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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Evidentiary Hearing  
December 3, 2008  
Jefferson City, Missouri  
Volume 22

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.

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

2                                   JUDGE WOODRUFF: Welcome back for  
3 another day of the AmerenUE rate case hearing. We're  
4 going to start today, I believe, on the -- the union  
5 issues. We had -- Mr. Datillo testified yesterday  
6 out of order, but we've got the rest of the witnesses  
7 here today, so I'm assuming you want to do mini  
8 openings at this point?

9                                   MR. FISCHER: Judge, the company would  
10 waive its opening.

11                                  JUDGE WOODRUFF: Okay.

12                                  MR. BYRNE: Your Honor, I do have a  
13 preliminary matter I'd like to bring up, if that's  
14 okay.

15                                  JUDGE WOODRUFF: Go right ahead.

16                                  MR. BYRNE: Yesterday when Mr. Zdellar  
17 was testifying, he testified that he -- said based on  
18 Staff's cross-examination he needed to correct some  
19 numbers in his testimony. I guess I'd like to  
20 reserve an exhibit to allow him to submit his  
21 corrected numbers. He was able to give order of  
22 magnitude numbers yesterday, but said it would be  
23 Monday or Tuesday before he had the exact numbers.

24                                  JUDGE WOODRUFF: All right. The next  
25 number, then, is 76.

1                   MR. BYRNE:   Okay.  Thank you, your  
2 Honor.

3                   MR. CONRAD:  Judge, when you get a  
4 chance.

5                   JUDGE WOODRUFF:  Yes, go ahead.

6                   MR. CONRAD:  We had mentioned yesterday  
7 that Mr. McPheeters from Noranda was -- we felt it  
8 was going to be necessary to do a correction on his  
9 testimony which will probably be more expedient to do  
10 live, but I'm advised this morning that his schedule  
11 down there and back is such that I'd like to try to  
12 get him on and off on Thursday afternoon.  That would  
13 permit him to travel here Thursday morning and then  
14 get back.  It's about a four-hour drive.

15                   JUDGE WOODRUFF:  That's fine.

16                   MR. CONRAD:  And if we could work that  
17 in --

18                   JUDGE WOODRUFF:  We'll accommodate him  
19 however we need to.

20                   MR. CONRAD:  -- without objection.

21                   JUDGE WOODRUFF:  That would be fine.

22                   MR. CONRAD:  Okay.  Thank you, Judge.

23                   JUDGE WOODRUFF:  All right.  Back to the  
24 union issues, then.  The company indicated they don't  
25 want to do an opening.  Does -- do the unions want to

1 do a mini opening?

2 MR. EVANS: The union would also waive  
3 its opening.

4 JUDGE WOODRUFF: Anyone else want to do  
5 an opening?

6 MR. REED: Well, I -- I do want to  
7 say -- it'll take a minute. It's mine.

8 JUDGE WOODRUFF: Go right ahead for  
9 Staff.

10 MR. REED: I just wanted to set forth in  
11 some fashion what we're going to be addressing with  
12 the next few witnesses, and that is that an issues  
13 list that was presented, you'll see that there are  
14 four questions posed by the union included in the  
15 issues list.

16 And each of the issues has an aspect to  
17 it that asks, does the Commission have authority to  
18 require Ameren to do any of the four things, the four  
19 questions, requested by the unions. And I believe  
20 the answer is this, and this leads us back to  
21 yesterday's discussion of the motion to exclude some  
22 evidence.

23 Under Sections 393.130 and 393.140, I  
24 believe that if the facts alleged by the unions and  
25 established through the hearing show that Ameren is

1 somehow failing to provide safe and adequate service,  
2 then the Commission certainly has authority to  
3 address those questions, those issues raised by the  
4 unions.

5                   If, in fact, the facts establish that in  
6 some way Ameren is failing to comply with Chapter 23,  
7 for instance, that has to do with the infrastructure  
8 standards and the vegetation management standards,  
9 then I believe the Commission has authority to take  
10 action.

11                   The question then becomes whether the  
12 recommendations posed by the unions in their  
13 testimony are the appropriate remedy or whether there  
14 is some other remedy that the Commission should  
15 order. That's all I have.

16                   JUDGE WOODRUFF: All right. Thank you.  
17 All right. Let's go with the first witness which on  
18 my list here is Mr. Desmond.

19                   (The witness was sworn.)

20                   (EXHIBIT NO. 901 WAS MARKED FOR  
21 IDENTIFICATION BY THE COURT REPORTER.)

22                   JUDGE WOODRUFF: Thank you. You may  
23 inquire.

24 DIRECT EXAMINATION BY MR. EVANS:

25                   Q. Are you the same David Desmond who

1 caused testimony to be filed in this matter?

2 A. Yes, I am.

3 Q. Do you have any corrections to that  
4 testimony?

5 A. I don't believe I do at this time, no.

6 Q. Okay. And if I would ask you the same  
7 questions today as were posed in your testimony,  
8 would you -- your answers be the same?

9 A. Yes, they would.

10 Q. And are those answers correct to the  
11 best of your knowledge, information and belief?

12 A. At that time, yes -- that we talked,  
13 yes.

14 MR. EVANS: Okay. At this point I would  
15 offer Mr. Desmond's testimony as Union Exhibit 901  
16 and tender him for cross-examination.

17 JUDGE WOODRUFF: Exhibit 901 has been  
18 offered. Is there any objection to its receipt?

19 (NO RESPONSE.)

20 JUDGE WOODRUFF: Hearing none, it will  
21 be --

22 MR. FISCHER: Judge, just subject to the  
23 relevancy objection we raised in our motion to  
24 strike, I don't have any other objections.

25 JUDGE WOODRUFF: All right. And once

1 again, those objections will be overruled and the  
2 exhibit will be received.

3 (EXHIBIT NO. 901 WAS RECEIVED INTO  
4 EVIDENCE AND MADE A PART OF THE RECORD.)

5 JUDGE WOODRUFF: Cross-examination?  
6 Any party other than Ameren wish to cross at this  
7 point?

8 MR. REED: I have a few questions,  
9 Judge.

10 JUDGE WOODRUFF: For Staff, then.

11 CROSS-EXAMINATION BY MR. REED:

12 Q. Mr. Desmond, my name is Steve Reed. I'm  
13 the attorney for Staff. Good morning.

14 A. Good morning.

15 Q. You are the business manager of the  
16 International Brotherhood of Electrical Workers Local  
17 No. 2; is that correct?

18 A. That is correct.

19 Q. You refer to that as the IBEW No. 2  
20 sometimes?

21 A. Yes.

22 Q. All right. As I understand it from your  
23 testimony, IBEW 2 workers with Ameren are primarily  
24 linemen; is that right?

25 A. Yes. I have some service workers that

1 are out in this area, work gas, and some warehouse  
2 people.

3 Q. What do the service workers do?

4 A. They maintain service to the linemen and  
5 that. They, I guess, basically just work in the  
6 warehouses.

7 Q. Okay. Can you tell us how many IBEW  
8 No. 2 workers are direct employees of AmerenUE?

9 A. I can't give you a direct -- an exact  
10 amount, but I'd say it's around 400.

11 Q. Okay. And then I think in your  
12 testimony, you referred to a number of IBEW workers  
13 who worked for AmerenUE contractors?

14 A. That is correct.

15 Q. Do you know that number?

16 A. An exact amount, no, but it's around  
17 five to 600.

18 Q. Okay. Five to 600.

19 A. That's -- that's in the line  
20 construction side. Now, I've got line clearance with  
21 about the same amount on that side too.

22 Q. Okay. So -- so fill me in. I mean,  
23 explain that for me.

24 A. Well, we have line clearance for the  
25 tree trimmers that --

1 Q. Okay.

2 A. -- cut the vegetation and that to keep  
3 the lines clear, and then I've got linemen who work  
4 on the lines.

5 Q. All right. And those are -- those  
6 are -- those are with the outside contracts?

7 A. Both of them, yes.

8 Q. All right. When we -- when we talk  
9 about linemen, are we talking about what you referred  
10 to as the distribution techs also?

11 A. Yes.

12 Q. Okay. Now, you claim in your testimony  
13 that Ameren has cut its internal workforce to the  
14 point that it cannot cover its sustained workload; is  
15 that your claim?

16 A. That's the impression that we have from  
17 seeing what we see. The workforce has been downsized  
18 through attrition. There's no -- been no layoffs,  
19 but they've been having a hard time getting more  
20 linemen to come back to work for them to fill those  
21 voids. I don't know -- for some reason they haven't  
22 produced -- been able to produce enough apprentices  
23 into journeymen to cover the workloads.

24 Q. Okay. So they're going to outside  
25 contractors?

1 A. Yes.

2 Q. All right. You refer in your testimony  
3 to a company called ADB. What is that?

4 A. It's a directional boring company out of  
5 St. Louis that has done -- primarily done a lot of  
6 underground work for Ameren.

7 Q. Are -- are you -- in your position, are  
8 you familiar with the quality of some of the work  
9 that ABD -- ADB has done?

10 A. Yes.

11 Q. And how are you familiar?

12 A. Gone around and seen some of it. I've  
13 heard testimony -- or statements from some of the  
14 linemen that have gone out and worked after them and  
15 some of the stuff they've had to fix.

16 Q. And what you've seen -- and I guess in  
17 your -- in your testimony you claim that some of the  
18 work quality by ADB is low?

19 A. Yes.

20 Q. Can you give us an example?

21 A. Conduits too shallow, coming up in the  
22 wrong places in the transformer vaults and having to  
23 be moved into the right place, things like that.

24 Q. Okay. Does that -- do those things need  
25 to be corrected?

1 A. Oh, yes.

2 Q. By whom?

3 A. By the -- by Ameren or somebody.

4 Q. Okay.

5 A. I mean, it should be -- the standard is  
6 three foot deep for primary cable, so it needs to be  
7 three foot deep. And if there's a reason that it's  
8 not, it's usually because of solid rock and then they  
9 make other amends to make it safe.

10 What I've seen on some of the stuff that  
11 they had done in the past is they were shallow and it  
12 was not encased in concrete, so it was a -- a  
13 potential hazard.

14 Q. All right. All right. Are there any  
15 other examples of the ADB work you can give me?

16 A. Pads not level, you know.

17 Q. Pads -- pads not level?

18 A. Yeah.

19 Q. What do you mean?

20 A. Transformer pads -- you set a  
21 transformer on a pad, it's a concrete pad, and it  
22 needs to be set level so when you put the  
23 transformer, it sets level so the oil sets level and  
24 everything inside it stays pretty safe.

25 Q. Okay.

1           A.       So if a pad's off, the oil runs to one  
2 side and you expose some of the internal workings of  
3 the transformer.

4           Q.       And that will have to be fixed as well?

5           A.       It should be, yes.

6           MR. REED: All right. That's all.

7 Thank you.

8           JUDGE WOODRUFF: AmerenUE, then?

9 CROSS-EXAMINATION BY MR. FISCHER:

10          Q.       Good morning, Mr. Desmond. My name is  
11 Jim Fischer and --

12          A.       Good morning.

13          Q.       -- I'm outside counsel with Ameren. I  
14 have just a few questions I'd like to address based  
15 on your direct testimony.

16          A.       Okay.

17          Q.       I think you answered in a question to  
18 Mr. Reed that you're the business manager of IBEW  
19 No. 2, correct?

20          A.       That's -- that is correct.

21          Q.       And if I understand your testimony, you  
22 represent approximately 900 members who are both  
23 permanent employees of Ameren as well as  
24 subcontractors or outside contractors; is that right?

25          A.       That's correct.

1 Q. On page 1 of your testimony at about  
2 lines 14 through 15 there, you see that reference?  
3 You say, "Accordingly, most of IB -- IBEW 2's members  
4 are working as subcontractors for Ameren"; is that  
5 right?

6 A. Yes.

7 Q. And I believe you indicated -- and I  
8 wasn't clear on the numbers there. Are you saying  
9 that you have about 600 members that are  
10 subcontractors that are members of your union?

11 A. That are working for a subcontractor,  
12 yes.

13 Q. Okay. Does that mean that you have  
14 about 300 that are in-house employees of Ameren that  
15 are members of your union?

16 A. Roughly, maybe a few more.

17 Q. Okay.

18 A. I don't know the exact number because I  
19 know they've hired a few people since this  
20 testimony's been out.

21 Q. Do you believe that your members are  
22 well qualified and well trained to perform the jobs  
23 that they're doing at Ameren?

24 A. Yes, I do.

25 Q. And I believe that on page 2 at line 16

1 through 18, you state there that, "The subcontracting  
2 of the daily line distribution work is going to  
3 IBEW 2 members who are trained and certified by the  
4 U.S. Department of Labor"; is that right?

5 A. At this -- at this time, yes.

6 Q. Would that include both IBEW 2 members  
7 who are permanent employees of Ameren as well as  
8 those that are working for subcontractors of Ameren?

9 A. Yes.

10 Q. Okay.

11 A. If -- if they're working for a  
12 subcontractor as a lineman, they've gone through a  
13 linemen's program through an apprenticeship which is  
14 about a four-year apprenticeship in order to become a  
15 journeyman lineman. And then that's whenever they  
16 become qualified, and they work on the --

17 Q. Could you elaborate for the Commission  
18 on how that process works?

19 A. It's a training process where they go to  
20 school on weekends and they have on-the-job training  
21 and they have to go through certain steps. They have  
22 to get so many hours of certain training of live line  
23 distribution, they have to get so many hours of  
24 transmission work, so many hours of substation  
25 underground. So they have to have the training in

1 all these aspects that Ameren has.

2 Q. Is it correct to conclude that you  
3 believe that the IBEW 2 members are well trained and  
4 certified to do their jobs with Ameren?

5 A. Yes, I am.

6 Q. And this would include both the  
7 permanent employees as well as the employees that  
8 work for the subcontractors?

9 A. That is correct.

10 Q. Okay. And in your opinion, do the  
11 IBEW 2 members generally work efficiently and perform  
12 their respective jobs well?

13 A. Yes, they do.

14 Q. And again, that would include those that  
15 are working for subcontractors; is that correct?

16 A. That is correct.

17 Q. Do your members have a generally good  
18 safety record?

19 A. Yes, they do.

20 Q. And that, again, would include those  
21 that work for both the in-house as well as the  
22 subcontractors?

23 A. Yes, sir.

24 Q. And I believe you -- you indicated to  
25 Mr. Reed that you represent journeymen linemen; is

1 that right?

2 A. Yes, sir.

3 Q. Are you familiar with the fact that  
4 AmerenUE is offering a hiring bonus of \$15,000 for  
5 persons who can qualify to be a journey lineman?

6 A. Yes, I am.

7 Q. Do you think this signing bonus is a  
8 reasonable program to help attract journeymen linemen  
9 to AmerenUE?

10 A. I think it's a start.

11 Q. Is it true that from your perspective  
12 that Ameren has had trouble attracting enough  
13 journeymen linemen to fill all the open positions at  
14 Ameren?

15 A. Yes.

16 Q. And do your members also have the  
17 opportunity to receive some incentive compensation if  
18 they achieve their performance guidelines?

19 A. No. We get paid by the hour.

20 Q. You don't have any incentive  
21 compensation as a part of your package?

22 A. Well, a safety incentive bonus.

23 Q. Okay. Do you believe that Ameren's  
24 incentive compensation plan for union workers is  
25 reasonable and necessary as a part of your

1 compensation package?

2 A. Well, I don't know if it's necessary  
3 because the type of work that we're doing needs to be  
4 done safely; otherwise, you don't go home. So I  
5 think that's pretty much incentive enough right  
6 there. But anything to make the people, I guess, be  
7 more conscious of what they're doing is a good thing.

8 Q. Is it correct to conclude that you  
9 believe that your compensation package for your  
10 members should be fair and reasonable?

11 A. Yes.

12 Q. Would it also be correct to indicate  
13 that you believe your members' compensation packages  
14 should actually be improved?

15 A. Yes, I do.

16 MR. FISCHER: I think that's all the  
17 questions I have. Thank you very much.

18 JUDGE WOODRUFF: All right. We'll come  
19 up for questions from the Bench, then. Commissioner  
20 Murray?

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Good morning.

23 A. Good morning.

24 Q. I just have a few questions for you.

25 You indicated that the work by ADB was not adequate.

1 Do you have any direct evidence of that? In other  
2 words, where you -- you yourself have directly  
3 observed --

4 A. I have seen some shallow conduits and  
5 things like that, yes.

6 Q. And you have -- have you given that as  
7 evidence in terms of time, place --

8 A. No, I don't have any of that, no.

9 JUDGE WOODRUFF: If I could interrupt  
10 for a moment. If the witness would move the  
11 microphone closer --

12 THE WITNESS: Oh, I'm sorry.

13 JUDGE WOODRUFF: -- to your mouth.  
14 We're having a hard time hearing.

15 THE WITNESS: Okay. No, I don't have  
16 any physical evidence, if that's what you're asking  
17 for.

18 COMMISSIONER MURRAY: I think that's all  
19 I have. Thank you.

20 THE WITNESS: Thank you.

21 JUDGE WOODRUFF: Commissioner Jarrett?

22 QUESTIONS BY COMMISSIONER JARRETT:

23 Q. Good morning, Mr. Desmond.

24 A. Good morning.

25 Q. I have just a few questions. There was

1 some testimony earlier in hearings about, you know,  
2 the recent ice storms and how Ameren had crews from  
3 all over the country coming in to work on restoring  
4 power.

5 A. Right.

6 Q. Does the IBEW get calls --

7 A. Yes.

8 Q. -- to go out --

9 A. Yes. Whenever --

10 Q. -- whenever there's storms?

11 A. When something like that happens, they  
12 pretty much blanket the country for -- looking for  
13 anybody available to come and help.

14 Q. So that's a fairly common occurrence  
15 for --

16 A. Yes.

17 Q. -- your folks to do that? Does that  
18 ever affect Ameren's ability to provide service?

19 A. Not that I know of. They only allow so  
20 many people to go, and they keep -- make sure they  
21 keep a workforce back to maintain their system.

22 Q. Okay. You know, on behalf of your --  
23 the workers that you represent, I appreciate your  
24 testimony. Is there anything else you'd like this  
25 Commission to consider in this case?

1           A.       I don't believe so. As long as, you  
2 know -- I'd like to make a little statement, I guess.

3                    You know, we all know that it costs  
4 money to -- to do things these days, and as long as  
5 Ameren's willing to put this into their system and  
6 that, I think they should get a rate increase as long  
7 as they're -- continue doing what they're doing with  
8 their system. Because, you know, with the cost of  
9 everything going up, I think current -- current  
10 costs, that's -- they're going to have to find it  
11 somewheres [sic] to increase. So that's all I've got  
12 to say about it.

13                   COMMISSIONER JARRETT: All right. Well,  
14 thank you, Mr. Desmond. I appreciate your testimony.  
15 I have no further questions.

16                   JUDGE WOODRUFF: Commissioner Gunn?

17 QUESTIONS BY COMMISSIONER GUNN:

18           Q.       Good morning, Mr. Desmond.

19           A.       Good morning.

20           Q.       I just have some clarifying questions.  
21 You mentioned three different categories of workers  
22 that you have in IBEW, and I'll say them: Direct  
23 employees of Ameren which you said were about 400; is  
24 that right?

25           A.       Roughly.

1 Q. And then you mentioned contractors and  
2 then line clearance folks. And those are separate  
3 categories?

4 A. Yes.

5 Q. How -- I thought you said that there  
6 were about five to 600 contractors that you  
7 represent.

8 A. Yes -- or -- and -- and probably about  
9 another 400 trimmers, so it's about 1,000 right there  
10 in construction.

11 Q. Okay.

12 A. The numbers have changed somewhat. They  
13 fluctuate a little bit, but that's pretty close to  
14 what it is.

15 Q. So that's about four -- four -- a total  
16 of 1,400 folks that you represent if you take that --  
17 or you --

18 A. It's closer to 1,300.

19 Q. 1,300. Okay. Now, in terms of -- of --  
20 of contract, are the -- are the direct employees  
21 covered by a single contract?

