

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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5 TRANSCRIPT OF PROCeeDINGS

6 Evidentiary Hearing

7 May 5, 2011

8 Jefferson City, Missouri

9 Volume 26

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12 In the Matter of Union)
13 Electric Company d/b/a)
14 AmerenUE's Tariff To Increase)
15 Its Annual Revenue For) File No. ER-2011-0028
16 Electric Service)

17 _____
18 MORRIS WOODRUFF, Presiding
19 CHIEF REGULATORY LAW JUDGE
20 JEFF DAVIS,
21 TERRY JARRETT,
22 ROBERT S. KENNEY, (via telephone)
23 COMMISSIONERS.
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1 JUDGE WOODRUFF: Welcome back to another
2 day of the Ameren rate case hearing. This morning
3 we're going to be taking up energy efficiency and DSM
4 issues.

5 Ms. Ott, since you're here -- there was a
6 bit of unfinished matter from last night, as Staff
7 has said, whether they want to cross Mr. Finnell and
8 Wysong, the affidavits that came in each day --

9 MS. OTT: Yes. We plan on crossing both
10 Mr. Finnell and Mr. Wysong as to affidavits so -- in
11 terms of scheduling --

12 JUDGE WOODRUFF: I'll turn to Ameren,
13 then, as to when they can be here.

14 MR. BYRNE: I don't think they're here
15 now, so maybe -- we can start energy efficiency --

16 JUDGE WOODRUFF: Yes.

17 MR. BYRNE: And I'll find out -- do you
18 have a preference -- do either of you have a
19 preference? Jamie, do you have a preference?

20 MS. OTT: Well, it's my understanding that
21 Mr. Wise wasn't available today; he's available
22 tomorrow. I don't know what Mr. Finnell's schedule
23 is.

24 MR. BYRNE: Do you think it would be
25 possible to do Mr. Finnell today and Mr. Wise

1 tomorrow? Would that work for you?

2 JUDGE WOODRUFF: I think that was what was
3 discussed last night so --

4 MS. OTT: Yeah, that's my understanding as
5 well.

6 MR. BYRNE: Great. Thanks.

7 JUDGE WOODRUFF: Let us know when they're
8 there, and we'll squeeze them in.

9 MR. BYRNE: It'll need to be this
10 afternoon. I think Mr. Finnel will come back, so
11 maybe -- well, sometime this afternoon I'll call him
12 and we'll get him here.

13 JUDGE WOODRUFF: I expect we'll be here.

14 MS. OTT: Just for the record, Staff,
15 yesterday, had mentioned questioning Mr. Brubaker on
16 fuel adjustment clause, but we will not have any
17 questions for him, so I'm not sure if any other party
18 does or not.

19 JUDGE WOODRUFF: Well, he was here for
20 this issue as well.

21 MS. OTT: Yeah.

22 JUDGE WOODRUFF: I think I saw him out in
23 the lobby.

24 MS. OTT: Just so you're not planning on
25 me coming back down.

1 JUDGE WOODRUFF: As you prefer it.

2 MS. OTT: Okay. thank you.

3 JUDGE WOODRUFF: All right. Well, let's
4 get started on energy efficiency, then, and we'll
5 start with mini openings beginning with Ameren.

6 MR. WILLIAMS: Judge, what about the
7 pending motion to strike by Staff?

8 JUDGE WOODRUFF: I will address that. I
9 was going to wait until after the openings, but since
10 that might affect that, I'll go ahead and do that.

11 Staff had filed a motion to strike or
12 otherwise disallow portions of the testimony of
13 William Davis, and their concerned portions of his
14 history on energy efficiency in which he had taken a
15 new position in his rebuttal testimony and then added
16 numbers to that surrebuttal testimony.

17 There have been responses back and
18 forth. Staff has also filed supplemental testimony
19 of Lena Mantal and John Rogers addressing that
20 issue. In addition, Missouri Industrial Energy
21 Consumers filed testimony on Michael Brosch also
22 addressing the matters that were raised by Mr. Davis.

23 Both motions asked that either the
24 testimony be struck or, as an alternative, that the
25 parties be allowed to file additional testimony. The

1 Commission will accept the second alternative of
2 allowing additional testimony to be filed when the --
3 of course it's not going to be admitted at this
4 point, but when those witnesses take the stand, you
5 can go ahead and offer that additional testimony at
6 the same time.

7 MR. WILLIAMS: Judge, given the
8 circumstances, I believe Staff has some additional
9 testimony it might want to put on live in response to
10 that new issue in addition to the supplemental
11 testimony.

12 JUDGE WOODRUFF: I will allow that in
13 principle, and if anyone has any objection to it as
14 specifics, they can raise that objection at that
15 time.

16 MR. WILLIAMS: Thank you.

17 JUDGE WOODRUFF: Okay. So we'll go on
18 then --

19 MS. TATRO: Your Honor, if I'm going to
20 object to that, do I do that when that witness takes
21 the stand? Do I offer it now? We indicated we had
22 no objection of them filing supplemental testimony,
23 to which they filed two pieces of supplemental
24 testimony.

25 I'm not sure why this wouldn't be any

1 different than a witness where this issue -- there
2 wasn't an issue about whether or not there was
3 something new and wanted to offer new testimony, such
4 as what the municipal group did earlier this week and
5 you did not allow.

6 JUDGE WOODRUFF: Well, it depends upon
7 what the -- that's why I'm trying to make a ruling on
8 it, because I don't have no idea what Staff is going
9 to try and offer at this point. If you wish to make
10 an objection at that time, go ahead and we'll deal
11 with it at that time.

12 MS. TATRO: Okay. Thank you.

13 JUDGE WOODRUFF: For openings on this
14 issue, we'll begin with AmerenUE, Ameren Missouri.

15 MS. TATRO. Good morning.

16 The CEO of Ameren Missouri has already
17 spoken to you about energy efficiency, and today
18 you're going to hear about the senior vice president
19 in charge of the company's energy efficiency program.

20 Both of those senior executives are
21 telling you the same thing: Ameren Missouri has been
22 and remains committed to energy efficiency in the
23 state of Missouri; however both of those senior
24 executives are also telling you that Ameren Missouri
25 cannot continue investing in energy efficiency

1 without the some assistance from this commission in
2 this case.

3 The good news is that the majority of the
4 facts which you have to consider in this case are
5 undisputed. For instance, no one disputes that
6 through the end of this year Ameren Missouri will
7 have invested approximately \$70 million in energy
8 efficiency since 2009.

9 No one disputes that Ameren Missouri's
10 energy efficiency programs have resulted in
11 substantial kilowatt-hour savings and it's on track
12 to save the levels set forth in its 2008 IRP. No one
13 disputes that expending Ameren Missouri's energy
14 efficiency programs will result in additional
15 kilowatt-hour savings.

16 No one disputes that Ameren Missouri has
17 been successful in achieving momentum in the
18 marketplace with its customers, its retailers, its
19 manufacturers, and other trade allies. No one,
20 importantly, disputes the existence of the throughput
21 disincentive.

22 No one disputes Ameren Missouri's
23 quantification of the throughput disincentive. That
24 is \$15 million since 2009 and \$50 million over the
25 next two years, presuming the Company spends an

1 additional \$25 million a year.

2 No one disputes that the Company's
3 current programs will expire on September 30 of this
4 year, and no one has testified that Ameren Missouri's
5 energy efficiency programs should be discontinued.

6 Commissioner Jarrett, these facts provide
7 the basis for what you have to decide in this case,
8 so where do we -- where does energy efficiency go in
9 Missouri from this point on? That's the question.

10 The Company has taken the position that
11 provides timely cost recovery, aligns financial
12 incentives, and provides timely earnings recovery,
13 all required by the Missouri Energy Efficiency
14 Investment Act, or MIEA.

15 Staff and other partners in this case
16 have taken the position that the Commission need not
17 do anything; rather, they want Ameren Missouri to
18 wait to file once the Commission's MIEA rules become
19 effective.

20 Mr. Rogers' own testimony says that a
21 realistic time frame for that type of a filing is
22 after the first of next year, and that's not counting
23 the time that will be involved to gain approval of
24 the filing. That schedule, your Honor, leaves Ameren
25 Missouri and its customers without electric energy

1 efficiency programs as of October 1st of this year.
2 That is not what Ameren Missouri wants, and we hope
3 it's not what the Commission wants.

4 Ameren Missouri's proposal bridges that
5 gap and provides time for the Commission's newly-
6 adopted rules to be sorted out and for the Company to
7 gain comfort with how it will be applied to energy
8 efficiency investments.

9 Mr. Mark, in his testimony, has been very
10 open about what factors management must consider in
11 making investment decisions, not only for energy
12 efficiency, but for any other type of investment.

13 Recovery of the cost of the investment
14 itself is only one part of the analysis. The impact
15 of that investment upon earnings is the other, and
16 that's a factor that's not being considered by the
17 other parties in this case.

18 At this point in time the largest hurdle
19 for energy efficiency is the fact that Ameren
20 Missouri loses money when its energy efficiency
21 programs are affected. The Company has lost very
22 real revenues because of this energy efficiency
23 measures to this point: \$15 million. We're a victim
24 of our other success.

25 The Company's proposal in this case is

1 the only proposal which deals with the throughput
2 disincentive. The proposal outlines a short-term
3 program over the next two years to bridge the gap
4 between the expiration of its current energy
5 efficiency programs and a time when the Company can
6 better file for energy efficient treatment under the
7 MIEA rules.

8 Our proposal is the only proposal that
9 deals with these issues now and deals with them in a
10 manner that allows Ameren Missouri's decision-makers,
11 like Warner Baxter, who you talked to last week, and
12 Richard Mark, who you'll talk with today, to have
13 confidence that the throughput disincentive can be
14 dealt with, at least at the investment level Ameren
15 Missouri is proposing for its energy efficiency
16 programs.

17 As Mr. Baxter testified at the beginning
18 of this hearing, this isn't the final solution. I
19 believe he described it as jogging, rather than
20 breaking into a full sprint, nor is this case the
21 last time the Company will be asking you to support
22 new and constructive regulatory treatment mechanisms
23 for energy efficiency expenditures.

24 But Commissioner, this proposal is what
25 Ameren Missouri believes is necessary right now to

1 continue to pursue energy efficiency in Missouri.

2 Now, other parties offer various
3 objections. It violates the Commission's definition
4 of lost revenue. The Company hasn't asked for
5 approval of its energy efficiency programs. The
6 Company hasn't asked for a waiver of some portion of
7 the not-yet effective MIEA rules.

8 The Commission hasn't hired an
9 evaluator. It's different than what has been allowed
10 for by KCPL. These objections are nothing but
11 distractions, distractions from the goal of pursuing
12 all cost-effective energy efficiency.

13 We aren't asking for lost revenues.
14 We're asking for our incentives to be aligned, which
15 means we're moving the throughput disincentive, which
16 is different than lost revenues.

17 If the law requires magic words from the
18 Commission to approve the Company's energy efficiency
19 programs, then put those words in your report and
20 order. If the Commission thinks a waiver of a
21 portion of the rules is necessary to approve this
22 billing unit mechanism, then grant us that waiver in
23 the order but, Commission, don't let this opportunity
24 to continue the very real progress Ameren Missouri
25 has made on energy efficiency fall by the wayside

1 because of the distractions offered by other parties
2 in this case.

3 Seize the opportunity. Work with us.
4 Continue to pursue all cost-effective in the state of
5 Missouri.

6 Thank you.

7 JUDGE WOODRUFF: Thank you.

8 Opening for Staff.

9 MR. WILLIAMS: Thank you, Judge,
10 Commissioners. May it please the Commission.

11 My name is Nathan Williams, and I'm
12 representing the Commission Staff. One issue you are
13 about to take evidence on is whether the
14 amortization period for Ameren Missouri's current
15 demand-side program cost recovery mechanism should be
16 changed.

17 Staff recommends it should be unchanged
18 at six years. The other issues you are about to hear
19 involve the Missouri Energy Efficiency Investment Act
20 that became law in 2009. After much input from
21 stakeholders regarding the meaning of certain
22 controversial provisions in that act, the Commission
23 has ordered Missouri Energy Efficiency Investment Act
24 rules that become effective May 31 of this year.
25 Those rules provide clarification of that act.

1 You are about to take evidence on Ameren
2 Missouri's request for Commission authorization to
3 recover all the estimated sales revenues it asserts
4 it will lose due to customer efficiency measures
5 taken because of Ameren Missouri's demand-side
6 programs.

7 The Missouri Energy Efficiency Investment
8 Act requires Commission approval of the demand-side
9 programs before recovery of such lost sales revenues
10 is allowed, but Ameren Missouri has not requested
11 approval of its demand-side programs in this case;
12 therefore, the Commission should deny that request.

13 Further, because the Commission has
14 expressed in its Missouri Energy Efficiency
15 Investment Act rules that recovery of such lost sales
16 revenue should be retrospectively based and limited
17 by the net retail kilowatt hours used to set
18 electricity rates and Ameren Missouri's proposal does
19 neither, the Commission should deny Ameren Missouri's
20 request.

21 Further, Ameren Missouri's billing units
22 adjustment proposal is deficient in the following
23 respects: First, it does not address treatment of
24 customers who opt out of demand-side programs and are
25 not to bear any cost of the demand-side programs.

1 Second, it does not consider the
2 possibility of reducing or exempting low-income
3 classes as a subclass of residential customers from
4 bearing the costs of the programs. Third, it does
5 not address how or whether Ameren Missouri would
6 identify its billing units adjustment on customers'
7 bills, including whether it is a separate line item
8 required by Section 393.1075.13.

9 The Missouri Energy Efficiency Investment
10 Act is intended to promote implementation of demand-
11 side programs to achieve all cost-effective demand-
12 side saving; therefore, Staff recommends the
13 Commission order Ameren Missouri to continue funding
14 its demand-side programs for 2012 and 2013, at least
15 at the \$20 million level shown in its preferred
16 resource plan that it filed on February 23, 2011, in
17 File No. EO-2011-0271.

18 That plan includes demand-side program's
19 design for achieving cost-effective demand-side
20 savings. Further, in light of Ameren Missouri's
21 recent Chapter 22 Electric Resource Planning
22 Compliance Filing, docketed as File No. EO-2011-0271
23 and the noncompliance of its lost sales revenues
24 proposal in this case with the Commission's Missouri
25 Energy Efficiency Investment Act rules, Staff also

1 recommends the Commission order Ameren Missouri to,
2 one, obtain stakeholder input to align Ameren
3 Missouri's financial incentives with helping its
4 customers to use energy more efficiently, and, two,
5 file by January 1st of 2012 an application made under
6 the Missouri Energy Efficiency Investment Act
7 seeking approval of its realistic, achievable,
8 potential demand-side program to set out in its
9 Chapter 22 compliance filing, File No. EO-2011-0271,
10 and for any cost recovery, lost revenue recovery, and
11 utility incentive Ameren Missouri wishes to pursue
12 under the Missouri Energy Efficiency Investment Act
13 rules, or if the rules are not effective under the
14 act itself.

15 Staff's primary and first witness on
16 these issues is John A. Rogers. Lena M. Mantle will
17 also testify for Staff regarding Ameren Missouri's
18 billing units adjustment proposal.

