2 caused to be filed in this case rebuttal testimony that's
3 been marked as Exhibit 13?

4 A. Yes, I am.

5 Q. And do you have any corrections to that
6 rebuttal testimony?

7 A. No.

8 Q. And is the information contained in your
9 rebuttal testimony true and correct to the best of your
10 knowledge and belief?

11 A. Yes, it is.

12 Q. If I was to ask you the questions contained
13 in that prefiled rebuttal testimony here today when you're
14 under oath, would your answers be the same?

15 A. Yes, they would.

16 MR. BYRNE: Your Honor, I'd offer
17 Exhibit 13 and tender Mr. Wiedmayer for cross-examination.

18 JUDGE WOODRUFF: Exhibit 13's been offered.
19 Any objections to its receipt?

20 (No response.)

21 JUDGE WOODRUFF: Hearing none, it will be
22 received into evidence.

23 (EXHIBIT NO. 13 WAS MARKED FOR
24 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

25 MR. WILLIAMS: Judge, this is one of those

1 issues where I would say Staff is less adverse to UE than
2 Public Counsel or other parties.

3 MR. MILLS: I agree, and I think for that
4 reason that Staff should cross before I do.

5 JUDGE WOODRUFF: All right. Go ahead.

6 MR. WILLIAMS: No questions.

7 MR. LOWERY: That made it easy.

8 JUDGE WOODRUFF: Public Counsel then?

9 CROSS-EXAMINATION BY MR. MILLS:

10 Q. Mr. Wiedmayer, do you have a copy of
11 Mr. Dunkel's testimony there with you?

12 A. Yes, I do.

13 Q. Can I have you turn to Schedule SR-7 of
14 Mr. Dunkel's surrebuttal testimony?

15 A. Is this his direct?

16 Q. I'm sorry. Of his surrebuttal testimony?
17 Do you recognize that as Public Counsel Data Request 5035
18 and your answer to that Data Request?

19 A. Yes.

20 Q. And is that answer that you gave accurate?

21 A. Yes.

22 Q. In this request, we asked you in how many
23 of your ten most recent depreciation cases you had
24 excluded the book reserve amounts in the calculation of
25 your recommended depreciation rates; is that correct?

1 A. Yes.

2 Q. Your response, in particular in part C, you
3 state, there is none. The book reserve is a necessary
4 input to the types of calculations referenced in part B of
5 this response; is that correct?

6 A. Yes, that is what the response indicates.
7 However, what I would like to clarify is that the book
8 reserve is a necessary input to the type -- types of
9 calculations that Mr. Dunkel references in part C of his
10 question, which is a remaining life -- I'm sorry. Up in
11 part B, he references a remaining life calculation or a
12 whole life calculation with the variances between the
13 calculated or theoretical reserve and the book reserve.
14 So it is a necessary input if you're doing those types of
15 calculations.

16 Q. And for which types of calculations is it
17 not necessary?

18 A. It would not be necessary if you were doing
19 a whole life calculation, which is what the Commission's
20 rates were based upon in the last case.

21 Q. Now, do you also have a copy of your
22 testimony there?

23 A. Yes, I do.

24 Q. Can I get you to turn to page 3,
25 specifically line 16 to 17?

1 A. Okay.

2 Q. And is it correct that you state there,
3 whole life rates are based on the estimated average
4 service life and net salvage and do not consider past
5 levels of capital recovery?

6 A. Yes, that is -- that is a characteristic of
7 whole life rates.

8 Q. Is it a correct statement that past levels
9 of capital recovery were not considered in the calculation
10 of the Callaway depreciation rates that AmerenUE is using
11 in this proceeding?

12 A. I would say they were considered. Staff
13 had recommended in the last case to monitor the
14 differences, the reserve and balances, rather than
15 actually truing up those differences over either a
16 remaining life of the account or a fixed period of years.
17 So it was considered in the last case. We had a different
18 take on what that reserve and balance should be.

19 Q. When you say considered, was it actually
20 the number? Is there a particular dollar amount that
21 considers past levels of capital recovery that's included
22 in the calculation of depreciation rates that are used in
23 this case?

24 A. No.

25 Q. So explain to me what you mean by

1 considered, when you said it was considered.

2 A. Well, the Order indicates that the company
3 is to monitor the differences between the theoretical
4 reserve and the book reserve and not to make any
5 adjustments to depreciation expense at this time.

6 Q. So is it another way of saying the same
7 thing that book reserve amounts were not used as an input
8 in the calculation of the Callaway depreciation rates that
9 AmerenUE is using in this proceeding?

10 A. Yes, that is correct.

11 Q. Okay. Now, if I can get you to turn to
12 page 5 of your testimony, line 23, and beginning on line
13 23, and actually I believe it continues on to the
14 following pages, you state Mr. Dunkel's adjustment is not
15 appropriate since it ignores the possibility that the
16 depreciation rates for other plant accounts may increase,
17 which may reduce or eliminate his adjustment entirely; is
18 that correct?

19 A. Yes.

20 Q. And can I get you to look at Mr. Dunkel's
21 testimony, his direct testimony in this case, page 18,
22 line 15. Are you there?

23 A. Yeah, I'm there. I'm just reading it now.

24 Q. If you look at the sentence beginning
25 towards the end of line 15, is it not true that Mr. Dunkel

1 states in his direct testimony that if the Commission
2 chooses to order that the depreciation rates in all the
3 accounts be adjusted to use actual reserve using the
4 parameters established in the prior case,
5 No. ER-2007-0002, I would have no objection to that? Is
6 that his direct testimony?

7 A. Yes.

8 Q. In this case, would you agree if the
9 Commission decided to order that the compliance filing for
10 all accounts, that the reserve variance should be
11 amortized over the remaining life using the same lives and
12 net salvages approved by the Commission in the prior case?

13 A. Could you restate the question, please?

14 Q. Yes. Let me put it this way. In this
15 case, would it be consistent with your recommendation if
16 the Commission ordered that in the compliance filing for
17 rates in this case, that the reserve variance be amortized
18 over the remaining life using the same lives and net
19 salvages approved by the Commission in the prior case?

20 A. I've made no recommendation in this case,
21 the company simply using the ordered depreciation rates to
22 calculate their depreciation expense for this proceeding.

23 Q. So that approach would be okay with you?

24 A. No, it would not be okay with me because I
25 think any time the company changes their depreciation

1 rates, it should be within the context of a full-blown
2 depreciation study where all plant accounts can be
3 reviewed. And what I mean by this is that their average
4 service lives, the net salvage percents, all the
5 parameters that go into calculating a depreciation rate
6 for each individual plant account should be reviewed in
7 its entirety and not just a select group of accounts.

8 Q. Would I have been misreading your rebuttal
9 testimony if I came to the conclusion that part of your
10 objection to Mr. Dunkel's proposal was that he was only
11 addressing the Callaway accounts?

12 A. Well, that would be -- yes, that would be
13 one of my objections.

14 Q. But as we just saw, he also suggested using
15 the same approach for all accounts, did he not?

16 A. Yes, he did. Now, let me explain to you,
17 there's a distinction --

18 Q. Let me ask you a question.

19 A. Okay.

20 Q. And you objected to that as well; is that
21 not correct?

22 A. Could you repeat what I objected to?

23 Q. Just now -- he suggested using the same
24 approach for all accounts. That's what we just read in
25 his direct testimony.

1 A. Yes.

2 Q. And here on the stand, you objected to that
3 approach as well; is that not true?

4 A. I objected to the fact that he has not
5 performed an updated depreciation study in which all plant
6 accounts can be reviewed, and by reviewing all plant
7 accounts, I mean reviewing the depreciation parameters
8 that go into calculating the rates, the accrual rates for
9 depreciation. What that mean --

10 Q. I didn't ask you why.

11 A. Well, that would mean --

12 Q. I asked if you did object.

13 MR. BYRNE: Your honor, can he finish his
14 answer?

15 MR. MILLS: He had finished his answer.
16 It's a yes/no question. He's going in to tell me why at
17 great length he said that, and I simply asked him if he
18 did, in fact, object to the proposal that I just made, and
19 he did, and now he's explaining at great length why, and I
20 don't really have any interest in finding out and I didn't
21 ask him that.

22 JUDGE WOODRUFF: I'll overrule the
23 objection, and the witness needs to answer the questions
24 that are asked and not give explanations unless that's
25 requested.

1 THE WITNESS: I think it would clarify --

2 JUDGE WOODRUFF: You don't need to explain
3 it to me. Answer counsel's question.

4 MR. MILLS: Thank you.

5 BY MR. MILLS:

6 Q. Now, if we -- if I can -- I'm not going to
7 ask you specific questions about this again, but if you
8 can keep in mind a response to Public Counsel Data Request
9 5035, that was the one about the past ten cases.