22 A. Yes.

23 Q. And when does that expire?

24 A. '11, I think.

25 Q. 2011?

1           A.       No, it's a little longer than that. I  
2 don't know the exact date. I know it was --

3           Q.       But it's not --

4           A.       -- a five-year contract.

5           Q.       It's not coming up any time -- any time  
6 soon?

7           A.       No. It will be another three years.

8           Q.       And are the contractors in line -- the  
9 clearance folks covered under a separate agreement?

10          A.       Yes.

11          Q.       And when does -- do you know when that  
12 expires?

13          A.       We're working on that right now.

14          Q.       Okay. So you're currently --

15          A.       Yes, that contract expires January 1.

16          Q.       Okay. Now, the -- the -- the folks that  
17 work for the subcontractors, those are included in  
18 that --

19          A.       Yes.

20          Q.       -- in those groups, so their contracts  
21 are -- are --

22          A.       It's a separate contract also.

23          Q.       It is a separate contract?

24          A.       Yes.

25          Q.       Okay. And do you know when that --

1           A.       That expires in three years.

2           Q.       Three years.  Okay.  So that's -- and  
3 I'm assuming -- does ADB have any union workers or is  
4 it all nonunion?

5           A.       It's all nonunion at this time.

6           Q.       Okay.  And just to clarify, you -- you  
7 say the union folks have been -- have been downsized  
8 because of attrition mostly?  No layoffs, but that  
9 has been reduced?

10          A.       Correct.

11          Q.       Now, are the people that are being  
12 replaced, are they -- are they nonunion or are they  
13 union subcontractors?

14          A.       Well, it was nonunion and now it's -- we  
15 have gone out and -- when it rebid the last time, the  
16 union contractors got it --

17          Q.       Okay.  All right.

18          A.       -- as far as the ADB work which is the  
19 underground work.  The overhead work has always been  
20 done union.

21          Q.       Always union.  All right.  Okay.  Are --  
22 the lack of apprentices, the lack of people that are  
23 coming in, I know unions have active recruiting  
24 programs all the time.

25          A.       Yes.

1           Q.       Does the company have -- other than  
2 the -- other than the hiring bonus, do they  
3 actively -- do they work with you in order to bring  
4 people into the apprentice program?

5           A.       Yes, to a degree.

6           Q.       Would you like to see more of it?

7           A.       Yes.

8                    COMMISSIONER GUNN:  Okay.  I think  
9 that's all I have.  Thank you for your -- your time.  
10 Thanks for coming down.

11                   THE WITNESS:  You're welcome.

12                   JUDGE WOODRUFF:  Chairman Davis?

13                   CHAIRMAN DAVIS:  No questions, but  
14 appreciate it.  We're mindful of your testimony.

15                   THE WITNESS:  Thank you.

16                   JUDGE WOODRUFF:  All right.  Any recross  
17 based on questions from the Bench?

18                   MR. CONRAD:  I just have possibly one or  
19 two.

20                   JUDGE WOODRUFF:  Okay.  For Noranda.

21 RE-CROSS-EXAMINATION BY MR. CONRAD:

22           Q.       You -- in response to Commissioner  
23 Gunn's question about categories of workers, and you  
24 mentioned contractors and direct employees, are you  
25 familiar with the term "troubleman"?

1           A.       Yes, I am.

2           Q.       Could you very quickly, briefly  
3 distinguish between a troubleman and -- well, first  
4 of all, let me strike that. Are those folks part of  
5 your bargaining unit?

6           A.       Yes, they are.

7           Q.       Okay. Would you distinguish briefly for  
8 me the difference in function between someone who is  
9 a troubleman or -- and someone who is a journeyman  
10 lineman?

11          A.       Well, a troubleman has to start out as a  
12 journeyman lineman, and then that's a bid position.  
13 And after you've had so many years experience, then  
14 you're able to bid into that position. And a  
15 troubleman goes around by himself and locates  
16 trouble. If he can fix it, he fixes it. If he  
17 can't, he calls in a crew.

18                   And he does a number of other things  
19 during the day for the company whenever he doesn't  
20 have anything that is pressing as far as outages.  
21 He's usually the first person to an outage and he  
22 assesses it. If he can fix it, he does. If he  
23 can't, then they call crews and they go from there.  
24 But he's usually the most experienced guy on the job.

25          Q.       So he -- would I be correct, then, that

1 that's kind of the higher echelon?

2 A. Yes, it is.

3 Q. Now, is -- going back to Commissioner  
4 Gunn's question, are those -- any of those folks  
5 being contracted out or are they direct employees?

6 A. No, they're direct employees.

7 MR. CONRAD: Thank you, Judge.

8 JUDGE WOODRUFF: Any other recross?

9 (NO RESPONSE.)

10 JUDGE WOODRUFF: Any redirect?

11 MR. EVANS: No.

12 JUDGE WOODRUFF: All right. You can  
13 step down.

14 THE WITNESS: Thank you.

15 JUDGE WOODRUFF: And I believe the next  
16 witness is Mr. Walter.

17 (The witness was sworn.)

18 JUDGE WOODRUFF: Thank you. You may  
19 inquire.

20 (EXHIBIT NO. 902 WAS MARKED FOR  
21 IDENTIFICATION BY THE COURT REPORTER.)

22 DIRECT EXAMINATION BY MR. EVANS:

23 Q. Are you the same Mike Walter who caused  
24 testimony to be filed in this matter?

25 A. Yes, I am.

1           Q.     Do you have any corrections to that  
2 testimony?

3           A.     No.

4           Q.     If I asked you the same questions today  
5 as were presented in your testimony, would your  
6 answers be the same?

7           A.     Yes.

8           Q.     And are those answers correct to the  
9 best of your information, knowledge and belief?

10          A.     Yes, other than a little fluctuation in  
11 numbers probably from the time of that testimony till  
12 today.

13          Q.     Would you like to address that?  Would  
14 you like to address those fluctuations in the  
15 numbers?

16          A.     Possibly an apprenticeship program, as  
17 Mr. Desmond testified, the ups and downs in the  
18 contractors, things of that nature.

19                   MR. EVANS:  Okay.  At this point I will  
20 offer Mr. Walter's testimony as being Exhibit 902 and  
21 tender him for cross-examination.

22                   JUDGE WOODRUFF:  Okay.  902 has been  
23 offered.  Are there any objections to its receipt?

24                   MR. FISCHER:  Judge, just subject to the  
25 objection of relevancy that we raised yesterday, I

1 have no other objections.

2 JUDGE WOODRUFF: All right. And again,  
3 the objection is overruled and the testimony is  
4 received into evidence.

5 (EXHIBIT NO. 902 WAS RECEIVED INTO  
6 EVIDENCE AND MADE A PART OF THE RECORD.)

7 JUDGE WOODRUFF: Any cross? Mr. Reed.  
8 CROSS-EXAMINATION BY MR. REED:

9 Q. Mr. Walter, my name is Steve Reed. I  
10 represent the Staff this morning. Good morning.

11 A. Good morning.

12 Q. You're the business manager of the  
13 International Brotherhood of Electrical Workers,  
14 Local 1439, correct?

15 A. Correct.

16 Q. In your testimony you claim that  
17 Ameren's use of outside contractors leads to  
18 inefficiency, right?

19 A. That is correct.

20 Q. And I think you lay out a number of ways  
21 in which you believe inefficiency takes place?

22 A. Correct.

23 Q. Do you -- do you claim that the use of  
24 outside contractors by Ameren somehow jeopardizes  
25 Ameren's ability to provide adequate service to its

1 customers?

2           A.       That is a difficult question, whether it  
3 is adequate or not. I think it is -- is -- I think  
4 it could be in some cases, possibly -- could possibly  
5 be inadequate.

6           Q.       Can you -- Mr. Walter, can you give me  
7 any examples of ways in which you believe that --  
8 that the use of the outside contractors may lead to  
9 inadequate service?

10          A.       Inadequate -- and I'm -- I want to  
11 just -- don't know if you're trying to distinguish or  
12 if there's any -- if we can distinguish adequate as  
13 to efficiency. I think, you know, we don't go around  
14 and inspect what the contractors do, whether it be  
15 union or nonunion.

16                    In the opinion of 1439, the -- the --  
17 there is some inefficiency when you have such a  
18 turnkey-type approach, and that comes in a variety of  
19 ways. And again, we're not out there on each and  
20 every job, but we do, in our own reports from our  
21 members and from some observation, believe that  
22 there's -- there's -- there's some inefficiency when  
23 you have that type of management approach.

24          Q.       What do you mean by the "turnkey  
25 approach"?

1           A.       When you have a particular job or a  
2 group of jobs and you simply turn it over to the  
3 contracting company to -- to handle the total  
4 management of that job, whether it be the amount of  
5 staffing necessary for it, the amount of equipment,  
6 the material that's used, the monitoring of that  
7 equipment, the management of that contractor by  
8 Ameren, we have some difficulty in understanding how  
9 that is an efficient process.

10          Q.       Do you have any experience with  
11 observing any of the work done by outside contractors  
12 after it's completed?

13          A.       Not after it's completed, no.

14          Q.       How about during the time it's being  
15 done?

16          A.       Occasionally going out on a job, we've  
17 had a report that possibly -- in most cases when it's  
18 something that we believe could possibly be an unsafe  
19 condition. And I can tell you that it's mostly -- on  
20 every occasion that we have been reported, it's been  
21 involving ADB where we've had someone go out, take a  
22 look at the job and from time to time call the  
23 company and notify them that we believe that this is  
24 something that's being done. It's against what we  
25 believe is a safe work practice.

1                   Reports of what we -- what we -- or our  
2 opinion, I guess, is that is in overmanning of a job,  
3 equipment that's out there that -- that it -- if it  
4 was -- if it was assigned to an internal workforce,  
5 the amount of equipment wouldn't be the same, the  
6 amount of manpower wouldn't be the same.

7                   So at the end of the day, was that  
8 really a more efficient process or would you have  
9 been able to do it more efficiently doing it in-house  
10 with your own standards and your own management.

11           Q.       And less costly, cheaper?

12           A.       That is -- that is our opinion.

13           Q.       All right. You heard Mr. Desmond  
14 testify about some of the work that he'd seen with  
15 ADB, didn't you?

16           A.       Yes.

17           Q.       Did you have any other examples you  
18 could provide to us?

19           A.       No, I don't.

20                   MR. REED: All right. Thank you.

21                   JUDGE WOODRUFF: All right. Cross by  
22 Ameren?

23 CROSS-EXAMINATION BY MR. FISCHER:

24           Q.       Good morning, Mr. Walter. My name is  
25 Jim Fischer and --

1 A. Hi.

2 Q. -- I'm representing the company in this  
3 case. Just got a couple questions regarding your  
4 direct testimony. As I understand it, you represent  
5 approximately 833 members who are permanent employees  
6 of Ameren; is that correct?

7 A. That's pretty accurate.

8 Q. Okay. And on page 6 of your testimony,  
9 you indicate that, "As I stated at the outset, we  
10 believe that a rate increase for Ameren is necessary  
11 and appropriate." Is that still true?

12 A. That is correct.

13 Q. And then later in answer on lines 10  
14 through 16, you go on to state, "We also feel,  
15 however, that Ameren should be required to expend  
16 that rate increase in a manner that will ensure  
17 long-term efficiency and quality of service.

18 "To accomplish that end, we ask the  
19 Commission to require Ameren to expend a substantial  
20 portion of the rate increase on investing in its  
21 employee infrastructure: Hiring, training and  
22 utilizing its internal workforce to maintain its  
23 normal and sustained workload"; is that right?

24 A. That is correct.

25 Q. Is it correct to conclude from your

1 testimony that you believe the Commission should  
2 direct Ameren's management to hire, train and utilize  
3 more of your union members for its internal  
4 workforce?

5 A. I wouldn't state it the way you just  
6 stated it. I believe in my -- my testimony there,  
7 what I'm -- what I'm trying -- the point I'm trying  
8 to make is that this industry has created a monster  
9 in itself. They have not trained employees,  
10 qualified employees across the country to continue to  
11 do the normal, sustained work of an investor-owned  
12 utility.

13 I believe that's something that probably  
14 started in the '90s when they prepared for  
15 deregulation. And -- and we found ourselves in this  
16 dilemma where Ameren as well as the union contractors  
17 are struggling to keep up with just the attrition  
18 levels, nonetheless try to beef up staffing to really  
19 meet customers' demands and -- and to keep the system  
20 maintained.

21 Q. But sir, would -- aren't you essentially  
22 saying, though, in your testimony you'd like to see  
23 more of the -- the in-house folks hired by Ameren  
24 that would be part of the union and part of -- to  
25 train folks that -- that you work with?

1           A.       I think ultimately that's -- that's what  
2 Ameren and all the utilities should be striving for,  
3 I guess.

4           Q.       Okay. Does your local represent any  
5 workers who work for subcontractors that are employed  
6 by Ameren?

7           A.       No.

8           Q.       Okay. On page 2 of your testimony at  
9 about line 19, you say that, first, "Ameren has  
10 historically used outside contractors that present  
11 time-sensitive emergency conditions when its internal  
12 workforce is otherwise overloaded or when the work  
13 requires specialized training or equipment beyond  
14 what is available with the internal workforce. My  
15 testimony today does not pertain to this use of  
16 outside contractors"; is that right?

17          A.       Would you repeat that for me, please? I  
18 don't have it in front of me, so --

19          Q.       Oh, okay. Yeah, I was just asking you  
20 about your reference in your testimony where you say  
21 that -- that Ameren has historically used outside  
22 contractors in emergency situations like storms, and  
23 that your testimony -- you're not objecting to the  
24 use of outside contractors in that situation?

25          A.       Absolutely not, no.

1 Q. Okay. Ameren often has to hire a large  
2 number of outside folks in those storm situations; is  
3 that right?

4 A. That's correct.

5 Q. And you don't have any complaints about  
6 their use of those folks in those situations?

7 A. No, no, I do not. However, I would like  
8 to state, though, that -- that I think that this use  
9 of contractors as well as assistance from other  
10 utilities in storm situations has increased to a  
11 level that's -- it should be beyond acceptable, in my  
12 opinion.

13 We -- we find ourselves -- and I  
14 would -- I would -- I would guess that Ameren's  
15 involved in some type of reciprocating agreements  
16 with other utilities which can be good. It can be  
17 good for the customer because you're not staffing as  
18 high, but nevertheless, you're now becoming more and  
19 more dependent on the assistance of other utilities  
20 who may also be in the storm conditions and  
21 contractors, just as Mr. Desmond said, that, you  
22 know, may be required to stay on this property but  
23 they may -- they may be able to travel on as well,  
24 so --

25 Q. Is it -- is it your understanding,

1 Mr. Walter, that Ameren also provides similar  
2 services to other utilities whenever they have  
3 emergency situations like that?

4 A. That's correct. That's what I'm  
5 referring to.

6 Q. Okay. Now, is one of your  
7 responsibilities as the business manager for IBEW  
8 1439 to encourage membership in your union?

9 A. Sure, certainly.

10 Q. Okay. It doesn't include managing the  
11 workforce of AmerenUE, though, does it?

12 A. No. There's a management's right clause  
13 and they have that right.

14 Q. Okay. Do you believe that it's the  
15 responsibility of this Commission to manage the  
16 workforce of AmerenUE?

17 A. No.

18 Q. And as a part of your preparation, were  
19 you given a copy of the list of issues in this case  
20 by chance, the union issues that were raised?

21 A. No. Other than my testimony, I'm not  
22 familiar with union issues.

23 Q. Okay. And you're not trained as an  
24 attorney; is that right?

25 A. No.

1 Q. Okay. So you're not in a position to  
2 give a legal opinion about what the authority of this  
3 Commission would be regarding these union issues?

4 A. No, I certainly don't.

5 MR. FISCHER: Okay. That's all I have.  
6 Thank you very much.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: All right. Questions  
9 from the Bench. Commissioner Murray?

10 COMMISSIONER MURRAY: I don't believe I  
11 have any. Thank you, Judge.

12 JUDGE WOODRUFF: Thank you.  
13 Commissioner Jarrett?

14 QUESTIONS BY COMMISSIONER JARRETT:

15 Q. Yes. Good morning, sir.

16 A. Good morning.

17 Q. I just had one question. You were here  
18 when Mr. Desmond testified earlier?

19 A. Uh-huh.

20 Q. And I think in response to one of my  
21 questions, he indicated that in his opinion, Ameren  
22 wasn't jeopardizing service when they let other  
23 workers go to help other utilities in storm or  
24 emergency situations because they only let so many go  
25 and they kept an adequate staff here to handle their

1 needs. And I want to make sure, do you -- do you  
2 disagree with that?

3 A. I'm not real sure of exactly what Dave  
4 was saying -- Mr. Desmond was saying in that respect.  
5 I'm not sure that he was referring to the contractors  
6 being held back to stay on Ameren's property or that  
7 Ameren has the right to determine whether or not they  
8 can release their own workforce to go out on a storm.  
9 So I really -- I really can't answer that.

10 Q. Okay. Well, what is your opinion? Do  
11 you think they have adequate staff in those  
12 situations?

13 A. As far as their own workforce, yes.  
14 They always hold back -- they'll hold back everybody  
15 if they -- and if they can release, they'll release  
16 some. A lot of that depends on the -- the storm  
17 situations, what our -- what our predicament is,  
18 possibilities are.

19 As far as contractors, I really don't  
20 know how they do that. I don't know how they -- what  
21 the method is or philosophy on that, so...

22 Q. All right. And you're aware of some of  
23 Ameren's programs to improve reliability that have  
24 been part of this hearing?

25 A. Sure.

1           Q.       How do you think -- how successful do  
2 you think those efforts have been so far?

3           A.       Personal opinion, I think the vegetation  
4 has been a great thing. I think -- I think the  
5 inspection programs that have been mandated by, I  
6 guess, this -- this Commission as far as the overhead  
7 and the underground system has been a great thing for  
8 the customers. I think it is -- it was due and it  
9 needed to be done and that's a good thing.

10                   I think time will tell as to whether or  
11 not the reliability program that's going on right now  
12 is -- is going to pay dividends. My own opinion, I  
13 think there's a lot of underground cable that is  
14 overdue. Its life expectancy is at its limits, and  
15 there's a lot of new cable needs to be put in.

16                   I -- I don't know how much, and there's  
17 no way for me to know. I don't receive any reports  
18 on how much -- how many of the overhead lines are  
19 being put underground which has been a big concern.  
20 So I can't respond to that, and I think time will  
21 tell.

22           Q.       Okay. Now, I want to give you the same  
23 opportunity I gave Mr. Desmond. I appreciate your  
24 written testimony, but on behalf of your -- the  
25 workers that you represent, do you have anything else

1 you want this Commission to consider?

2 A. Yeah. I would like this Commission to  
3 consider the fact that -- and I'm not going to  
4 pretend to understand how these rate cases work.  
5 This is the first one I've been involved in.

6 But it's my understanding that it's --  
7 it's primarily based on what has been spent. And I  
8 believe that not only this Commission, but  
9 commissions across this country, hopefully understand  
10 that the utilities are in a situation where we have  
11 to also predict what needs to be spent to keep the  
12 systems in line and continue to keep them maintained  
13 and to meet the future needs.

14 I find that difficult to understand how  
15 you can do that, because if I was in -- on the other  
16 side of the table as management of Ameren, where do  
17 you -- where are you going to -- where are you going  
18 to shortcut things? How are you going to make this  
19 demand if you're only going to receive the money that  
20 you've spent? I find difficulty in that whole  
21 philosophy.

22 COMMISSIONER JARRETT: All right. Well,  
23 again, that's -- I guess that's why we get paid the  
24 big bucks to decide those issues. Well, Mr. Walter,  
25 thank you for being here and I appreciate your

1 testimony. Thanks.

2 JUDGE WOODRUFF: Commissioner Gunn?

3 COMMISSIONER GUNN: Thank you.

4 QUESTIONS BY COMMISSIONER GUNN:

5 Q. I was going to say I've been pretending  
6 to know how these rate cases work for the last nine  
7 months, so that's okay.