19 Because of how late in this case Ameren
20 Missouri's billing units adjustment proposal was
21 introduced, providing Staff with very little time to
22 prepare its prefiled supplemental testimony while
23 also preparing for other issues in this hearing,
24 Staff particularly encourages the Commission to fully
25 explore this issue with Staff's witnesses.

1 Thank you.

2 JUDGE WOODRUFF: Opening for MIEC.

3 MR. DOWNEY: Good morning. Edward Downey
4 on behalf of the Missouri Industrial Energy
5 Consumers. I will represent the MIEC on this issue
6 and another issue tomorrow.

7 This issue actually presents two
8 subissues, as Mr. Williams just indicated. One is:
9 How should Ameren recover its actual expenditures on
10 DSM programs? I think we all agree that it should
11 recover those expenditures. The question is, How?

12 The second issue of which the MIEC has an
13 interest is: Should Ameren have an adjustment
14 mechanism, the one it's proposed, to recover its lost
15 revenues from lost sales? I think we call that a
16 billing units adjustment.

17 The MIEC will present the testimony of
18 two witnesses on these issues, Maurice Brubaker and
19 Mike Brosch, and through their testimony and the
20 testimony of other witnesses, the following facts
21 will be established: DSM expenditures should be
22 included in rate base and amortized over ten years.

23 This is consistent with the position the
24 Missouri Energy Group has taken, as well as MIEC's
25 position. The expenditures should not be expensed.

1 They are designated regulatory assets that, on
2 average, provide benefits over 12 years.

3 The MIEC disagrees with some of the
4 parties that the expenditures should be amortized
5 over six years. The basis for the six-year
6 amortization -- I think is a stipulation in the last
7 Ameren rate case. That stipulation was not to have
8 precedential value, although it did carry over into
9 the Kansas City Power and Light decision.

10 As far as I am aware from the study of
11 the testimonies that you will receive today, the only
12 analysis that was performed on the benefits that
13 these programs provide was performed by Mr. Brubaker,
14 and as far as I can tell, his analysis is undisputed
15 by the other witnesses, that on average, a weighted
16 average, the programs provide benefits over 12 years,
17 and that's why Mr. Brubaker proposes amortization
18 over ten.

19 The other issue is the billing units
20 adjustment that was recently proposed by Ameren, and
21 I have a list of reasons why the MIEC opposes that.
22 Mr. Williams has just articulated those, so I'm not
23 going to repeat them, for the sake of brevity here,
24 but in conclusion, the MIEC asks the Commission to
25 include the expenditures, DSM expenditures, in rate

1 base, amortize those over ten years, and deny the
2 billing units adjustment.

3 JUDGE WOODRUFF: Thank you.

4 MR. DOWNEY: Thank you.

5 JUDGE WOODRUFF: Opening for DNR.

6 MS. FRAZIER. Good morning and thank you.
7 Jennifer Frazier for the Department of Natural
8 Resources.

9 The circumstances surrounding this case
10 have made it particularly challenging for the
11 Department of Natural Resources to formulate a
12 position on the issues presented the Commission on
13 demand-side management and energy efficiency.

14 First off, Ameren started out asking for
15 three-year amortization of its regulatory asset
16 account, and at the end of the case changed this to
17 six years, we think. Ameren put forth a fixed-cost
18 recovery mechanism for account for the lost of
19 recovery of fixed costs in its current rates, but in
20 its rebuttal, this mechanism was replaced with the
21 alternative method that's been discussed earlier
22 today.

23 The Commission's Staff's then willing to
24 consider either of these proposals. Consequently,
25 the nonutility parties have been left to try and hit

1 a moving target, and there's not been sufficient
2 information provided to develop either the fixed-cost
3 recovery mechanism or the billing unit adjustment
4 recovery mechanism.

5 To compound the difficulties of this
6 case, we are operating in a vacuum that is the gap
7 between the promulgation and implementation of the
8 MIEA rules. In these challenging circumstances, the
9 Department would like to encourage the Commission to
10 consider the following with respect to DSM issues:

11 First, I believe all parties agree that the
12 Commission should approve Ameren's request to
13 continue its current demand-side management programs
14 through the end of 2013.

15 Second, the Department believes these
16 programs should continue to be funded at current or
17 greater levels to achieve all cost-effective demand-
18 side savings. Ameren's stated intention of funding
19 these programs at significantly-reduced levels should
20 not be accepted as it is inconsistent with the
21 policies of this state and the goals of the
22 Commission under MIEA. These programs and funding
23 should be ramped up, not down.

24 Third, because the policy of the state is
25 not only to value demand-side investments, but also

1 to provide timely cost recovery, the Commission
2 should approve a cost recovery mechanism that will
3 also address disincentives. We believe the
4 Commission has the flexibility and ability to do so,
5 particularly in this gap period while we are all
6 waiting for rules to become effective.

7 Movement toward timely cost recovery's
8 essential to removing disincentives to further DSM
9 investment. At a minimum, the amortization period
10 for the recovery of DSM programs should be shortened
11 to three years.

12 In conclusion, the Commission does have
13 the flexibility and duty to balance the interests of
14 moving toward all cost-effective energy efficiency
15 measures with the need to provide timely cost
16 recovery to Ameren.

17 We encourage the Commission to require
18 Ameren to continue its forward momentum and not to
19 backslide on its commitments to energy efficiency,
20 which we believe benefit Ameren's customers in the
21 long run, as well as the citizens of the state.

22 Thank you.

23 JUDGE WOODRUFF: Thank you.

24 COMMISSIONER JARRETT: Judge, could I
25 inquire?

1 JUDGE WOODRUFF: Certainly.

2 COMMISSIONER JARRETT: This has nothing to
3 do with this case, but I was just wondering, Do you
4 know what the status is in the budget of some of
5 DNR's energy efficiency programs as far as funding?

6 MS. FRAZIER: I'm afraid I don't, but I'd
7 be happy to check and get back with you.

8 COMMISSIONER JARRETT: All right. I'd
9 appreciate that. I know some of that was kind of in
10 controversy and in flux.

11 MS. FRAZIER: Yes. I will report back to
12 you on this.

13 COMMISSIONER JARRETT: Thank you.

14 JUDGE WOODRUFF: Opening for Public
15 Counsel.

16 MR. MILLS: Good morning. May it please
17 the Commission.

18 In this case, as you can see from the
19 slide on the AMO, this is a fixture from page 21 of
20 the executive summary of AmerenUE's currently-pending
21 integrated resource filing. It's also been admitted
22 into this case as part of Exhibit 232, but as you can
23 see from that, we're literally at a crossroads.

24 We have an array of options for moving
25 forward with demand-side management and energy

1 efficiency for Union Electric Company, and I agree
2 with DNR, that the most critical thing that the
3 Commission can do is ensure that we don't go
4 backwards. Given UE's recalcitrance -- perhaps that
5 is a kind word as displayed in this case -- I think
6 it may be very difficult to move the ball forward,
7 but the Commission should at least ensure that we do
8 not go backwards.

9 And I think to that end, the testimony of
10 Public Counsel witness Ryan Kind is that the
11 Commission should take an approach similar to the
12 approach it recently took in the KCPL case, which is
13 to require Ameren to continue current levels of DSM
14 spending and authorize a six-year amortization of
15 those expenditures.

16 This, at the very least, keeps us from
17 going backwards, and that may be the best we can do
18 in this case. We've had a lot of discussions this
19 morning about the MIEA rules and the path forward to
20 achieve the kind of energy efficiency that MIEA
21 envisions.

22 Even if the Commission were to swallow
23 whole -- as Ms. Frazier pointed out -- the moving
24 target, which is UE's proposal in this case, that
25 doesn't get us there. That doesn't get us very far

1 at all. In fact, it's a radical departure from
2 current ratemaking practices that gives us very
3 little additional DSM, as you heard Mr. Baxter
4 testify on the first day of the hearing, so I think
5 the Commission's best course of action in this case,
6 while we wait for a MIEA filing, is to follow the
7 KCPL approach as recommended by public counsel
8 witness Kind.

9 Thank you.

10 JUDGE WOODRUFF: Thank you.

11 Is MEG here?

12 (No response.)

13 JUDGE WOODRUFF: All right. Anyone else
14 wish to make an opening? There's a lot of people in
15 the room today, and I can't see who everybody is.

16 (No response.)

17 JUDGE WOODRUFF: Then let's go forward
18 with our first witness, which would be Mr. Mark Fram
19 [sic].

20 Morning. Please raise your right hand.

21 RICHARD MARK,
22 of lawful age, being sworn, testified as follows:

23 JUDGE WOODRUFF: You may inquire.

24 MS. TATRO: Thank you.

25 DIRECT EXAMINATION BY MS. TATRO:

1 Q. Would you please state your name and
2 business address for the Commission.

3 A. Richard Mark, 1901 Chouteau, St. Louis,
4 Missouri.

5 Q. Are you the same Richard Mark who prefiled
6 rebuttal and surrebuttal testimony in this case?

7 A. Yes.

8 Q. Do you have any corrections or additions
9 to make to your testimony?

10 A. No.

11 Q. If I asked you the questions that are
12 contained within those testimonies, would your
13 answers be the same?

14 A. Yes.

15 MS. TATRO: I move -- I think it's Exhibit
16 110 and 111 into the record.

17 JUDGE WOODRUFF: Exhibits 110 and 111 have
18 been offered. Any objection to their receipt?

19 (No response.)

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

22 (Ameren Exhibit Nos. 110 and 111
23 were marked and admitted.)

24 MS. TATRO: I tender the witness for
25 cross.

1 JUDGE WOODRUFF: For cross-examination
2 we'll begin with -- looks like DNR.

3 MS. FRAZIER: Thank you. Do I need to
4 move to a microphone?

5 JUDGE WOODRUFF: Yes, if you'll come up to
6 the podium, please.

7 MS. FRAZIER: Thank you. I just have a
8 couple questions, Mr. Mark.

9 CROSS-EXAMINATION BY MS. FRAZIER:

10 Q. I'm Jennifer Frazier with the Attorney
11 General's Office. In your direct testimony, you
12 recommended a three-year amortization period for
13 Ameren's regulatory asset account; is that correct?

14 A. Correct.

15 Q. When asked why the six-year amortization
16 period in the last rate case was insufficient, one of
17 the reasons you gave was that the six-year period was
18 just a time period negotiated and it was not based on
19 objective criteria; is that correct?

20 A. That's right.

21 Q. Do you understand that?

22 And you expressed your concern in your
23 direct testimony that if the amortization period was
24 too long a --

25 MS. TATRO: Excuse me. Mr. Mark does not

1 have direct testimony. Are you talking about his
2 rebuttal?

3 MS. FRAZIER: I think I did. I'm sorry.
4 It's Exhibit 114, and I apologize for that
5 mischaracterization.

6 MS. TATRO: I think it's 110 and 111.
7 Sorry. It's early.

8 MS. FRAZIER: I know, and I'm asking him
9 the wrong questions for a different witness. Let's
10 start over. I'm glad you agreed with me though.

11 THE WITNESS: Okay.

12 BY MS. FRAZIER:

13 Q. What is Ameren projected to spend this
14 year on energy efficiency programs?

15 A. Do you mean this year, this --

16 Q. 2010. What was Ameren projected to spend
17 in this current year?

18 A. 2011?

19 Q. 2011 that we're in.

20 A. I believe our budget this year is
21 33 million.

22 Q. Thank you. That's the number I was asking
23 for.

24 And you testified that Ameren would
25 commit to spending 25 million per year on energy

1 efficiency program under certain circumstance in your
2 rebuttal testimony; is that correct?

3 A. Correct.

4 Q. What were those circumstances?

5 A. Well, when we looked at the 25 million,
6 the 25 million that we decided to go forward with was
7 an average of our spend over the last -- since we
8 implemented the energy efficiency programs in 2008,
9 and so it took a while to get the programs ramped up
10 to speed, and so what we did is, over that period of
11 time from '08 to current, we spent approximately
12 \$70 million, and so when we looked at our average
13 spend, it was about 25 million, and so that's how we
14 developed -- that's part of the thought process that
15 went into developing the budget going forward.

16 Q. But in your rebuttal testimony --

17 A. Okay.

18 Q. -- you stated that the 25 million would be
19 conditioned upon the Commission's approval of a
20 three-year amortization; is that right? If you need
21 to refer --

22 A. Sure, if you can show me where --

23 Q. It would be on page 7, line 6 to 10.

24 A. Okay.

25 Q. And I'll repeat the question. The

1 circumstances under which Ameren would commit to
2 spending 25 million for a three-year
3 amortization [sic] --

4 A. Uh-huh.

5 Q. That's right?

6 A. Correct.

7 Q. -- and the billing unit adjustment cost
8 recovery mechanism; is that correct?

9 A. I didn't talk about the billing unit --

10 Q. How did you characterize it?

11 A. Well, what I say there is that if the
12 Commission were to allow the Company to amortize its
13 energy-efficient -- the regulatory asset over three
14 years and approve -- okay, the recommended billing
15 unit adjustment, we'd continue to spend around
16 25 million per year on its energy-efficiency
17 programs, which is consistent with the average level
18 of spending over the past several years.

19 Q. All right. In your surrebuttal testimony,
20 however, you -- Ameren changes its position on
21 amortization from three to six years; is that
22 correct?

23 A. Correct.

24 Q. Can you explain how, if the recommended
25 billing unit adjustment mechanism is not approved,

1 what would that do to your position on amortization?

2 A. Well, in my surrebuttal, we stated that we
3 were withdrawing our request to shorten the
4 amortization period and keep it at the six-year
5 period of time.

6 Q. But if the Commission did not approve that
7 billing unit adjustment, would that affect your
8 position on amortization? Would it make it necessary
9 to have a three-year amortization?

10 A. Well, I think what we stated was that, you
11 know, at this point the six-year -- you know, the
12 main concern that we have is the throughput
13 disincentive, and so we think that's the most
14 important issue that needs to be resolved, and that's
15 why we made the decision to drop the issue to
16 three-year amortization.

17 Q. Is the billing -- I'm not sure what to
18 call it, the billing unit adjustment --

19 A. Billing unit adjustment. Okay.

20 Q. -- do you consider that to be a cost
21 recovery mechanism?

22 A. It's -- it's a portion of it. It's a step
23 toward helping us to recover all of our costs, yes.

24 MS. FRAZIER: Thank you. I have no
25 further questions.

1 JUDGE WOODRUFF: MIEC?

2 MR. DOWNEY: No questions.

3 JUDGE WOODRUFF: Public counsel?

4 MR. MILLS: Yes. Thank you. Good
5 morning, Mr. Mark.

6 THE WITNESS: Morning.

7 CROSS-EXAMINATION BY MR. MILLS:

8 Q. Have you had the opportunity to listen to
9 or read the transcripts of any of the proceedings so
10 far?

11 A. I've read some of the transcripts. There
12 were some technical difficulties listening to it, so
13 I haven't listened to much of it, but I've read some
14 of the transcripts, yes.

15 Q. Assume for purpose of this question that
16 during yesterday's opening statements on the fuel
17 adjustment clause issue, Company Attorney Tom Byrne
18 asserted that customer satisfaction ultimately
19 benefits the customer and its shareholders. Do you
20 agree with that?

21 I'm sorry. The Company and its
22 shareholders. Do you agree with that.

23 A. Could you restate that?

24 Q. Yes. I'm sorry.

25 Customer satisfaction ultimately benefits

1 the Company and its shareholders.