10 A. Uh-huh.

11 Q. In the past ten cases, you proposed that
12 depreciation rates use the book reserve as an input; is
13 that correct?

14 A. Yes.

15 Q. And in this case, you oppose depreciation
16 rates that use the book reserve as input; is that correct?

17 A. Repeat the question.

18 Q. In this case, you oppose Mr. Dunkel's
19 approach to calculating depreciation rates using book
20 reserve as an input; is that correct?

21 A. No.

22 Q. You don't oppose that approach?

23 A. What I oppose is the select few accounts
24 that Mr. Dunkel has suggested that an adjustment to
25 depreciation expense be made, outside of the context of a

1 full-blown depreciation study in which all plant accounts
2 should be reviewed because there's some accounts whose
3 depreciation rates may increase and there's some --

4 Q. We'll get to that. That's well beyond my
5 question. Okay. And as we just established, Mr. Dunkel
6 suggested not applying to a select few accounts but
7 applying it to all accounts, and you also do not agree
8 with that approach; is that not correct?

9 A. That is not correct.

10 Q. You would, in fact, be willing in this case
11 to apply that approach to all accounts?

12 A. No. I misspoke. I would not agree to
13 that.

14 Q. Okay. Thank you. Now, turning back to
15 your -- your rebuttal testimony at page 3, lines 14 to 15,
16 and there you discuss, and I assume this is sort of a
17 general statement, about what would happen if past
18 depreciation rates were too high; is that correct? I'm
19 sorry. Past depreciation levels were too high. Do you
20 see that passage there beginning at line 14?

21 A. Yes, I see it.

22 Q. Is it correct that if past depreciation
23 levels were too high, then the way the Callaway
24 depreciation rates that AmerenUE is using in this
25 proceeding would not -- I'm sorry -- that the depreciation

1 rates that AmerenUE is proposing to use in this proceeding
2 were calculated does not adjust future depreciation rates
3 for the fact that past depreciation rates were too high?

4 In other words, if for the Callaway
5 accounts past depreciation rates were too high, you've
6 done nothing in this case to correct that; is that true?

7 A. That is correct. The company is using the
8 ordered depreciation rates from the last case, which were
9 based upon whole life approach and no adjustment made to
10 correct the reserve in balance between the theoretical
11 reserve and the book accumulated depreciation.

12 Q. But future rate -- future depreciations
13 are -- I'm sorry. Let me start that over again.

14 The future depreciation rates are adjusted
15 for the fact that past depreciation rates were too high if
16 the depreciation rates are calculated using whole life
17 plus an amortization of the reserve variance; is that not
18 correct?

19 A. Yes, that is a characteristic of remaining
20 life rates.

21 Q. Is it also a characteristic of a rate
22 calculated using whole life plus an amortization of the
23 reserve variance?

24 A. Yes.

25 Q. Okay. Thank you.

1 MR. MILLS: Judge, I'd like to have an
2 exhibit marked.

3 JUDGE WOODRUFF: All right. Your next
4 number is 417.

5 (EXHIBIT NO. 417 WAS MARKED FOR
6 IDENTIFICATION BY THE REPORTER.)

7 BY MR. MILLS:

8 Q. Mr. Wiedmayer, do you recognize Exhibit 417
9 as Public Counsel Data Request 5036 and your response
10 thereto?

11 A. Yes.

12 Q. In this Data Request, is it correct that we
13 refer to some figures that Mr. Dunkel used in this case
14 and asked you if you disagreed with those figures?

15 A. Yes.

16 Q. And further, if you did disagree, were
17 asked to provide your version of the figures; is that
18 correct?

19 A. Yes, in part C of this Data Request.

20 Q. And your response to part C is that no such
21 calculations have been made by the company; is that
22 correct?

23 A. Yes, that is correct.

24 MR. MILLS: Judge, with that I'd like to
25 offer Exhibit 417 into the record.

1 JUDGE WOODRUFF: 417 has been offered. Are
2 there any objections to its receipt?

3 MR. BYRNE: No objection.

4 JUDGE WOODRUFF: It will be received into
5 evidence.

6 (EXHIBIT NO. 417 WAS RECEIVED INTO
7 EVIDENCE.)

8 BY MR. MILLS:

9 Q. Mr. Wiedmayer, is it correct that
10 depreciation rates that AmerenUE is using in this case
11 were ordered in the Report and Order in Case No.
12 ER-2007-0002 dated May 22nd, 2007?

13 A. Yes, that is correct for most of the
14 accounts. There was a supplementary order that revised
15 four of the nuclear plant accounts.

16 Q. Now, and I don't think I need to offer this
17 into the record, but do you recall that you -- that you
18 responded to Public Counsel Data Request 5033 with the
19 date on which AmerenUE first announced that it would
20 request the 20-year license extension of the Callaway
21 plant as of February 5th, 2008?

22 A. I don't believe I was the witness that
23 responded to that Data Request.

24 Q. Let me show you the Data Request and see if
25 this refreshes your recollection.

1 And you're correct; it does indicate that
2 it was prepared by Wendy Tatro, and the response is that
3 it was publicly stated in this request for waiver which
4 was filed February 5th, 2008. Does that date sound
5 familiar to you?

6 A. No.

7 Q. Do you know whether at this time AmerenUE
8 has announced that it will seek a life extension for the
9 Callaway nuclear power plant?

10 A. I do not.

11 Q. Well, we'll come back to that. So I take
12 it from that last answer that you, at least as of the time
13 of the Commission's Order in the last case, AmerenUE had
14 not announced it would seek a life extension; is that
15 correct?

16 A. Yes, that's correct.

17 Q. Now, on page 5, line 23 of your rebuttal
18 testimony --

19 A. Okay. I'm there.

20 Q. -- you state that Mr. Dunkel's adjustment
21 is not appropriate since it ignores the possibility that
22 the depreciation rates for other plant accounts may
23 increase which may reduce or eliminate his adjustment
24 entirely; is that correct?

25 A. Yes.

1 Q. And similarly, when we asked you a question
2 about whether or not you did a calculation that showed
3 that, your answer was that no such calculations exist; is
4 that correct?

5 A. No, that is not correct.

6 MR. MILLS: Judge I'd like to have another
7 exhibit marked.

8 JUDGE WOODRUFF: All right. Exhibit 418.

9 (EXHIBIT NO. 418 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 MR. MILLS: 418?

12 JUDGE WOODRUFF: Yes.

13 BY MR. MILLS:

14 Q. Mr. Wiedmayer, do you recognize Exhibit 418
15 as Public Counsel's Data Request 5032 submitted to
16 AmerenUE in this case and your response thereto?

17 A. Yes.

18 Q. Can you read the question that -- that's
19 part A of this Data Request?

20 A. Yes.

21 Q. Could you read it into the record, please?

22 A. Provide the analysis that shows that if the
23 parameters adopted by the Commission in Case No.
24 ER-2007-0002 are used, that if Mr. Dunkel's adjustment
25 amortizing the variances between the calculated,

1 parenthetical, theoretical accrued depreciation and the
2 book accumulated depreciation over the composite remaining
3 life of the asset were applied to all accounts, that
4 would, quote, reduce or eliminate his adjustment entirely,
5 end quote. In this response, specifically use the
6 parameters adopted by the Commission in Case No.
7 ER-2007-002, including the life parameters for steam
8 production plant as adopted by the Commission in Case No.
9 ER-2007-0002.

10 Q. And on the second page of Exhibit 418, can
11 you read your answer to the question in part A?

12 A. No such calculations exist. The company's
13 depreciation expense for this proceeding was determined
14 using the Commission approved rates multiplied by the
15 plant balance.

16 Q. Thank you. Now, turning back to your
17 testimony, on page 2, lines 3 to 5.

18 A. What lines?

19 Q. At the very top, the first answer, lines 3
20 through line 5. There you testify that Mr. Dunkel used
21 remaining life accrual rates for the Callaway nuclear
22 plant accounts; is that correct?

23 A. Yes, that is what I state.

24 Q. Can you please turn to Mr. Dunkel's
25 surrebuttal, page 8, lines 8 through 9.

1 A. Was that page 8?

2 Q. Hang on just one second. I may have given
3 you the wrong reference. Yes, page 8, lines 8 to 9. I'm
4 sorry. It's page 8, line 16 to 17. Doesn't Mr. Dunkel
5 there testify that he used the same whole life basis plus
6 an amortization of the reserve variance formulas that Mr.
7 Wiedmayer used in the prior case?