8 I just have a couple of quick questions.  
9 You have -- you said you have about 833 and they're  
10 all direct employees --

11 A. Correct.

12 Q. -- in -- in Local 1439?

13 A. Correct.

14 Q. What percentage of those would you say  
15 are about -- are five to ten years away from  
16 retirement?

17 A. Boy, I should know this too. But I  
18 think our average age of 1439 workforce is about 49,  
19 49 and a half.

20 Q. Okay. And -- and -- and I'm -- I  
21 apologize for not knowing this. What would you  
22 consider retirement? Is that 55, is it 60 or --

23 A. Used -- used to be about 55, 56. It's  
24 continually starting to climb just because of the  
25 economic situation. So it's -- it may be more

1 typical to see 58, 59 now.

2 Q. Are you replacing workers at the same  
3 rate that they're retiring into -- into the local,  
4 not necessarily at Ameren but into the -- into the  
5 local?

6 A. The last I looked at that, yeah, we  
7 were -- we were maintaining about the same level  
8 through retirement and attrition, and that's been  
9 going for several years. In my recordkeeping and my  
10 best estimation, we are not making any progress. We  
11 pretty much maintain.

12 And I know Ameren's got -- you know,  
13 exhausted a lot of effort to try to build that  
14 overhead line group which is -- the big primary  
15 concern in the industry is our overhead lines.  
16 There's a lot of other aspects and support groups  
17 involved in that, but across the board, we pretty  
18 much maintain the level just to keep up with  
19 attrition.

20 Q. Okay. And does -- does the union do  
21 ongoing training or certification for your workers?

22 A. Not 1439, we do not. It's all Ameren.

23 COMMISSIONER GUNN: All Ameren. Okay.

24 All right. Great. Thanks. That's all I have.

25 Thanks for your time.

1 THE WITNESS: Thank you.

2 JUDGE WOODRUFF: Any recross? Go ahead  
3 for Ameren.

4 MR. FISCHER: Just briefly.

5 RE-CROSS-EXAMINATION BY MR. FISCHER:

6 Q. In answer to Commissioner Jarrett, you  
7 indicated that you thought -- your personal opinion  
8 was that the vegetation program was a great thing. I  
9 was just wondering if you could elaborate on that.  
10 Why do you believe that?

11 A. It's the -- the consistent response I'm  
12 getting from our linemen in the field, that they  
13 believe that is probably the most effective thing  
14 that's gone on.

15 Q. And you had a similar comment about the  
16 inspection program. Why -- why do you believe that's  
17 been appropriate?

18 A. Because as the -- in the overhead  
19 system, for instance, I think it's created some  
20 priority system which has made sure, at least --  
21 least, again, in my opinion, I think we've better  
22 monitored poles that absolutely need to be replaced  
23 versus poles that we know are due to be replaced but  
24 we may be able to put them off. I think that has put  
25 more insistence on the company to get that done.

1                   The URD or underground system, I'm not  
2 aware of any inspection process that was ever there.  
3 And the underground system is, you know, probably  
4 40 years old now or more in some areas, but an  
5 average maybe 40 years old, and it's due for some  
6 inspection. Nobody's ever looking at it until now.

7           Q.       Okay. And then also in answer to  
8 Commissioner Gunn, I believe you indicated the  
9 average age of your union members was about 49 and a  
10 half. Can you give us a better understanding, are  
11 there a large number of folks around the 49-year age  
12 level or is it just that happens to be average?

13          A.       That probably is going to vary a little  
14 bit according to a work group.

15          Q.       Would you elaborate on that? Are  
16 there -- I guess one of the issues is, are we  
17 expecting a lot of retirements from the union here in  
18 the next ten years, do you believe?

19          A.       I think we are. I think Ameren's  
20 identified that as well as the IBEW has identified  
21 across the country that we've got a -- we do have a  
22 serious concern as far as this influx of retirements  
23 due to the baby boomer generation.

24                   And it's not -- as I said, it's not  
25 unique with Ameren, it's across the country. Every

1 utility is faced with this issue of what are we going  
2 to do to -- to respond to the next five or six years  
3 with retirements and things of that nature.

4 Q. And I believe you indicated in answer to  
5 Commissioner Gunn that -- that Ameren was, from your  
6 perspective, able to keep up with attrition but that  
7 was about all. They're not attracting a lot of new  
8 journeymen or other union members; is that right?

9 A. They're having difficulty with  
10 journeymen linemen.

11 Q. And is -- is that true even with that  
12 signing bonus, that \$15,000 signing bonus?

13 A. I think they've hired a couple recently,  
14 so maybe that's having some effect, I don't know.  
15 It's not having a great effect.

16 Q. Okay.

17 A. There's a shortage of linemen, so it's  
18 just not a -- it's just not going to happen quickly.

19 Q. Do you know if there's a shortage of  
20 other -- other union workers besides the journeymen?

21 A. Yes.

22 Q. Okay.

23 A. Yeah, technicians, things of that  
24 nature, skilled professions, communication  
25 technicians, relay technicians, distribution

1 technicians. Those type of jobs, you just don't find  
2 people that are qualified on the street to just walk  
3 in and hit the road running, so that's a problem all  
4 over.

5 MR. FISCHER: Okay. That's all I have.  
6 Thank you very much.

7 JUDGE WOODRUFF: Redirect?

8 MR. EVANS: No redirect.

9 JUDGE WOODRUFF: Mr. Walter, you can  
10 step down.

11 THE WITNESS: Thank you.

12 JUDGE WOODRUFF: And the next witness is  
13 Mr. Giljum.

14 (The witness was sworn.)

15 JUDGE WOODRUFF: You may inquire.

16 (EXHIBIT NO. 903 WAS MARKED FOR

17 IDENTIFICATION BY THE COURT REPORTER.)

18 DIRECT EXAMINATION BY MR. EVANS:

19 Q. Are you the same Don Giljum who caused  
20 testimony to be filed in this matter?

21 A. Yes, I am.

22 Q. Do you have any corrections to that  
23 testimony?

24 A. No, I do not.

25 Q. If I asked you the same questions today

1 as were posed in your written testimony, would your  
2 answers be the same?

3 A. Yes, they would.

4 Q. And are those answers true and correct  
5 to the best of your information --

6 A. Yes.

7 Q. -- knowledge and belief?

8 A. Yes, they are.

9 MR. EVANS: At that point, I would offer  
10 Mr. Giljum's testimony as Union Exhibit 903 and  
11 tender him for cross-examination.

12 JUDGE WOODRUFF: All right. Thank you.  
13 903 has been offered. Any objection to its receipt?

14 MR. FISCHER: Subject to the same  
15 objection of relevancy, I have no other objections.

16 JUDGE WOODRUFF: Okay. Once again, that  
17 objection is overruled and the exhibit will be  
18 received into evidence.

19 (EXHIBIT NO. 903 WAS RECEIVED INTO  
20 EVIDENCE AND MADE A PART OF THE RECORD.)

21 JUDGE WOODRUFF: Do any of the parties  
22 wish to cross other than Ameren?

23 MR. CONRAD: I just had --

24 JUDGE WOODRUFF: Noranda.

25 MR. CONRAD: -- a couple of questions

1 for the gentleman, if I might.

2 CROSS-EXAMINATION BY MR. CONRAD:

3 Q. Mr. Giljum, my name is Stu Conrad.

4 I'm -- I'm here for Noranda. And there would be no  
5 reason you would know this, but a long, long time ago  
6 in a galaxy far, far away, I used to do some labor  
7 law. And when I had occasion to have contact with  
8 operating engineers --

9 A. Uh-huh.

10 Q. -- I found most of them to be operating  
11 heavy equipment and bulldozers and cranes and lifting  
12 arrangements.

13 A. Yes.

14 Q. And I was surprised to see that you have  
15 1,100 in your bargaining units in power plants.  
16 Could you just briefly -- and I truly mean briefly, I  
17 don't mean long --

18 A. Uh-huh.

19 Q. Explain to me what your -- your folks do  
20 in power plants.

21 A. Sure. In -- we're a stationary local  
22 union. The -- the operators are split into two  
23 sections: One is construction, hoisting and  
24 portable, the other is stationary engineers which are  
25 more industrial work groups.

1                   Our people in the plants operate and  
2 maintain all the power plants from the labor-type  
3 work. We used to do janitorial work, we do the actual  
4 physical operation of the turbines and the boilers, we  
5 maintain those. We have electricians, machinists,  
6 pipe fitters, welders, all of those people who repair  
7 the tubes, maintain the pumps, motors, all of that.

8           Q.       So it's a number of trades that you have  
9 within this --

10          A.       Yes. There's probably about 15 or 20  
11 different classification of trades that we represent  
12 within the power plants.

13                   MR. CONRAD: All right. Very well.  
14 Thank you, sir.

15                   THE WITNESS: Uh-huh.

16                   JUDGE WOODRUFF: Staff, then?

17                   MR. REED: Yes, thank you.

18 CROSS-EXAMINATION BY MR. REED:

19          Q.       Mr. Giljum, Steve Reed for the Staff.  
20 Good morning.

21          A.       Good morning.

22          Q.       Are there -- are there outside  
23 contractors, then, being hired to do some of the work  
24 that your members would otherwise do?

25          A.       Yes.

1           Q.       What -- what kind of work are the  
2 outside contractors being asked to do?

3           A.       They're doing pipefitting work, they're  
4 doing welding work, they're doing electrical work on  
5 a lot of the overhaul work. We used to do probably  
6 95 percent of all of our unit overhauls. And we had  
7 approximately 200 more people than we currently have  
8 that have performed that.

9                    The company elected a number of years  
10 ago to stretch those outages, those major overhauls  
11 out, and then virtually eliminated that organization,  
12 at least cut it down to about the 30 people that we  
13 currently have.

14          Q.       What do you mean by "stretch the  
15 overhauls out"?

16          A.       They used to overhaul their major units  
17 on a -- for the most part on an 18-month cycle, and  
18 now their major overhauls are being performed on  
19 anywhere from a short-term three years out to now it  
20 looks like it's going to be five or six years before  
21 we do Labadie and Rush Island now, just for example.

22          Q.       Are -- are any of the workers who are  
23 with the outside contractors, are any of them union  
24 that you know of?

25          A.       Most of those are union.

1 Q. Most of those. Okay. So it would be --  
2 the 1,100 workers who you represent in the Ameren  
3 power plants, are they all direct employees or are  
4 they both direct and outside contractors?

5 A. No. Those are all direct employees in  
6 that group. We represent at least contractors that  
7 do work at Ameren, very few. It would be in the  
8 specialty field of HVAC or mechanical-type work.

9 Q. Okay. I just want to be clear about the  
10 workers for the outside contractors. Some of them  
11 are union, correct?

12 A. Right, they're with the trades.

13 Q. They're with the trades?

14 A. The building trades, primarily, uh-huh.

15 MR. REED: Okay. That's all. Thanks.

16 JUDGE WOODRUFF: For AmerenUE?

17 MR. FISCHER: Just briefly.

18 CROSS-EXAMINATION BY MR. FISCHER:

19 Q. I'm Jim Fischer representing the  
20 company. I just had a couple questions regarding  
21 your testimony. On page 2 toward the bottom of the  
22 page, you state that, "Ameren has recently purchased  
23 the new training center for training generation  
24 personnel"; is that correct?

25 A. Yes, they have.

1           Q.       What kind of activities are going on  
2 there and do they involve your union?

3           A.       Well, there -- nothing's -- right now  
4 the only thing they're doing is setting it up. We're  
5 hoping to start doing some training by mid 2009, is  
6 what the goal is right now. But certainly because of  
7 the financial crunch and that, a lot of things are  
8 being delayed a little bit.

9           Q.       And what types of training activities  
10 will be happening then?

11          A.       Well, the training activities that will  
12 go on there will be those that will take basic  
13 journeyman-level people and then increase their  
14 skills to be able to perform the type of maintenance  
15 work that needs to be done in a power plant.

16                    The -- there's still a tremendous need,  
17 though, for that basic level. And we used to have a  
18 program where we took a person from no skills,  
19 entered the apprenticeship program that we had, a  
20 traditional program, and trained them all the way  
21 through that. That's been eliminated by Ameren.

22          Q.       From your perspective, is the purchase  
23 of that new training center a step in the right  
24 direction?

25          A.       Yes, it is.

1           Q.       And then you also go on to state in the  
2 next sentence that, "And Ameren has finally begun  
3 hiring employees to fill vacancies that existed for  
4 several years"; is that correct?

5           A.       Well, they started to, and now because,  
6 again, of the financial circumstances, they've kind  
7 of put -- slowed that down tremendously.

8           Q.       From your perspective, is it -- is it  
9 correct to conclude that you think that filling those  
10 positions is an appropriate action taken by Ameren?

11          A.       Yes, it is.

12          Q.       Mr. Giljum, is one of your  
13 responsibilities with Local 148 to take steps to  
14 encourage membership -- membership in your union?

15          A.       Sure.

16          Q.       It's not within your responsibilities,  
17 though, to manage the workforce; is that true?

18          A.       No.

19          Q.       Okay. And let's see. Do you believe  
20 it's within the authority of the Commission to manage  
21 that workforce? Do you have an opinion about that?

22          A.       Well, I don't know if it's within their  
23 authority, but I would certainly hope it's certainly  
24 subject to their scrutiny and oversight.

25          Q.       Okay. And you're not in a position to

1 give a legal conclusion about that authority, right?

2 A. No, I'm not.

3 MR. FISCHER: That's all I have. Thank  
4 you very much.

5 THE WITNESS: Uh-huh.

6 JUDGE WOODRUFF: Questions from the  
7 Bench, then? Commissioner Murray?

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Good morning.

10 A. Good morning.

11 Q. Just very briefly. Could you elaborate  
12 on the training programs that have been eliminated  
13 and the dates upon which they were eliminated?

14 A. Okay. The -- the -- we used to have  
15 apprenticeship programs that were generally anywhere  
16 from 36 months to 60 months in duration. The company  
17 eliminated all of those positions, and what they  
18 wanted was an expedited program. They believe  
19 that -- and this happened in 19 -- I'm going to say  
20 '96 is when they decided they were going to go this  
21 route.

22 All of those were eliminated. They  
23 believe that because of the reductions by a lot of  
24 other companies, they would be able to hire skilled  
25 craftsmen and that into the fields. Unfortunately,

1 that has not happened.

2                   Many of the people that they've hired  
3 since '96 that have gone into the crafts are not  
4 nearly as qualified as the people who had  
5 traditionally gone through the training programs.  
6 They're not accustomed to the type of work that we do  
7 in the powerhouses and the conditions that they're  
8 subject to. And amongst that group of people,  
9 there's been more of a turnover than the older  
10 worker.

11           Q.       And are those union workers?

12           A.       Yes, they're part of our -- our group,  
13 but again, without having the ability to train them  
14 to the extent that needs to be done, it's a problem.  
15 And they put in place then an expedited program where  
16 they would take somebody who had already had  
17 experience or training and they would test them.

18                   And if they passed the test, they could  
19 be considered a journeyman, for example, or they  
20 would be placed in school to complete their training.  
21 However, that particular school has never been  
22 established by the company to do that until recently.

23           Q.       So where did they get their further  
24 training?

25           A.       They didn't. It was just on-the-job.

1           Q.       All right.  So that -- that's what you  
2 were referring to when you said training has been  
3 eliminated?

4           A.       Yes, uh-huh.  Now, that's the craft  
5 training.  The operational training we've still had,  
6 but again, it becomes more and more difficult to  
7 train the people simply because of the shortage of  
8 manpower and the ability of the company to release  
9 people then from their duties in order to take the  
10 training.

11                   COMMISSIONER MURRAY:  Thank you.

12                   THE WITNESS:  Uh-huh.

13                   JUDGE WOODRUFF:  Commissioner Jarrett?

14                   QUESTIONS BY COMMISSIONER JARRETT:

15           Q.       Good morning, Mr. Giljum.  How are you?

16           A.       Good morning.

17           Q.       Just a couple of questions.  Is it your  
18 testimony that in the power generating plants that  
19 Ameren is not operating safely due to the inadequate  
20 staffing levels?

21           A.       I certainly think they could do a much  
22 better job and operate them much more safely with a  
23 better staffing level.  I think that's evident from  
24 some of the things that have happened over the past  
25 several years.

1 Q. And could you elaborate on those, some  
2 examples?

3 A. Well, I think one was the Venice power  
4 plant when it exploded and the operating condition it  
5 was in and the fact that they were not maintaining it  
6 the way they needed to and they had reduced the  
7 staffing there to the point that, you know, it just  
8 was neglected, causing an explosion, and then  
9 ultimately a conversion to a much more expensive  
10 operation and -- a gas turbine operation.

11 And then, of course, the Taum Sauk  
12 incident where there we had for -- for several years  
13 complained about the adequacy of the staffing and  
14 that, especially on back-shifts and that and the --  
15 the lack of attendance to the equipment there had  
16 needed to be attended to.

17 Q. And I believe on some questioning  
18 from -- from AmerenUE's attorney, Mr. Fischer, you  
19 talked about -- a little bit about some new training  
20 programs being initiated?

21 A. Uh-huh.

22 Q. Do you feel like they're going in the  
23 right direction?

24 A. I think they're going in the right  
25 direction, but I have grave concern about the initial

1 training. We are in the process now of talking about  
2 how that's going to be delivered where we can bring  
3 people to the level of a basic journeyman. And  
4 they've indicated that -- and we have no problem,  
5 that's going to be the union's responsibility. But  
6 to take on that responsibility, there has to be a  
7 means of funding that. And they have not been  
8 interested in looking at that at this point in time  
9 or talking about it.

10 Our local union does have a training  
11 trust fund, and our other employers contribute to  
12 that and our members that work for those employers  
13 contribute to that, ten cents an hour from the  
14 employer and from the employee into that trust fund.  
15 And certainly, if Ameren were to do that, that  
16 certainly would allow us then to be able to really  
17 adequately train and finance the necessary training  
18 to bring them up to speed.

19 Q. All right. Do you feel like your union  
20 has a good relationship with AmerenUE as far as  
21 negotiating these types of issues and coming to  
22 resolutions?

23 A. It's gotten much better in the past  
24 year, much better.

25 Q. Well, good. And then, as I've asked all

1 the other witnesses, I appreciate, of course,  
2 appreciate your written -- written testimony.  
3 Anything else on behalf of the workers you represent  
4 you want us to consider?

5 A. No. I would just, again, consider to --  
6 consider encouraging or requiring Ameren to  
7 adequately use their -- their resources to fund the  
8 necessary training and staffing levels to make the  
9 facilities safer and more reliable.

10 COMMISSIONER JARRETT: Well, thank you,  
11 Mr. Giljum. I appreciate you being here.

12 THE WITNESS: Thank you.

13 JUDGE WOODRUFF: Commissioner Gunn?

14 QUESTIONS BY COMMISSIONER GUNN:

15 Q. Good morning. Thank you.

16 A. Good morning.

17 Q. I just have one quick question. You  
18 mentioned that the outage cycle went from an 18-month  
19 cycle down to a three-year cycle or potentially a  
20 five- to six-year cycle?

21 A. Yes.

22 Q. Do you believe that that -- that cycling  
23 is adequate?

24 A. Well, personally, no. I think it should  
25 be done sooner than that because what happens is

1 there's a lot more forced outages in between that  
2 time where you have tube failures or pump failures,  
3 motor failures, and then the units come down and you  
4 have to get in and work on them very quickly. But  
5 that requires, then, a lot of overtime or the  
6 reliance on contractors to come in and do that.

7                   And then putting them off for such a  
8 long time, what's happened is, they haven't been able  
9 to get a lot of the contractor personnel from the  
10 local area. They've relied on people from out of  
11 state through the union halls to come in and do the  
12 major overhaul work.

13           Q.       Do you think that that actually  
14 increased costs?

15           A.       I believe so, but they maintain that  
16 their unit availability is still very high.

17                   COMMISSIONER GUNN: Okay. I had another  
18 question but I lost it. That's all I have. Thanks  
19 very much.