2 A. I think so, yes.

3 Q. Do you have any doubt about that? You
4 look a little bit puzzled.

5 A. Well, to -- to measure the effect of it is
6 very difficult. It's something we try to look at all
7 the time: The impact of customer service on
8 shareholder value on the Company.

9 And its one of those things that's very
10 difficult to measure, so I don't think it's -- you
11 know, there's a direct -- there's not a real clear-
12 cut measurement for it.

13 Q. But it's there.

14 A. It is.

15 Q. It's just hard to measure.

16 A. It is, correct.

17 Q. Do you believe that by offering energy
18 efficiency programs to Ameren Missouri customers the
19 Company has an opportunity to increase the level of
20 customer satisfaction?

21 A. I believe that energy efficiency programs
22 do give customers choices and options that does help
23 with their satisfaction of services we provide, yes.

24 Q. Now, do you have a copy of your
25 testimonies there with you --

1 A. Yes.

2 Q. -- and your surrebuttal testimony?

3 A. Okay.

4 Q. Page 3, at the top of the page,
5 specifically line 3, beginning at line 3, you talk
6 about how Ameren Missouri makes decisions about
7 investments in energy efficiency; is that correct?

8 A. Well, my statement's there, yeah.

9 Q. Who at Ameren Missouri makes the final
10 decision about the level of future investments in
11 energy efficiency?

12 A. I don't think there's any one person.
13 That's kind of a team effort, myself, Mr. Baxter, as
14 well as representatives from other departments. Dan
15 Laurent makes recommendations. We get information
16 from our corporate planning departments, and
17 basically we have a team that basically makes
18 decisions going forward.

19 Q. Is this sort of a standing committee, or
20 is an ad hoc group of people, depending on what the
21 issues are?

22 A. It's the Ameren Missouri leadership team.
23 When we look at asset allocation and capital
24 allocation going forward, we try to look at all areas
25 of the Company and decide where we need to make

1 investments and how we should spend our dollars
2 available to us.

3 Q. Is the Ameren Missouri board of directors
4 involved in the process?

5 A. They find -- they make a budget. They do
6 approve our final budgets, yes.

7 Q. How about the Ameren board of directors?
8 Are they involved in that process?

9 A. Ameren board of directors?

10 Q. Yes.

11 A. They approve the budget, yeah.

12 Q. Because the prior question was about
13 Ameren Missouri's board.

14 A. They're involved. There's representatives
15 of the Ameren board, yes. Myself, I'm on the
16 Ameren Missouri board. Mr. Baxter is also.

17 Q. What is Dan Laurent's role in the process?

18 A. Dan is the manager of our energy
19 efficiency programs, and he basically manages the
20 day-to-day running and operation of those programs as
21 well as their design and evaluation and progress
22 reports.

23 Q. Is Steve Kidwell involved in the decision-
24 making process?

25 A. Steve Kidwell is not. He's in corporate

1 planning now. He has some role in providing
2 information, but he doesn't have a direct role in
3 deciding going forward the budgets.

4 Q. How about Warren Wood?

5 A. He could have some input. He is a member
6 of the leadership team, but he does not have direct
7 involvement in putting that together, no.

8 Q. Now, when you talk about the executive
9 leadership team, is that an Ameren Missouri group or
10 an Ameren group?

11 A. Ameren Missouri.

12 Q. Ameren Missouri.

13 And what are the primary responsibilities
14 of that group?

15 A. Well, each person on the team is -- I
16 mean, it's made up of officers of -- that represent
17 the various segments of the business operations, you
18 know, the senior chief nuclear officer, our CEO, our
19 vice president of finance, vice president of
20 distribution operations. All of our senior officers
21 make up that team.

22 Q. Now, you've been talking about the Ameren
23 Missouri executive leadership team. Is there also a
24 similar executive leadership team at Ameren
25 Corporation?

1 A. Yes.

2 Q. Are you a member of that team as well?

3 A. Yes.

4 Q. Is the Ameren -- that's distinct from the
5 Ameren Missouri -- the Ameren executive leadership
6 team responsible for trying to ensure that the
7 business and strategic plans of the various
8 subsidiaries of Ameren are aligned with the overall
9 business and strategic plans of Ameren?

10 A. Yes.

11 Q. Does the Ameren -- again, as distinct from
12 the Ameren Missouri -- Ameren executive leadership
13 team make any decisions or provide any input
14 regarding the future level of investments of energy
15 efficiency at Ameren Missouri?

16 A. They make input. I mean, obviously,
17 issues are discussed, and any time any one of the
18 business units brings something to present, a budget
19 or an issue or a new program, they're discussed and,
20 yes, there's input by everyone. Our thought is: The
21 more input you get, the better decisions you make.

22 Q. Which group makes the ultimate decision as
23 to the level of Ameren Missouri's energy efficiency
24 expenditures? Is it the Ameren Missouri executive
25 leadership team or the Ameren leadership team?

1 A. Well, I don't know if I've ever been to a
2 meeting where that issue is the only topic of the
3 discussion and there's been [sic] on the table to
4 make that decision.

5 Q. So what is that answer? Which team is it?

6 A. So basically, Ameren Missouri would put
7 together the overall budget, not just on energy
8 efficiency, but on the overall operations of Ameren
9 Missouri, and then that would be -- the Illinois
10 would do the same thing, and all the business
11 segments would then put their budgets together, and
12 then we look at it in conjunction with the overall
13 strategies and decision-making going forward for
14 Ameren Corporation.

15 Q. So then the Ameren leadership team would
16 approve or suggest modifications to those various
17 business segments' budgets?

18 A. If there were some issues there, yes, they
19 would.

20 Q. Now, turning to Ameren Missouri integrated
21 resource planning process --

22 A. Uh-huh.

23 Q. -- how does the IRP process affect the
24 decisions that Ameren Missouri makes about the level
25 of future investments in energy efficiency?

1 A. I think it gives us some direction on
2 programs and which way to go and options.

3 Q. Can you be more specific about what you
4 mean by "some direction"?

5 A. It basically lays out different scenarios
6 as far as looking at our portfolio of, you know,
7 meeting our customer needs for the future, so it
8 gives a direction of what options are available and
9 what would happen if you took advantage of a certain
10 one of those scenarios.

11 Q. Are Ameren Missouri's budgets for energy
12 efficiency over the next several years consistent
13 with the IRP?

14 A. Not that -- no, I don't believe so.

15 Q. Does Ameren Missouri have a segment
16 business plan that covers the five-year period from
17 2011 through 2015?

18 A. Excuse me. Could you repeat that, please.

19 Q. Does Ameren Missouri have a segment
20 business plan that covers the period of time from
21 2011 through 2015?

22 A. We do have a business plan, yes.

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

25 JUDGE WOODRUFF: Okay. Public Counsel's

1 next number is 310.

2 (OPC Exhibit No. 310-P

3 was marked for identification.)

4 MS. TATRO: While he's handing that out, I
5 just want to know if this is marked "proprietary."

6 MR. MILLS: It is, and when we get to
7 talking about it, we'll need to go in-camera.

8 JUDGE WOODRUFF: So it's proprietary, so
9 it's 310-P.

10 MS. TATRO: I apologize. Did you say
11 310?

12 THE WITNESS: 310-P.

13 MS. TATRO: Thank you.

14 MR. MILLS: Judge, I think we'll need to
15 go in-camera to address the proprietary portions of
16 these questions.

17 JUDGE WOODRUFF: Okay. At this point we
18 are in-camera.

19 (REPORTER'S NOTE: At this point an
20 in-camera session was held, which is contained in
21 Volume 27, pages 1815 to 1821 of the transcript.)

22 MR. MILLS: Judge, what was the exhibit
23 number?

24 JUDGE WOODRUFF: 310-P.

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1 (REPORTER'S NOTE: At this point, public
2 session resumed.)

3 MR. MILLS: I'd like to offer Exhibit
4 310-P.

5 JUDGE WOODRUFF: 310-P has been offered.
6 Any objection to its receipt?

7 (No response.)

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

10 (Public Counsel Exhibit No. 310-P was admitted.)

11 BY MR. MILLS:

12 Q. Mr. Mark, can you please explain your
13 involvement in the Ameren Missouri integrated
14 resource planning process.

15 A. I don't have direct involvement in it. I
16 have input and I review it and -- but it's basically
17 put together by our corporate planning department and
18 staff with their analysts.

19 Q. Okay. The corporate planning department
20 is outside of your scope of authority or
21 responsibility; is that correct?

22 A. Yes.

23 Q. Corporate planning, is that an Ameren
24 Missouri department or is that Ameren Services?

25 A. Corporate -- there's corporate planning is

1 predominantly Ameren Corporation people with input
2 from Ameren Missouri people.

3 Q. Were you a member of a -- and you may have
4 answered this a little bit earlier, but were you a
5 member of a committee or a group that provided
6 guidance and oversight for the Ameren integrated
7 resource planning process?

8 A. I wasn't directly involved in the planning
9 and oversight of it. Like I said, I review it. I
10 got the input from it. I sat in on some meetings,
11 but I wasn't directly involved in putting it
12 together.

13 Q. Is there such a group that was involved
14 and responsible for the integrated resource planning
15 process?

16 A. There's a group that does that, yeah.

17 Q. Do they have -- is there a specific name
18 for that group?

19 A. I don't remember the name off the top of
20 my head. I mean, there was a team and a task force
21 that worked on the integrated resource plan.

22 Q. Who all was involved in that? Do you know
23 the people that were?

24 A. There was dozens of people that are
25 involved in the IRP. I don't -- you know, I mean,

1 you can ask another officer. I don't know who's all
2 on that team. I know there's -- there's tons of
3 people on it. I don't know all of them.

4 Q. Who would be in the -- this may not be the
5 right term, but it's sort of a functional, if not
6 exact title. Who would be the team leader of that
7 team?

8 A. Overall, I think it would probably be Rick
9 Voytas, I think. He was one of the team leaders. I
10 don't know if he was the key -- he was -- he's not an
11 officer, so I don't know if he's the person that had
12 overall. Corporate planning is under Michael Main,
13 so his department would have overall responsibility
14 and accountability for it but, like I said, it's a
15 number of people that's from throughout the
16 organization, some with Ameren Services, some with
17 Ameren Missouri, that work on putting that together.
18 It's a very complex group of folks.

19 Q. Other than Rick Voytas and Michael Main,
20 who would be some other senior team leaders of that
21 group?

22 A. Matt Michaels, Dan Laurent, Bill Davis.
23 You know, then other people will come and go in
24 different parts of it, you know. I mean, I would
25 think that at some point almost every officer of

1 Ameren Missouri is involved in some piece of it, but
2 who sits on the initial -- that whole team, I don't
3 know off the top of my head right now.

4 Q. First of all, was it that group that
5 selected the preferred resource plan that is
6 identified in Ameren Missouri's 2011 IRP plan for IRP
7 filing?

8 A. Yes, I mean, they put it together. They
9 put the preferred resource plan and the options,
10 finalized the report.

11 Q. Can I get you -- do you still have
12 surrebuttal testimony?

13 A. Yes.

14 Q. Can I get you to turn back to page three?
15 Can you read into the record the sentence
16 that begins on line three?

17 A. Decisions about -- on page three?

18 Q. Yes.

19 A. Decisions about investment in energy
20 efficiency requires assessing trade-offs between
21 expected utility costs, including how those costs
22 recovered in the regulatory framework and benefits to
23 the customers. Because of that assessment --

24 Q. That's enough for -- you can read more, if
25 you want to, but that's all I had in mind for right

1 now.

2 The portion that you read talks about
3 expected utility costs; correct?

4 A. Correct.

5 Q. Does the level of DSM investment chosen by
6 Ameren Missouri depend on how the utility's expected
7 future cost of energy efficiency investments compare
8 to the utility's expected future cost of supply-side
9 investments?

10 A. Could you repeat the question, please?

11 Q. Yeah. Does the level of DSM investment
12 that Ameren Missouri chooses to make in the future
13 depend on the utility's expected future cost of
14 energy efficiency investments as compared to supply-
15 side investments such as fossil or nuclear units?

16 A. I believe it does, yes.

17 Q. Okay. Does the IRP planning process that
18 Ameren Missouri enters into help the Company make
19 decisions about whether it can serve its customers at
20 a lower cost by investing in energy efficiency
21 instead of in supply-side resources?

22 A. Does the IRP do that?

23 Q. Yes.

24 A. I think the IRP puts -- you know, puts out
25 scenarios. I mean, I think the decisions that

1 make -- on budgeting and spend are based more to
2 business segment level than at the IRP level.

3 Q. Does the IRP process inform the decisions
4 of the business segment-level planning?

5 A. I think it gives us some direction and
6 view. The IRP, you know, takes a look at over a
7 20-year horizon, but I think that, you know, you look
8 at, you know, the most -- it's more focused on what
9 happens over the next two to three years, and then
10 the business segments makes more of a decision based
11 on budgeting and going forward based on what's
12 available at the time.

13 Q. Are you generally familiar with the
14 Commission's integrated planning rules?

15 A. Generally.

16 Q. Is it true that the Commission's
17 currently-effective IRP -- and first, let me see if
18 you'll agree with this: Are you aware that the
19 Commission is undertaking a revision of the IRP
20 rules?

21 A. No, I wasn't.

22 Q. Okay. So with respect to the IRP rules,
23 is it true that there's a provision that requires
24 electric utilities to, quote, Use minimization of the
25 present worth of long-run utility costs as the

1 primary selection criteria in choosing the preferred
2 resource plan," closed quotes? Are you familiar with
3 that requirement?

4 A. I haven't read it but, I mean -- what are
5 you reading from?

6 Q. Well, it's the Commission's current IRP
7 rule.

8 MR. MILLS: Judge, may I approach?

9 JUDGE WOODRUFF: You may.

10 Do you want to mark this?

11 MR. MILLS: We might as well, because I'm
12 going to ask him a couple questions about it.

13 JUDGE WOODRUFF: This will be 311.

14 (OPC Exhibit No. 311

15 was marked for identification.)

16 BY MR. MILLS:

17 Q. Mr. Mark, Exhibit 311 is the beginning of
18 the Commission's Chapter 22 resource planning rules,
19 and I've handed you a copy of that, the beginning of
20 those rules.

21 Do you recognize that the highlighted
22 section there is the sentence that I just read to
23 you?

24 A. Yes.

25 Q. That, as it says, requires the present

1 worth of long-run utility costs to be the primary
2 selection criteria in choosing the preferred resource
3 plan; correct?

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

5 Q. Is it your understanding that the least-
6 cost resource plan in Ameren Missouri's 2011 IRP
7 filing was the plan referred to as the Energy
8 Efficiency Plan?

9 A. The least cost? Well, you know, I mean,
10 if you could show me in their -- in the -- I'd rather
11 read from the document, rather than paraphrase it.

12 MR. MILLS: May I approach?

13 JUDGE WOODRUFF: You may.

14 MR. MILLS: Judge, what I've handed the
15 witness is a copy of the executive summary which has
16 been previously entered into the record as Exhibit
17 232. Do you have a copy handy?