8 A. Yes, that is what he stated. However, he
9 does not use whole life rates as he suggests.

10 Q. We'll get into that a little bit more.
11 You'll have your chance to explain.

12 A. Okay.

13 Q. In Mr. Dunkel's direct testimony, can I get
14 you to turn to Schedule WWW-3, and begin on the first page
15 of that schedule. Is the heading of that schedule not
16 shown as Calculation of Whole Life Rate?

17 A. That's part of it.

18 Q. Nothing there about remaining life rates,
19 is there?

20 A. No. There's just an item that says this is
21 not OPC recommended rate.

22 Q. And you've reviewed Mr. Dunkel's work
23 papers that support this exhibit, have you not?

24 A. Yes, I have.

25 MR. MILLS: Judge, I'd like to have another

1 exhibit marked.

2 JUDGE WOODRUFF: Exhibit 419.

3 (EXHIBIT NO. 419 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. MILLS:

6 Q. Mr. Wiedmayer, do you recognize Exhibit 419
7 as sort of a summary of the type of calculation that
8 Mr. Dunkel provided in his full work papers to support
9 Schedule WWW dash -- WWWD-3?

10 A. This is the first time I've seen this, and
11 it appears to be the same as -- the same numbers that he
12 shows on -- Mr. Dunkel shows on Schedule WWWD-3, with the
13 exception of he added a footnote, Footnote 1, and he
14 deleted his totals at the nuclear -- for the nuclear
15 production plant.

16 Q. Now, does 419 also show the formula for
17 column E that's not shown on WWW -- I'm sorry, WWD-3?

18 A. The whole life rate formula is shown. The
19 rates appear to be correct. However, the average service
20 life that's shown in column B is a detailed calculation
21 that is made up of multiple vintages. The number that are
22 shown in column D is a composite of all of those vintages.

23 Q. Okay. We can get to that, but the formula
24 that's shown for column E is not the remaining life
25 formula, is it, but rather the whole life formula?

1 A. That's correct.

2 Q. And you don't have any problem with --
3 setting aside for the moment the question of average
4 service lives, you have no problem with the way that the
5 numbers in column E were calculated pursuant to that
6 formula; is that correct?

7 A. That's correct.

8 Q. Now, in Mr. Dunkel's direct testimony,
9 Schedule WWD-3, the next page, page 2 of 3, is it correct
10 that in the reserve variance column Mr. Dunkel calculates
11 the difference between the book reserve and the
12 theoretical reserve?

13 MR. BYRNE: Which schedule are you on?

14 MR. MILLS: This is WWD-3, page 2. This is
15 attached to his direct testimony.

16 THE WITNESS: Yes, Mr. Dunkel shows the
17 reserve variance on Schedule WWD-3, page 2 of 3.

18 BY MR. MILLS:

19 Q. And that's calculated by taking the
20 difference between the book reserve and the theoretical
21 reserve; is that correct?

22 A. Yes, that's correct.

23 Q. And on the last column of that page, WWD-3,
24 page 2, Mr. Dunkel amortizes the reserve variance over
25 remaining life; is that correct?

1 A. Yes, that is correct.

2 Q. Now, turning to the last page of Schedule
3 WWD-3, page 3 of 3, Mr. Dunkel adds the whole life accrual
4 to the reserve variance amortization; is that correct?

5 A. Yes, that is correct.

6 MR. MILLS: Judge, I believe that's all the
7 questions I have. I'd like to offer Exhibits 417, 418 and
8 419.

9 JUDGE WOODRUFF: I show 417's already in.
10 418 and 419 have been offered. Any objections to their
11 receipt?

12 MR. BYRNE: Yes, your Honor, I do, to --
13 not for 418, but 419, which is, it's a sheet that -- well,
14 there's an improper foundation. Mr. Wiedmayer said he
15 just saw it for the first time when Mr. Mills handed it to
16 him. It's a compilation of stuff out of Mr. Dunkel's
17 testimony and schedules, and I don't think a proper
18 foundation has been laid, and I don't think it should be
19 admitted.

20 JUDGE WOODRUFF: Your response?

21 MR. MILLS: Yes, Judge. For purpose of
22 simplicity, we have boiled down what are some very
23 voluminous work papers to an illustrative sheet, primarily
24 for the purpose of shows that the column in Mr. Dunkel's
25 WWD-3, page 1 of 3, is actually calculated using the whole

1 life rate.

2 Mr. Wiedmayer testified that he recognized
3 the numbers on Schedule 419 as corresponding with Schedule
4 WWW3, page 1 of 3 and he recognized the whole life rate at
5 the top of the -- in the whole life calculation formula at
6 the top of the column, and that he agreed that the numbers
7 were calculated appropriately using that formula. So I
8 think a proper foundation has been laid.

9 MR. BYRNE: You Honor, it's a complicated
10 document, as Mr. Wiedmayer testified. Column D, for
11 example, is a composites of a whole bunch of different
12 things. There's no way Mr. Wiedmayer's sitting there,
13 having seen this for the first time, can tell whether this
14 is an accurate or fair representation of what it purports
15 to be. Surely, you know, if it would have been a schedule
16 to Mr. Dunkel's testimony, that would be fine, but trying
17 to put testimony from Mr. Dunkel in through Mr. Wiedmayer
18 live on the witness stand, he's not laid proper
19 foundation.

20 MR. MILLS: Judge, one of the things that
21 we do in these cases is we circulate work papers shortly
22 after the submission of testimony. We did that in this
23 case. In this case, we circulated work papers, including
24 this work paper in a slightly different form to the
25 company many many months ago, August 29th, 2008 via

1 e-mail.

2 So it simply is not correct to say that
3 Mr. Wiedmayer is seeing this information for the first
4 time. He has not seen this exact sheet today for the
5 first time, but he has seen this in response to the work
6 papers submitted with direct testimony. This is not
7 unfamiliar to him.

8 MR. BYRNE: This is Mr. Dunkel's testimony
9 with an improper foundation tying it to Mr. Wiedmayer. He
10 said he hasn't seen it before. He said column D is a
11 compilation of many different vintages, there's no
12 foundation for this document using Mr. Wiedmayer as a
13 witness.

14 JUDGE WOODRUFF: I'm going to overrule the
15 objection. The document will be received into evidence.

16 (EXHIBIT NO. 419 WAS RECEIVED INTO
17 EVIDENCE.)

18 JUDGE WOODRUFF: 418 was offered without
19 objection, so it will also be received.

20 (EXHIBIT NO. 418 WAS RECEIVED INTO
21 EVIDENCE.)

22 MR. MILLS: Thank you.

23 JUDGE WOODRUFF: All right. Then we'll
24 come up for questions from the Bench. Commissioner
25 Jarrett?

1 COMMISSIONER JARRETT: I have no questions.

2 JUDGE WOODRUFF: Chairman Davis?

3 CHAIRMAN DAVIS: No questions. Thank you.

4 JUDGE WOODRUFF: I also have no questions,
5 so there's no need for recross. Any redirect?

6 MR. BYRNE: Yes, your Honor, just a few.

7 REDIRECT EXAMINATION BY MR. BYRNE:

8 Q. Mr. Wiedmayer, in response to one of
9 Mr. Mills' questions, I think you said that the Commission
10 made a decision to monitor the difference between book
11 reserve and theoretical reserve in the last case. Do you
12 recall that?

13 A. Yes, I recall.

14 Q. Was that a mistake on the Commission's
15 part?

16 A. No, it was not a mistake. There are
17 different methods for -- for treating what to do with the
18 reserve imbalance. Some commissions and companies choose
19 to monitor it and not make any adjustment to depreciation
20 expense. Other companies true that reserve imbalance up
21 over the remaining life or over a fixed number of years.
22 Some companies choose to ignore it.

23 Q. And did -- to your knowledge, did OPC
24 object to that approach in the last rate case?

25 A. They did not object.

1 Q. Okay. Let me ask you this. When the
2 Commission set depreciation rates for the Callaway
3 accounts in the last rate case, didn't they -- or did they
4 assume or not assume that a 20-year life extension would
5 take place?

6 MR. MILLS: I object to the form of the
7 question, and I'd ask what the Commission assumed or
8 didn't assume, there's certainly -- if there is any
9 evidence in the record on which the Commission relied,
10 there should have been no assumption. Asking him to
11 testify about what the Commission assumed is calling for
12 speculation.

13 JUDGE WOODRUFF: Could you clarify your
14 question?

15 BY MR. BYRNE:

16 Q. Let me ask it a different way, then. Were
17 the depreciation rates for the Callaway accounts based on
18 an additional 20-year life extension for the Callaway
19 plant?

20 A. Yes, they were. In the last case, they
21 were based upon a 60-year life span for Callaway.

22 Q. Given the fact that they were based on that
23 life extension, is the announcement, AmerenUE's
24 announcement that it's going to seek a life extension on a
25 material change that would suggest a change to the

1 depreciation rates is appropriate?