20                   THE WITNESS: Okay. Thank you.

21                   JUDGE WOODRUFF: Chairman Davis?

22           QUESTIONS BY CHAIRMAN DAVIS:

23           Q.       Good morning, Mr. Giljum.

24           A.       Good morning.

25           Q.       My -- my impression of your testimony is

1 that you'd like to see higher staffing levels?

2 A. Uh-huh.

3 Q. And can you -- can you put numbers and  
4 can you put dollars to that?

5 A. Well, I would say that we're probably  
6 looking at -- and to my way of thinking, again, we  
7 were at a high of 1,700 employees there. We've made  
8 some changes and I think that we're naturally going  
9 to -- to save on resources and jobs and reduce some  
10 of them.

11 I would think that an adequate staffing  
12 level would be an additional 200 or so people because  
13 we have so many people right now that are getting  
14 ready to retire. In fact, all of our, I guess,  
15 highly skilled journeymen who have gone through our  
16 traditional training programs in the power plants  
17 are -- are -- will be retiring within the next five  
18 to six years, probably better than half of them.

19 Q. And what do you think another 200  
20 employees would cost in terms of salary, benefits, I  
21 mean, the whole -- whole ball of wax?

22 A. I -- it would be hard to say. Maybe --  
23 I'd say at least \$2 million a year or better.

24 Q. Okay. Let me get my calculator out here  
25 and let me just crunch the numbers and --

1           A.       Well, I would say that you're probably  
2 talking, with all the training that goes into an  
3 employee, their wages and their benefits, you're  
4 probably talking about an expenditure on average of  
5 about \$100,000 per employee.

6           Q.       Okay. So \$100,000 per employee?

7           A.       Uh-huh.

8           Q.       Okay. And let me ask you this: Let's  
9 say you have a plant employee retire.

10          A.       Yes.

11          Q.       How long does it take to get that  
12 employee replaced?

13          A.       In order to replace him to the extent  
14 that if they hire somebody directly and bring them up  
15 to speed, it could take anywhere from a year to --

16          Q.       Okay.

17          A.       -- five years.

18          Q.       Right. Well, okay. Let's --

19          A.       If you had them in the system --

20          Q.       Right.

21          A.       -- well, again, we used to anticipate  
22 through our apprenticeship program, they would look  
23 at when people would be retiring and then bid those  
24 positions and we would start their training out. So  
25 they would look at employees when they would normally

1 be retiring, get a sense of that, and then start  
2 training so that they'd be able to step in upon their  
3 retirement as a journeyman. That doesn't happen  
4 anymore.

5                   So you don't start that process until a  
6 person actually retires. And if you start them out  
7 in an apprenticeship program at that time, it's going  
8 to take at least three years to bring them up to the  
9 level.

10           Q.       Okay. But -- okay. Let's say, for  
11 instance, like -- let's say you have -- and you'll  
12 have to forgive me because I'm not familiar with your  
13 job classifications.

14           A.       Okay.

15           Q.       So if I get it wrong, please help me and  
16 correct me. But let's say you've got, you know, an  
17 entry level position, you know, in a power plant.  
18 That person gets promoted, so you've got, you know, a  
19 vacancy on January 1.

20           A.       Uh-huh.

21           Q.       How long does it take to get someone  
22 hired in to fill -- I mean, just -- not saying that  
23 they're trained, but just saying how long does it  
24 take to get someone hired to replace them?

25           A.       Probably with -- within a matter of

1 months.

2 Q. Okay. So it takes months to get --

3 A. Sure. Now, we do have -- we've started  
4 a program with Ameren that has a temporary referral  
5 system where we prequalify people. There's about 35  
6 to 50 people in that pool that work for them, then,  
7 on a part-time basis. About 20 of them are eligible  
8 for full-time employment. And if they take them,  
9 they're ready to go immediately.

10 If they hire their traditional way, it  
11 takes probably several months by the time that they  
12 get through the interview process, the training and  
13 then the qualification process, testing process.

14 Q. Okay.

15 A. But the real concern is our top  
16 journeyman jobs. We're going to have so few of them  
17 and no qualified people. The way they're trying to  
18 qualify people today -- for example, we had an  
19 employee who was hired as a laborer, there was a  
20 vacancy in the electrician position, they needed an  
21 electrician.

22 They allowed him to test, he tested out  
23 on it and passed it. His prior work experience was  
24 doing some electrical [sic] work at fe-fi-fo-fum  
25 and now he's a powerhouse electrician. And you know,

1 I submit to you that that certainly isn't the way  
2 that we would like to see our people trained. And I  
3 certainly would not feel safe working with that  
4 particular individual.

5 Q. Okay. Anything else you wish to add?

6 A. No.

7 CHAIRMAN DAVIS: Mr. Giljum, thank you  
8 for coming here to testify, and I think Commissioner  
9 Gunn wants to take over.

10 QUESTIONS BY COMMISSIONER GUNN:

11 Q. I apologize for the brain freeze. I  
12 just wanted to go back to one other question. Do you  
13 believe that the change from the 18-month to the --  
14 to the longer overhaul cycles is a direct result of  
15 staffing or are there other reasons?

16 A. Oh, I think there's -- there's probably  
17 other reasons involved in that. Certainly staffing  
18 is part of it, but certainly that's been, from my  
19 understanding and reading the trade journals and what  
20 they have said, is that most of the utilities have  
21 started to stretch their outages out further and  
22 further.

23 Q. So it's becoming fairly standard  
24 industry practice to do that?

25 A. Yes, yes.

1                   COMMISSIONER GUNN: Okay. Great. Thank  
2 you very much. Apologize for having to come back to  
3 you. Thank you.

4                   JUDGE WOODRUFF: And anybody wish to  
5 recross? For Public Counsel?

6                   MR. MILLS: Thank you, Judge.

7 RE-CROSS-EXAMINATION BY MR. MILLS:

8           Q.       Just briefly, Mr. Giljum. You -- in  
9 response to one of Commissioner Jarrett's questions,  
10 you referred to Taum Sauk.

11           A.       Uh-huh.

12           Q.       And one of the things you mentioned with  
13 respect to Taum Sauk is back-shifts.

14           A.       Yes.

15           Q.       Can you describe for the record what a  
16 back-shift is?

17           A.       Back-shifts are the p.m. and midnight  
18 shifts, the 3:00 to 11:00 and 11:00 to 7:00 a.m.  
19 shifts.

20           Q.       And from your perspective, can you  
21 describe what went wrong at Taum Sauk and how that  
22 illustrates the points you've raised in your  
23 testimony?

24                   MR. FISCHER: Judge, I think I'm going  
25 to object on the grounds of relevancy to this case.

1 It's -- we're not here to try what happened out at  
2 Taum Sauk.

3 MR. MILLS: Well, I -- the witness has  
4 already mentioned it in response to a question from  
5 the Bench in terms of how it relates to the positions  
6 in his testimony, and I'm simply asking him to  
7 further explain upon that. I think it's entirely  
8 relevant.

9 JUDGE WOODRUFF: I'm going to overrule  
10 the objection. You can answer.

11 THE WITNESS: You know, I don't know if  
12 having a person on a back-shift certainly would have  
13 prevented it, but certainly, it gives you an added  
14 level of security with somebody there that can  
15 physically observe what's going on.

16 BY MR. MILLS:

17 Q. Okay. Thank you. Now, in terms of unit  
18 availability, let me see if I can clarify what --  
19 what I think you were talking about. Let's just talk  
20 about an 18-month scheduled outage pattern versus a  
21 36-month.

22 A. Uh-huh.

23 Q. Which of those two will have more hours  
24 enforced outages?

25 A. Well, certainly, I think the longer that

1 you -- you spread the outages out, the more forced  
2 outages you're going to have.

3 Q. Okay. Which of those will have more  
4 total hours of outage; that is, forced outage plus  
5 scheduled outage together?

6 A. I -- I really wouldn't -- wouldn't know  
7 man-hour-wise. I haven't --

8 Q. Well, I'm not talking about  
9 man-hour-wise. I'm talking about the hours in which  
10 the units are operating.

11 A. Well, certainly, from the statistical  
12 data that's been kept, there's greater unit  
13 availability with the longer outage schedule now.  
14 And the duration of the forced outages are very  
15 short, for the most part.

16 MR. MILLS: Thank you.

17 JUDGE WOODRUFF: All right. For Ameren,  
18 then?

19 MR. FISCHER: Just briefly.

20 RE-CROSS-EXAMINATION BY MR. FISCHER:

21 Q. In your discussion with the Chairman, I  
22 believe you indicated how hard it was to hire new  
23 journeymen or to train and hire. From your  
24 perspective, what's -- what's the problem with that?  
25 Is it a generational problem or some other problem

1 that's out there?

2 A. Well, I think part of it is. I think  
3 from my perspective, though, it's been the type and  
4 nature of work. We don't have the -- a lot of people  
5 that were hired, for example, when I was back in the  
6 '70s and that, grew up in that environment.

7 And today, when you bring people in who  
8 work traditionally, you know, an eight-hour day and  
9 have weekends off and they have to go into the  
10 powerhouse setting where it's rotating shifts, a lot  
11 of weekend work, you're on call 24 hours a day, those  
12 types of things, they just have a tough time  
13 accepting that.

14 Q. You also were discussing, I think, a  
15 figure of \$100,000 per employee to hire and you were  
16 talking about 200 employees, and I was just sitting  
17 here doing the math. Is that really about  
18 20 million?

19 A. 20 million, yes.

20 Q. Okay. Right. And from your --

21 A. I was a couple zeros off.

22 Q. From your perspective from -- from the  
23 union, is it easier for you to do your job and to  
24 adequately staff and get the job done out -- out at  
25 Ameren if the company's financially healthy?

1 A. Oh, absolutely.

2 Q. Okay.

3 A. Absolutely.

4 MR. FISCHER: Thank you very much.

5 That's all I have, Judge.

6 JUDGE WOODRUFF: I'm sorry. Redirect?

7 MR. EVANS: No redirect.

8 JUDGE WOODRUFF: Okay. Then,

9 Mr. Giljum, you can step down.

10 THE WITNESS: Thank you.

11 JUDGE WOODRUFF: We've got a couple  
12 company witnesses. Might as well take them right  
13 away too.

14 MR. FISCHER: Yes, Judge. We would call  
15 Mark Birk to the stand.

16 (EXHIBIT NOS. 14 AND 15 WERE MARKED FOR  
17 IDENTIFICATION BY THE COURT REPORTER.)

18 JUDGE WOODRUFF: Good morning, Mr. Birk.

19 MR. BIRK: Good morning.

20 JUDGE WOODRUFF: Have you testified  
21 earlier in this proceeding?

22 MR. BIRK: No, I have not.

23 JUDGE WOODRUFF: Then I'll need to swear  
24 you in. Please raise your right hand.

25 (The witness was sworn.)

1                   JUDGE WOODRUFF: Thank you. You may  
2 inquire.

3 DIRECT EXAMINATION BY MR. FISCHER:

4           Q.       Good morning, Mr. Birk. Please state  
5 your name and address for the record.

6           A.       Mark Christopher Birk.

7           Q.       Are you the same -- go ahead.

8           A.       Pardon me?

9           Q.       And your address?

10          A.       Home address?

11          Q.       Or business address.

12          A.       Business -- my business address is 1901  
13 Chouteau, St. Louis, Missouri.

14          Q.       Are you the same Mark Birk that caused  
15 to be prefiled in this case direct and rebuttal  
16 testimony that have now been marked as Exhibit 14 and  
17 15?

18          A.       Yes, I am.

19          Q.       Do you have any changes or corrections  
20 you need to make to either of those pieces of  
21 testimony?

22          A.       I have one change to my rebuttal  
23 testimony. There was a question, I believe it was on  
24 page 3, dealing with the specific KPIs that address  
25 plant availability. In there I believe the response

1 initially was "20 percent" of these employees'  
2 incentive compensation's determined by equivalent  
3 availability. That number should have been  
4 "25 percent."

5 Q. Is that located at the bottom of  
6 page 3 --

7 A. Yeah.

8 Q. -- on line 23?

9 A. 22 and 23 on the testimony that I have,  
10 yes.

11 Q. Okay. Any other changes you need to  
12 make?

13 A. No, there are not.

14 Q. With those changes, if I were to ask you  
15 the questions contained in your direct and rebuttal  
16 testimony, would your answers be the same?

17 A. Yes, they would.

18 Q. And are those answers true and correct  
19 to the best of your knowledge and belief?

20 A. Yes, they are.

21 MR. FISCHER: Judge, then I would tender  
22 the witness for cross-examination and move for the  
23 introduction of Exhibits 14 and 15.

24 JUDGE WOODRUFF: 14 and 15 have been  
25 offered. Any objections to their receipt?

1 (NO RESPONSE.)

2 JUDGE WOODRUFF: Hearing none, they will  
3 be received.

4 (EXHIBIT NOS. 14 AND 15 WERE RECEIVED  
5 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

6 JUDGE WOODRUFF: Any parties wish to  
7 cross-examine?

8 MR. CONRAD: I just want to be clear the  
9 witness is offered for his union-related testimony at  
10 this point; am I correct?

11 JUDGE WOODRUFF: That would be my  
12 understanding.

13 MR. CONRAD: Okay. We don't -- we don't  
14 have any questions for Mr. Birk on that issue.

15 JUDGE WOODRUFF: Staff?

16 CROSS-EXAMINATION BY MR. REED:

17 Q. Hi, Mr. Birk. Steve Reed.

18 A. Hi, Steve. Good morning.

19 Q. You are the vice president of power  
20 operations, correct?

21 A. That is correct.

22 Q. Tell us what you do.

23 A. Basically in that role I am responsible  
24 for the -- the engineering operation and maintenance  
25 of the Ameren-regulated generation fossil fleet; in

1 other words, the four coal units, the three hydro  
2 units and Taum Sauk, Osage and Keokuk and the 14  
3 combustion turbine sites that we have on the system.

4 Q. All right. In your testimony you  
5 responded only to Mr. Giljum's testimony; is that  
6 right?

7 A. That is correct.

8 Q. Okay. Because you're responsible for  
9 the generating plants where those operating engineers  
10 are employed?

11 A. That is correct.

12 Q. Okay. Now, I talked to Mr. Giljum a  
13 little bit about the use of outside contractors in  
14 the generating -- in the power stations. I'm sure  
15 you're familiar with the use of those outside  
16 contractors?

17 A. Yes, I am.

18 Q. Explain to us what they're for.

19 A. Basically, as -- as Mr. Giljum had  
20 stated, we typically use outside contractors when we  
21 are doing major overhauls on our units. As -- as was  
22 stated, we typically take a major overhaul every  
23 three to six years on our major coal units.

24 And when we do that, we take a unit down  
25 for anywhere from eight to 12 weeks. And during that

1 eight- to 12-week period, we do bring in outside  
2 contractors to help augment our normal staff in --  
3 in -- in repair and maintenance on those units, on  
4 the particular unit that that serves.

5 Q. The units that require overhauls, those  
6 are the coal -- the four coal units?

7 A. Correct. The ones that we predominantly  
8 are bringing contractors in are for the fossil units,  
9 correct.

10 Q. Okay. Now, what kind of maintenance  
11 like that is there for the hydro units?

12 A. Typically, when we -- from a -- from a  
13 hydro perspective at Osage plant, for example, the  
14 type of maintenance we normally would do would be  
15 predominantly a runner -- what we call a runner  
16 replacement; in other words, where we're -- where  
17 we're replacing the turbine water wheel.

18 We're currently doing that on two units  
19 at Osage right now. And we -- we have brought in  
20 outside contractors to do that replacement. But --  
21 but that's something that occurs very infrequently.

22 These particular runners that we're  
23 replacing were original that were installed with --  
24 with the plant when it was built, and some of them  
25 back in the '30s and back in the '50s depending on

1 which units they were. So they're being replaced.

2 This is the first time in their life.

3 Q. And I guess in a hydro plant like that  
4 it's as-needed?

5 A. Correct. We do not have major overhaul  
6 cycles or major overhauls per se in the hydro plants.

7 Q. All right. And we heard testimony and  
8 we've heard your testimony as well about the overhaul  
9 of these coal plants being somewhere between three  
10 and six years. Is it true that it was the case that  
11 overhauls were done on about an 18-month basis?

12 A. Yes. It -- in the past, and we're  
13 probably looking at five or so years ago, it was  
14 typical at AmerenUE along with industry, that major  
15 overhauls were performed roughly on an 18-month  
16 cycle, 18- to 24-month.

17 As Mr. Giljum stated, the industry is  
18 typically going to a longer cycle, and we currently  
19 at AmerenUE have our units on anywhere from a three-  
20 to a six-year overhaul cycle. What's meant by that  
21 is that the unit would come down -- like a Sioux  
22 unit, for instance, would come down once every three  
23 years for that major eight- to 12-week overhaul.

24 The reason that we've been able to do  
25 this is because we have a much more sophisticated

1 instrumentation and monitoring on the plants now that  
2 we did not have in the past, so we can actually  
3 perform much more detailed analysis on the equipment.  
4 So it gives us a better condition assessment and we  
5 can make a better determination of when we need to  
6 take those major overhauls.

7 Q. So it's industry-wide, nationwide?

8 A. It's -- it's industry-wide. The  
9 benchmark data I've looked at -- and it varies by  
10 unit, okay? So if you have a coal unit like a Sioux  
11 plant that's a cyclone-fired super critical unit,  
12 you're not going to tend to be at a six-year overhaul  
13 cycle on it.

14 If you look industry-wide, there may be  
15 15 of those units in the United States right now.  
16 They're on a -- on a -- probably around a two- to  
17 three-year-cycle benchmark.

18 If you look at a Labadie or a Rush  
19 Island unit which is a tangential-fired 600-megawatt  
20 coal unit, benchmark-wise you look at those and  
21 they're probably on a -- on a four- to five- to  
22 six-year cycle. So we track what's going on in the  
23 industry. We also look at the data we have  
24 internally and we make the determination.

25 Q. So the -- the outside contractors are

1 primarily used in these overhaul situations?

2 A. Yeah. The majority of the outside  
3 contractors that are brought in during the overhaul  
4 situations are boilermakers, and they're typically  
5 from Local -- our Local 27, which is a boilermaker  
6 local in the St. Louis area. And typically, that's  
7 the majority.

8 We also bring in at times people to do  
9 pipefitting work, at times people to do machinist  
10 work and electrical work. It really depends upon the  
11 nature of the jobs that are going on during that  
12 major overhaul.

13 Q. Okay. What -- what happened at the  
14 Venice plant that Mr. Giljum mentioned? Has this  
15 been a while back?

16 A. Yeah, it's actually been quite a while  
17 back, and I was not --

18 Q. Okay.

19 A. -- I was not in power operations nor was  
20 I involved in that. So I probably -- I'm not really  
21 able to speak to that -- to that plant.

22 Q. All right. Now, the -- the chart that  
23 you put in your -- I think it's your rebuttal  
24 testimony that has to do with the equivalent  
25 availability and net capacity factor --

1           A.       Uh-huh.

2           Q.       -- page 7, that is just the four coal  
3 plants?

4           A.       That is correct.

5           Q.       All right.  It's not any of the hydros,  
6 it's not Taum Sauk, Osage or Keokuk, right?

7           A.       That is correct.  It's the four fossil  
8 units.  The -- when you look at equivalent  
9 availability on hydro plants, it tends to be very  
10 high since they don't have major overhauls and they  
11 have very -- a very limited amount of forced outages.  
12 Their equivalent availability on the hydro plants  
13 tends to run in the mid to upper 90s.

14          Q.       All right.  Anything about the  
15 combustion turbines that requires the kind of  
16 overhaul or the kind of fluctuating work that would  
17 require outside contractors?

18          A.       The combustion turbines, we have a  
19 number of different styles on our system.  But  
20 typically, when you look to do what we call a major  
21 overhaul on a -- on a gas-fired combustion turbine,  
22 it's really determined by the number of starts or the  
23 number of equivalent starts.

24                    And you look at that number and you look  
25 at the other performance data and then you make a

1 determination. Normally, on those type of overhauls,  
2 they're limited to more inspection and some component  
3 replacement, but that's typically what -- what  
4 occurs.