18 JUDGE WOODRUFF: Not handy.

19 THE WITNESS: I think I brought the same
20 copy, if you need an extra one. I think it's the
21 copy of what I have.

22 MR. MILLS: Yeah.

23 BY MR. MILLS:

24 Q. Specifically on page 19, at the bottom
25 there's a description of a plan called The Energy

1 Efficiency Plan.

2 A. Right.

3 Q. My question was, Is it your understanding
4 that the least-cost resource plan in this IRP filing
5 is that Energy Efficiency Plan?

6 A. Well, it's -- it says that with this
7 plan -- it says, Under this plan our future energy
8 needs would be met solely through greater energy
9 efficiency.

10 Q. Do you know whether that plan, of the
11 plans described in sthis executive summary, is the
12 least-cost plan?

13 A. I -- I don't know if I've ever heard it
14 defined -- described that way.

15 Q. Which of the plans that are described in
16 the integrated resource is the least cost?

17 A. Well, I think -- you know, I think the
18 preferred resource plan, I mean, outlines -- in the
19 chart it outlines what the preferred resource plan
20 is, and that means that's taken under some
21 assumptions that you have virtually no changes in
22 regulatory and a lot of environment type of
23 regulations that would be put on the plans. I think
24 that's the preferred resource plan.

25 Q. Right. I'm not asking you about which is

1 the preferred resource plan.

2 A. Okay.

3 Q. I'm asking you, Which is the least cost?

4 A. Well, I think it does say that energy
5 efficiency would probably be the least cost.

6 Q. Okay. Now, does that energy efficiency
7 plan include DSM at the level of realistically-
8 achievable potential?

9 A. You know, I'd have to go back and read
10 it. I mean, I don't know exactly what level this
11 plan calls for. Like I said, I didn't put these
12 plans together, and I'm not directly involved, but I
13 have kind of a general understanding of it.

14 The one thing I do know is that when we
15 look at the -- you know, everything in the IRP is
16 predicated under certain assumptions that are built
17 into it, and I do know that one of the things has
18 built into the IRP, when we looked at the energy
19 efficiency plan, and that is -- you know, it depends
20 on the regulatory framework that, you know, with
21 the -- and I think it's stated right there, that's --
22 it says, State regulatory framework that encourage
23 utility investments and energy efficiency programs,
24 and the other thing is we want the customers to
25 embrace energy efficiency programs and work to save

1 energy.

2 Q. Was your answer to my question, I don't
3 know?

4 My question was simply: Does the energy
5 efficiency plan include DSM at the realistically-
6 achievable potential level?

7 A. I said I don't -- I don't know if that's
8 the level that is designed.

9 Q. Are you familiar with the levelized cost
10 of energy analysis that appears on page eight and
11 nine of the executive summary, the document I just
12 handed you?

13 A. I've seen it, yes.

14 Q. And specifically Figure 1.4 on page 9,
15 does that show that the levelized cost of Ameren
16 Missouri's existing generation is about five cents
17 per kilowatt hour?

18 A. Yes.

19 Q. And it shows that the levelized cost of
20 new nuclear energy is about ten cents per kilowatt
21 hour; is that correct?

22 A. That's what the chart shows, yes.

23 Q. And it shows that the levelized cost of a
24 new combined cycle is about twelve cents per kilowatt
25 hour; is that correct?

1 A. Correct.

2 Q. And those are all numbers that are
3 calculated by Ameren Missouri based on your capital
4 costs and O & M costs; is that correct?

5 A. Correct.

6 Q. Do you know what Ameren Missouri
7 calculates as the levelized cost of new investments
8 in energy efficiency?

9 A. I think it's stated in this document
10 somewhere, that there's some -- there's a statement
11 toward the cost of energy efficiency.

12 Q. Can I get you to turn to page 8?

13 A. Yes.

14 Q. There's a statement there.

15 A. Uh-huh.

16 Q. What does that say towards the bottom of
17 the final full paragraph on that page about the
18 levelized cost of energy efficiency?

19 A. It says that -- well, to read it, it says,
20 The levelized cost of energy near four cents kilowatt
21 hour, energy efficiency, is less expensive than
22 supply-side alternatives. Ameren Missouri's analysis
23 has also quantified some of the unique risks
24 associated with implementing the demand-side
25 programs.

1 Q. Now, can I get you to turn to page 20,
2 please, still on Exhibit 232?

3 A. Okay.

4 Q. Now, there's a sentence beginning the last
5 full paragraph on that page that says, The IRP
6 analysis showed aggressive DSM plans are likely to
7 result in the lowest cost to customers over the
8 planning horizon, so if regulatory barriers to
9 implementation are removed, the aggressive DSM plan
10 could become the preferred plan. Did I read that
11 correctly?

12 A. Correct.

13 Q. Now, do you recall when we discussed the
14 requirement of the Commission's rules about using the
15 minimization of the present worth of long-run utility
16 costs of the primary selection criteria?

17 A. I remember discussion, yes.

18 Q. Considering that requirement, can you
19 explain to me why Ameren Missouri did not choose as
20 its preferred resource plan the lowest-cost plan?

21 MS. TATRO: I'm going to object that it
22 assumes facts not in evidence. I'm not sure that
23 Ameren Missouri didn't choose the lowest-cost plan,
24 and I'm not sure this is even the witness who made
25 that decision. We do have that -- a witness involved

1 in that decision in the room who we can ask questions
2 of later.

3 MR. MILLS: There were two parts of that.
4 If he doesn't know, he can certainly say he doesn't
5 know, and I believe it does assume facts that are not
6 in evidence. I've think we've just gone through
7 that.

8 JUDGE WOODRUFF: I'm going to overrule the
9 objection.

10 THE WITNESS: Can you restate your
11 question, please?

12 BY MR. MILLS:

13 Q. The questions is: Given the requirement
14 in the Commission's rules to choose the least-cost
15 plan, why did Ameren Missouri not choose the energy
16 efficiency plan that's described at the bottom of
17 page 19 as it's preferred resource plan?

18 A. Well, I think -- for one thing, I think if
19 you read the rest of that paragraph, it talks about
20 some of the problems with choosing the total energy
21 efficiency plan and talks about the significant
22 uncertainty around achieving those targeted savings
23 levels. It also talks about recouping and recovering
24 your costs, so all of those things are taken into
25 consideration when you talk about a least-cost plan.

1 It isn't just the cost of the initial
2 investment. It's the -- over everything that's
3 involved with it, and with energy efficiency, you
4 have the throughput disincentive issue that is a
5 major barrier toward going forward, and so it
6 wouldn't make it the least costly for our
7 shareholders. It would make it the most costly.

8 Q. Can I get you to turn to 21? That's the
9 chart that's the decision road map.

10 A. Yes.

11 Q. Sort of to the -- the top center is where
12 the preferred resource plan is; is that correct?

13 A. Yes, I see it.

14 Q. Does that indicate -- and it's sort of a
15 flowchart. Does that indicate to you that in order
16 to move from the preferred resource plan to the
17 contingency plan on the right that DSM cost recovery
18 solutions must be implemented?

19 A. Yes.

20 Q. The contingency plan to the right, that is
21 the one that achieves realistically-achievable
22 potential; is that correct?

23 A. Correct.

24 Q. Can you tell the Commission whether Ameren
25 Missouri intends to file an application under the

1 MIEA rules to seek a DSM cost recovery solution that
2 would allow Ameren Missouri to choose that plan?

3 A. Well, in my opinion, that's what we're
4 doing right now. We're asking for the extension of a
5 programs [sic]. We're offering some solutions to
6 extend those programs going forward, and that's what
7 we're trying to get to at this point in this hearing.

8 Q. So if the Commission approves the
9 mechanisms that you've approved in this case, then
10 you plan to go forward with programs that will
11 achieve realistically-achievable potential?

12 A. I think my statement in my rebuttal is
13 that if it approves the proposal that we have, we
14 will expend \$25 million in the next two years and
15 that we will work to look at other ways to make going
16 to different levels more realistic.

17 Q. In 2013, the \$25 million level, what
18 percentage of the expenditure to achieve
19 realistically-achievable potential is that?

20 A. I think it's a little over 50 percent, 53
21 percent, something like that.

22 Q. So if you spend 53 percent of the amount
23 needed to get to realistically-achievable potential,
24 you're not getting it, are you?

25 A. Not if we spend 53 percent, right.

1 Q. Is there any proposal that you've made in
2 this case that will get you beyond 53 percent in
3 2013?

4 A. No, there isn't.

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

6 JUDGE WOODRUFF: Cross for Staff.

7 MR. WILLIAMS: Thank you, Judge.

8 CROSS-EXAMINATION BY MR. WILLIAMS:

9 Q. Mr. Mark, if the Commission continues --
10 do you need a break?

11 THE WITNESS: IF I could just have some
12 water, if you don't mind.

13 MR. MILLS: I apologize if I ran you dry.

14 BY MR. WILLIAMS:

15 Q. Mr. Mark, if the Commission continues the
16 current cost recovery, which is you get your costs
17 but you're not recovering any lost revenue, what
18 you're calling the throughput disincentive --

19 A. Correct.

20 Q. At what annual level will Ameren Missouri
21 continue to spend on its demand-side programs?

22 A. I don't think we've decided yet. I think
23 that through this process, and I think through the
24 IRP process, I think it has heightened our awareness
25 and our learning of just the impact that energy-

1 efficiency programs have on future sales and revenue,
2 and so I think that, you know, we would have to
3 evaluate that and to look at what programs we would
4 offer going forward and do a more thorough assessment
5 on what we budget for energy efficiency than we've
6 done in the past.

7 Q. So you haven't looked at the option of
8 what you would spend if the Commission basically
9 says, Maintain the status quo in terms of cost
10 recovery?

11 A. Well, if they -- we haven't -- I think
12 that after that decision was made --

13 MR. WILLIAMS: Judge, I think that calls
14 for a "yes" or a "no" response.

15 THE WITNESS: Okay. Could you ask the
16 question again then?

17 BY MR. WILLIAMS:

18 Q. The question was, Has AmerenUE considered
19 what it would spend in the event the Commission only
20 continues the status quo in terms of recover of costs
21 for demand-side programs?

22 A. I'd say no.

23 Q. Do you agree the billing unit adjustment
24 that Ameren Missouri is proposing in this case is a
25 lost revenue mechanism?

1 A. I think it's part of helping cover the
2 lost revenues. I don't know if that's the total
3 solution, but it's part of it.

4 Q. So are you saying it is a lost revenue
5 mechanism, it just doesn't recover all of the lost
6 revenue?

7 A. Well, I think that depends on -- I think
8 there's -- number one, there's a lot of
9 interpretations of "lost revenue," and so it depends
10 on what interpretation -- and how you're interpreting
11 lost revenue.

12 We think that the billing unit adjustment
13 is a mechanism to help us -- that does help us
14 recover -- or avoid lost revenue is actually what it
15 does.

16 Q. Isn't that the whole purpose of it?

17 A. To avoid lost revenues? Yes.

18 Q. And how will Commission approval of Ameren
19 Missouri's billing adjustment proposal increase
20 Ameren Missouri's incentive to increase its revenues
21 by increasing its sales?

22 A. Could you repeat the question, please? I
23 didn't hear the last part.

24 Q. Let me restate. I think I misspoke
25 anyway.

1 A. Okay.

2 Q. How will Commission approval of Ameren
3 Missouri's billing adjustment proposal decrease
4 Ameren Missouri's incentive to increase its revenues
5 by increasing its sales?

6 A. Could you ask that again? How would it
7 decrease --

8 Q. How would it decrease Ameren Missouri's
9 incentive to increase its revenues by increasing its
10 sales?

11 A. Well, I think by agreeing to the billing
12 unit adjustment, obviously it makes it -- that's --
13 you know, without it, we anticipate that if we budget
14 \$25 million a year for the next two years, we'll lose
15 over 52, \$53 million, and so if we can, you know,
16 resolve that issue, definitely it decreases our
17 reluctance to go forward with expenditures at that
18 level.

19 Q. Well, that explains why it would decrease
20 your disincentive to expend money on demand-side
21 programs. I'm asking, How does it decrease your
22 incentive to increase your revenues by increasing
23 sales?

24 A. Well, I -- I don't know. I mean, you
25 know, you decrease revenues by -- I'm not for sure

1 what you're asking but --

2 Q. Let me put it this way: How does it
3 change the throughput incentive for Ameren Missouri?

4 A. Because we won't -- without the billing
5 unit adjustment, as I said, we've already -- we feel
6 that we've lost approximately \$15 million over the
7 last three years because of the actions taken because
8 of our energy efficiency programs and energy savings.

9 By going forward and investing 25 million
10 over the next two years, we anticipate that without
11 the billing unit adjustments that we will lose
12 another \$53 million, so by doing the billing unit
13 adjustment and avoiding those lost revenues, it does
14 give us an incentive to continue those programs going
15 forward, continue our energy efficiency programs and
16 at that expenditure level that we've talked about.

17 Q. I don't think your answer addressed how
18 your proposal for billing unit adjustment changes the
19 throughput incentive. Would you address that?

20 A. Maybe I'm not the person to talk to you
21 about -- the expert on the billing unit. Bill Davis
22 designed that, but the -- you know, the overall goal
23 of the billing unit adjustment is to avoid those lost
24 revenues in the future, and that based on the 25
25 million-dollar level of expenditure so, I mean -- you

1 know, I don't know how to better answer it than that,
2 and maybe Bill can give you more in-depth about the
3 billing unit adjustment that maybe you're looking
4 for, but that's my understanding of it.

5 Q. Do rate increases put downward pressure on
6 electricity sales?

7 A. I -- I don't know. I've never looked at a
8 study of that. By Missouri having the fourth lowest
9 rates in the country, I mean, everybody talks about
10 how cheap it is. You know, you have data centers
11 from New York moving to St. Louis because of our low
12 rates. I don't think it has a significant input that
13 I've seen right now on -- on -- on impact.

14 Q. Would you turn to your rebuttal testimony,
15 which has been marked as Exhibit 110 --

16 A. Okay.

17 Q. -- particularly on page 4.

18 A. Okay.

19 Q. Then starting on line 18, do you refer
20 there to a decoupling mechanism?

21 A. Yes.

22 Q. As you use the term there, what do you
23 mean by a decoupling mechanism?

24 A. Well, there I meant -- you know,
25 decoupling is separating your revenues from your

1 volume, you know, making a distinction between not
2 having it based on volumes.

3 Q. When you say "volumes," what -- volumes of
4 what?

5 A. Sales.

6 Q. Would using a decoupling mechanism as
7 you've defined it remove Ameren Missouri's incentive
8 to increase its revenues by increasing its sales,
9 which you called the throughput incentive [sic]?

10 A. You know, I think when we issued our
11 rebuttal testimony, you know, that was -- was my
12 thought. I -- I basically -- you know, in looking at
13 it since then, and decoupling, I think the more I
14 read and hear about decoupling, I think the more I
15 would want to analyze it.

16 Q. So is your answer you don't know?

17 A. Well, my answer was my statement.

18 Q. Well, you said you would want to analyze
19 it more. Are you saying that at this time you don't
20 know?

21 A. Well, if decoupling was how we, as a
22 company, defined "decoupling," then I would say that
23 it would.

24 Q. And then the decoupling mechanism, as
25 you've defined it, would that remove Ameren

1 Missouri's disincentive to increase energy savings
2 from demand-side programs because they reduce sales?

3 A. Well, I think Bill would probably be the
4 more expert to talk about how the decoupling would
5 impact future sales.