2 A. No.

3 Q. Okay. One of your questions toward the end
4 of Mr. Mills' cross-examination, you were explaining --
5 and I think he cut you off. You were talking about why --
6 why Mr. Dunkel -- why Mr. Dunkel is not using whole life
7 rates. Would you like to finish your answer?

8 A. Could you say that again?

9 Q. If you recall, you were talking with
10 Mr. Mills about why -- I think the question was about
11 whether -- whether Mr. Dunkel was using whole life rates
12 or remaining life rates, and Mr. Mills cut you off. I
13 just want to know if you want to finish that answer?

14 A. Sure. The methodology that I've presented
15 in the previous case ER-2007-0002, I proposed whole life
16 rates used in conjunction or plus an amortization of the
17 reserve variance. That amortization of the reserve
18 variance was to be trued up over the remaining life of the
19 plant accounts.

20 Mr. Dunkel has also used the same method in
21 this proceeding. I think we're talk -- it's a question of
22 semantics, what we call it. When you true the reserve
23 imbalance up, and the reserve imbalance is the difference
24 between the theoretical reserve and the book reserve, over
25 its remaining life, it is similar to performing a

1 remaining life calculation.

2 MR. BYRNE: Okay. Thank you very much.

3 That's all the questions I have.

4 JUDGE WOODRUFF: Thank you. Mr. Wiedmayer,
5 you can step down.

6 Then we move to Staff witness Rosella
7 Schad.

8 (Witness sworn.)

9 JUDGE WOODRUFF: You may be seated. You
10 may inquire.

11 ROSELLA SCHAD testified as follows:

12 DIRECT EXAMINATION BY MR. WILLIAMS:

13 Q. Please state your name.

14 A. My name is Rosella Schad.

15 Q. Who's your employer?

16 A. The Missouri Public Service Commission.

17 Q. What position do you hold with the Missouri
18 Public Service Commission?

19 A. I'm an engineer.

20 Q. And did you prepare part of the Staff
21 Report Cost of Service that was prefiled in this case and
22 has been marked for identification as Exhibit 200?

23 A. Yes.

24 Q. And does what you prepared appear on page
25 59 under the heading depreciation?

1 A. Yes.

2 Q. And did you also provide an affidavit and a
3 resume that shows your credentials?

4 A. Yes.

5 Q. And are those also part of Exhibit 200?

6 A. Yes.

7 Q. And the part of the Staff report that you
8 prepared, the depreciation section, is that portion of the
9 report still true and accurate today?

10 A. Yes.

11 MR. WILLIAMS: With that, I'd offer that
12 portion of the Staff report, Exhibit 200, that's marked as
13 G that appears on page 59 under the heading depreciation.

14 JUDGE WOODRUFF: All right. A portion of
15 Exhibit 200 has been offered into evidence. Are there any
16 objections to receipt of that portion of the document?

17 (No response.)

18 JUDGE WOODRUFF: Hearing none, it will be
19 received.

20 (A PORTION OF EXHIBIT NO. 200 WAS RECEIVED
21 INTO EVIDENCE.)

22 MR. WILLIAMS: And I also offer under
23 Appendix 1, the resume of Rosella Schad that appears on
24 pages 32 through 34.

25 JUDGE WOODRUFF: That portion of the

1 document has been offered also. Any objections to its
2 receipt?

3 (No response.)

4 JUDGE WOODRUFF: Hearing none it also be
5 received.

6 MR. WILLIAMS: Tender the witness.

7 JUDGE WOODRUFF: Thank you. Noranda?

8 MR. CONRAD: No questions.

9 JUDGE WOODRUFF: I skipped over Public
10 Counsel.

11 MR. MILLS: Judge, being most adverse to
12 Staff in this case, I believe I would go last.

13 JUDGE WOODRUFF: AmerenUE?

14 MR. BYRNE: No questions.

15 JUDGE WOODRUFF: Public Counsel?

16 MR. MILLS: No questions.

17 JUDGE WOODRUFF: Commissioner Jarrett, do
18 you have any questions?

19 COMMISSIONER JARRETT: No questions.

20 JUDGE WOODRUFF: I have no questions. No
21 need for recross or redirect. Ms. Schad, you can step
22 down.

23 THE WITNESS: Thank you.

24 MR. BYRNE: Your Honor, I do agree with
25 Mr. Mills, he's most adverse, so with Mr. Gilbert we ought

1 to go in that order, too.

2 JUDGE WOODRUFF: Okay.

3 (Witness sworn.)

4 JUDGE WOODRUFF: You may be seated. You
5 may inquire.

6 GUY GILBERT testified as follows:

7 DIRECT EXAMINATION BY MR. WILLIAMS:

8 Q. Would you please state your name.

9 A. Guy Gilbert.

10 Q. And who are you employed by?

11 A. The Missouri Public Service Commission.

12 Q. And in what capacity are you employed at
13 the Commission?

14 A. As a Utility Regulatory Engineer II.

15 Q. And what is the nature of your job duties
16 with the Commission?

17 A. I conduct depreciation studies and analyses
18 as they relate to depreciation.

19 Q. And did you cause to -- did you prepare and
20 cause to be prefiled rebuttal testimony on the issue of
21 depreciation as well as surrebuttal testimony?

22 A. I did.

23 Q. And do you have copies of that testimony
24 with you?

25 A. I do.

1 Q. Do you have any changes to your rebuttal
2 testimony which has been marked for identification as
3 Exhibit No. 209?

4 A. I do not.

5 Q. And do you have any changes to your
6 surrebuttal testimony which has been marked for
7 identification as Exhibit No. 210?

8 A. I do not.

9 Q. Are Exhibits No. 209 and 210 your testimony
10 here before the Commission today?

11 A. They are.

12 MR. WILLIAMS: With that, I
13 Offer Exhibits 209 and 210.

14 JUDGE WOODRUFF: 209 and 210 have been
15 offered. Any objections to their receipt?

16 (No response.)

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

19 (EXHIBIT NOS. 209 AND 210 WERE MARKED FOR
20 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

21 MR. WILLIAMS: I tender the witness.

22 JUDGE WOODRUFF: Okay. Noranda?

23 MR. CONRAD: No questions.

24 JUDGE WOODRUFF: All right. Then Ameren?

25 MR. BYRNE: Yes, your Honor. I do have a

1 couple.

2 CROSS-EXAMINATION BY MR. BYRNE:

3 Q. Good afternoon, Mr. Gilbert.

4 A. Good afternoon.

5 Q. My understanding is you are supportive of
6 the company's position that Mr. Dunkel's proposed
7 adjustments to the depreciation rates for selected
8 accounts ought not to be approved in the absence of a
9 comprehensive depreciation study?

10 A. That's true.

11 Q. Okay. Why in your mind is it important to
12 have a comprehensive depreciation study?

13 A. I believe that I pointed out in my filed
14 rebuttal testimony, there are basically a number of
15 reasons, foremost being that really when you consider an
16 issue as large as depreciation, it's appropriate to look
17 at all of the accounts. There's several accounts to look
18 at. Some accounts naturally go up. Other accounts go
19 down. And there's a broader picture to be observed.

20 Additionally, in the context of
21 things, as I mentioned within my testimony, Ameren right
22 now is involved in a rather large capital program. I
23 believe it's called Power On. And depending upon when
24 that enters rate base, that may well be offset by these
25 amounts.

1 Q. So can you explain that a little further?
2 How does Power On relate to this?

3 MR. MILLS: Judge, I'm going to object to
4 this on the basis that it's friendly cross and improper
5 bolstering of the witness' direct testimony. The way that
6 these cases play out, the parties are supposed to file
7 testimony in a certain order, and by allowing parties that
8 are closely aligned with the positions of other parties to
9 come in on the day of the hearing and simply ask leading
10 softball questions that essentially say to this witness,
11 please explain more about what's in your direct testimony
12 and amplify upon that, that gives the parties that have
13 allies on certain issues a decidedly unfair advantage over
14 some other parties that may not.

15 Plus, in addition to that, it's also unduly
16 repetitious and cumulative. This is all stuff that Mr.
17 Gilbert has put in his direct testimony, and to have a
18 closely aligned party simply given the opportunity to say
19 it all over again is unfair, unduly repetitious, and I
20 object to it.

21 MR. BYRNE: Well, first of all, your Honor,
22 I've had an objection for friendly cross overruled against
23 me previously in this proceeding. I don't think my
24 questions are unduly repetitious. This is only just the
25 very beginning of my cross-examination. I think if I am

1 allowed to continue, you will see they're not unduly
2 repetitious.