5 Q. So were outside contractors required  
6 when those -- when something --

7 A. On those we use a mix. We do use some.  
8 We haven't done a whole lot of those per se. Most of  
9 the -- of the combustion turbine fleet, the gas fleet  
10 that we have is fairly new, and thus, we haven't done  
11 a whole lot of overhauls on them yet.

12 Q. Would you say that the change in the --  
13 in the period for overhauls has resulted in a  
14 reduction of -- of direct operating engineer  
15 employees at Ameren? Has that been the primary  
16 reason that there's been a reduction in the number of  
17 operating engineers that -- directly employed by  
18 Ameren?

19 A. I would say that the -- the change in  
20 the overhaul cycles was -- was really driven by -- by  
21 operational requirements.

22 Q. Uh-huh.

23 A. And as -- as Mr. Giljum had mentioned,  
24 we did have a traveling maintenance force, that when  
25 you are overhauling units on an 18- to 24-month

1 cycle, we would -- we would keep employed -- if  
2 you're on an 18- or 24-month cycle, you're  
3 essentially overhauling probably six or seven units a  
4 year, so you can keep that traveling maintenance  
5 staff fairly engaged and employed just doing that  
6 outage work.

7                   When you go to a three- to six-year  
8 cycle that we're on now, you're typically doing three  
9 unit overhauls per year. And as such, at that point  
10 we did not feel that it was -- it was prudent to --  
11 to keep a -- a 200-person maintenance staff in place  
12 for -- for essentially 24 to 30 weeks' worth of work  
13 a year.

14           Q.       I'm -- I lost some -- I lost you there  
15 somewhere. But three -- I'm sorry -- three overhauls  
16 per year, you say?

17           A.       If you -- yeah. When you look at a unit  
18 overhaul cycle that's, say, 18 to 24 months.

19           Q.       All right.

20           A.       That means you're going to have -- like  
21 at our Labadie plant that has four units, if you're  
22 on a 24-month cycle, you've got two unit outages  
23 there every year.

24           Q.       Okay.

25           A.       You've got two units that are taken out

1 of service every year. At Meramec, you'd have two  
2 units that are taken out of service every year.

3 Q. Okay.

4 A. At Rush and Sioux, you'd have one unit  
5 that was taken out of service. So -- so you're  
6 talking at least six units -- six units that are out  
7 every year. If you go to a three- to six-year cycle  
8 like we're on now, you typically have three units  
9 that are out per year. So our outage-related work  
10 has been cut in half.

11 Q. All right. I understand.

12 A. It's been cut in half.

13 MR. REED: All right. Thank you,  
14 Mr. Birk.

15 THE WITNESS: Thank you.

16 MR. MILLS: Judge, I'm not sure, but I  
17 think I was supposed to have gone before Staff on  
18 cross-examination.

19 JUDGE WOODRUFF: I apologize.

20 MR. MILLS: That's all right.

21 CROSS-EXAMINATION BY MR. MILLS:

22 Q. Mr. Birk, in the -- in the summer of  
23 2006, were you UE's designated representative for the  
24 Illinois auction?

25 A. I don't believe so.

1 Q. Were you at any time UE's designated  
2 representative for the Illinois auction?

3 A. In my -- in my role as vice president of  
4 power operations, it's very possible that I could  
5 have signed off as an officer representing the UE  
6 plants, but I was not actively involved in that  
7 auction in 2006.

8 Q. Do you know why UE ultimately decided  
9 not to participate in those auctions?

10 A. I do not.

11 MR. MILLS: Okay. Thank you. I have no  
12 further questions.

13 JUDGE WOODRUFF: Do the unions wish to  
14 cross?

15 MR. EVANS: The union does not wish to  
16 cross.

17 JUDGE WOODRUFF: Okay. Up to the Bench.  
18 Commissioner Murray?

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good morning.

21 A. Good morning.

22 Q. Can you explain the significance of the  
23 chart that you listed -- you showed on page 8 of your  
24 testimony, the OSHA incident rate? You showed -- you  
25 put the chart in there to demonstrate, I think, that

1 the incident rate has declined over the last ten  
2 years --

3 A. Yes.

4 Q. -- is that right? Can you tell me how  
5 that relates to or how that compares to other  
6 utilities?

7 A. Yes, I can. One of the things that --  
8 that AmerenUE has -- has not been very good at in the  
9 past is our safety performance, and that's one of the  
10 things that we've recognized that we need to improve  
11 upon.

12 So the -- the chart that's in here is a  
13 common benchmarkable item that other utilities use  
14 along with AmerenUE to determine what we call the  
15 OSHA incident rate. In other words, the type of  
16 accidents that we are having in our plant where  
17 people are getting injured, okay?

18 Q. And is this where they miss -- actually  
19 miss work because of an injury?

20 A. It depends. When -- in OSHA recordable,  
21 there's various classes. If you have a class 2  
22 recordable, you would miss work. A class 3, you'd be  
23 some type of restricted duty.

24 In other words, you could -- let's say  
25 you -- you strained your back and you could -- you

1 could still come to work but you physically couldn't  
2 do parts of the job, so you may end up doing  
3 something on a computer or doing some other type of  
4 work. That would be a restricted duty.

5                   So when we look at an OSHA incident  
6 rate, it includes -- it includes not only accidents  
7 where you can't come to work because you're  
8 physically injured, but also those accidents where  
9 you're restricted in duty. And also an accident  
10 where, let's say, you cut your hand and you need to  
11 get stitches and you can come back to work. That's  
12 also an OSHA recordable.

13                   So when you look at an incident rate,  
14 it's basically the rate -- the number of accidents  
15 you have, really, compared to the amount of safety  
16 hours you work or the amount of time that you work.  
17 And when you talk about kind of a benchmark level for  
18 us, currently in -- for 2007, the OSHA incident rate  
19 for EEI companies, the median rate, in other words,  
20 where you're -- you're 50 percent or better and  
21 50 percent or worse is 2.7.

22                   A top quartile rate for -- for  
23 generating for peers or generating plants, EEI  
24 companies would be 1.75. So where we rank right now  
25 as of -- through October of '08 is that we're at 1.8.

1 We're -- we're -- we're better than the median, we're  
2 not as good as the top quartile yet.

3                   But -- but as you can see from the  
4 table, we've -- we've made substantial improvement.  
5 Our -- our employees have done a great job of -- of  
6 really focusing on working safely and effectively in  
7 our plants, and it's -- it's shown.

8           Q.       And this is for all of the plants,  
9 right?

10          A.       This is -- this is for all of the  
11 plants, that's correct.

12          Q.       And to what do you attribute the  
13 improvement?

14          A.       I think it's -- I think, number one,  
15 there's much more focus on it, both from -- from the  
16 management side and from the operating engineer's  
17 side. I think it takes -- it takes a culture that is  
18 very open to feedback and open to discussion, and one  
19 that is very accepting of the only way to do a job  
20 properly is to do it the safe way.

21                   So some of our jobs I would say we're  
22 actually spending more time to do them, but we're  
23 doing them much more safely and it is -- it is  
24 showing up in the data. We're not as good as -- as  
25 we need to be, but we're definitely on the right

1 track and we're definitely improving.

2 Q. And do these figures include any  
3 incidents that would have been involving a  
4 contractor?

5 A. These particular figures do not. We do  
6 track -- also track contractor incidents. The  
7 contract -- the Taum Sauk rebuild, for instance,  
8 we -- we are -- we track how well the contractors are  
9 doing from their lost workday way and incident rate  
10 perspective, and that's one of the metrics we use  
11 when we go to -- go to determine what contractors we  
12 use on particular projects.

13 Q. And how do those metrics compare?

14 A. Generally, our contractors have  
15 performed at a level that is as good as or sometimes  
16 better than our employees have. At Taum Sauk, for  
17 instance, we've worked now about 1.4 or 1.5 million  
18 man hours, and we've had one lost workday away  
19 accident which is -- which is -- which is excellent.

20 COMMISSIONER MURRAY: Okay. Thank you  
21 very much.

22 THE WITNESS: You're welcome.

23 JUDGE WOODRUFF: Commissioner Jarrett?

24 QUESTIONS BY COMMISSIONER JARRETT:

25 Q. Good morning, sir.

1           A.       Good morning.

2           Q.       Just a couple of questions, and I may  
3       overlap a little bit with Commissioner Murray.  But  
4       just addressing Mr. Giljum's testimony where he  
5       alleges that inadequate staffing levels and the use  
6       of contractors is a problem, I just wanted to ask  
7       what steps does the company take when it hires  
8       contractors to make sure that those contractors and  
9       contractors' employees are qualified, trained  
10      properly and basically qualified to do the job safely  
11      and correctly?

12          A.       Are you referencing, say, a major  
13      overhaul when we bring -- bring boilermakers in?

14          Q.       Okay.

15          A.       Typically what we do is that we -- we  
16      have a rigorous bid process where we -- we'll bid it  
17      to a number of what we believe to be qualified  
18      contractors.  If we're doing a -- a major component  
19      replacement, say, on a boiler, we may go to an  
20      Alstom, we may go to a Schack to a B&W which are --  
21      which are known boiler installation repair  
22      contractors, and we will go and bid the work to them.

23                    As part of the bid process and review  
24      process, we also qualify their supervision, their  
25      superintendents; in other words, we get a list of

1 their resumé's and their names. Typically, the craft  
2 people that are used on the project are people that  
3 come out of the local boilermakers' hall, okay?

4           So what we do with them is at times  
5 there's some preliminary training. If they've been  
6 at our sites before, typically they're allowed back  
7 on. There's random drug testing associated with --  
8 with anyone that works on our sites, not only our  
9 employees, but contractor employees.

10           And we maintain -- like the last outage  
11 that we -- we did at Labadie, we maintained a safety  
12 professional both from Ameren and a safety  
13 professional that was used from the local, Local 27,  
14 that continuously monitored the jobs; in other words,  
15 they walked the job down, looked for any type of  
16 issues around safety.

17           From a quality perspective, we have our  
18 own weld inspectors that monitor the work that's  
19 going on. We also radiograph and do testing in  
20 various areas to make sure that we're getting the  
21 quality that we believe we should be getting on the  
22 repairs. So that's typically how -- how we bid it  
23 and how we assure that there's quality.

24           Q.       Right. Are there any other instances?  
25 You described one example. Any other examples where

1 the company would hire outside contractors to do  
2 other work?

3 A. We -- another example that I alluded to  
4 earlier is the -- is the Taum Sauk rebuild. We have  
5 approximately -- at this point I think about 450  
6 contract employees that are on the site essentially  
7 rebuilding the upper reservoir. And in that case, we  
8 followed the same process.

9 We have a safety professional that's  
10 onsite. We also have a rigorous, what we call QCIP,  
11 a quality control inspection process that we're using  
12 where, you know, people are reviewing the work that's  
13 been done and we're taking all kinds of samples to --  
14 to prove the integrity of the structure. And again,  
15 the people that are on the site are subjected to drug  
16 testing and other means, and that's typically what we  
17 use to monitor and control.

18 Q. All right. And I think you -- I think  
19 you mentioned this, but I just want to make it clear.  
20 Are most of the contractors that you hire, are they  
21 union contractors?

22 A. The vast majority of them are union  
23 contractors. The projects I was talking about, they  
24 would have all been union contractors.

25 COMMISSIONER JARRETT: Okay. Thank you,

1 sir. I have no further questions.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: Commissioner Gunn?

4 COMMISSIONER GUNN: I don't have any  
5 questions. Thank you.

6 THE WITNESS: Thank you.

7 JUDGE WOODRUFF: Chairman Davis?

8 QUESTIONS BY CHAIRMAN DAVIS:

9 Q. Good morning, Mr. Birk.

10 A. Good morning.

11 Q. Did you hear Mr. Giljum's testimony?

12 A. Yes, I did.

13 Q. Do you think having one more employee  
14 would help?

15 A. I think that -- I went back and I looked  
16 at some of our records because -- that predate me. I  
17 went back ten years, went back to 1997. In power  
18 operations in 1997 we had 1,449 employees. That's  
19 management and bargaining unit.

20 We -- that year we had 154 recordable  
21 injuries. In 2007 we had about 1,145 employees. We  
22 had 37 recordable injuries. So our safety -- with  
23 fewer employees, we've actually worked much safer.

24 Our equivalent availability in -- in  
25 1997 was -- was about 76 percent. And equivalent

1 availability on the units, these are the coal units,  
2 really is the measure of how much a unit's available.  
3 If you equate it to like a car, you know, if you take  
4 your car in for an oil change, a tire rotation, it's  
5 not available to operate. We have the same issues on  
6 coal plants if we have a boiler tube leak or  
7 something else occur.

8                   So in 1997, our equivalent availability  
9 was 76 percent. In 2007 it was 89.4 percent. So  
10 we've seen an increase of 13 percent in equivalent  
11 availability. We've seen an improvement in safety  
12 and we have had a reduction in employees. So I  
13 don't -- I don't know that I would agree that -- that  
14 one additional employee is going to make us work  
15 safer.

16           Q.       Okay. Well, let's say -- let's set  
17 aside safety. And you know, you guys have got the  
18 operational efficiency down, okay? We've -- we've  
19 covered that. And I guess the remaining question is,  
20 you know, what about, you know, the aging workforce  
21 problem that -- I mean, we certainly hear about it as  
22 Commissioners from -- from all different spectrums  
23 from -- from EEI and everyone else.

24                   I mean, it's true that part of your --  
25 you know, your increased reliability in terms of

1 fewer plant outages and fewer accidents could be due  
2 to that you've got a seasoned workforce.

3           A.       That is correct. And I give credit, a  
4 lot of credit to our workforce. I think we have a --  
5 a very skilled and talented workforce. And we are  
6 concerned -- I agree with Mr. Giljum, we are  
7 concerned about being able to -- to maintain the  
8 level of skill and experience that we have.

9                   One thing that we do do is -- is every  
10 two or three years, our HR department basically runs  
11 a demographic study where it looks at all of the  
12 positions in our power plants and all of the  
13 management positions. And it looks at the ages of  
14 people and looks at the projected retirement ages.  
15 And it gives us kind of a feel for where we're going  
16 to see holes in deficiencies in the future.

17                   That is exactly the reason that we  
18 determined we needed to establish an additional -- a  
19 training facility for -- for our craft workforce. We  
20 realize that we cannot hire -- you just can't hire  
21 the level of experience and skill you need directly  
22 off the street.

23                   What we found, especially with the  
24 current economy, is that, you know, there are people  
25 out there, there are people from the auto industry

1 and from other industries that are out there that are  
2 willing to come into our plants and work, and they do  
3 have some level of skill. They don't have all of the  
4 skills necessary to safely work in our plants, and  
5 that's one of the reasons we need -- we realize we  
6 need to beef up our training programs.

7                   One of the things that wasn't mentioned  
8 is, we are working with 148 on a mentoring training  
9 program in local high schools in St. Louis, North  
10 County Tech, South County Tech and the Construction  
11 Career Center where we actually have both management  
12 and operating engineers go into the schools and talk  
13 to kids about career opportunity in power plants.  
14 And -- and they are in technical schools.

15                   And one of the commitments we made last  
16 year and we've made the same commitment this year is  
17 that if you graduate from school and you can -- you  
18 can pass our entrance testing and go through the  
19 interview process, we will give you a job. We will  
20 hire you in as a laborer.

21                   And as -- as -- as Don Giljum mentioned,  
22 we are working with the union to develop ways to take  
23 people from labor into our higher skilled level jobs.  
24 We're not there yet, it's not perfect. But we  
25 realize there are -- there are concerns and we're

1 working to address them.

2 Q. Okay. Is there anything you wish you  
3 could -- could do that you haven't done?

4 A. In the way of training or -- it's a  
5 pretty open-ended question.

6 Q. In the way -- in the way -- in the way  
7 of training, recruiting employees.

8 A. Yeah, I think it would have been more  
9 beneficial if we could have started the process  
10 earlier. You know, I think one of the -- the  
11 interesting aspects of the way the economy is -- and  
12 I think it's been mentioned here -- we had seen an  
13 average retirement age of around 58 or 59. That's  
14 being pushed back. We are seeing that -- at this  
15 point that fewer and fewer people are retiring  
16 because they've lost in their 401(k)s and other  
17 things, so they're staying around longer.

18 But there will come a time where --  
19 where we will start seeing a large -- a larger number  
20 of retirements and we have to be prepared for that  
21 time. So I think starting earlier would have been --  
22 would have been better.

23 Q. Okay. So if as a part of this credit  
24 case we said we're going to give you \$3 million a  
25 year to help, you know, recruit, train more

1 employees, what would you do with it?

2 A. If you were to give us 3 million --

3 Q. An extra \$3 million.

4 A. -- an extra 3 million --

5 Q. An extra 3 million.

6 A. What we would do would be continue -- we  
7 would establish -- fully establish the training  
8 facility, continue the mentoring program. We're  
9 working right now or we've developed a mentoring  
10 program for our internal employees because one of the  
11 shortages we've realized also is supervision.

12 And a lot of our supervisors come out of  
13 our craft areas, and we're not getting the movement  
14 from the craft areas in the first line supervision  
15 and those are our future leaders. So I'd spend some  
16 of that money to develop future leaders, some of it  
17 to be able to develop -- take our people that we're  
18 hiring in as laborers and develop them into our  
19 future craft people. That's how I'd use it.

20 Q. Okay. So you wouldn't not spend it and  
21 give it back?

22 A. Pardon me?

23 Q. You wouldn't not spend it and give it  
24 back?

25 A. No. I believe that there's -- there's

1 definitely a need for additional training and  
2 development of people. And I think that -- that if  
3 you were to give us 3 million additional, that's what  
4 I would use it for.

5 Q. Is 3 million the right number?

6 A. I don't know that. I could look at it  
7 and provide some feedback. I'd have to look at it a  
8 little more carefully. But I don't know that  
9 3 million is the right number.

10 Q. Okay. Well, would you -- would you look  
11 at it and -- and -- and tell me what you think the  
12 right number is?

13 A. I will do that.

14 CHAIRMAN DAVIS: Thank you. No further  
15 questions.

16 JUDGE WOODRUFF: All right. Any recross  
17 based on questions from the Bench?

18 (NO RESPONSE.)

19 JUDGE WOODRUFF: All right, then. Any  
20 redirect?

21 MR. FISCHER: Just briefly.

22 REDIRECT EXAMINATION BY MR. FISCHER:

23 Q. In your conversation with Mr. Reed, you  
24 talked about the use of outside contractors versus  
25 in-house employees for major overhauls. Do you

1 recall that conversation?

2 A. Yes, I do.

3 Q. Did you explain why you would choose to  
4 use outside contractors on some occasions to -- for  
5 your major overhauls?

6 A. Yeah -- I did not, but that's -- I  
7 can -- I can clarify. Basically, when we take a unit  
8 off one of our big 600-megawatt coal units,  
9 basically, we want to try and return it to service  
10 as -- as soon as possible. And in order to do that,  
11 we may bring in several hundred boilermakers to  
12 replace major components.

13 We don't have that many certified  
14 repairmen on our staff. So it's really -- it's  
15 really to allow us to most cost effectively and in a  
16 timely manner return the unit to service.

17 Q. Are you saying it's more efficient to do  
18 that?

19 A. Yes, yes.

20 Q. Okay. You also mentioned I think in  
21 those situations you would sometimes go to the  
22 St. Louis area boilermakers' locals and pipe fitters'  
23 locals to get those folks?

24 A. Yes. The vast majority of the time,  
25 that's what occurs.

1 Q. So those outside contractors would be  
2 unionized typically or --

3 A. Oh, yes, yes. Uh-huh.

4 Q. And you also discussed with Mr. Reed or  
5 one of the Commissioners the equivalent availability  
6 table contained in your -- on page 7 of your  
7 testimony?

8 A. Yes.

9 Q. What was that chart designed to show?

10 A. Basically what it was designed to show  
11 was that we've had marked improvement in our  
12 equivalent availability over the last ten years.