6 Q. Well, he may be, but I'm asking you.

7 A. I would depend on his analysis.

8 Q. So you're saying you don't know?

9 A. Correct.

10 Q. Is a decoupling mechanism, as you've used
11 the terminology, better than Ameren Missouri's
12 billing unit adjustment?

13 A. At the current time I don't believe it
14 would be.

15 Q. Why not?

16 A. Well, first of all, I think that our
17 programs expire in September. We are looking for
18 some type of mechanism to bridge that gap from
19 September to -- that we want to make sure those
20 programs are extended and continue, and from what I
21 understand, you have to have separate docket to even
22 discuss and have -- to have discussions on
23 decoupling, and so our feeling was to try to look at
24 a mechanism that could be implemented during this
25 rate proceeding that would allow us to continue our

1 energy-efficient programs, that -- energy efficiency
2 programs and extend them into the future.

3 Q. Well, let's assume the decoupling
4 mechanism, as you've defined it, is available now.
5 Would it be a better mechanism than Ameren Missouri's
6 billing unit adjustment proposal?

7 A. I don't know. I would ask Bill to analyze
8 that for me.

9 Q. Assuming there weren't any limitations,
10 what would be the best mechanism to remove Ameren
11 Missouri's disincentive to increase energy savings
12 from demand-side programs because it reduced sales?

13 A. Assuming what?

14 Q. Assuming that any mechanism's available,
15 what would be the best one to renew Ameren Missouri's
16 disincentive to increase energy savings from demand-
17 side programs because they reduce sales?

18 A. I would say that I'm not in a position to
19 answer that right now, because what I've learned over
20 the three years of doing energy efficiency is that
21 there's a lot we don't know about energy efficiency
22 programs, and there's a lot of things that we put
23 into place when we establish programs, you know,
24 three years ago that we didn't realize and fully
25 understand.

1 We've looked at it from a budget and from
2 a dollar spent perspective versus an energy savings
3 perspective, so I would -- my feeling would be,
4 before we go forward with -- what we're looking at is
5 using our existing programs as the basis to go
6 forward by extending them and then learning as we go
7 and incrementally improving at working toward higher
8 levels of energy efficiency as we know more about it.

9 Q. Well, given that answer, would you be
10 opposed to continuing your existing programs under
11 the current recovery?

12 A. At the current budget level?

13 Q. Yes.

14 A. No.

15 Q. In this case has Ameren Missouri requested
16 a performance incentive for its demand-side program?

17 A. We're not requesting a performance
18 incentive. We requested the billing unit adjustment.

19 Q. Why didn't Ameren Missouri request a
20 performance incentive?

21 A. Well, I don't know if I know all the
22 reasons, but I guess off the top of my head, you
23 know, one reason is that incentives are basically
24 retrospective, I think, and, you know, after
25 something is achieved. I don't think it's -- it

1 would fit into what we're looking for trying to
2 achieve now as taking the existing programs and
3 moving them forward.

4 Q. Do you know whether the Commission's
5 Missouri Energy Efficiency Investment Act rules would
6 allow Ameren Missouri to request and receive
7 Commission approval of an incentive for demand-side
8 programs?

9 A. I think the rules do. The rules do state
10 that that's possible, yes.

11 Q. Do you know if there's any limitation on
12 what share that Ameren Missouri might request as an
13 incentive?

14 A. I don't know that answer.

15 Q. If the Commission doesn't approve Ameren
16 Missouri's billing units adjustment proposal in this
17 case, when will Ameren Missouri file for approval of
18 its demand-side programs under the Commission's
19 Missouri Energy Efficiency Investment Act rules, or
20 if they're not affected, under the Missouri Energy
21 Efficiency Investment Act.

22 A. We have not set a date to -- to file,
23 obviously, after we got the ruling in this case.
24 It's something that we would immediately meet on and
25 make some decisions on going forward just what the

1 status would be and how we would proceed.

2 MR. WILLIAMS: Judge, may I have a minute?

3 JUDGE WOODRUFF: Sure.

4 MR. WILLIAMS: No further questions of
5 this witness at this time.

6 JUDGE WOODRUFF: Before we hear from the
7 bench, Mr. Mills, you never offered 311.

8 MR. MILLS: 311, yes. I'd like to offer
9 that at this time. Thank you.

10 JUDGE WOODRUFF: 311 has been offered.
11 Any objection to its receipt? That was the current
12 IRP rule.

13 (No response.)

14 JUDGE WOODRUFF: Hearing no objections, it
15 will be received.

16 (OPC Exhibit No. 311 was admitted.)

17 JUDGE WOODRUFF: Can we have questions
18 from the Bench then? Commissioner Jarrett.

19 COMMISSIONER JARRETT: I don't have any
20 questions. Thank you for your testimony.

21 JUDGE WOODRUFF: From St. Louis, then
22 Commissioner Kenney.

23 COMMISSIONER KENNEY: Good morning,
24 Mr. Mark.

25 THE WITNESS: Good morning.

1 COMMISSIONER KENNEY: Can you hear me
2 okay?

3 THE WITNESS: I can. Thank you.

4 QUESTIONS BY COMMISSIONER KENNEY:

5 Q. I think most of my questions may be more
6 appropriately addressed to Mr. Davis regarding
7 billing units. Is that probably safe to say?

8 A. That's safe to say, yes.

9 Q. Let me just generally ask you: If the
10 billing units takes -- makes an assumption about the
11 number of megawatt hours that will be saved as a
12 result of the energy efficiency programs and reduces
13 that number in the rate case as the number against
14 which revenue requirement would be recovered;
15 correct?

16 A. Correct.

17 Q. So does it -- and it's after the revenue
18 requirement has been determined and after rate design
19 has been completed; is that correct?

20 A. Yes. Yes, I believe so.

21 Q. Did it have the overall effect, then, of
22 raising the price per kilowatt hour for the
23 residential customer?

24 A. I -- I -- I'm not sure. I think it -- I'm
25 not for sure.

1 Q. Okay. How is -- if you don't know, I'll
2 ask Mr. Davis.

3 If you know, how is the number of
4 megawatt hours that -- the reduction, how is that
5 calculated or determined?

6 A. Well, I think Bill did a -- has a formula
7 that he used to calculate that, so he would be best
8 to explain that --

9 Q. Okay.

10 A. -- but, I guess, I would add that --

11 Q. Go ahead. I'm sorry.

12 A. Well, I think that I would add that, you
13 know, just looking at our program's performance over
14 the past, we do know how those programs have
15 performed, and we do know what type of savings we've
16 got out of our current energy efficiency programs,
17 and so we do have programs that we know are
18 successful and are working, and so we -- we think
19 that that is also a good basis to go forward of
20 having some experience with these programs.

21 Q. Is it Mr. Laurent that's in charge of the
22 evaluation measurement and verification programs?

23 A. Dan Laurent oversees that, yes.

24 Q. Okay. Let me ask a general question,
25 because in your testimony -- and I think it's in your

1 rebuttal testimony on page two. You cite from the
2 Energy Efficiency Investment Act, and it's Section
3 393.1075, and the section of that that gets the most
4 attention is the part, the parenthetical number two
5 where the Commission is directed to ensure that
6 utility financial incentives are aligned with helping
7 customers use energy more efficiently.

8 Is it your understanding that, as a
9 general matter, the throughput disincentive is the
10 single biggest misalignment that utilities face?

11 A. I believe so. I think -- and we even
12 state that in our IRP, that we feel that that is one
13 of the major hurdles in going forward, yes.

14 Q. Is that because, essentially, you're
15 asking the widget maker to sell less widgets,
16 basically?

17 A. Correct.

18 Q. The second half of that parenthetical
19 number two, from MIEA reads, And in a manner that
20 sustains or enhances utility customers' incentives to
21 use energy more efficiently.

22 Do you believe that Ameren has focused a
23 significant -- or a sufficient amount of attention on
24 the second half of that, putting incentives -- or
25 putting measures in place that sustain or enhance the

1 customer's incentive to be energy-efficient, and if
2 so, what are those measures?

3 A. Well, I think our programs that are
4 directed toward our customers about energy
5 efficiency, you know, whether it's on the residential
6 side or the business side, you know, it provides
7 customers incentives to use energy more efficiently.

8 I think the -- some of our business
9 customers, obviously as they make retrofits to their
10 businesses and change their lighting, that type of
11 thing, it does help them sustain the importance and
12 focus on energy efficiency, so I believe our programs
13 do do that, yes.

14 Q. I guess this question will probably
15 reflect some of my thinking on this, but I'm
16 interested in hearing your thoughts. Are those two
17 clauses in that sentence compatible? Can you align
18 the utility's financial incentive with the customer's
19 incentive to use energy more efficiently?

20 Or put another way, can you incentivize a
21 customer to buy less widgets while also incentivising
22 the widget maker to sell or not sell more widgets?
23 It seems like those two clauses are incompatible.

24 A. Well, I think that that's -- I think that
25 it can be done. I think it's a balance. It's a very

1 difficult balance, and that's why I am reluctant to
2 talk about going, you know, to the fullest extent on
3 energy efficiency and how that we've got to learn
4 from it.

5 I talked earlier about how we've learned
6 over the last three years more and more about it,
7 and we've realized how much we don't know about
8 energy efficiency.

9 I think that what we need to do is look
10 at a mechanism to move the programs we have forward.
11 We think that we have good programs. They have been
12 successful. I think if we can look at how to move
13 forward, aligning those incentives between our
14 company and our shareholders and our customers, I
15 think there are ways out there to do it, but I think
16 it's going to take some innovative solutions, and
17 what we're trying to do here is take the first step
18 forward with the billing unit adjustment of coming up
19 with an innovative solution that can get us there.

20 Q. Has Ameren looked at any other states that
21 take the responsibility for promoting energy
22 efficiency away from the utility and place it in a
23 state energy office or place that responsibility with
24 a state commission?

25 A. I'm sure they have. I think Illinois has

1 some version of that, but I have not looked at it
2 personally, but I think they've looked at other
3 states and other programs to try to get ideas from.

4 Q. Would Mr. Laurent or Mr. Davis be able to
5 maybe offer some opinion on what other states have
6 done in that regard?

7 A. They've -- they probably would have some
8 ideas, yes.

9 COMMISSIONER KENNEY: Mr. Mark, thank you
10 for your time. I don't have any other questions.

11 THE WITNESS: Thank you, Commissioner.

12 JUDGE WOODRUFF: Commissioner Jarrett.

13 COMMISSIONER JARRETT: Yes. Mr. Mark, I
14 just had a quick question.

15 QUESTIONS BY COMMISSIONER JARRETT:

16 Q. I believe Ameren commissioned a study on
17 energy efficiency and DSM potential in Missouri --

18 A. Uh-huh.

19 Q. -- some time here in the recent past?

20 A. Correct.

21 Q. Do you know, is this part of anybody's
22 testimony or an exhibit?

23 MR. Rogers: It's in mine.

24 COMMISSIONER JARRETT: Is it on John's?

25 Thank you very much. I couldn't remember.

1 THE WITNESS: Thanks.

2 JUDGE WOODRUFF: Recross based on
3 questions from the Bench?

4 MIEC?

5 MR. DOWNEY: No.

6 JUDGE WOODRUFF: Public counsel.

7 MR. MILLS: (Shook head.)

8 JUDGE WOODRUFF: Oh. I'm sorry. I
9 skipped over DNR.

10 MS. FRAZIER: No.

11 JUDGE WOODRUFF: Staff.

12 MR. WILLIAMS: (Shook head.)

13 JUDGE WOODRUFF: Okay. Redirect?

14 MS. TATRO: Thank you.

15 REDIRECT EXAMINATION BY MS. TATRO:

16 Q. Early in the cross-examination when you
17 were being asked questions by the Department of
18 Natural Resources' attorney, she had discussions with
19 you about changing the position on amortization
20 period.

21 A. Correct.

22 Q. Do you remember those questions?

23 A. Correct.

24 Q. If the Commission denies -- and she put
25 forth the position that if the Commission denies the

1 billing unit adjustment mechanism but shortened
2 amortization, would that or would that not be an
3 improvement. Do you remember those questions?

4 A. Yes.

5 Q. If the Commission's shortens the
6 amortization period to three years and does not grant
7 Ameren Missouri the billing unit adjustment, does
8 that resolve the throughput disincentive?

9 A. No. No, it doesn't.

10 Q. Why?

11 A. The throughput disincentive is there
12 regardless of the amortization period.

13 Q. The Office of Public Counsel asked you
14 several questions about customer satisfaction and how
15 energy efficiency programs improve customer
16 satisfaction. Do you remember those questions?

17 A. Yes.

18 Q. Do you think free electricity would
19 improve customer satisfaction?

20 A. If it's reliable. Our constant surveys
21 show that customer satisfaction -- the number one
22 priority in customer satisfaction is reliability, so
23 for us, when we look at customer satisfaction, the
24 number one thing we look at is keeping the lights on.

25 Q. Do you think the Commission should order

1 the Company to provide free electricity just because
2 it would make customers more satisfied?

3 A. No.

4 Q. The Office of Public Counsel also asked
5 you a lot of questions about the IRP, and there was
6 an Exhibit 310-P, which was a segment business plan.
7 Do you remember those questions?

8 A. Correct. Yes, I do.

9 Q. Okay. And then on page 11 -- let me find
10 that. I'm trying to think about my answer so we
11 don't have to go in-camera again with my question.

12 I'm sorry. You're on page 11?

13 A. Of which document?

14 Q. Sorry. This is the business segment plan
15 that was attached to the data request answer.

16 A. Okay.

17 Q. I think it's 310-P.

18 A. Okay.

19 Q. Page 11 --

20 A. Okay.

21 Q. -- talks about customer satisfaction.

22 This is proprietary, so I don't want to get into any
23 of the details, but do you see that first paragraph?

24 A. Yes.

25 Q. If the Commission doesn't provide the

1 billing unit mechanism to resolve the throughput
2 disincentive, would that impact how you fulfill the
3 customer satisfaction criteria?

4 A. Could you explain that again?

5 Q. Let me ask it this way.

6 A. I don't quite understand what you're
7 asking.

8 Q. Can you turn to the front page of that
9 document, please, which is the data request itself.
10 Says OPC -- 2016.

11 A. Okay. Yes.

12 Q. And what does it say under proprietary?

13 A. Attached is the most recently created
14 draft of the AmerenUE strategic plan - Ameren
15 Missouri's draft 2011-2015 business plan which is
16 preliminary and not yet been finalized.

17 Q. So it can be changed as conditions change?

18 A. Well, yeah, the business plan can always
19 be changed. Whenever there's changes that are
20 unknown at the time, business plans change, budgets
21 change. There's always changes. None of these
22 documents are set in stone and can never be changed
23 once the year begins.

24 Q. So the Commission ruling in this case
25 could impact or change what is contained within this

1 document?

2 A. Sure. Any time there's an impact on our
3 business, whether it's an impact, you know, some
4 unforeseen event, it changes the business plan and it
5 changes budgets. I mean, they change regularly
6 throughout the year. That's not uncommon at all.

7 Q. All right. Then Mr. Mills asked you
8 questions about who has input into the IRP
9 development and approves and how that all worked. Do
10 you remember that conversation?