3 JUDGE WOODRUFF: I'm going to overrule the
4 objection. I am -- I am concerned about what Mr. Mills is
5 saying about friendly cross, and we've been -- it's been a
6 problem here at the Commission as to how to deal with that
7 many times, and I know Mr. Thompson for Staff made the
8 point yesterday that there's no rule against it.
9 Mr. Mills makes it a good point about not being unduly
10 repetitive and so forth. I'll allow you some leeway, but
11 keep it relevant.

12 MR. BYRNE: Thank you, your Honor.

13 BY MR. BYRNE:

14 Q. Okay. My understanding, Mr. Gilbert, is in
15 your testimony you discussed AmerenUE's capital program.
16 I think that's what we were just discussing.

17 A. Power On.

18 Q. Power On. Can you explain to me, though,
19 exactly how that relates to the issue of a depreciation
20 study? How do future capital expenses relate to
21 depreciation rates today?

22 A. I'm not an accountant, but essentially
23 depreciation rates are -- the depreciation accrual is
24 computed against the plant balance, and to the extent that
25 a company is involved in large ongoing capital

1 expenditures, the plant balances will be on a forward
2 basis growing, which will call for increased amounts of
3 depreciation accrual.

4 Q. Okay. Mr. Gilbert, how long have you
5 worked for the Staff?

6 A. I've worked for the Staff at the Missouri
7 Public Service Commission from 1994 to 2000. I took a
8 hiatus to teach, and was hired back in 2004 and have been
9 here since.

10 Q. And were you involved in depreciation, in
11 the depreciation area of the Staff during the time you
12 were employed here?

13 A. Yes.

14 Q. Okay. And in that time, you've not seen an
15 adjustment in individual accounts outside of a
16 depreciation study?

17 A. No.

18 Q. You also briefly mentioned the cost of a
19 depreciation study being an issue in your testimony. I
20 don't know exactly where it is. In your experience, how
21 much time does it take to do a depreciation study?

22 A. It's a quite lengthy and involved process.
23 It depends in part on the familiarity with the company.
24 It can involve site visits, interviews, data and actuarial
25 analysis, and then actually the production of reports and

1 testimony.

2 Q. For a company the size of AmerenUE, is it
3 even more than average?

4 A. It's our largest customer.

5 Q. Company you mean?

6 A. Company.

7 Q. And to the extent AmerenUE uses an outside
8 witness like Mr. Wiedmayer to do a depreciation study, to
9 your knowledge, is it very expensive?

10 A. I've -- as I recall in the last case,
11 they -- it might have been OPC requested or asked what the
12 hourly rates were, and they were in the hundreds of
13 dollars per hour for the depreciation witnesses.

14 Q. Is that cost and expense and time one of
15 the reasons that the Commission's rules only require
16 depreciation studies to be done periodically and not every
17 year?

18 A. I believe so, in part.

19 Q. Okay. And do you know how often companies
20 are required to come in with a depreciation study under
21 the rules?

22 A. As I recall the rules, if it's within the
23 course of a rate case, the depreciation needs to be at
24 least, I term it three years fresh, or have taken place
25 within the past three years. If it's not in the context

1 of a rate case, then the electric utilities are required
2 to file a depreciation study revised continuing property
3 record and plant accounting catalog every five years.

4 Q. Do you know when exactly AmerenUE will be
5 required to come in with a depreciation study under that
6 schedule under the rules?

7 A. The last study I believe was conducted
8 through December 31st of 2005, so in the absence of a
9 case, I think it would be sometime in 2009 or next year.

10 Q. And at that point, could -- and what if we
11 do have a case, when, if we have a case, do we have to
12 file a depreciation?

13 A. It would be due at that time.

14 Q. Okay. And then I assume Mr. Dunkel's
15 issues could be addressed and the issues that AmerenUE has
16 raised could be addressed?

17 A. Yes.

18 Q. Okay. You also briefly mentioned in your
19 testimony a concern with adjusting depreciation rates so
20 quickly after they were established. I don't have a
21 citation, but do you recall making -- that being part of
22 your testimony?

23 A. I do.

24 Q. And what's the concern with that?

25 A. Well, again, I think we can kind of cite --

1 I would like to cite back to the rule and the three and
2 the five-year period. Depreciation is a very large issue.
3 It's not an exact science. The numbers are very large.
4 So given all of those factors, it's -- it's not an issue
5 to just be -- be addressed on a piecemeal basis.

6 Q. You wouldn't want to be changing
7 depreciation rates every six months, would you?

8 A. I don't believe so, unless there was just
9 some overriding or compelling issue that would require
10 such adjustments to be made.

11 MR. BYRNE: Thank you. That's all I have,
12 Mr. Gilbert.

13 JUDGE WOODRUFF: Then for Public Counsel?

14 MR. MILLS: Yes, thank you.

15 CROSS-EXAMINATION BY MR. MILLS:

16 Q. Good afternoon, Mr. Gilbert.

17 A. Good afternoon.

18 Q. Let's talk first about one of the points
19 that you just discussed with Mr. Byrne. If a company
20 makes new investments, is it correct that the depreciation
21 rate automatically applies to new investments?

22 A. I don't know that it increases the revenue
23 requirement.

24 Q. That wasn't my question. Do you know the
25 answer to my question?

1 A. I'm not an accountant. I determine what
2 the depreciation rates are, and I'm familiar with the fact
3 that there's a certain amount of return that they're
4 allowed to make, but I don't -- I don't know the answer to
5 that.

6 Q. Is it your understanding that a new
7 investment sits -- from the time it's made sits
8 undepreciated until some future time when depreciation
9 rates begin to apply?

10 A. No.

11 Q. So from the moment that a new piece of
12 plant goes in service, the depreciation rates apply; is
13 that correct?

14 A. Yes.

15 Q. So if we take, for example, a 3 percent
16 depreciation rate, if there's \$100 million of investment,
17 the depreciation rate is -- the depreciation expense is
18 \$3 million; is that correct?

19 A. I'm sorry. Could you state that again,
20 please?

21 Q. If you just take hypothetically a 3 percent
22 depreciation rate and \$100 million new investment, okay,
23 under those circumstances, the depreciation expense is
24 \$3 million; is that correct?

25 A. Yes.

1 Q. And with respect to another topic that you
2 touched on with Mr. Byrne, if a depreciation study is
3 filed outside of the context of a rate case, is it your
4 understanding that rates change at that point or rates do
5 not change until the next rate case?

6 A. The rates do not change until the
7 Commission orders so, that the rates be changed.

8 Q. And let me be clear. I'm not asking about
9 depreciation rates. If there is a depreciation case
10 because there's not a rate case filed within those windows
11 that you talked about with Mr. Byrne, in that depreciation
12 case if depreciation rates are changed by the Commission,
13 would rates that customers pay change at that time?

14 A. I don't know.

15 Q. Have you ever been involved in a
16 depreciation case outside of the context of a rate case?

17 A. Just depreciation authority orders for
18 telephone companies.

19 Q. And what was the outcome of those cases?

20 A. The rates were changed as per the
21 Commission's order.

22 Q. And when you say rates, do you mean rates
23 that customers pay or depreciation?

24 A. The depreciation rates.

25 Q. Do you know whether rates the customers pay

1 were changed in those cases?

2 A. I do not.

3 Q. I'm going to try not to get into any legal
4 questions. Were you familiar with the general concept of
5 the prohibition against changing rates without considering
6 all relevant factors?

7 A. No.

8 Q. Let me ask you some more general questions
9 to begin with about your testimony. Is it correct that
10 you recommend not correcting the Callaway depreciation
11 rates at this time?

12 A. Yes.

13 Q. Is it correct that the book reserve amounts
14 were not used in the calculation of the Callaway
15 depreciation rates?

16 A. That's correct.

17 Q. Do you have a copy of your surrebuttal
18 testimony there with you?

19 A. I do.

20 Q. Could I get you to turn to page 3?

21 A. I'm there.

22 Q. And do you suggest that you are not -- that
23 you recommend not correcting the Callaway depreciation
24 rates at this time stating that this is because the effect
25 of changing depreciation rates for individual plant

1 accounts may be counteracted by the effects of changes in
2 depreciation rates for other accounts?

3 A. Yes.

4 Q. And do you have a copy of Mr. Dunkel's
5 testimony?

6 A. Direct or --

7 Q. Direct in this case.

8 A. Yes.

9 Q. I'm going to be asking you some questions
10 about both, but right now I'm going to turn you, if you
11 would, please, to page 18, line 15.

12 A. I'm there.

13 Q. And the sentence beginning, at the end of
14 line 15 states that if the Commission chooses to order
15 that the depreciation rates in all the accounts be
16 adjusted to use actual reserve using the parameters as
17 established in the prior case, No. ER-2007-0002, I would
18 have no objection to that. Do you recall that testimony
19 from Mr. Dunkel?