13 Q. I believe you quoted up to 2007, 89.4 in  
14 one of your answers. What does 2008 show?

15 A. 2008 shows a forecast of 90.73.

16 Q. Does improved equivalent availability  
17 have any effect on the cost of producing a unit of  
18 power?

19 A. Ultimately -- ultimately, it does.  
20 Ultimately, it -- if you -- if you look at a total  
21 number of megawatt hours produced by a generating  
22 plant, a generating unit -- the more that that unit's  
23 on line, obviously, what's in the denominator are  
24 your megawatt hours, and -- and the more it's on  
25 line, the more megawatt hours you could produce.

1 Q. So it's a good thing?

2 A. It's a good thing.

3 Q. Okay.

4 A. Yeah, right now in the industry, about  
5 87 percent is top quartile. So our -- our coal units  
6 are above top quartile in the industry.

7 MR. FISCHER: Thank you very much.

8 That's all I have.

9 JUDGE WOODRUFF: Thank you, Mr. Birk.

10 You can step down.

11 THE WITNESS: Thank you.

12 JUDGE WOODRUFF: One more witness on  
13 this. That would be Mr. Zdellar.

14 MR. FISCHER: Yes. We would call Ronald  
15 Zdellar to the stand.

16 JUDGE WOODRUFF: And Mr. Zdellar, you've  
17 previously testified. You understand you're still  
18 under oath?

19 THE WITNESS: Yes.

20 CHAIRMAN DAVIS: Judge, when is Mr. Birk  
21 going to get back to us with an answer?

22 MR. BIRK: Can you give me about a week  
23 to look at it? Is that okay?

24 CHAIRMAN DAVIS: Before the end of the  
25 hearings?

1 MR. BIRK: Yeah, yeah.

2 CHAIRMAN DAVIS: Okay.

3 JUDGE WOODRUFF: Okay. You may inquire.

4 DIRECT EXAMINATION BY MR. FISCHER:

5 Q. Please state your name.

6 A. My name is Ronald C. Zdellar.

7 Q. And are you the same Ronald C. Zdellar  
8 that's previously testified in this proceeding?

9 A. I am.

10 MR. FISCHER: Judge, I believe his  
11 testimony, Exhibit 15 and 16, have already been  
12 entered into the record; is that correct?

13 JUDGE WOODRUFF: I believe that is  
14 correct, yes.

15 MR. FISCHER: If that's correct, then I  
16 would just move -- or I would tender the witness for  
17 cross-examination on the union issues.

18 JUDGE WOODRUFF: Okay. Does anyone wish  
19 to cross?

20 (NO RESPONSE.)

21 JUDGE WOODRUFF: For Staff, then?

22 CROSS-EXAMINATION BY MR. REED:

23 Q. Mr. Zdellar, hi. Steve Reed for the  
24 Staff.

25 A. Good morning.

1 Q. Is the "D" in your name silent?

2 A. It is silent.

3 Q. All right.

4 A. It just came with the package.

5 Q. Right, got it. You are the vice  
6 president of energy delivery distribution services,  
7 correct?

8 A. That is correct.

9 Q. Tell us what you do.

10 A. Basically, I'm over the wires and pipes  
11 and meters of getting electric and gas to our  
12 customers.

13 Q. All right. In your testimony, you did  
14 not respond to Mr. Giljum's testimony but rather to  
15 Mr. Desmond, Mr. Datillo and Mr. Walter?

16 A. That's correct.

17 Q. All right. In that regard, I guess  
18 primarily linemen and tree trimmers?

19 A. That is correct. There was a small  
20 group of linemen represented by Local 148 at  
21 Lakeside, but the rest of the folks were in the  
22 unions represented.

23 MR. REED: All right. Thank you,  
24 Mr. Zdellar.

25 JUDGE WOODRUFF: All right. Questions

1 from the Bench, then. Commissioner Murray?

2 COMMISSIONER MURRAY: Give me one  
3 minute, please.

4 JUDGE WOODRUFF: Okay.

5 COMMISSIONER MURRAY: No, I don't think  
6 I have any. Thank you.

7 JUDGE WOODRUFF: All right.

8 Commissioner Jarrett?

9 COMMISSIONER JARRETT: I have no  
10 questions either. Thank you.

11 JUDGE WOODRUFF: Commissioner Gunn?

12 COMMISSIONER GUNN: I don't have any.  
13 Thank you, sir.

14 JUDGE WOODRUFF: Chairman Davis?

15 CHAIRMAN DAVIS: Nice to see you,  
16 Mr. Zdellar. Thank you.

17 MR. EVANS: Excuse me, Judge. The union  
18 did have a few questions.

19 JUDGE WOODRUFF: All right. Go ahead.

20 MR. EVANS: Thank you.

21 CROSS-EXAMINATION BY MR. EVANS:

22 Q. Mr. Zdellar, my name is Mike Evans. I  
23 represent the unions in this matter. Could you  
24 describe for me the efforts -- efforts made by Ameren  
25 from the period of 1996 to 2006 to maintain an

1 internal workforce that can meet Ameren's normal and  
2 customary workload?

3 A. That's a fairly broad question in terms  
4 of effort. During the years -- and I'd have to look  
5 at some of the records going back. Don't have great  
6 details around the years you mentioned, but  
7 typically, we've had replacement programs of some  
8 sort. Over those years, there's been some attrition  
9 in the overall workforce. We've not had a layoff at  
10 all during that period.

11 Some of that attrition has been related  
12 to some technology that we've incorporated in our  
13 business, the hydraulics with line trucks, things  
14 like that. The changing of crew size over the years  
15 through contract negotiations has had an impact on  
16 it, and just the general workload, particularly early  
17 in that period, didn't demand a lot of effort in  
18 terms of replacement. That has changed significantly  
19 in recent years.

20 Q. Okay. So are you aware of any efforts  
21 made to recruit employees for the period 1996 to  
22 2006?

23 A. Yeah, I think we've always -- to the  
24 best of my knowledge, we've always had a standing  
25 requisition for outside linemen particularly since

1 those -- for all -- for all those years.

2 Q. Okay. But despite that, the workforce  
3 has been reduced by attrition for that period,  
4 correct?

5 A. Actually, yes, it's lower now. That --  
6 well, not now, but it was -- it was -- during the  
7 period you mentioned, it did decrease.

8 Q. Okay. Thank you. Now, can you tell me  
9 if any workforce assessments have been made by Ameren  
10 within the last ten years?

11 A. Not specifically. And if you would,  
12 please define what that assessment might be. We've  
13 done some things in looking -- some of the questions  
14 I had earlier around the age of the population and  
15 expected retirements and, you know, project to the  
16 future, what it looks like in the past, we've done  
17 some of that, but not to the detail of a job-by-job,  
18 here's-what-we-need-to-do kind of a thing.

19 Q. So it hasn't compiled any reports about  
20 how many employees are needed in various areas for  
21 the future or currently?

22 A. Not to that level of detail.

23 Q. Okay. To your knowledge, has Ameren  
24 ever performed a workforce assessment like I just  
25 described?

1           A.       Not to my knowledge.

2           Q.       Do you -- do you know why not?

3           A.       I think it's just something that -- that  
4 just -- we haven't seen a requirement for in great --  
5 in that level of detail. I think we've recognized in  
6 recent years that we needed to do things, as a number  
7 of -- of folks that have testified earlier have  
8 mentioned. And we've accelerated, I think, rather  
9 dramatically our -- our programs in terms of  
10 recruitment and training and getting ready for the  
11 attrition we see in front of us.

12          Q.       Uh-huh. So performing a workforce  
13 assessment might be something that Ameren would want  
14 to do in the future?

15          A.       I think that's correct.

16          Q.       Okay. Commissioner Davis asked Mr. Birk  
17 how he would spend the \$3 million, hypothetical  
18 \$3 million in regard with the training. How would  
19 you spend that money?

20          A.       Well, if I get the same offer, I will  
21 definitely be able to respond to it in a similar way  
22 to Mr. Birk. But as I -- as I heard that question, I  
23 thought about it myself, and I think the one thing  
24 for sure we would probably look at is development of  
25 some training programs focused on our particular

1 business within vocational schools within the state  
2 of Missouri.

3                   That, to me, seems an area that  
4 addresses some of the issues that Mr. Giljum  
5 addressed and others about, you know, the  
6 demographics today. And what young people today are  
7 looking for in the workforce is far different than a  
8 lot of us looked at years ago. And we need to sort  
9 of have incubators in my mind to bring people into  
10 the trades in this business.

11                   This is a different business. It's, you  
12 know, plants and there are field operations. This is  
13 a 24 by 7, 365 business. And you know, a lot of the  
14 population today is not interested in working  
15 overtime, is not interested in the kinds of physical  
16 work that -- or demands of the jobs that we have.  
17 And I think that will be the place that I would look  
18 first in terms of setting up incubators.

19                   And vocational schools are pretty much  
20 prepared to do that, given some money and direction.  
21 Part of that direction -- and we've done a little bit  
22 of that ourselves already with the junior college in  
23 St. Louis County where we've had retired linemen  
24 actually working with a class even today of -- it's a  
25 first class, and we're calling it a pre-apprentice

1 program.

2                   And there's about 24 people in that  
3 program right now and they're learning climbing  
4 skills, they're learning the basics of electricity.  
5 They will have to take our normal entry exams, but we  
6 have reached an agreement with the union on a job  
7 classification that we call banked apprentices.

8                   And should these people successfully  
9 complete that class, they will go into that banked  
10 apprentice program, become employees of our company,  
11 and then as apprentice classes open up, they'll go  
12 right into the class as opposed to going through a  
13 normal bid process.

14                   So I think we're doing some things to  
15 move forward, and there's -- there's a lot yet to do,  
16 but certainly if offered some additional funds, we  
17 could accelerate, I think, some of those efforts.

18                   MR. EVANS: Thank you. I have nothing  
19 further.

20                   JUDGE WOODRUFF: We'll bring it back up  
21 to the Bench. Did that prompt any questions from any  
22 of the Commissioners?

23                   COMMISSIONER MURRAY: None here.

24                   COMMISSIONER JARRETT: None here.

25                   JUDGE WOODRUFF: I don't believe there

1 were any questions from the Commissioners, so there's  
2 no need for recross. Any redirect?

3 MR. FISCHER: Just briefly.

4 REDIRECT EXAMINATION BY MR. FISCHER:

5 Q. Mr. Zdellar, you were just asked a  
6 question by Mr. Evans regarding your efforts between  
7 1996 and 2006 regarding internal workforce and the  
8 sustainable work levels. Do you recall that  
9 conversation?

10 A. I sure do.

11 Q. I'd ask you to think back to around the  
12 year 1999. Were there any contract discussions that  
13 went on with the union on those topics?

14 A. I think the -- there were -- there  
15 were -- there were discussions around outside  
16 contractors, use of outside contractors back in 1990  
17 negotiations.

18 Q. Can you describe what those negotiations  
19 resulted in or --

20 A. There was a change to the labor  
21 agreement that basically permitted the use of outside  
22 contractors as long as we had no internal layoffs  
23 within the company.

24 Q. And that was subject to discussions with  
25 the unions?

1           A.       Periodic discussions around what the  
2 work is being contracted.

3                   MR. FISCHER: Thank you. That's all I  
4 have.

5                   JUDGE WOODRUFF: All right.  
6 Mr. Zdellar, you can step down. And we're due for a  
7 break. We'll come back at 10:45, I believe, with the  
8 ice storm AAO issue.

9                   (A RECESS WAS TAKEN.)

10                  JUDGE WOODRUFF: We are back on the  
11 record after our break, and I believe we're ready to  
12 move on to the next issue which is the ice storm AAO.  
13 Ms. Barnes -- or Lynn Barnes for the company.

14                  MR. BYRNE: Are we going to do openings,  
15 mini openings?

16                  JUDGE WOODRUFF: I'm sorry. Yes.

17                  MR. BYRNE: I wrote them, so --

18                  JUDGE WOODRUFF: Go ahead.

19                  MR. BYRNE: Thank you. May it please  
20 the Commission. Previously in Case No. EU-2008-0141,  
21 the Commission issued an Accounting Authority Order,  
22 or AAO, to capture the expense AmerenUE incurred  
23 associated with the restoration of service to  
24 customers following the winter storm that impacted  
25 the company's service territory and the service

1 territory to the other electric providers in Missouri  
2 on January 13th, 2007.

3           There's no issue as to whether the --  
4 these expenses were prudently incurred, there is no  
5 issue as to what the correct amount of the costs is,  
6 which is \$24.56 million, there is no question as to  
7 how long the amortization period for these costs  
8 should be which has -- which has been agreed to as  
9 five years.

10           The only question at issue before the  
11 Commission today is what date the amortization of  
12 these costs should begin. The Staff argues that the  
13 amortization should begin retroactively on  
14 February 1, 2007, just a little over two weeks after  
15 the storm. We believe this is unreasonable for  
16 several reasons.

17           Most significantly, starting the  
18 amortization on that date virtually guarantees that  
19 AmerenUE will be unable to recover the full amount of  
20 its costs. By the time rates from this case take  
21 effect and the amortization can begin to be reflected  
22 in those rates, over 40 percent of the costs will be  
23 amortized away never to be recovered.

24           And please keep in mind, during the  
25 period when these costs would have been amortized

1 away, AmerenUE was underearning. When the storm hit,  
2 we were in the middle of our last rate case which  
3 resulted in a \$43 million rate increase. In fact,  
4 the storm hit just 13 days after the cutoff date in  
5 that case for known and measurable changes.

6                   Since our last rate case ended, we have  
7 consistently been unable to earn our authorized rate  
8 of return as evidence provided by Mr. Weiss and  
9 Mr. Voss has shown in this case. If these storm  
10 costs are retroactively amortized over that past  
11 period, AmerenUE's earnings shortfall will be made  
12 even worse.

13                   AmerenUE also believes that it is  
14 unreasonable to start the amortization on February 1,  
15 2007, because at that point, the exact amount of the  
16 restoration costs was not yet known. As Ms. Barnes  
17 has testified, we continued to get invoices related  
18 to that storm restoration until June of 2007, and we  
19 got a final credit from another utility who helped us  
20 with the restoration as late as the fall of 2007.  
21 Starting the amortization before the costs were even  
22 known is not reasonable.

23                   Finally, the Staff's proposed  
24 amortization begins significantly before the  
25 Accounting Authority Order was issued which was on

1 March 20th, 2008. AmerenUE believes that the fairest  
2 treatment is to start the amortization on the  
3 effective date of rates for this case. That is the  
4 approach that the Commission has taken in dealing  
5 with the amortization of other extraordinary costs in  
6 past cases, and that approach will provide AmerenUE  
7 with a real opportunity to recover the full amount of  
8 the costs that it incurred in responding to the  
9 storm.

10                 Staff argues that if this amortization  
11 is used, it will be possible for the company to  
12 over-recover its costs if it waits more than five  
13 years to file another rate case. However, this is an  
14 unlikely scenario. For one thing, if AmerenUE is  
15 permitted to use a fuel adjustment clause, it will  
16 have to file a rate case every four years, at least.

17                 Even if no fuel adjustment clause is  
18 granted, it is very unlikely that the company will be  
19 able to delay a rate case even one or two years in  
20 the current environment of rising costs. In these  
21 circumstances, starting the amortization on the  
22 effective date of rates for this case is most  
23 reasonable, and it sends the signal to electric  
24 utilities that if they prudently incur extraordinary  
25 storm restoration costs, those costs will be fully



1 allow the company an opportunity to recover costs  
2 incurred because of an extraordinary event, it's not  
3 to have ratepayers become insurers of the company.  
4 Thank you.

5 JUDGE WOODRUFF: Any other party wish to  
6 make an opening?

7 (NO RESPONSE.)

8 JUDGE WOODRUFF: All right. And now,  
9 then, we'll bring up Ms. Barnes.

10 (EXHIBIT NO. 26 WAS MARKED FOR  
11 IDENTIFICATION BY THE COURT REPORTER.)

12 (The witness was sworn.)

13 DIRECT EXAMINATION BY MR. BYRNE:

14 Q. Good morning, Ms. Barnes. Could you  
15 please state your name and business address for the  
16 record.

17 A. Yes. It's Lynn M. Barnes. My business  
18 address is 1901 Chouteau, St. Louis, Missouri.

19 Q. And are you the same Lynn M. Barnes that  
20 caused to be filed in this case rebuttal testimony  
21 that's been marked as Exhibit 26?

22 A. Yes.

23 Q. Do you have any changes to that  
24 testimony?

25 A. No.

1 Q. And is the information contained in that  
2 testimony true and correct to the best of your  
3 knowledge and belief?

4 A. Yes.

5 Q. If I were to ask you those same  
6 questions contained in that written testimony today  
7 when you're here under oath, would your answers be  
8 the same?

9 A. Yes.

10 MR. BYRNE: Thank you. I would offer  
11 Exhibit 26 and tender Ms. Barnes for  
12 cross-examination.

13 JUDGE WOODRUFF: Exhibit 26 has been  
14 offered. Any objection to its receipt?

15 (NO RESPONSE.)

16 JUDGE WOODRUFF: Hearing none, it will  
17 be received.

18 (EXHIBIT NO. 26 WAS RECEIVED INTO  
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 JUDGE WOODRUFF: For cross-examination  
21 beginning with Noranda?

22 MR. CONRAD: And we do not have any  
23 questions for Ms. Barnes.

24 JUDGE WOODRUFF: For the State?

25 MR. IVESON: No questions, your Honor.

1 JUDGE WOODRUFF: Public Counsel?

2 MR. MILLS: Just briefly.

3 CROSS-EXAMINATION BY MR. MILLS:

4 Q. Ms. Barnes, without an Accounting  
5 Authority Order, what would happen to these costs?

6 A. The shareholders would bear the burden  
7 of the expense.

8 Q. And under Staff's proposal, will the  
9 shareholders bear the entire burden of the expense?

10 A. They would bear at least 40 percent of  
11 that cost if we began amortization prior to when  
12 these rates go into effect.

13 Q. But barring some extraordinary  
14 treatment, the company would bear all of those costs;  
15 is that not correct?

16 A. That's correct.

17 MR. MILLS: No further questions.

18 JUDGE WOODRUFF: All right. Thank you.  
19 Then for Staff?

20 CROSS-EXAMINATION BY MR. WILLIAMS:

21 Q. What amount has been built into rate  
22 base in this case for the storm AAO that's in  
23 question on this issue?

24 A. The \$5 million because we've all agreed  
25 that there's a five-year amortization period.

1 Q. And in any rate case where there's --  
2 the amortization period has not ended, will there not  
3 be \$5 million included in rate base for the purpose  
4 of setting rates in that case?

5 A. As long as it's in the test year, it  
6 would certainly be there. I don't know that that's a  
7 lock that means it would stay there. Obviously,  
8 during a rate case process, it could be disallowed in  
9 a future period.

10 Q. Well, anything can always be disallowed  
11 in a future period, can it not?

12 A. Yes.

13 MR. WILLIAMS: No further questions.

14 JUDGE WOODRUFF: All right. We'll come  
15 up to questions from the Bench. Commissioner Murray?

16 QUESTIONS BY COMMISSIONER MURRAY:

17 Q. Good morning.

18 A. Good morning.

19 Q. I'm not sure that I understand why the  
20 recovery amount would be a significant -- the  
21 difference would be as significant as it is depending  
22 on your suggested start date for the amortization  
23 versus Staff's. Can you try to explain that better?

24 A. Certainly. The Staff was proposing an  
25 amortization period that would start in February of

1 2007. At the point in time that the rates in this  
2 case go into effect, which would be approximately  
3 March 1st, 2009, a two-year period of time would have  
4 passed, and so two of the five years of amortization  
5 would already have occurred. And that approximates  
6 40 percent of the total costs that are at question.