11 A. Yes.

12 Q. Does Ameren Missouri approve the IRP?

13 A. I don't think there's a formal process
14 that I'm aware that approves it. I mean, you know,
15 we look at it. We review it and submit it. You
16 know, I think -- I don't know if there's a formal
17 process to approve it.

18 Q. Do you know if the Ameren Missouri board
19 approves it?

20 A. Yeah, it's signed off on by our CEO, but I
21 mean, we don't go through -- I'm not involved in a
22 formal process. I look at my parts of it and I give
23 approval for the parts that I'm responsible for.

24 Q. Then Mr. Mills talked to you about what
25 level of funding would be necessary to achieve RAP,

1 and in 2013, 25 million equates to 53 percent. Do
2 you remember that conversation?

3 A. Yes.

4 Q. Why has Ameren Missouri not put forth a
5 proposal to go all the way to RAP?

6 A. Well, because of the throughput
7 disincentive. As I said, by investing in '12 and
8 '13 -- if we invest \$25 million a year, we would see
9 a loss of approximately -- over \$52 million of
10 revenue, and so to try to continue to invest dollars
11 and receive that kind of loss, it just would not be
12 prudent on our part.

13 Q. If the Commission grants the billing unit
14 proposal, are there other reasons that Ameren
15 Missouri is unwilling to go all the way to RAP at
16 this point in time?

17 A. Well, as I said, if they approve the
18 billing unit, we have a plan that's outlined over the
19 next two years that we feel will work toward getting
20 us at a better level, but I think it will also give
21 us time to understand and learn more about energy
22 efficiency programs and the impact that they have.

23 Q. Then the Staff attorney asked you some
24 questions and asked you if you were opposed to
25 continuing current expenditures. Do you remember

1 that question?

2 A. Yes.

3 Q. And current expenditure are at what level?

4 A. In 2011, our current expenditure level's
5 at 33,000,000.

6 Q. When he indicated -- under what
7 circumstances are you willing to continue current
8 expenditures or some average of current expenditures?

9 A. At what?

10 Q. Under what circumstances?

11 A. Right now, I mean, we don't have a plan to
12 extend it at the current level. Our plan is to spend
13 25,000,000 in '12 and 25,000,000 in '13, if we could
14 get the appropriate treatment, regulatory treatment,
15 with the billing unit adjustment.

16 MS. TATRO: I don't have any further
17 questions. Thank you.

18 JUDGE WOODRUFF: All right. You can step
19 down.

20 We're due for a break. We'll take a
21 break and come back at 10:30.

22 (A recess was taken.)

23 JUDGE WOODRUFF: We're back from break and
24 we're ready to move on to Ameren's next witness,
25 which would be Mr. Laurent.

1 Sir, if you would please raise your right
2 hand.

3 DAVID LAURENT,
4 of lawful age, being sworn, testified as follows:

5 JUDGE WOODRUFF: You may inquire.

6 (Ameren Exhibit Nos. 112 and 113
7 were marked for identification.)

8 DIRECT EXAMINATION BY MS. TATRO:

9 Q. Good morning. Could you please state your
10 name and business address for the Commission.

11 A. Daniel Laurent, 1901 Chouteau Avenue,
12 St. Louis, Missouri.

13 Q. Are you the same Daniel Laurent that filed
14 rebuttal testimony, which has been marked as 112 and
15 surrebuttal testimony which has been marked as
16 Exhibit 113?

17 A. Yes.

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

20 A. No.

21 Q. If I were to ask you the questions that
22 are contained within this testimony, would your
23 answers be the same?

24 A. Yes.

25 MS. TATRO: I move Exhibits 112 and 113

1 into the record.

2 JUDGE WOODRUFF: 112 and 113 have been
3 offered. Any objection to their receipt?

4 (No response.)

5 JUDGE WOODRUFF: Hearing none, they will
6 be received.

7 (Ameren Exhibit Nos. 112 and 113 were admitted.)

8 MS. TATRO: Tender the witness for cross-
9 examination.

10 JUDGE WOODRUFF: For cross-examination
11 we'll begin with DNR.

12 MS. FRAZIER: No questions.

13 JUDGE WOODRUFF: MIEC.

14 MR. DOWNEY: No questions.

15 JUDGE WOODRUFF: Public Counsel.

16 MR. MILLS: No questions.

17 JUDGE WOODRUFF: Staff.

18 MR. WILLIAMS: No questions.

19 JUDGE WOODRUFF: Questions from the
20 bench. Commissioner Davis?

21 COMMISSIONER DAVIS: No questions.

22 JUDGE WOODRUFF: Commissioner Jarrett.

23 COMMISSIONER JARRETT: I'm not going to
24 start anything. No questions.

25 JUDGE WOODRUFF: Well, then we're making

1 good progress. There was no questions for the Bench,
2 so we're ready for recross, and there was no cross,
3 so no need to redirect.

4 Mr. Laurent, you can step down.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: Next witness is

7 Mr. Davis.

8 Morning sir.

9 MR. DAVIS: Morning.

10 JUDGE WOODRUFF: Please raise your right
11 hand.

12 WILLIAM DAVIS,
13 of lawful age, being sworn, testified as follows:

14 JUDGE WOODRUFF: You can inquire.

15 DIRECT EXAMINATION BY MS. TATRO:

16 Q. Would you state your name and business
17 address for the record.

18 A. My name is William Davis. My business
19 address is 1901 Chouteau Avenue, St. Louis, Missouri.

20 Q. And are you the same William Davis that
21 filed prefiled direct, rebuttal, and surrebuttal
22 testimony in this case?

23 A. Yes.

24 Q. Do you have any additions or corrections
25 to make to your testimony?

1 A. I do have two corrections.

2 Q. Okay. Would you provide those, please.

3 A. In my direct testimony on page 5, line 14,
4 the number I have there is 46.4 million. That should
5 have been 36.2 million at the time.

6 Q. Okay. Did you have any others?

7 A. Yeah, a minor correction in rebuttal
8 testimony. On page six, line eight, it should read,
9 Yes, an alternate approach to address the throughput
10 disincentive, instead of "incentive."

11 Q. Any other corrections or changes?

12 A. No.

13 Q. If I were to ask you the questions that
14 are contained in this written testimony, would your
15 answers be the same?

16 A. Yes, it would.

17 MS. TATRO: I move exhibits -- I've lost
18 the number -- direct, rebuttal, and surrebuttal
19 testimony into the record.

20 JUDGE WOODRUFF: It's 114, 115, and 116.

21 MS. TATRO: Thank you. 114, 115, and 116.

22 JUDGE WOODRUFF: Any objections to their
23 receipt?

24 (No response.)

25 JUDGE WOODRUFF: Hearing nothing, they

1 will be received.

2 (Ameren Exhibit Nos. 114, 115 and 115

3 were marked and admitted.)

4 MS. TATRO: I tender the witness for

5 cross.

6 For cross-examination we begin with DNR.

7 MS. FRAZIER: Thank you, your Honor.

8 Good morning, Mr. Davis.

9 THE WITNESS: Morning.

10 CROSS-EXAMINATION BY MS. FRAZIER:

11 Q. Do you have your direct testimony with
12 you?

13 A. Yes, I do.

14 Q. That's Exhibit 114. In your direct
15 testimony you recommended a three-year amortization
16 period for Ameren's regulatory asset account; is that
17 correct?

18 A. Yes, it is.

19 Q. And you expressed concern that if the
20 amortization period was too long that the bubble of
21 costs in that account would continue to grow as
22 annual DSM expenditures continue to exceed the amount
23 recovered through amortization; is that right?

24 A. That's correct.

25 Q. Now, Ameren, of course, is requesting a

1 six-year amortization; right?

2 A. Yeah. Well, yes.

3 Q. And if you'll turn to page 4 of your
4 direct testimony, line 24, can you read the sentence
5 starting with, This inconsistency?

6 A. This inconsistency in the treatment of
7 demand-side versus supply-side resource costs
8 supports either a much shorter amortization period or
9 treatment of DSM costs as an expense.

10 Q. So can you please explain why this
11 statement -- if this statement is still correct with
12 respect to the six-year amortization period --
13 whether or not this statement is correct and applies
14 to the six-year amortization period?

15 A. Well, the arguments here were about
16 reducing the six-year amortization period to a three-
17 year amortization period, so in that regard we would
18 still request a shorter amortization, but in this
19 case we dropped that request, so DSM cost recovery
20 can basically take a temporary back seat to the
21 throughput disincentive, which we see as the major
22 hurdle for energy efficiency.

23 Q. But ideally you would address both of
24 those because they're two separate mechanisms, as I
25 understand it; is that right?

1 A. I think ideally you want to. I mean, the
2 idea is to look at this as a package, but at this
3 time, you know, when we're faced with how to continue
4 these programs, in this case we felt it would be more
5 productive to focus the energies on coming up with a
6 constructive treatment for the throughput
7 disincentive as opposed to fixate on just the program
8 cost recovery.

9 Q. But doesn't the reasoning of the statement
10 that you just read still apply?

11 A. It still applies, yes.

12 MS. FRAZIER: No further questions.

13 JUDGE WOODRUFF: MIEC.

14 MR. DOWNEY: Yes.

15 CROSS-EXAMINATION BY MR. DOWNEY:

16 Q. Good morning.

17 A. Good morning.

18 Q. You're familiar with the Public Service
19 Commission's regulations on DSM, are you not?

20 A. I'm sorry. Could you be more specific on
21 which regulations you're referring to?

22 Q. 4 CSR 240-3.163.

23 A. I'm sorry. You're going to have to be
24 more specific. I'm not -- I don't know what that's
25 referencing.

1 Q. Okay. Let me try it a different way. Are
2 you familiar with any regulation of the Public
3 Service Commission that defines "lost revenue"?

4 A. I'm -- I'm familiar with two places where
5 lost revenues are defined. One is in the integrated
6 resource planning rules, and the other is in the -- I
7 don't know how to describe it -- maybe pending
8 Missouri Energy Efficiency Investment Act rules.

9 Q. I'm going to call those the DSM rules.

10 A. Correct.

11 Q. And you're familiar with how you are
12 defining or treating lost revenue in your billing
13 units adjustment?

14 A. Yeah. The billing unit adjustment is
15 designed to prevent lost revenues from even
16 occurring.

17 Q. Okay. Since you're familiar with both of
18 them, you will agree, won't you, that the definition
19 that the Commission has adopted for "lost revenue" is
20 different than the definition you're using in your
21 billing adjustment or --

22 A. Yes.

23 Q. -- your billing units adjustment?

24 A. Yes.

25 Q. Commissioner Kenney hit on a good point

1 earlier, and I want to ask you about that. Your
2 billing units adjustment will definitely increase the
3 cost per kilowatt hour that Missouri consumers incur;
4 right?

5 A. Yes.

6 MR. DOWNEY: I have nothing further.

7 JUDGE WOODRUFF: Public counsel.

8 MR. MILLS: Just very briefly.

9 CROSS-EXAMINATION BY MR. MILLS:

10 Q. Mr. Davis, in your rebuttal testimony,
11 page 9, lines 9 through 12 --

12 MS. TATRO: I'm sorry, Lewis. Which
13 testimony?

14 MR. MILLS: Rebuttal testimony, page 9,
15 line 9.

16 MS. TATRO: Thank you.

17 BY MR. MILLS:

18 Q. You say that the Commission's rules are
19 likely to result in litigation; is that correct?

20 A. Yes.

21 Q. Do you know whether Ameren Missouri has
22 appealed the Commission's orders of rulemaking?

23 A. My understanding is that Ameren Missouri,
24 Kansas City Power & Light and the Office of Public
25 Counsel have all appealed those rules.

1 Q. Has Ameren Missouri in addition to filing
2 appeal, requested a stay of the rules?

3 A. I'm sorry. I don't know that answer.

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

5 JUDGE WOODRUFF: For Staff.

6 MR. WILLIAMS: Thank you, Judge.

7 CROSS-EXAMINATION BY MR. WILLIAMS:

8 Q. Mr. Davis, you reference decoupling in
9 your testimony, do you not?

10 A. I think I did in the direct testimony,
11 yes.

12 Q. What's your understanding of decoupling,
13 or what did you mean by "decoupling" whenever you
14 made that reference?

15 A. Well, I think in a general sense,
16 decoupling is -- the purpose of it is to decouple
17 revenues from sales volumes.

18 Q. All revenues?

19 A. Oh, yeah. Well, it's mainly focused on
20 fixed-cost revenues.

21 Q. And in your opinion, would a decoupling
22 mechanism that decoupled fixed-cost revenues from
23 sales be better than Ameren Missouri's billing unit
24 adjustment proposal?

25 A. Would it be better? I don't know.

1 They're -- they're very different. I think we'd have
2 to study it to determine which one's better. I'm
3 sure each one has its pros and cons. I don't really
4 see decoupling as a silver bullet to the issues we're
5 facing. I think that it is a way to accomplish some
6 of the goals we're after, but I can't say if it's
7 better today sitting here.

8 Q. Well, didn't you indicate in your
9 testimony that you were proposing a billing units
10 adjustment because decoupling wasn't available?

11 A. Right. We don't see decoupling as an
12 available option right now. We think the billing
13 unit proposal is a good opportunity to bridge the
14 gap, if you will, for the next two years under our
15 proposal, keep our programs going at the spend of
16 25,000,000.

17 Q. Well, if you didn't believe at that point
18 in time that decoupling was better than the billing
19 unit proposal, why did you --

20 MS. TATRO: I'm going to object. I don't
21 think that properly restates his testimony. He
22 didn't say it's not better. He said it's a way.

23 JUDGE WOODRUFF: I'm going to overrule the
24 objection. You can ask the question, if you recall
25 it, or you can repeat the question.

1 THE WITNESS: Sorry. Could you repeat the
2 question?

3 MR. WILLIAMS: I think I'll let the court
4 reporter do that.

5 (The last question was read back
6 by the court reporter.)

7 BY MR. WILLIAMS:

8 Q. At the point of time whenever you prepared
9 your testimony and filed it, you made a reference to
10 decoupling. If you didn't believe decoupling was a
11 better option than the billing unit adjustment at the
12 time, why did you even make a reference to
13 decoupling?

14 A. Well, I'll take a look at that particular
15 page. In my direct testimony on page 7, starting on
16 line 7, what I say is that there are several ways to
17 deal with it. I'm paraphrasing here, but I'm
18 pointing it to everyone so they can take a look at
19 it.

20 There's several ways to deal with it, and
21 one way to deal with it is a decoupling mechanism.
22 And then I go on to say that we're not proposing
23 decoupling in this case, so I'm not going to discuss
24 any of the details associated with it.

25 Q. Then you also say later on line 12, Short

1 of decoupling, another method to mitigate the
2 throughput incentive is to explicitly anticipate the
3 effects of energy efficiency and reimburse the
4 utility directly, do you not?

5 A. Yes.

6 Q. And that wasn't to indicate that
7 decoupling was preferable?

8 A. No. You know, reading this now, it was
9 probably -- maybe just a transition in the wording
10 since the prior paragraph was mentioning decoupling.

11 Q. Isn't the effect of Ameren Missouri's
12 billing adjustment proposal to increase Ameren
13 Missouri's revenues above those the Commission would
14 authorize under the ratemaking process that it's
15 traditionally used?