20 A. I just followed along with you reading it,
21 yes.

22 Q. Had you read that before?

23 A. I have.

24 Q. And isn't it true that his suggestion there
25 would remedy the problem that you highlight at page 3,

1 lines 2 through 4?

2 A. I don't believe so in its entirety, in
3 light that it wouldn't be a full depreciation study. He's
4 just talking about truing up with respect to reserve
5 requirements as opposed to the going in and doing a
6 complete depreciation study and review.

7 Q. Okay. But it would certainly fix the
8 problem selecting just one or a small handful of accounts,
9 would it not?

10 A. It would change -- it would change the rate
11 on an account, but it wouldn't be respective of an entire
12 study, so it would just be changing a rate here and there.

13 Q. Now, I take it you were here when I asked
14 questions of Mr. Wiedmayer --

15 A. I was.

16 Q. -- is that correct?

17 And one of the things we talked about is
18 the use of book reserve amounts as an input in the
19 calculation of depreciation rates. Do you recall that?

20 A. That's an option, yes.

21 Q. And do you believe that for -- well, first
22 of all, do you agree with Mr. Wiedmayer's answers that for
23 the calculation of depreciation rates, that the book
24 reserve amount needs to be taken into account as an input?

25 A. I do not.

1 Q. For -- you don't agree that it's a
2 necessary input?

3 A. That's correct.

4 Q. And is that position, is that the
5 mainstream depreciation definitions of the way you
6 calculate depreciation rates?

7 A. Here in Missouri we use the whole life
8 formula. With respect to any over or under-accrual of the
9 reserves, we take that into account and, if necessary, an
10 amortization is initiated to bring things back on course.

11 Q. Amortization of what?

12 A. Any excess or under-accrual of the reserve.

13 Q. Of the book reserve?

14 A. Yes.

15 Q. So then is not the book reserve taken into
16 account in that calculation?

17 A. In light of a complete depreciation study,
18 yes, it is.

19 Q. Is it correct that in order to determine
20 how much of the investment adjusted for net salvage
21 remains to be recovered in future depreciation rates, we
22 have to know how much of that investment has already been
23 recovered in past depreciation rates?

24 A. Could you state that again, please?

25 Q. Sure. If you want to determine how much of

1 the investment needs to be recovered in future
2 depreciation rates, don't you need to know how much of the
3 investment has already been recovered in past depreciation
4 rates?

5 A. You do, yes.

6 Q. And the accumulated depreciation book
7 reserve is the record of what has been accumulated as a
8 result of past depreciation rates; is that not true?

9 A. That is true.

10 Q. Now, in your surrebuttal testimony on page
11 3 again, and I'm going to refer you back to that same
12 sentence we just looked at, where you talk about the
13 effect of changing depreciation rates for individual plant
14 accounts may be counteracted by the effect of changes in
15 other accounts, do you recall that?

16 A. I do.

17 Q. Have you provided any analysis that shows
18 that using the book reserve as an input for other accounts
19 would counteract the effect of using the book reserve of
20 an input for the Callaway accounts?

21 A. I'm sorry. Could you say that one more
22 time, please?

23 Q. Let me rephrase that.

24 A. Okay.

25 Q. You understand which accounts that

1 Mr. Dunkel has proposed adjusting the book reserve on?

2 A. I do.

3 Q. Have you done an analysis to show which
4 other accounts throughout the company's books the same
5 adjustment would have the effect of counteracting that
6 change that Mr. Dunkel proposes?

7 A. Not in this case.

8 Q. Have you -- have you in other cases?

9 A. Previously I provided some oversight to
10 Ms. Mathis, who was the person conducting the technical
11 depreciation study in the ER-2007-0002 rate case.

12 Q. So you had some involvement in helping
13 Ms. Mathis put together her material in that case?

14 A. Cursory. I looked at her tables, and at
15 times we would discuss various aspects of things, but as
16 far as running the actual models, that was her duty.

17 Q. Okay. Can you look at Mr. Dunkel's direct
18 testimony, page 19, lines 2 to 4, and the footnote that is
19 contained within those lines? Have you had a chance to
20 read through that material?

21 A. I'm reviewing it now. Okay.

22 Q. And let me back up just a step. Had you
23 reviewed Mr. Dunkel's direct testimony at the time that
24 you wrote your surrebuttal testimony?

25 A. Yes.

1 Q. Isn't it true that in his direct testimony
2 Mr. Dunkel stated that based on the data from the prior
3 case for the non-nuclear accounts in total using the
4 parameters developed in Case No. ER-2007-0002 and using
5 the actual reserves instead of theoretical reserves would
6 most likely result in lower total depreciation expenses
7 for the non-nuclear accounts than the results for the
8 current rates?

9 A. I think that depends in part on whether
10 Staff's lives or the company submitted life spans were to
11 be used.

12 Q. In this case or the lives from the last
13 case?

14 A. The last case.

15 Q. And did not the Commission resolve that
16 issue?

17 A. Yes.

18 Q. And whose lives did they pick?

19 A. Staff's.

20 Q. And if we were to relook at that quote I
21 just read to you, based on the understanding that we're
22 using Staff's lives, what is your answer?

23 A. Without having done that analysis at this
24 time, that may be the case.

25 Q. You haven't done any analysis that refutes

1 that position?

2 A. I have not.

3 MR. MILLS: Judge, I'd like to have an
4 exhibit marked.

5 JUDGE WOODRUFF: You're at 420.

6 (EXHIBIT NO. 420 WAS MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 BY MR. MILLS:

9 Q. Mr. Gilbert, do you recognize that what has
10 been marked as Exhibit 420 is the cover sheet and Schedule
11 JLM-3 to Ms. Mathis' testimony in Case No. ER-2007-0002?

12 A. I do.

13 Q. If I can get you to turn to the first page
14 there, does the last column show whether the account is
15 over or under-accrued?

16 A. It does.

17 Q. Looking at all the steam production
18 accounts -- first let me back up here.

19 When I refer to steam production accounts,
20 what is your understanding what I mean by steam production
21 account?

22 A. The coal-fired units that are used to
23 generate steam and spin the turbines. So the coal-fired
24 units, yeah.

25 Q. Coal and natural gas as well or just coal?

1 A. I don't believe they fire any of their
2 boilers with -- with gas. I think they're all gas
3 turbines.

4 Q. Okay. But in any event, not including
5 nuclear production facilities like Callaway?

6 A. That's correct.

7 Q. And looking at JLM-3, is it correct that
8 the Staff exhibit shows that 24 of the steam production
9 accounts are over-accrued and only one is under-accrued.

10 MR. BYRNE: I'm going to object to
11 questions about this exhibit, your Honor. There's been no
12 foundation laid, and it's also hearsay. Ms. Mathis is not
13 here, and of course earlier today testimony from a
14 previous case was excluded from evidence in this case, I
15 don't think -- I don't think it's proper for him to get
16 any information out of this exhibit through Mr. Gilbert,
17 who is not the author of it and, as far as I know, has no
18 knowledge of whether there's any truth to anything in this
19 exhibit.

20 MR. MILLS: I can answer that in a couple
21 ways. One, Mr. Gilbert just testified that he did provide
22 supervision to Ms. Mathis putting together her testimony
23 in the last case, so he does have some familiarity with
24 it.

25 He also talked about the fact that it would

1 excluded and in some occasions it is included. I believe
2 there was some indication of what Mr. Barnes' testimony on
3 behalf of Staff was in a prior case when it was relative
4 to the issue at hand.

5 MR. BYRNE: That was admission in a Data
6 Request from the Staff. This is presenting in testimony
7 he did not write and using it for the truth.

8 JUDGE WOODRUFF: No. It's numbers that I
9 believe he indicated he had supervised a person who
10 compiled the numbers. Is that correct, Mr. Gilbert?

11 THE WITNESS: It is.

12 MR. BYRNE: That's not the same as knowing
13 the numbers are correct.

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

16 BY MR. MILLS:

17 Q. The question was, is it correct that
18 this -- that this exhibit shows that 24 of the steam
19 production accounts are over-accrued and only one is
20 under-accrued?

21 A. Based upon the parameters at the time that
22 this study was conducted, I would say yes.

23 Q. And based on those same parameters, is it
24 not true that the difference column of this exhibit shows
25 that the total steam production plant is over-accrued by

1 \$576,369,652?

2 MR. BYRNE: I'm going to object again.
3 There's been no foundation that this witness has any
4 knowledge that that number is correct. He's obviously
5 offering this number for the truth of it, and there's no
6 foundation laid and it's hearsay.