7 COMMISSIONER MURRAY: All right. Thank  
8 you.

9 THE WITNESS: Uh-huh.

10 COMMISSIONER MURRAY: That's all I have.

11 JUDGE WOODRUFF: Commissioner Jarrett?

12 COMMISSIONER JARRETT: No questions.

13 Thank you.

14 JUDGE WOODRUFF: Commissioner Gunn?

15 COMMISSIONER GUNN: I don't have any  
16 questions. Thank you.

17 JUDGE WOODRUFF: Chairman Davis?

18 CHAIRMAN DAVIS: Nope.

19 JUDGE WOODRUFF: All right. Anyone wish  
20 to recross based on those questions? Mr. Mills?

21 RE-CROSS-EXAMINATION BY MR. MILLS:

22 Q. Ms. Barnes, could UE -- could UE have  
23 filed this rate case sooner?

24 A. I guess we can file a rate --

25 Q. That's a yes or no question.

1           A.       We can file a rate case when we need to.  
2 This was not the only consideration under which the  
3 decision would be made to file a case.

4           Q.       Is that a yes?

5           A.       Yes.

6           Q.       And if UE had filed its case sooner,  
7 would that have cut down on the amount that you claim  
8 is not being allowed for recovery?

9           A.       Potentially it depends when the case  
10 would have been filed. But we were in a rate case in  
11 January when the storm occurred, so rates were going  
12 into effect June 1st of 2007 on a case that was  
13 already pending at the time of the storm. So there  
14 would have been some difficulty in filing a case  
15 immediately after that.

16          Q.       You could have filed a case as soon as  
17 the previous case ended, could you not?

18          A.       I guess from a regulatory perspective,  
19 the process would allow that, yes.

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

22                   JUDGE WOODRUFF: All right. Any other  
23 recross?

24                   (NO RESPONSE.)

25                   JUDGE WOODRUFF: Redirect?

1                   MR. BYRNE: Yes, just a couple, your  
2 Honor.

3 REDIRECT EXAMINATION BY MR. BYRNE:

4           Q.       I think maybe I misheard, but I thought  
5 when Mr. Williams was asking you questions, he asked  
6 you if there was \$5 million being added to rate base,  
7 but I think maybe he misspoke.

8           A.       No, you're correct.

9           Q.       Is it a --

10          A.       It's built into cost of service assuming  
11 the amortization stays at five years, and it's a  
12 \$25 million expense.

13          Q.       It's more the nature of an expense --

14          A.       Yes, it is.

15          Q.       Okay. And -- and you were asked --  
16 well, you were asked about continuing to recover it  
17 in a future rate case. And my question is, in a  
18 future rate case, would the Commission have the  
19 opportunity to reexamine the amortization at that  
20 point and decide what to do then?

21          A.       Absolutely, which is what they would do  
22 with any other costs as well.

23          Q.       I want to explore what Mr. Mills was  
24 asking you about, and that is, could -- could we have  
25 filed the rate case earlier. You remember that

1 question?

2 A. Uh-huh, yes.

3 Q. And just to try to get the timing right,  
4 we're in a rate case in 2007, and when did those  
5 rates become effective? I think you said --

6 A. June 1st of 2007 was when those rates  
7 went into effect.

8 Q. Okay. So let's imagine that, you know,  
9 the fastest we could conceivably have put a rate case  
10 together may be two or three months. I don't know.  
11 Is that --

12 A. Probably, yeah, realistically.

13 Q. Okay. So let's say it was three months.  
14 When's that? June, July, August, September. So  
15 maybe we could have filed --

16 A. September 1, October 1, perhaps.

17 Q. Of 2007?

18 A. Uh-huh.

19 Q. And then when would the rates have taken  
20 effect assuming 11 months' suspension period?

21 A. Would have been the fall of 2008.

22 Q. Okay. And so -- so -- so that's -- is  
23 that as soon as we could have gotten a rate case with  
24 rates in effect to reflect this, in your opinion?

25 A. I think realistically without doing

1 something, you know, inhuman.

2 MR. BYRNE: Okay. Thank you very much.

3 I have nothing further.

4 JUDGE WOODRUFF: All right. Ms. Barnes,

5 you can step down.

6 And Mr. Cassidy is a witness for Staff.

7 I believe this is the first time you've testified in

8 this case.

9 THE WITNESS: No.

10 JUDGE WOODRUFF: No? You testified

11 earlier?

12 THE WITNESS: Yes.

13 JUDGE WOODRUFF: You're still under

14 oath. Please proceed.

15 DIRECT EXAMINATION BY MR. WILLIAMS:

16 Q. Please state your name.

17 A. John P. Cassidy.

18 Q. Mr. Cassidy, did you prepare what's been

19 headed as No. 15, "Storm Cost Amortization Expense"

20 that begins on page 55 and "Storm Cost AAO" that

21 appears on page 56, continues through 57 and onto

22 page 58 of the Staff report cost of service that's

23 been marked for identification as Exhibit 200?

24 A. Yes, I did.

25 Q. And would you have any changes to

1 that -- to that section of that exhibit?

2 A. Yes, I do have a couple of changes on  
3 page 57 on the paragraph that begins with,  
4 "Consistent with this past practice, the Staff  
5 recommends that...", I'd like to insert the word  
6 "the" before "amortization."

7 And then later in that same paragraph  
8 where I state, "unnecessarily delayed by over  
9 26 months," I'd like to strike "over 26" and replace  
10 that with "25 months."

11 Q. Do you have any other changes?

12 A. No, that's all.

13 Q. And did you also prepare surrebuttal  
14 testimony that's been marked for identification as  
15 Exhibit No. 226 and caused that to be prefiled in  
16 this case?

17 A. Yes, I did.

18 Q. And did you address the issue that's  
19 before the Commission currently at pages 11 through  
20 13 of that testimony?

21 A. Yes, I did.

22 Q. Do you have any corrections to that  
23 section of that testimony?

24 A. No, I don't.

25 Q. With the changes you've just provided,

1 are the sections of the Staff cost of service report  
2 that's been marked for identification as Exhibit 200  
3 and your prefiled surrebuttal testimony that's been  
4 marked as Exhibit No. 226, would that be your  
5 testimony here today?

6 A. Yes.

7 MR. WILLIAMS: With that, I offer those  
8 portions of Exhibit 200 and Exhibit 226 that have  
9 just been identified.

10 JUDGE WOODRUFF: I believe 226 is  
11 already in in its entirety.

12 MR. WILLIAMS: Okay.

13 JUDGE WOODRUFF: Sections of 200 have  
14 been offered. Are there any objections to their  
15 receipt?

16 (NO RESPONSE.)

17 JUDGE WOODRUFF: Hearing none, it will  
18 be received into evidence.

19 (SECTIONS OF EXHIBIT NO. 200 WERE  
20 RECEIVED INTO EVIDENCE AND MADE A PART OF THE RECORD.)

21 JUDGE WOODRUFF: For cross-examination,  
22 then, beginning with Public Counsel?

23 MR. MILLS: No questions.

24 JUDGE WOODRUFF: For the State?

25 MR. IVESON: No questions.

1 JUDGE WOODRUFF: For Noranda?

2 MR. CONRAD: No questions.

3 JUDGE WOODRUFF: AmerenUE?

4 CROSS-EXAMINATION BY MR. BYRNE:

5 Q. Mr. Cassidy, there isn't any question  
6 that -- that the storm restoration costs that  
7 AmerenUE incurred following the January 13th, 2007  
8 storm were extraordinary, is there?

9 A. No.

10 Q. And -- and I think Mr. Williams said  
11 that we're all in agreement on the amount of the  
12 costs which I think is \$24.56 million; is that  
13 correct?

14 A. That's correct.

15 Q. Okay. And there's not any allegation of  
16 imprudence with regard to those costs, is there?

17 A. No.

18 Q. And isn't it -- isn't it true that  
19 AmerenUE actually did a pretty good job in responding  
20 to that January 13th, 2007 storm, if you remember?

21 A. I'm not certain how good of a job they  
22 did. They did get service restored.

23 Q. Did they -- and maybe faster than some  
24 of the other utilities that were hit by that storm,  
25 and co-ops?

1           A.       I don't know.

2           Q.       Okay. I'd like to talk to you a little  
3 bit about how we would over-earn if -- if the  
4 Commission approved our proposal to start the  
5 amortization with this rate case, okay? And my  
6 understanding is, since it's a five-year  
7 amortization, if they -- if they started amortization  
8 with -- effective with rates in this case, the first  
9 time we would have any opportunity to over-earn would  
10 be -- or over-recover these costs would be five years  
11 after the rates become effective, right?

12          A.       Correct.

13          Q.       So -- so if the rates become effective  
14 in March of 2009, our -- our first chance to  
15 over-earn or over-recover these storm costs would be  
16 March of 2014; is that right?

17          A.       That's correct.

18          Q.       Okay. And in the event that there's a  
19 rate case in between now and then, the Commission  
20 would be free to reconsider this amortization or stop  
21 the amortization or change the parameters of the  
22 amortization; isn't that correct?

23          A.       That's a possibility.

24          Q.       I mean, aren't -- they would certainly  
25 have the power to do that, right?

1 A. Yes.

2 Q. Okay. So it's only if we don't file a  
3 rate case before 2014 that they won't at least be  
4 able to reconsider this, right?

5 A. Correct.

6 Q. Okay. And -- and if we get a fuel  
7 adjustment clause, we have to file a rate case before  
8 2014, don't we?

9 A. That's correct.

10 Q. Okay. And -- okay. I'd like to talk --  
11 ask you a couple questions about the other side of  
12 the coin, and that is if the amortization starts when  
13 you say it should, which is now you're at February of  
14 2007 -- February 1, 2007; is that correct?

15 A. Yes.

16 Q. Okay. And let's say after -- well,  
17 let's say the Commission approves your proposed  
18 amortization period and then we file a rate case  
19 in -- let's see, so your amortization would end -- if  
20 it starts February 1st, 2007, it would end February  
21 1st, 2012; is that right?

22 A. Yeah, January 31st, 2012.

23 Q. January 31st, 2012. So if we filed a  
24 rate case in February of 2012, then this amortization  
25 will no longer be included; in other words, if the

1 rates take effect February 1st, 2012, the  
2 amortization would no longer be included; is that  
3 right?

4 A. If -- if you file a rate case in  
5 February 2012, it will take 11 months --

6 Q. Okay.

7 A. -- for that case to be processed and  
8 rates to be implemented, but --

9 Q. Good point. Back it up, then. Let's  
10 say we filed in March of 2011 and it became effective  
11 February of 2012, right?

12 A. Under that scenario, yes.

13 Q. And then that rate case would no longer  
14 have the amortization in it, right?

15 A. It depends on the timing of when that  
16 amortization expires in terms of when rates would be  
17 implemented in that case.

18 Q. Well, I'm -- I'm asking -- okay. I'm  
19 asking you to assume the rates will take effect after  
20 the amortization expires. So then it wouldn't be  
21 included, right?

22 A. I -- well --

23 Q. Say -- say -- let me start over because  
24 I think I've confused you by asking confusing  
25 questions.

1 A. Uh-huh.

2 Q. Let's assume the Commission accepts your  
3 amortization period, okay?

4 A. Okay.

5 Q. It starts February 1st, 2007, and it  
6 ends February 1st, 2012, okay?

7 A. Right.

8 Q. And then further assume that AmerenUE  
9 files a rate case in 2011 so that the rates will take  
10 effect just after the amortization expires, okay?

11 A. (Nodded head.)

12 Q. You have to --

13 A. Yes.

14 Q. Do you understand all that? So then no  
15 amount for these storm costs would be included in  
16 those rates; isn't that correct?

17 A. I don't know, because in a recent KCPL  
18 case, I think that amortization was included.

19 Q. Even though it had expired, it was  
20 included?

21 A. I believe so.

22 Q. Okay. So you might include the  
23 amortization in our rates even after it expires?

24 A. Well, it's possible. It happened in a  
25 KCPL case.

1 Q. Okay. Well, let's assume you don't --  
2 let's assume you don't include the amortization in  
3 our rates after it expires. Won't we have eaten  
4 40 percent of the cost of the storm restoration at  
5 that point?

6 A. No. Because -- well, if it -- if it  
7 doesn't get implemented in rates, then the company  
8 would not fully recover those costs.

9 MR. BYRNE: Okay. Thank you -- well,  
10 wait one second. That's all the questions I have.  
11 Thanks.

12 JUDGE WOODRUFF: We'll come up for  
13 questions from the Bench. Commissioner Murray?

14 COMMISSIONER MURRAY: I don't have any.  
15 Thank you.

16 JUDGE WOODRUFF: All right.  
17 Commissioner Jarrett?

18 COMMISSIONER JARRETT: No questions.  
19 Thank you.

20 JUDGE WOODRUFF: Commissioner Gunn?  
21 QUESTIONS BY COMMISSIONER GUNN:

22 Q. I have one question, and I want you to  
23 take it for -- for what it's worth. I'm not asking  
24 you -- because I'm genuinely interested in the answer  
25 to this and it's something I've thought about,

1 actually, and I don't know the answer to it.

2                   Do you believe that it should be the  
3 policy of this Commission to encourage folks to come  
4 in with rate cases quickly? And let me -- some of  
5 the -- some of the questions today said, you know,  
6 could you have come in for a rate case earlier? So  
7 immediately after a rate case is over or rates come  
8 into effect that a utility -- or Ameren could then  
9 have filed a rate case immediately after that case  
10 was over.

11                   Is that a policy that, as a -- as a  
12 general proposition, something that we should be  
13 encouraging or should we be encouraging longer  
14 periods of time between rate cases or is the answer  
15 as it most always is, it depends?

16           A.       Yes, it does depend. And you know,  
17 if -- Ameren could have assessed all of its factors  
18 to determine whether they needed to file a rate case,  
19 and that would be one of the factors they would have  
20 to contemplate in making that decision, so...

21           Q.       And your date that begins that -- your  
22 proposal date to begin the amortization was based on  
23 a reasonable amount of time that you think Ameren  
24 could have determined those costs and either filed a  
25 rate case or -- or do what they're -- what they've

1 done currently?

2 A. Yes. Ameren booked an accrual that  
3 closely estimated the outcome of the expenses in  
4 January of 2007, and the storm event occurred in  
5 January 2007. So logically, it makes sense for them  
6 to begin the amortization shortly thereafter.

7 And I would also offer the company could  
8 have sought recovery in their last rate case for this  
9 item as an isolated adjustment, but chose not to do  
10 so. So that opportunity did exist for them.

11 Q. And you believe that in the -- that they  
12 had the information that they needed in order to do  
13 that during the last rate case?

14 A. I believe they could have gathered quite  
15 a bit of information that would have been necessary,  
16 yes.

17 COMMISSIONER GUNN: Okay. All right.  
18 Thank you. I appreciate it.

19 JUDGE WOODRUFF: Chairman Davis?

20 CHAIRMAN DAVIS: No questions.

21 JUDGE WOODRUFF: All right. Anyone wish  
22 to recross based on those questions? Mr. Mills  
23 first.

24 RECROSS-EXAMINATION BY MR. MILLS:

25 Q. Mr. Cassidy, I believe in response to

1 Commissioner Gunn's question, is it a fair  
2 paraphrasing of your testimony that the decision by a  
3 utility to file a rate case is sort of a big-picture  
4 decision?

5 A. Yes, that's correct.

6 Q. They weigh not only things like recovery  
7 of storm costs in particular but a lot of other  
8 things in deciding that?

9 A. Correct.

10 Q. And if something such as recovery of  
11 storm costs isn't significant enough in the big  
12 picture, then they don't file a rate case at that  
13 point; is that correct?

14 A. Yes.

15 MR. MILLS: Okay. That's all I have.

16 Thank you.

17 JUDGE WOODRUFF: For Ameren?

18 RE-CROSS-EXAMINATION BY MR. BYRNE:

19 Q. Mr. Cassidy, in response to Commissioner  
20 Gunn, you talked about that we could have asked for  
21 recovery of those costs in our previous case. But  
22 isn't it true that -- that the storm occurred about  
23 two weeks after the cutoff date in that case for  
24 known and measurable changes?

25 A. That's correct.

1           Q.       Is it -- are you aware -- Ms. Barnes has  
2 testified, but are you aware that the invoices  
3 related to the storm restoration were still coming in  
4 up until June of 2007?

5           A.       I heard her testimony, yes.

6           Q.       And are you aware that we still got a  
7 credit from another utility as late as the fall of  
8 2007 for their assistance in restoring or helping us  
9 with that restoration?

10          A.       Yes, I heard.

11          Q.       I mean, do you think -- do you think  
12 those costs were known and measurable until all the  
13 invoices and credits were received?

14          A.       I don't know if the company knew at that  
15 time whether it could gather the invoices on a more  
16 expedited basis, or, you know, under --

17          Q.       Okay.

18          A.       -- under that scenario, I think the  
19 company would have pressed for costs from those  
20 suppliers at that time and maybe have gotten them on  
21 a quicker basis.

22          Q.       But in any event, the storm occurred two  
23 weeks after the cutoff date for known and measurable  
24 changes, correct?

25          A.       That's correct, but that didn't prevent

1 the company --

2 MR. BYRNE: That's -- that's -- that  
3 answered my question. Thank you.

4 JUDGE WOODRUFF: Redirect?

5 MR. WILLIAMS: Thank you.

6 REDIRECT EXAMINATION BY MR. WILLIAMS:

7 Q. Mr. Cassidy, Mr. Byrne asked you some  
8 questions about under what circumstances a company  
9 would under-recover under the Staff's proposed  
10 beginning date for the amortization --

11 A. Yes.

12 Q. -- do you recall that?

13 A. Yes, I do.

14 Q. Under what circumstances would the  
15 company under-recover under the company's proposed  
16 start date?

17 A. There's no possibility for the company  
18 to under-recover under its proposed amortization.

19 Q. Do you know if the Commission has ever  
20 disallowed an amortization amount in cost of service  
21 in a rate case from an AAO amortization before the  
22 amortization period ended?

23 A. Not that I'm aware of.

24 Q. Has the Commission ever modified the  
25 amortization amount by reducing it or shortened the

1 amortization period absent some agreement of parties?

2 A. Not that I'm aware of.

3 Q. You were asked some questions -- well,  
4 you hit the topic of the company being able to seek  
5 recovery in the last rate case due to the January  
6 2007 storm as an isolated adjustment. Do you recall  
7 that?

8 A. Yes.

9 Q. And you were also asked some questions  
10 about the knowledge of what that amount would have  
11 been at the time of that case. Do you recall those  
12 questions?

13 A. Yes, I do.

14 Q. If the amount wasn't totally known,  
15 could that amount have been trued-up at some later  
16 date?

17 A. Yes, it could.

18 MR. WILLIAMS: No further questions.

19 JUDGE WOODRUFF: All right.

20 Mr. Cassidy, you can step down. And I believe that  
21 completes the ice storm AAO issue.

22 The next issue on the list is the  
23 off-system sales.

24 MR. BYRNE: Your Honor, I believe  
25 there's some discussions going on about that, and we

1 were hoping we might be able to take a break for  
2 lunch now to see if perhaps we can reach a settlement  
3 on the off-system sales issue.

4 JUDGE WOODRUFF: That certainly sounds  
5 good to me. I was going to say that we were going to  
6 take a break at lunch -- for lunch at 11:30 as well  
7 anyway, so we'll go ahead and take a break now. How  
8 long do you need for your discussions?

9 MR. BYRNE: Maybe a couple of hours.  
10 Would that be okay?

11 JUDGE WOODRUFF: Well, let's say we'll  
12 come back at one o'clock, okay, and we'll see where  
13 we're at then.

14 MR. BYRNE: Okay. Okay.

15 JUDGE WOODRUFF: And I do want to invite  
16 everyone. There is a lunch going on out in the lobby  
17 that you may have noticed. That's a benefit for the  
18 charitable committee for the Commission. They're  
19 having sandwiches and soup.

20 CHAIRMAN DAVIS: Judge, I don't know  
21 that it would be appropriate for them to purchase our  
22 food. I'm sorry.

23 JUDGE WOODRUFF: I don't know.

24 CHAIRMAN DAVIS: I've just got to raise  
25 that concern. I mean, I'm not trying to be the

1 Grinch.

2 JUDGE WOODRUFF: I'm certainly not  
3 trying to --

4 MR. FISCHER: Judge, in the interest of  
5 full disclosure, I should indicate that I have  
6 already eaten the Chairman's wife's cheesecake, and  
7 it is very good.