16 A. Yes, I think by design it has to. We're
17 talking about the identification of the gap and then
18 a way to fill the gap.

19 Q. Doesn't the billing adjustment proposal
20 have the effect of increasing, at least, certain
21 customer class rates?

22 A. I'm sorry. What do you mean by "certain
23 customer class rates"?

24 Q. Well, it wouldn't apply, for example, to
25 the LTS customer class rates.

1 A. Right. I think in my testimony -- I don't
2 remember if I spelled it out -- but Ms. Mantle might
3 have included it in hers -- but we haven't seen any
4 savings from that class and we don't anticipate any
5 savings coming from that class.

6 Q. Let me rephrase the question. See if I
7 can get where I'm trying to drive at.

8 As opposed to traditional class cost of
9 service where you're trying to make the rates match
10 that that classes revenue requirement, isn't the
11 billing unit adjustment that you're proposing going
12 to cause some of the classes' rates to be higher than
13 they would under that more traditional approach?

14 A. Well, yeah, I think that we discussed
15 earlier that all of the rates -- well, except for
16 lighting and for large transmission services, all
17 rates would increase.

18 Now, for residential, it's a little bit
19 easier because we can -- you know, we are running
20 programs by residential customers. Now, for the
21 business class, those programs aren't run by rate
22 class, so what I chose to do was to allocate based on
23 the savings that we achieved so far by rate class.

24 Q. Aren't those additional revenues that
25 you're seeking to obtain through the billing

1 adjustment proposal based on Ameren Missouri's
2 estimate of the future reduction of sales due to its
3 demand-side programs, not based on historical
4 experience?

5 A. Well, not all of the savings that we have
6 already experience and documented are included in the
7 test year, so there are some savings that are
8 historical in nature that are outside the test year
9 that are incorporated into the adjustment, but there
10 are certainly sales that are from expected savings in
11 the future included in that adjustment, yes.

12 Q. How is Ameren Missouri's billing
13 adjustment proposal different than simply increasing
14 rates to collect the sum of revenues solely to induce
15 Ameren Missouri to have demand-side programs?

16 A. I'm sorry. Could you restate the
17 question? I want to make sure I understand what
18 you're asking.

19 Q. How is Ameren Missouri's billing
20 adjustment proposal different than simply increasing
21 rates to collect the sum of revenues solely to induce
22 Ameren Missouri to have demand-side program?

23 A. I think probably the major distinction
24 here is that we base the amount that we want to
25 increase rates on on the savings that weren't

1 included in the test year, as well as anticipate
2 saving of the programs that have been running for the
3 past two or three years.

4 Q. Turning to your surrebuttal testimony,
5 which has been marked as 116, on page 4 at lines 13
6 to 14 -- Do you see that?

7 A. Lines 13 to 14 on page four, yes.

8 Q. -- what is your basis for saying there
9 that the billing unit adjustment does not require a
10 lost revenue mechanism?

11 A. Well, the billing unit adjustment is, in
12 my view, a unique proposal, right? We're not setting
13 up a lost revenue tracker. What we're doing is we're
14 taking a -- we're taking a step back and we're
15 saying, Okay. Here's the throughput disincentive,
16 right? What's the cause of that throughput
17 disincentive?

18 Well, right now we have a certain level
19 of energy efficiency that's built into rates. Well,
20 that's based on a historical test year. Now in the
21 future -- sometime in the future, eventually those
22 effects of energy efficiency programs will get built
23 into base rates, so what we're talking about is the
24 impact on the billing that's in between these rates
25 cases, so what we're proposing to do is fill that

1 hole by recognizing that in the future it is true
2 that those will get built into rates, but let's go
3 ahead and build them into rates now so we don't even
4 experience lost revenues.

5 Q. Isn't the whole purpose of the billing
6 unit adjustment to recover future lost sales revenue?

7 A. Associated with fixed costs, yes, and a
8 reduction of sales associated with our energy
9 efficiency programs.

10 Q. How will Commission approval of Ameren
11 Missouri's billing adjustment proposal reduce Ameren
12 Missouri's incentive to increase its revenues by
13 increasing its sales?

14 A. I think I got you on this one. I think I
15 understood it. You had a little trouble with Richard
16 earlier, but it doesn't. It doesn't decrease our
17 incentive to increase sales, but at the same time,
18 I'm not aware of any programs Ameren Missouri's
19 offering to increase its sales, or I'm not aware of
20 any plans of Ameren Missouri to implement any
21 programs that increase its sales.

22 Q. So you're saying Ameren Missouri currently
23 doesn't have any marketing or plans to increase its
24 sales of electricity?

25 A. Not that I'm aware of.

1 Q. I'm still going to ask the following
2 question: How will Commission approval of Ameren
3 Missouri's billing adjustment proposal decrease
4 Ameren Missouri's disincentive to promote demand-side
5 programs?

6 A. How will it decrease our disincentive to
7 continue our programs?

8 Q. To promote those program.

9 A. I think that's exactly what it's designed
10 to do, right? What we're seeing is that the
11 throughput disincentive is out there, and the
12 proposal is designed to mitigate it in a way that we
13 can run our programs and not experience, you know,
14 financial loss.

15 Q. Assuming everything else is equal, isn't
16 the design of the billing units adjustment such that
17 if Ameren Missouri experiences load growth, it will
18 collect more than is intended to be collected by how
19 it's designed?

20 A. I don't think that's a fair
21 characterization. The entire purpose of this is to
22 collect pretty much the exact amount that we would
23 have collected if we weren't doing energy efficiency
24 programs on our own, so it's not intended to collect
25 some additional amount beyond that.

1 Q. Well, by increasing rates, aren't you
2 going to collect more than you would otherwise?

3 A. We would collect more than we would
4 otherwise if we're doing our energy efficiency
5 programs, but not if we weren't doing our energy
6 efficiency programs. That's really the crux of the
7 comparison we're after here.

8 Q. I'm focusing just on the growth aspect of
9 it. If you have higher rates with your billing
10 adjustment -- as a result of the billing units
11 adjustment proposal, aren't you going to end up
12 collecting more revenues from those customers than
13 you would have without that growth?

14 A. Okay. I think I understand your question
15 now, Mr. Williams. That is a minor side effect of
16 it, but just to kind of put that into perspective,
17 what we're talking about here is one percent of about
18 one percent. I think what we'd see is, that's about
19 maybe \$250,000.

20 Q. So it's an impact, but it's very small.

21 A. Yes.

22 Q. Do rate increases put downward pressure on
23 electricity sales?

24 A. Do rate increases put downward pressure on
25 electricity sales? I think they can but, again, I

1 was here earlier where Mr. Mark explained it. You
2 know, we're in a low-rate environment. You know, the
3 magnitude of that is questionable, especially in the
4 short term.

5 Q. Aren't rates sometimes designed
6 intentionally to put downward pressure on electricity
7 sales?

8 A. I mean, I think that can happen.

9 Q. Aren't rate blocks sometimes used for that
10 purpose?

11 A. Do you mean something like an inclining
12 block?

13 Q. Yes.

14 A. Yes.

15 Q. If the Commission continues the current
16 cost recovery for demand-side programs without
17 modifying it in any way, do you know at what annual
18 level Ameren Missouri will continue spending on
19 demand-side programs after this case?

20 A. No, I do not.

21 Q. Going to the executive summary from the
22 2011 integrated resource plan, are you familiar with
23 that?

24 A. I'm familiar with it. I don't have a copy
25 in front of me.

1 Q. Hopefully you won't need one. If you get
2 to that point, we'll do that.

3 MR. MILLS: (Handed document to
4 Mr. Davis.)

5 THE WITNESS: Thank you, Mr. Mills.

6 BY MR. WILLIAMS:

7 Q. Do you know how the lowest demand-side
8 management budget level was determined?

9 A. Yeah. I think we were designing that
10 portfolio probably a little more than a year ago.
11 The main constraint on that at the time was limiting
12 the size of the regulatory asset associated with
13 six-year amortization.

14 Q. And were there any constraints on what --
15 you focused on the six-year amortization. What about
16 the level of the regulatory asset? Were there any
17 constraints on that?

18 A. I mean, that's exactly what it was, the
19 level of the regulatory asset assuming a six-year
20 amortization.

21 Q. What was that level?

22 A. I think it was close to about a hundred
23 million dollars.

24 Q. I have -- or Staff has prepared an exhibit
25 that attempts to do a comparison between different

1 recovery mechanisms. I'd like to ask you some
2 questions about that and see if you agree it
3 accomplishes the intended purpose.

4 THE WITNESS: I don't have a copy.

5 MR. WILLIAMS: May I approach?

6 JUDGE WOODRUFF: You may.

7 Mark this?

8 MR. WILLIAMS: Yeah.

9 JUDGE WOODRUFF: It will be 245.

10 MS. TATRO: I'm sorry. I couldn't hear
11 what number you said.

12 JUDGE WOODRUFF: 245.

13 MS. TATRO: Thank you.

14 (Staff Exhibit No. 245
15 was marked for identification.)

16 BY MR. WILLIAMS:

17 Q. Mr. Davis, have you received what's been
18 marked for identification as Exhibit No. 245?

19 A. Yes.

20 Q. You've never seen Exhibit 245 before, have
21 you, before today?

22 A. Before today, no.

23 Q. And I want you to assume that we're
24 dealing with a utility that has 37.3 million of
25 megawatt-hour sales and that it anticipates or

1 there's expected energy savings from demand-side
2 programs of 480,000 megawatt hours. Can you make
3 those assumptions for me?

4 A. Yes.

5 Q. Then I want you to assume different growth
6 rates without any impact from demand-side programs,
7 and in particular, 2.6 percent increase, a 1.1
8 percent increase, no growth, a decrease of 1.1
9 percent, and a decrease of 2.6 percent. Can you make
10 those assumptions?

11 A. Yes.

12 Q. Under those assumptions, if the
13 Commission's Missouri Energy Efficiency Investment
14 Act rules' definition of "lost revenue" is applied,
15 would the lines or the entries on line five for case
16 one, two, three and four be, if not exact, at least
17 roughly correct as to the impacts?

18 A. I mean, I haven't had a chance to review
19 it, but it looks correct.

20 Q. At least on the order of magnitude?

21 A. Yeah.

22 Q. And if you had complete decoupling, does
23 line six show what the impacts would be for each of
24 those cases, at least order of magnitude?

25 A. Well, you know, "decoupling" is a pretty

1 loaded word. I mean, if I were to -- you know, I'm
2 looking at this adjustment.

3 Q. Let's assume for purposes of this
4 hypothetical that "decoupling" means that the rate --
5 or the revenues are adjusted to get the Company back
6 to what its revenue requirement was at the time rates
7 were set.

8 A. Now, would that be on a per-customer
9 basis?

10 Q. Just on an aggregate basis. I'm just
11 doing it for comparing the impact of these
12 mechanisms.

13 A. Okay.

14 Q. That is just illustrative. It's not
15 intended to be definitive.

16 A. All right. I would just like to note
17 that, you know, I think a common implementation of
18 decoupling would include customer growth on a
19 per-customer basis -- would be implemented on a
20 per-customer basis, so the amount of load growth
21 here, if that was all associated with customer
22 additions, then that savings amount -- or that sales
23 used to set rates would also increase accordingly.

24 Q. I want you to assume that there's no
25 impact from load growth in terms of the decoupling

1 mechanism.

2 A. Okay.

3 Q. Now, with that assumption, are these
4 numbers, do they appear to you, at least on order of
5 magnitude, to be correct or illustrative?

6 A. I think so.

7 Q. Then does line four -- and I realize these
8 numbers, or I believe these numbers wouldn't be
9 precise, but does line four show for each case
10 roughly, at least on order of magnitude, the impact
11 of the Company's billing units adjustment proposal?

12 A. Yeah, I see it on every line. Yes.

13 Q. Would that be correct? Under those
14 different growth scenarios, would that still be
15 roughly the impacts of the Company's billing units
16 adjustment proposal?

17 A. Yeah, I'm just a little bit confused,
18 because I don't think that that billing unit proposal
19 would be applied at the same time as something like
20 decoupling, so I'm kind of making sure I understand
21 what we're talking about.

22 Q. Well, the idea is to compare the Company's
23 billing units adjustment proposal, the
24 Commission's -- the impact of lost revenues under the
25 Commission's Missouri Energy Efficiency Investment

1 Act rules, and decoupling as I just defined it for
2 you.

3 Do these last three rows under the
4 assumptions that are set forth above give at least a
5 relative comparison that's accurate with changes in
6 sales growth without considering demand-side program
7 impacts?

8 Or to put it another way, does this
9 table, the last three rows of it, show the relative
10 comparison of the impacts of the different proposals
11 under the hypothetical?

12 A. I'm sorry. This is going to take a minute
13 to look at it.

14 Q. Okay. Mr. Davis, if you'd like a
15 calculator, I can probably supply one.

16 A. That's okay. I'm just trying to acclimate
17 myself as to what the data is. It looks like it's
18 reasonable, according to all those assumptions, yes.

19 Q. I'm not trying to say these numbers are
20 representative of anything other than relative
21 impacts of these different mechanisms under the
22 assumptions made.

23 A. Okay.

24 Q. Do you agree that these give a fair
25 representation of the different impacts of these

1 types of mechanisms?

2 A. I think so, yes.

3 MR. WILLIAMS: Judge, I'd like to offer --
4 did you say 245?

5 JUDGE WOODRUFF: 245.

6 245 has been offered. Any objections to
7 its receipt?

8 MS. TATRO: I object. I don't believe
9 that it's relevant. Mr. Davis did not prepare this.
10 He did not do any of the calculations. He's already
11 indicated he disagrees with some of the assumptions
12 and how decoupling should be correctly calculated. I
13 don't think it's appropriate, and no foundation at
14 this point in time.

15 JUDGE WOODRUFF: I'll overrule the
16 objecting. The document will be received.

17 (Staff Exhibit No. 245 was admitted.)

18 BY MR. WILLIAMS:

19 Q. You may have been asked this earlier and,
20 if so, I apologize for re-asking it, but on page 4 of
21 your surrebuttal testimony -- and I think you also
22 addressed that in your rebuttal testimony --

23 A. On page 4?

24 Q. Yes. You reference -- you propose
25 reducing residential sales by 250,952 megawatt hours,

1 and then for a group of classes, small general
2 service, large general service, small primary
3 service, and larger primary service, you propose a
4 reduction of 227,678 megawatt hours there, don't you?

5 A. On page 4, yes.

6 Q. Were those megawatt hours based on class
7 energy usage?

8 A. Those megawatt hours are based on looking
9 at what savings Ameren has achieved, what savings are
10 embedded in the test year or previous test years, and
11 also what levels of savings we expect to achieve.

12 Q. How did you measure those, the savings
13 that are achieved that are embedded in the test year
14 and the expected savings, to come up with those
15 megawatt hours?

16 A. Well, the main source of the information
17 is, of course -- for the history is our evaluation
18 reports. What I've been able to do is take a look at
19 those reports. Now, those reports report annual
20 savings, so to get it into monthly and to also
21 incorporate the fact that there's a ramp-up into
22 those savings, so for example, some of those measures
23 were installed in January and some are installed in
24 December. Well, the evaluation reports just report
25 an annual number as if everything was there on

1 January, so to incorporate that effect that measures
2 were installed throughout the year, I got information
3 from the implementers in terms of in what months what
4 end uses were installed, which was data from the
5 evaluators, and then all of that has been calibrated
6 to the evaluation reports. And for the anticipated
7 savings, it's based on, basically, the plan that's
8 been developed for the budget that's been developed.