7 MR. MILLS: Well, Judge, we have this
8 witness speculating that some other accounts may
9 counteract what Mr. Dunkel has proposed. Here we have the
10 most recent information on these other accounts that
11 Mr. Gilbert has in his testimony speculated about. This
12 is the best evidence we're going to get because it's the
13 most recent evidence that exists that shows what the
14 actual state of those accounts is rather than Mr.
15 Gilbert's speculation that they may counteract the effects
16 of changes. This document shows that they do not, in
17 fact, and so I think it's much better for the Commission
18 to rely on the evidence adduced in the last case, which is
19 the most current depreciation evidence we have, to show
20 that Mr. Gilbert's speculation is, in fact, off base.

21 JUDGE WOODRUFF: I'm going to overrule the
22 objection. Proceed.

23 BY MR. MILLS:

24 Q. Mr. Gilbert, do you understand what the
25 last question was?

1 A. Could you please repeat it?

2 Q. If you flip to the last page of the
3 exhibit, does it not show that the -- I'm sorry. If you
4 look at the first page, it's the second page in the
5 exhibit, right after the cover sheet, and about three-
6 quarters of the way down it shows the steam production
7 plant, and does that not indicate that the steam
8 production plant is over-accrued by a total of
9 \$576,369,652?

10 A. This document does.

11 Q. Is it correct that if everything else was
12 the same, if the book reserve was used -- was used as an
13 input or the overaccrual was amortized for steam
14 production, that that would not counteract the effect of
15 using the book reserve as an input for the Callaway
16 accounts but, in fact, would add to the effect?

17 A. Could you please repeat the question?

18 Q. Sure. If we look at that overaccrual,
19 everything else being equal, isn't it true that making the
20 change to -- to using the book reserve as an input or
21 amortizing over-accrual for steam production would not
22 counteract, as you suggested, the effect of Mr. Dunkel's
23 adjustment but would, in fact, go in the same direction
24 and increase the effect?

25 A. At the time this was prepared, that appears

1 to be true, yes.

2 Q. And as a result, isn't it correct that for
3 steam production, everything else equal, if the book
4 reserve was used as an input or over-accrual was
5 amortized, that would result in the steam production
6 depreciation rates being lower than the steam production
7 rates used in this proceeding?

8 A. The depreciation rates that this table is
9 prepared in conjunction with didn't take into account the
10 amount of reserve over or under-accrual that was treated
11 as a separate part of the depreciation analysis. Now, as
12 I understand what you're asking is to perform a different
13 type of calculation that would incorporate this over or
14 under-accrual and then come up with a new depreciation
15 rate. So in light of doing something different there,
16 yes, in all likelihood it would come up with a different
17 depreciation rate.

18 Q. Not just different, but lower?

19 A. It appears to be so, yes.

20 Q. Significantly lower?

21 A. I can't speak to the significance without
22 crunching some numbers.

23 Q. Now, on page 3 of your surrebuttal, you're
24 talking there essentially about not making a change
25 without an analysis of all accounts; is that correct?

1 A. Yes.

2 Q. Now, if we look at all accounts from
3 Ms. Mathis' testimony in the last case, and this is the
4 difference on page -- the third page of the account, isn't
5 it true that for all accounts, the overaccrual was
6 \$766,103,194?

7 A. That's what this document indicates.

8 Q. So the total over-accrual for all accounts
9 is larger than the over-accrual for just nuclear; is that
10 correct?

11 A. By this document, yes.

12 Q. So that if you were to take into account
13 all the other accounts, they would not counteract the
14 over-accrual in nuclear accounts but instead would add to
15 the over-accrual; is that not correct?

16 A. At this snapshot in time, yes.

17 MR. BYRNE: Judge, I'd like to have another
18 exhibit marked.

19 JUDGE WOODRUFF: 421.

20 MR. MILLS: Before I move on, let me offer
21 Exhibit 420.

22 JUDGE WOODRUFF: All right. Exhibit 420
23 has been offered. Are there any objections to its
24 receipt? Does Ameren wish to object?

25 MR. BYRNE: Okay. I guess I will object to

1 the -- I guess it's 420?

2 JUDGE WOODRUFF: It's 420.

3 MR. BYRNE: 420. It's hearsay. There was
4 no foundation laid that Mr. Gilbert had any knowledge of
5 any of the numbers that were reflected in that document.
6 So I object on the grounds that no foundation was laid and
7 that it's hearsay.

8 JUDGE WOODRUFF: Your objection's noted and
9 the document will be received into evidence.

10 (EXHIBIT NO. 420 WAS RECEIVED INTO
11 EVIDENCE.)

12 JUDGE WOODRUFF: Your next exhibit will be
13 421.

14 (EXHIBIT NO. 421 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 BY MR. MILLS:

17 Q. Mr. Gilbert, do you have a copy of
18 Exhibit 421?

19 A. That's the Schedule WWD-SR8?

20 Q. Exactly.

21 A. Yes, sir.

22 Q. You recognize this as a schedule that was
23 attached to Mr. Dunkel's surrebuttal testimony?

24 A. I believe I do.

25 Q. And have you seen this schedule before?

1 A. I believe I have, yes.

2 Q. Now, on page 3 of your surrebuttal, and
3 we've talked about this a little bit already, you
4 suggested that an analysis of all accounts should be done
5 before making any depreciation changes; is that correct?

6 A. A complete analysis, yes.

7 Q. Does Exhibit 421, which is Schedule
8 WWD-SR8, analyze all depreciable accounts?

9 A. It's a numerical analysis. It doesn't take
10 into account all of the different things that would be
11 undertaken during a full and complete depreciation study.

12 Q. But it's a numerical analysis?

13 A. Right. It's a partial review that would be
14 conducted during a depreciation study, right.

15 Q. Of all accounts?

16 A. Yes.

17 Q. Now, in the prior case, I believe you've
18 testified that the Commission adopted the Staff
19 recommendations for steam production; is that correct.

20 A. Yes.

21 Q. For steam production, do the numbers on
22 Schedule WWD-SR8, which has been marked as Exhibit 421,
23 match the Staff prepared numbers shown on JLM-3?

24 A. Just doing some spot checks, I agree, yeah.

25 Q. And for all accounts in which the

1 Commission adopted the Staff recommendation, do the
2 figures on Schedule WWD-SR8 match the figures on Staff
3 Schedule JLM-3?

4 A. Is that a question?

5 Q. Yes.

6 A. Subject to check, yes.

7 Q. And what do you mean by that?

8 A. Well, I haven't looked at every number and
9 seen, but yeah, they appear to me to be the same schedules
10 or repeat components of the same schedules, yes.

11 Q. And will you take it upon yourself to have
12 your attorney interrupt proceedings and let us know if you
13 find in later review that there is a mismatch?

14 A. I can do that.

15 Q. Otherwise the record is not clear whether
16 your answer is yes or no. I'm taking your answer as a
17 yes, and I want you --

18 A. Okay. Yes.

19 Q. -- to tell us that you will tell us if it's
20 not a yes.

21 A. Certainly.

22 Q. Okay. Thank you. Now, using the
23 Commission approved rates for all accounts, Schedule
24 WWD-SR8, which has been marked Exhibit 421, shows an
25 over-accrual of 219,456,053 for total nuclear production;

1 is that correct?

2 A. Yes.

3 Q. And a larger over-accrual of 8 million --
4 \$822,417,485 for all accounts; is that correct?

5 A. I'm sorry. 822,417,485?

6 Q. Correct.

7 A. Yes.

8 Q. Is it correct that, everything else the
9 same, if the book reserve was used as an input or again if
10 the over-accrual was amortized for all accounts, that
11 would not counteract the effect of using the book reserve
12 as an input for the Callaway accounts, would it?

13 A. I don't believe so.

14 Q. Indeed, it would add to the effect,
15 correct?

16 A. Yes.

17 Q. And have you done any analysis for the
18 purposes of this case that would show that either JLM-3 or
19 WWD-SR8 are incorrect?

20 A. I have not.

21 Q. Mr. Gilbert, did you file testimony in Case
22 GR-2006-0387, a case involving Atmos Energy Corporation?

23 A. I did.

24 Q. And in that testimony, did you propose a
25 change to depreciation rates in the absence of a full

1 depreciation study?

2 A. I don't believe I did, but I did call for
3 an amortization to true up some reserve over-accrual.

4 Q. Is that not very similar to what Mr. Dunkel
5 has proposed in this case?

6 A. I believe Mr. Dunkel is calling for a
7 change in the depreciation rate.

8 Q. Based upon what?

9 A. His observance of an over-accrual in the
10 reserve.

11 Q. And what would the nature of his change be,
12 an amortization of that difference?

13 A. I'd -- I'd have to look. I think so.

14 Q. And can you explain to me how that is
15 different from what you proposed in the Atmos case?

16 A. I can't.

17 MR. MILLS: No further questions.

18 JUDGE WOODRUFF: Then we'll come up to
19 questions from the Bench. Commissioner Clayton, do you
20 have any questions?