8 MR. CONRAD: Forgive me, your Honor, for  
9 I too have sinned.

10 JUDGE WOODRUFF: We'll see if there are  
11 any motions to disqualify.

12 COMMISSIONER JARRETT: We'll open a  
13 confessional up here on the side.

14 MR. MILLS: Judge, can I request we go  
15 off the record now?

16 JUDGE WOODRUFF: Let's go off the  
17 record.

18 (THE LUNCH RECESS WAS TAKEN.)

19 JUDGE WOODRUFF: Mr. Lowery, tell us  
20 where we're at.

21 MR. LOWERY: Your Honor, the -- all of  
22 the parties in the case and the unions and the  
23 environmental groups were not at the table, but -- I  
24 can't anticipate an objection -- have reached a  
25 settlement on all the -- we have to memorialize it,

1 but we don't think there are any disagreements -- we  
2 have to get it on paper -- on all of the off-system  
3 sales issues, the main one and all the subissues  
4 below it.

5 JUDGE WOODRUFF: Very good.

6 MR. LOWERY: And so our intention is, is  
7 to put that together and try to get that finalized  
8 perhaps even today, but we don't have any  
9 anticipation that it will not be finalized.

10 JUDGE WOODRUFF: Good. And that catches  
11 us up, then, on our schedule.

12 MR. LOWERY: We do what we can do.

13 JUDGE WOODRUFF: All right. Sounds  
14 good. Mr. Conrad, did you want to add anything else?

15 MR. CONRAD: I was just -- I was just  
16 going to collectively throw ourselves on the mercy of  
17 the Bench and see if we could have the afternoon to  
18 do that.

19 JUDGE WOODRUFF: Well, I -- is it  
20 agreeable to everyone else?

21 MR. LOWERY: It is with the company.

22 JUDGE WOODRUFF: Did you want to add  
23 something, Mr. Dottheim?

24 MR. DOTTHEIM: Yes.

25 JUDGE WOODRUFF: I just thought --

1                   MR. DOTTHEIM: Yes, about the -- the  
2 next item on the -- on the -- on the schedule, class  
3 cost of service and rate design, though only after  
4 we -- we -- we finish with off-system sales.

5                   JUDGE WOODRUFF: All right. There is  
6 one other small issue, I believe, the Entergy  
7 Arkansas which I believe has also settled, but you  
8 were going to do a little stipulation on that?

9                   MR. DOTTHEIM: Yes.

10                  JUDGE WOODRUFF: Should we go ahead and  
11 do that now?

12                  MR. DOTTHEIM: We can.

13                  MR. LOWERY: Mr. Dottheim, I have the  
14 language with me if you want me -- what we were going  
15 to do is just read -- or you can or I can, it doesn't  
16 make any difference. Have at it.

17                  MR. DOTTHEIM: Okay.

18                  MR. LOWERY: Your Honor, we, the Staff  
19 and the company, have reached an agreement on  
20 resolution of that issue, and I think it will consist  
21 of two sentences that I'm going to read into the  
22 record. It will be a stipulated resolution of the  
23 issue as follows:

24                                 "The company shall maintain such books  
25 and records as are necessary to allow the Staff to

1 identify the amount of refunds, if any, the company  
2 may receive in the future arising from the dispute  
3 involving the 1999 purchased power service agreement  
4 with Entergy Arkansas described in the surrebuttal  
5 testimony of Staff witness, John P. Cassidy.

6 "The company shall also maintain the  
7 books and records necessary to identify any costs  
8 associated with obtaining any such refunds such as  
9 legal expenses associated with efforts to obtain  
10 refunds."

11 And that's the end of the stipulation.

12 JUDGE WOODRUFF: Any other party have  
13 any objection or wish to ask any questions on those  
14 issues?

15 (NO RESPONSE.)

16 JUDGE WOODRUFF: I don't hear any. I  
17 see nods of -- indicating they do not. So that will  
18 take care of that issue. And Mr. Mills? Mr. Mills?

19 MR. MILLS: Yeah, and I think  
20 Mr. Dottheim was getting ready to speak to this issue  
21 as well. A number of the parties have been working  
22 on a Stipulation and Agreement as to the class cost  
23 of service and rate design issues. We have -- there  
24 is a relatively close-to-final draft circulating. We  
25 don't know at this point which parties will -- will

1 ultimately sign on, whether all parties will sign on,  
2 whether some parties will not sign on but not oppose,  
3 but that's also in the works, and I just wanted to  
4 make sure that the Bench was aware of that.

5 JUDGE WOODRUFF: Okay. I appreciate  
6 knowing that also. And that would be the only other  
7 issue to do -- deal with this week then; is that  
8 right?

9 MR. MILLS: That's correct. Fuel  
10 adjustment clause is scheduled for three days next  
11 week.

12 JUDGE WOODRUFF: All right. Okay.  
13 Well, Mr. Chairman?

14 CHAIRMAN DAVIS: Do the parties just not  
15 trust us to design rates?

16 JUDGE WOODRUFF: It always does seem to  
17 settle. Mr. Dottheim?

18 MR. DOTTHEIM: Yes, and...

19 MR. LOWERY: You weren't answering that  
20 question, were you?

21 MR. DOTTHEIM: Well, my next comments  
22 will probably address that by saying that at the  
23 moment, that Stipulation and Agreement is not  
24 unanimous. The Staff is one party that does not --

25 CHAIRMAN DAVIS: You don't have to tell

1 us, Mr. Dottheim.

2 MR. DOTTHEIM: No, I think -- I think  
3 from a procedural perspective --

4 CHAIRMAN DAVIS: Okay.

5 MR. DOTTHEIM: -- because I think the  
6 Bench and the parties need to be contemplating where  
7 this case is if there is a nonunanimous Stipulation  
8 and Agreement on class cost of service, rate design,  
9 and one or more parties are opposing the nonunanimous  
10 Stipulation and Agreement.

11 Generally, when there's a nonunanimous  
12 Stipulation and Agreement, there is no opposition to  
13 the nonunanimous Stipulation and Agreement and the  
14 nonunanimous Stipulation and Agreement becomes a  
15 unanimous Stipulation and Agreement.

16 At the moment, the prospects are that  
17 the nonunanimous Stipulation and Agreement will be  
18 objected to and opposed. And as a consequence, the  
19 nonunanimous Stipulation and Agreement will be merely  
20 a position of the signatory parties to be stipulated  
21 positionally.

22 JUDGE WOODRUFF: And it would have to be  
23 supported by evidence.

24 MR. DOTTHEIM: Yes.

25 JUDGE WOODRUFF: Yes.

1                   MR. DOTTHEIM: And so the question then  
2 becomes in what form would that evidence take? In  
3 other proceedings before the Commission, that  
4 evidence has taken the form of written, prepared,  
5 prefiled testimony. We are, of course, well into the  
6 proceedings. We are into the second-to-last week of  
7 the hearings. We are in the middle of the -- of the  
8 week. There's arguably, certainly, the option of  
9 live testimony. I wanted to raise that matter.

10                   The Staff certainly never wants to be in  
11 the position of delaying proceedings regardless of  
12 the fact that written, prefiled, prepared testimony  
13 might be advisable as opposed to live testimony.

14                   This matter has developed over a period  
15 of time, but most quickly in the last 24 hours. In  
16 fact, the last session that occurred on this was the  
17 reason for the -- in part, it was discussed over the  
18 extended lunch break. The Staff has not had an  
19 opportunity to caucus, so to speak.

20                   I was hoping that after we break, that  
21 the Staff will have an opportunity to caucus and we  
22 will be able to get a better fix on where the Staff  
23 is regarding this nonunanimous Stipulation and  
24 Agreement.

25                   But prospects are, I think, quite

1 considerable that the Staff will object to and oppose  
2 a nonunanimous -- nonunanimous Stipulation and  
3 Agreement. I don't believe I've divulged any of the  
4 negotiations, and I wanted to raise this matter  
5 because of the procedural questions that will arise  
6 if the nonunanimous Stipulation and Agreement is  
7 objected to, opposed by the Staff.

8 I don't know, and I'm certainly not  
9 going to speak on behalf of any other party, but  
10 there may be one or more other parties that are in a  
11 similar position to the Staff.

12 JUDGE WOODRUFF: All right. Well,  
13 Mr. Dottheim certainly raises valid concerns, and as  
14 you're all no doubt aware, a nonunanimous Stipulation  
15 and Agreement that is objected to essentially is of  
16 little value to the Commission, something that does  
17 just state the position of the parties rather than  
18 anything the Commission can approve.

19 I believe a similar situation came up in  
20 the last Ameren rate case on some of -- some of the  
21 more minor issues, as I recall, and any position that  
22 the parties would take in that Stipulation and  
23 Agreement would have to be supported by evidence  
24 before the Commission, so we would be needing to call  
25 witnesses and so forth as I believe the way we'd

1 handle it in that case.

2                   And certainly, we are running towards  
3 the end of the hearing here, and we've got three days  
4 next week for the FAC which I assume we'll need for  
5 the FAC.

6                   So just keep that in mind during your  
7 discussions and we'll see where we're at tomorrow. I  
8 would certainly encourage any parties that know that  
9 they will be opposing the Stipulation and Agreement  
10 to announce that as soon as they can. Certainly  
11 don't want to do it now, but after further  
12 negotiation, as soon as you know that you will be  
13 opposing, let us know and we'll take it up again  
14 tomorrow morning and see where we're at then.

15                   MR. MILLS: Okay. Judge, if I may  
16 briefly address some of the scheduling issues that  
17 you've been discussing and Mr. Dottheim has been  
18 discussing. I believe, and of course, I'm speaking  
19 for myself, but I think the other parties that  
20 anticipate being signatories are in agreement on  
21 this.

22                   It would be our intention to file a  
23 Stipulation and Agreement relatively early this  
24 afternoon. If the other parties who are  
25 nonsignatories could be pressed to state whether they

1 will oppose or not oppose much quicker than the seven  
2 days allowed in the rule, I think that would be  
3 helpful.

4                   But in any event, regardless of whether  
5 other parties are in agreement or not in agreement,  
6 it would be the signatory -- signatory parties'  
7 intent tomorrow morning when we begin this issue to  
8 simply put on each of their witnesses, offer all of  
9 their testimony, tender their witnesses for  
10 cross-examination and questions from the Bench from  
11 any party so that there will be the opportunity to  
12 make a full record on all issues and cross-examine  
13 all the witness who have testified on these matters.

14                   I believe it is the intent of the  
15 signatory parties not to cross-examine each other's  
16 witnesses, but those witnesses will be available for  
17 the Bench and for other parties who either do not  
18 sign on or may be considering opposition to the  
19 Stipulation and Agreement.

20                   So that I don't see that under any  
21 circumstances there's really any reason to -- that we  
22 would have to be delaying the hearing. We're  
23 prepared to go forward tomorrow, if necessary.

24                   JUDGE WOODRUFF: Okay.

25                   MR. BYRNE: And your Honor, from the

1 company's standpoint, we haven't -- we haven't really  
2 been involved in the discussion, so at this point  
3 we're not a signatory to anything. We could be  
4 opposed to it or just a nonsignatory. But I agree  
5 with Mr. Mills. This should shorten the hearing, not  
6 lengthen it because -- because probably the  
7 signatories, whoever they end up being, won't be  
8 cross-examining each other at least. And I see no  
9 reason -- you know, we've got the FAC thing scheduled  
10 next week -- I see no reason this ought to delay  
11 anything.

12 JUDGE WOODRUFF: Okay. Anything else  
13 anyone else wants to bring up while we're still on  
14 the record?

15 MR. DOTTHEIM: Mr. Woodruff, Judge, I  
16 wonder if Mr. Mills would address, I think, a matter  
17 you raised and I raised regarding what evidence would  
18 be in the record supporting the change in position of  
19 the parties to the Stipulation and Agreement if there  
20 was no additional prepared testimony or live  
21 testimony.

22 I don't -- maybe I misunderstood  
23 Mr. Mills when he was describing the proceedings that  
24 were contemplated by the signatory parties to the  
25 nonunanimous Stipulation and Agreement for tomorrow

1 morning.

2 MR. MILLS: I'd be happy to. I think  
3 that the prefiled testimony, assuming that it is  
4 admitted, and of course, we don't -- we don't know  
5 until we -- until we offer it whether there will be  
6 objections, but if it is admitted, I think it  
7 provides ample evidence on which to find support for  
8 the Stipulation and Agreement that we anticipate.

9 It does -- none of the parties have  
10 testified to exactly what is in the Stipulation and  
11 Agreement, but it's well within the parameters of the  
12 evidence that's -- that's offered by the parties.  
13 But I don't know that there's any need for additional  
14 testimony that says, yes, this is a great Stipulation  
15 and Agreement and here's why, because I think the  
16 evidence that will be in the record based on the  
17 prefiled testimony will amply support it.

18 JUDGE WOODRUFF: Well, of course, the  
19 Commission can't really make any rulings on this  
20 matter --

21 MR. MILLS: Well, exactly, exactly.

22 JUDGE WOODRUFF: -- to the stipulation.

23 MR. MILLS: But to answer Mr. Dottheim's  
24 question, it was -- it was certainly not my intent  
25 and certainly to -- anybody else can speak for

1 themselves, but it was not my intention to write or  
2 offer any additional testimony.

3 MR. BYRNE: We certainly shouldn't be  
4 writing any testimony. If testimony was needed, you  
5 could do it live. You know, somebody could spend  
6 five minutes saying why they support the stipulation  
7 in addition to their testimony.

8 JUDGE WOODRUFF: All right. Well,  
9 then --

10 MS. VUYLSTEKE: Your Honor, I just  
11 wanted to clarify that --

12 JUDGE WOODRUFF: Come forward so we can  
13 hear you, Ms. Vuylsteke.

14 MS. VUYLSTEKE: Thank you. I apologize.  
15 I do want to clarify that the MIEC and perhaps other  
16 parties may wish to on the record have their  
17 witnesses introduce evidence to support the unanimous  
18 Stipulation and Agreement as to its reasonableness  
19 and why standing alone independently of the other  
20 evidence in the record that it is reasonable in and  
21 of itself.

22 I don't mean to speak for other parties,  
23 but I don't want there to be any question as to, you  
24 know, whether we would be introducing evidence  
25 tomorrow. I would hate to see anybody objecting to

1 evidence regarding the reasonableness of the stip  
2 that may be presented live by the witnesses for the  
3 first time tomorrow. So I just wanted to raise that  
4 point.

5 JUDGE WOODRUFF: Procedurally, that  
6 would be some additional direct testimony, that being  
7 the witness's testimony?

8 MS. VUYLSTEKE: Right. And in the past  
9 when the Commission has had Stipulations and  
10 Agreements, they've asked the parties to come forward  
11 and have -- sometimes hearings have been held on the  
12 record regarding the reasonableness of stipulations,  
13 and the Commission has called witnesses and heard  
14 arguments to support stipulations. So this would be,  
15 I think, similar to that.

16 JUDGE WOODRUFF: Okay. Well,  
17 Mr. Dottheim, did you want to add anything else?

18 MR. DOTTHEIM: Yes. Of course, the  
19 Staff has no authority to seek review of a Commission  
20 Report and Order, but I would suggest to the -- to  
21 the Bench that probably some of the signatories to  
22 the nonunanimous Stipulation and Agreement, if they  
23 in other proceedings opposed a nonunanimous  
24 Stipulation and Agreement and there were no evidence  
25 in the record directly supporting the Stipulation --

1 the nonunanimous Stipulation and Agreement, the  
2 position covered by the nonunanimous Stipulation and  
3 Agreement, they would use that as grounds for seeking  
4 a judicial review of a Commission Report and Order.

5 JUDGE WOODRUFF: Certainly. Any  
6 position the Commission reaches, any decision it  
7 reaches has to be supported by competent and  
8 substantial evidence. And I'm sure we can -- we'll  
9 deal with that tomorrow when the issue comes up and  
10 we'll reach some sort of a procedure that is fair to  
11 everyone.

12 All right. With that, then, we're  
13 adjourned until 8:30 tomorrow morning.

14 (WHEREUPON, the hearing of this case was  
15 recessed until December 4, 2007, at 8:30 a.m.)

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1	I N D E X	
2	ISSUE: UNIONS	
3	MINI OPENINGS	
4	Opening Statement by Mr. Reed	1729
5	UNIONS' EVIDENCE	
6	DAVID DESMOND	
7	Direct Examination by Mr. Evans	1730
8	Cross-Examination by Mr. Reed	1732
9	Cross-Examination by Mr. Fischer	1737
10	Questions by Commissioner Murray	1742
11	Questions by Commissioner Jarrett	1743
12	Questions by Commissioner Gunn	1745
13	Recross-Examination by Mr. Conrad	1749
14	MICHAEL WALTER	
15	Direct Examination by Mr. Evans	1751
16	Cross-Examination by Mr. Reed	1753
17	Cross-Examination by Mr. Fischer	1756
18	Questions by Commissioner Jarrett	1762
19	Questions by Commissioner Gunn	1766
20	Recross-Examination by Mr. Fischer	1768
21	DONALD GILJUM	
22	Direct Examination by Mr. Evans	1771
23	Cross-Examination by Mr. Conrad	1773
24	Cross-Examination by Mr. Reed	1774
25	Cross-Examination by Mr. Fischer	1776
26	Questions by Commissioner Murray	1779
27	Questions by Commissioner Jarrett	1781
28	Questions by Commissioner Gunn	1784
29	Questions by Chairman Davis	1785
30	Questions by Commissioner Gunn	1790
31	Recross-Examination by Mr. Mills	1791
32	Recross-Examination by Mr. Fischer	1793
33	COMPANY'S EVIDENCE	
34	MARK BIRK	
35	Direct Examination by Mr. Fischer	1796
36	Cross-Examination by Mr. Reed	1798
37	Cross-Examination by Mr. Mills	1807
38	Questions by Commissioner Murray	1808
39	Questions by Commissioner Jarrett	1812
40	Questions by Chairman Davis	1816

1	COMPANY'S EVIDENCE	
2	(CONTINUED - ISSUE: UNIONS)	
	RONALD ZDELLAR	
3	Direct Examination by Mr. Fischer	1826
	Cross-Examination by Mr. Reed	1826
4	Cross-Examination by Mr. Evans	1828
	Redirect Examination by Mr. Fischer	1834
5		
6	ISSUE: ICE STORM ACCOUNTING AUTHORITY ORDER (AAO)	
7	MINI OPENINGS	
8	Opening Statement by Mr. Byrne	1835
	Opening Statement by Mr. Williams	1839
9		
10		
	COMPANY'S EVIDENCE	
11	LYNN BARNES	
12	Direct Examination by Mr. Byrne	1840
	Cross-Examination by Mr. Mills	1842
13	Cross-Examination by Mr. Williams	1842
	Questions by Commissioner Murray	1843
14	Recross-Examination by Mr. Mills	1844
	Redirect Examination by Mr. Byrne	1846
15		
16	STAFF'S EVIDENCE	
17	JOHN CASSIDY	
	Direct Examination by Mr. Williams	1848
18	Cross-Examination by Mr. Byrne	1851
	Questions by Commissioner Gunn	1856
19	Recross-Examination by Mr. Mills	1858
	Recross-Examination by Mr. Byrne	1859
20	Redirect Examination by Mr. Williams	1861
21		
22		
23		
24		
25		

	EXHIBITS INDEX	
	MARKED	RECEIVED
1		
2		
3	Exhibit No. 14	
4	Direct testimony of Mark Birk	1795 1798
5	Exhibit No. 15	
6	Rebuttal testimony of Mark Birk	1795 1798
7	Exhibit No. 26	
8	Rebuttal testimony of Lynn Barnes	1840 1841
9	Exhibit NO. 200	
10	Staff cost of service report	* ** 1850
11	Exhibit No. 901	
12	David Desmond's testimony	1730 1732
13	Exhibit No. 902	
14	Michael Walter's testimony	1751 1753
15	Exhibit No. 903	
16	Donald Giljum's testimony	1771 1772
17	* Marked in a previous volume	
18	** Sections of the exhibit were received into evidence.	
19		
20		
21		
22		
23		
24		
25		