21 COMMISSIONER CLAYTON: No questions,

22 JUDGE WOODRUFF: Commissioner Jarrett?

23 COMMISSIONER JARRETT: No questions.

24 JUDGE WOODRUFF: Chairman Davis?

25 CHAIRMAN DAVIS: Just a couple.

1 QUESTIONS BY CHAIRMAN DAVIS:

2 Q. Mr. Gilbert?

3 A. Yes, sir.

4 Q. Is it fair to say that depreciation is
5 spreading out the cost of an asset over a period of years,
6 usually the life of an asset?

7 A. That's true, yes.

8 Q. Okay. So once an asset is depreciated out,
9 the utility can't earn a return on equity on that asset,
10 can it?

11 A. That is true.

12 Q. So depreciating physical plant out can
13 actually be a good thing for consumers, can't it?

14 A. Yes.

15 Q. Okay. So in the context of utilities, is
16 it fair to say that one of the functions of depreciation
17 is the length of time it takes them to recover their
18 investment of capital and physical plant?

19 A. Yes.

20 Q. Okay. Do you think timely recovery of
21 investment capital is important to attracting investment
22 capital?

23 A. Yes.

24 Q. Are you at all concerned that if this
25 Commission were to engage a systematic pattern of lowering

1 a utility's depreciation rates, that it could negatively
2 impact the utility's ability to attract capital?

3 A. In my role as depreciation analyst, I don't
4 look at that.

5 Q. Okay. Mr. Gilbert, if you had a choice of
6 investing in two investments, say you've got \$100 million
7 to invest and you're going to choose between one of two
8 investments, and they pay the same return on equity, and
9 the only difference is that one would be depreciated out
10 over four years and the other one would be depreciated out
11 over 60 years, which would you choose?

12 A. And my returns on the equity?

13 Q. Are the same. So which one would you
14 choose?

15 A. Well, the investment would last longer with
16 the 60-year life.

17 Q. Okay. The investment would last longer?

18 A. Right. So I'd get a rate of return over my
19 plant in service over a longer period of time, if I'm
20 understanding the question.

21 Q. Right. So you wouldn't be concerned about
22 getting your money back ever?

23 A. If I can continue to earn a 10 percent rate
24 of return on it as opposed to getting it back and having
25 to seek another investment that might be riskier, I would

1 tend to want to maximize the duration of my firm return
2 investment, I guess.

3 CHAIRMAN DAVIS: No further questions.
4 Thank you.

5 JUDGE WOODRUFF: Mr. Mills, did you want to
6 offer 421?

7 MR. MILLS: Judge, it's already in the
8 record as part of Mr. Dunkel's surrebuttal testimony. I
9 really had it marked just for the ease of asking cross-
10 examination. If it makes the record cleaner, I'm happy to
11 offer it. I'll go ahead and offer it.

12 JUDGE WOODRUFF: All right. 421 has been
13 offered. Is there any objections to its receipt?

14 MR. BYRNE: I object. It's already in the
15 record.

16 JUDGE WOODRUFF: All right. Well, since --
17 I'll sustain that objection, and it will not be received.
18 All right. Recross based on questions from the Bench.
19 Does anyone wish to recross based on questions from the
20 Bench?

21 MR. MILLS: No questions.

22 MR. BYRNE: I think I have one question.

23 JUDGE WOODRUFF: Go ahead.

24 RE-CROSS-EXAMINATION BY MR. BYRNE:

25 Q. Mr. Gilbert, Chairman Davis asked you

1 about -- he asked you some questions about the impact of
2 depreciation rates on the utility's ability to attract
3 investment. Do you remember those questions?

4 A. I do.

5 Q. I think at least in response to one of them
6 you said, you know, in my role as an depreciation
7 engineer, I don't consider that. Do you think it's
8 appropriate for the Commission to consider broader issues
9 like that when setting depreciation rates for a utility?

10 A. The Commission considers many, many issues
11 and parameters in setting the rates for the companies.

12 Q. Would impairment of the utility's ability
13 to attract capital be a legitimate issue for the
14 Commission to consider in your view?

15 A. I believe so.

16 MR. BYRNE: Thank you. No further
17 questions.

18 JUDGE WOODRUFF: Redirect?

19 MR. WILLIAMS: Thank you, Judge.

20 REDIRECT EXAMINATION BY MR. WILLIAMS:

21 Q. Mr. Gilbert, Exhibit 420, which is portions
22 of, looks like, some schedules from the direct testimony
23 of Jolie Mathis in Case No. ER-2007-0002?

24 A. Yes.

25 Q. When would the information that was used to

1 create that schedule have been from?

2 A. I believe it was through December of 2005.

3 Q. Have you done any analysis to confirm that
4 that -- the numbers on that exhibit are true?

5 A. I have not.

6 Q. Do you know if they'd still be correct?

7 A. I doubt it.

8 Q. So they wouldn't be accurate for 2008?

9 A. I don't believe so, no.

10 Q. And then for Schedule WWD-SR8, which was
11 also marked for identification as Exhibit 421 --

12 A. Yes.

13 Q. -- have you done any analysis to confirm
14 that the numbers on that schedule are correct?

15 A. I have not.

16 Q. And in response to Mr. Mills, you
17 indicated -- he was asking you about -- well, as part of
18 your response you indicated that the schedule didn't
19 reflect everything that would be done in a full
20 depreciation study. Do you recall that?

21 A. I do.

22 Q. What does it not reflect that would be done
23 in a full depreciation study?

24 A. Well, one of the first things we do in a
25 full depreciation study is to obtain all the depreciation

1 records, the continuing property records, the property
2 unit catalog, the accounting manual. We'll conduct
3 investigations into the engineering, the budget, the
4 maintenance. In light of the current environment, we
5 would look for any mandated or compliance costs that may
6 be impacting the utility. We would also conduct site
7 visits and an actuarial analysis of the -- of the
8 depreciation data.

9 Q. And going back to Exhibit 420, what did the
10 Staff show as the total over or under-accrual?

11 A. The Staff showed an over-accrual of
12 \$766,103,194.

13 Q. And what's the over-accrual that Public
14 Counsel was saying that exists in the Callaway accounts in
15 this case?

16 A. I'm sorry. The first number I read was for
17 all plant accounts. Now you wish the --

18 Q. Just what Public Counsel's pursuing in this
19 case on this particular issue?

20 A. \$219,465,053.

21 Q. And what did Staff recommend in the last
22 case that the Commission do as a result of the 766-some
23 million over-accrual at that point in time?

24 A. They recommended that basically an eye be
25 kept on it. When we look at the theoretical reserves

1 we -- it's a very large number. It encompasses all
2 accounts. It was large or appeared to be large, and that
3 the number needs to be monitored for any future adjustment
4 if necessary.

5 Q. So Staff didn't recommend any change in
6 depreciation rates on account of the difference between
7 the book and theoretical reserve in that case?

8 A. It didn't have any influence on the
9 depreciation rates. It was a separate depreciation item.

10 Q. And did the Commission make any change in
11 depreciation rates because of the over or under-accrual in
12 that case?

13 A. Not as I recall, other than the number
14 needs to be monitored.

15 MR. WILLIAMS: No further questions.

16 JUDGE WOODRUFF: All right. Then
17 Mr. Gilbert, you can step down.

18 MR. BYRNE: Your Honor, I have one
19 housekeeping thing.

20 JUDGE WOODRUFF: Go ahead.

21 MR. BYRNE: Friday afternoon Exhibit 66
22 was -- I marked it and offered it and it was accepted into
23 evidence, but I didn't have copies. It was when I was
24 writing on the board, if you remember that. So I do have
25 copies for the parties and the Commissioners. It's the --

1 it's the Gorman analyses calculating different ROEs based
2 on Mr. Gorman's analysis.

3 JUDGE WOODRUFF: All right. Anything else
4 anyone wants to bring up while we're still on the record?
5 Then we are adjourned until tomorrow morning when we'll
6 take up demand side management. I understand the union
7 issues will be moved to some other day?

8 MR. LOWERY: Tentatively for December 3rd,
9 and I think there's some discussion about whether it might
10 be the 2nd. December 3rd is the current date.

11 MR. MILLS: So we're going to begin with
12 DSM?

13 JUDGE WOODRUFF: Yes, at 8:30.

14 WHEREUPON, the hearing of this case was
15 recessed until November 25, 2008.

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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified

Shorthand Reporter with the firm of Midwest Litigation Services, and Notary Public within and for the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Given at my office in the City of Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR
Notary Public (County of Cole)
My commission expires March 28, 2009.