9 Q. Do you know who may elect not to
10 participate in demand-side measures Ameren Missouri
11 offers?

12 A. My understanding is that there have been
13 some customers that have given the utility
14 notification. I don't know which customers those are
15 or which classes they are in.

16 Q. How does Ameren Missouri propose to
17 address those customers with its billing units
18 adjustment proposal?

19 A. I don't think it's applicable to them. I
20 mean, what we're talking about is the recovery of
21 fixed costs, and those costs really don't have any
22 relationship to DSM other than DSM causes us not to
23 collect them.

24 I mean, to think about it in a little bit
25 different way to help with that, because it's a

1 little bit tough, just pretend, for instance -- and
2 I'm not proposing this. Just pretend like we have a
3 rate design that mitigates the throughput
4 disincentive, something like straight fixed variable
5 where you have all of your fixed costs into one
6 charge.

7 In this particular case, we wouldn't try
8 to earmark a portion of that customer charge that's
9 associated with the throughput disincentive that
10 customers would be responsible for those costs, and
11 that's exactly the construct we're developing this
12 in, is that, you know, these -- this throughput
13 disincentive, these revenues we're talking about are
14 just normal cost that shouldn't be subject to opt
15 out.

16 Q. Now, the billing unit adjustment proposal
17 was a change that was made after Ameren Missouri
18 filed its direct case, is it not?

19 A. Yes.

20 Q. And doesn't Ameren Missouri's billing
21 adjustment proposal impact class revenues?

22 A. I mean, it's designed to impact what
23 revenues are collected. It doesn't impact the
24 revenue requirement itself.

25 Q. So you don't think the billing units

1 adjustment proposal should have any impact on class
2 revenue responsibilities for class cost of service
3 study purposes?

4 A. I don't think so. I mean, the design of
5 this is to be a layer on top of those other issues,
6 right, so that's -- it's kind of an appealing feature
7 of it, in my mind, that you can go through the normal
8 process in determining the revenue requirement and
9 the normal process for determining the class cost of
10 service and then layer this on top of it.

11 MS. TATRO: Your Honor, just in case Bill
12 Davis' mother is watching, can you take the exhibit
13 down and put him back up?

14 JUDGE WOODRUFF: Just to clarify --

15 MS. TATRO: Oh, he is on.

16 JUDGE WOODRUFF: He is on.

17 MS. TATRO: Okay

18 JUDGE WOODRUFF: He is on.

19 MS. TATRO: Thank you.

20 BY MR. WILLIAMS:

21 Q. Would your billing units adjustment,
22 should it be incorporated into the NBFC rates in
23 Ameren Missouri's fuel adjustment clause?

24 A. I assume you're talking about net-based
25 fuel costs when you say NBFC.

1 Q. I'm actually talking about the NBFC
2 rates but I --

3 A. Okay, the NBFC rates?

4 Q. In the fuel adjustment clause, but my
5 understanding of those are based on what people often
6 refer to as "net based fuel costs."

7 A. I think the short answer is no. Just, you
8 know, from a conceptual standpoint, to me it doesn't
9 fit. What we're talking about here is fixed costs
10 being collected through volume metric rates as
11 opposed to variable costs being collected through the
12 FAC, so from a conceptual standpoint, I don't believe
13 it makes sense.

14 Q. Well, if you're reducing sales to retail
15 customers because of demand-side programs, wouldn't
16 that lower the Company's fuel costs?

17 A. If you decrease sales to retail customers,
18 off-system sales will increase, and net fuel costs
19 will go down, and customers will receive that benefit
20 as it happens through the FAC.

21 Q. Is the NBFC rate in Ameren Missouri's fuel
22 adjustment clause based on average fuel and purchase
23 power costs net of off-system sales as opposed to
24 marginal?

25 A. I don't know for sure. I mean, it sounds

1 right, but I don't know for sure if it's the
2 average. I mean, it's -- it is total fuel cost less
3 total off-system sales divided by the sales, so I
4 guess, yeah, that's a fair statement.

5 MR. WILLIAMS: May I have a moment?

6 JUDGE WOODRUFF: Sure.

7 MR. WILLIAMS: Judge, I have no further
8 questions at this point in time for this witness.

9 JUDGE WOODRUFF: Okay. Questions from the
10 Bench. Commissioner Davis.

11 QUESTIONS BY COMMISSIONER DAVIS:

12 Q. Good morning, Mr. Davis. Are you familiar
13 with any of the other Ameren's testimony in this
14 case?

15 A. Some of it, yes.

16 Q. Are you familiar with the point that
17 Ameren is significantly underearning?

18 A. I have heard that, yes.

19 Q. So Mr. Williams took most of my questions
20 already, but why shouldn't we just decouple Ameren's
21 rates?

22 A. Why shouldn't we just decouple them?

23 Q. Uh-huh.

24 A. I think it's a big change for the
25 Commission, for everyone, for the Company. I think

1 the sense that there could be a reduction of
2 volatility in customers' bills associated with
3 weather, and I don't have anything else off the top
4 of my head right now.

5 Q. What would you view as the detriments to
6 decoupling, or what are the negatives?

7 A. What are the negatives? I don't have a
8 list off the top of my head. I would think there
9 would be a lot of concern from the Company's
10 standpoint on how that's implemented.

11 I think that one issue associated with
12 decoupling is how it could be applied to, like, a
13 large customer class, because typically when you have
14 a small group of -- or a large group of customers
15 that are fairly similar, like residential or small,
16 medium, commercial, I think it works very well, but
17 when you have a group of large customers where you
18 face instances of customers coming on the system or
19 customers leaving the system, you know, that kind
20 of -- those kind of changes roll through the overall
21 cost of service, so it makes it more difficult to
22 implement decoupling, I think.

23 Q. Okay. So are you saying that decoupling
24 the residential class would be good or bad?

25 A. I think it would make sense under the

1 right circumstances.

2 Q. Okay.

3 COMMISSIONER DAVIS: No further questions,
4 Judge.

5 JUDGE WOODRUFF: Commissioner Jarrett.

6 COMMISSIONER JARRETT: Good morning,
7 Mr. Davis.

8 THE WITNESS: Good morning.

9 QUESTIONS BY COMMISSIONER JARRETT:

10 Q. You had a few questions from Mr. Downey
11 about the Commission's MIEA rules. Do you recall
12 that?

13 A. Yes.

14 Q. Are you familiar with the incentive
15 mechanism or mechanisms that are talked about in
16 those rules?

17 A. I think it's -- as I read the rules, I
18 think it's just defined as -- shared net benefits is
19 the incentive mechanism, yes.

20 Q. What I wanted to ask you, if you could
21 compare or tell me how your proposal for recovery is
22 different or conflicts with our rules?

23 A. Well, I think it's different in the sense
24 that the -- the MIEA rules or the DSM rules, as
25 Mr. Downey put it -- it's different in the sense that

1 they define lost revenues in a particular way, and
2 they define how you use an incentive with the goal, I
3 think, with the presumption in my mind, that you can
4 use these two things, lost revenue recovery and an
5 incentive, to cover the throughput disincentive,
6 right? That's the full range of issue we're talking
7 about, the throughput disincentive.

8 And maybe those two things can work
9 together to cover the full throughput disincentive,
10 so in that way we're consistent with the rules in
11 that we're designing something, we're recognizing
12 that there is a throughput incentive and proposing
13 something to cover that gap.

14 I don't see anything in the rules that
15 addressed specifically what we're proposing in this
16 case. In terms of where it conflicts, I think the
17 most obvious spot is that we're talking about
18 anticipated savings as opposed to the MIEA rules that
19 specify that they be retrospective, and I think in
20 this case, you know, where -- as far as I can tell,
21 we have a large agreement that the Company's programs
22 should continue, that the Company's programs have
23 already resulted in savings, that some of these
24 programs have been under two evaluations -- most of
25 them have been under at least one round of

1 evaluation -- so we know they're working, right, so
2 we should feel pretty comfortable, I think, with
3 bridging t the gap over the next two years and going
4 ahead and agreeing that they're going to continue to
5 make savings.

6 Q. So if you had your druthers or position
7 to -- you know, had authority to change our rules, do
8 you think our mechanism or how we figure our
9 incentives should be changed, should be tweaked?

10 A. I think it should be. You know, just a
11 moment ago, I was talking about how I'm presuming
12 that the lost revenue portion of rules and the
13 incentive portion of the rules are designed to work
14 together to cover the throughput disincentive.

15 I think the challenge, the practical
16 challenge, that introduces is, you know, you don't
17 know what you're going to get out of that lost
18 revenue recovery component, because it's determined
19 based on where sales actually end up, so if you're
20 trying to design an incentive to cover the full gap
21 and you don't know how much you're going to get from
22 the lost revenue component, then I think it -- I
23 can't say it's impossible, but I feel like it's going
24 to be impractical to try to design an incentive that
25 fills a gap that you don't know how big that gap is

1 going to be going into it.

2 And of course, you know, I think it's
3 appropriate to go ahead and make the adjustments
4 prospectively. You know, if the Commission's
5 approving that these programs continue, that, you
6 know, there's wide agreement that these programs will
7 continue to make savings in a cost-effective way,
8 that it doesn't seem like too big of a stretch to go
9 ahead and make those adjustments now instead of
10 waiting until after the fact.

11 COMMISSIONER JARRETT: Thank you,
12 Mr. Davis. Appreciate your testimony.

13 JUDGE WOODRUFF: commissioner Kenney.

14 COMMISSIONER KENNEY: Mr. Davis, how are
15 you.

16 THE WITNESS: Doing good. Thank you,
17 Commissioner.

18 QUESTIONS BY COMMISSIONER KENNEY:

19 Q. Were you in the room for Mr. Mark's
20 testimony?

21 A. Yes, sir.

22 Q. So you heard some of my questions. I'll
23 ask you the same question I asked him. Well, first
24 of all, are you familiar with the statute and the
25 language of the statute that says that the Commission

1 is supposed to align the utility's financial
2 incentives and do it in a manner that also enhances
3 or sustains the utility customers' incentives to use
4 energy more efficiently?

5 A. I'm familiar with it. I don't have it in
6 front of me but, yes.

7 Q. Do you think that those two goals are
8 irreconcilably incompatible, aligning the utility's
9 financial interests, on the one hand, and enhancing
10 and sustaining the utility customers' incentives on
11 the other?

12 A. No, I don't. For example, I think that
13 keeping that in mind we can design things such that
14 customers are still getting price signals on energy
15 efficiency, and they're still able to save money.

16 For example, one way -- earlier I
17 mentioned straight-fixed variable -- I think the
18 commissioners are familiar with it -- where you would
19 have all of the fixed costs in one charge. One can
20 argue that doesn't send an appropriate price signal
21 to customers, right, and that customers wouldn't be
22 able to save as much if that was the rate design, so
23 I think by incorporating things like that and saying,
24 Gosh, you know even though something like straight-
25 fixed variable might make conceptual sense, that it

1 would conflict in this particular case in not sending
2 the price signals we want to customers, that when you
3 reduce your usage, you will save on energy
4 efficiency.

5 Q. Well, how does the billing unit adjustment
6 send the correct price signal, in your estimation,
7 then?

8 A. Well, we also got to remember, right, that
9 if a customer participates in these programs,
10 right -- yes, we're increasing the rates to recover
11 additional revenue, but when a customer participates
12 and that customer is paying a little bit more for the
13 amount he caused sales to go down, that's true, but
14 that particular cost of his savings is being spread
15 across all one million residential customers, so that
16 customer is still going to save.

17 Q. So the way billing unit adjustment works
18 is that after the revenue requirement has been
19 determined in the rate case and after rate design has
20 been concluded, then you look at the number of
21 megawatt hours across which you're going to correct
22 your revenue requirement, and you decrease it; right?

23 A. Yeah, only the portion associated with
24 fixed costs, so we would be excluding the fuel costs.

25 Q. So you decrease it by some number of

1 megawatt hours --

2 A. Yes.

3 Q. -- specifically attributable to fixed
4 costs?

5 A. Well, what I'm saying is, that revenue
6 requirement you were describing, the first thing I
7 would do --

8 Q. Take out the fuel portion.

9 A. Is take out the fuel cost and then divide
10 the remainder by a smaller number, if you will, and
11 that will give a higher rate.

12 Q. But it's going to increase the cost per
13 kilowatt hour to the consumer; correct?

14 A. Yes.

15 Q. And it's going to increase the cost for
16 kilowatt hour to the consumer whether that consumer
17 participates in an energy efficiency program or not;
18 correct?

19 A. That's correct.

20 Q. And if you are a consumer that's
21 participating in an energy efficiency program, how do
22 you know that the amount that they will save is going
23 to exceed the amount of that increase?

24 A. Well, I haven't done that particular
25 calculation. We know that they're going to save on

1 the fuel costs either way. We know they're going to
2 save those fuel costs.

3 On the fixed costs, I haven't done the
4 calculations, but I believe they would save because,
5 again, you know, that additional -- those fixed costs
6 that we're spreading out across the full class, we're
7 saying that only a limited number of customers are
8 going to participate in these programs, not all of
9 them, and then we are spreading that higher rate
10 across the entire residential class, all in doing so
11 such that we can continue these programs, which will
12 over the long term lock in long-term lower costs.

13 Q. Okay. You said that the estimation of
14 what you've -- the lost revenues that you've
15 experienced thus far was verified by one of -- by
16 some independent analysis; correct?

17 A. Not the lost revenues, not the dollar
18 amount. The savings, the historical savings, that
19 I'm using to determine the megawatt-hour adjustment
20 part of those were from evaluation reports.

21 Q. You have two companies, if I read -- I
22 think either in your testimony or Mr. Laurent's
23 testimony, two companies that do evaluation
24 measurement and verification; is that right?

25 A. That was Mr. Laurent's testimony, but I

1 believe that's the case.

2 Q. Are you familiar -- is it Cadmus and ADM
3 Associates?

4 A. That sounds familiar.

5 Q. Okay. I asked -- are you familiar with
6 any other states who take away from the utility the
7 responsibility for promoting energy efficiency and
8 assign that responsibility to either a state energy
9 office or a state utility commission?

10 A. I'm aware that that model has been
11 adopted. I think it's fairly limited. I'm not sure
12 about the results. I think the results might be
13 mixed on that, but even in doing so, we're still not
14 going to deal with the -- with the root issue here,
15 and that is that even if that were the case, the
16 utility would still experience financial consequences
17 associated with that and, you know, if we take a look
18 at these mechanisms and move towards a more longer
19 term solutions [sic], then the utility can be part of
20 that. The utility could be part of that and support
21 it, but even if we move to that, the utility wouldn't
22 be able to support those actions.

23 Q. Well, that's right, but at least you
24 wouldn't be putting the utility in the position of
25 basically having to encourage its consumers to

1 consume less of its widgets.

2 A. Yeah, I mean --

3 Q. Essentially that's the position you're
4 putting the utility in, is to encourage consumers to
5 buy less of your product.

6 A. That's right. That would still be going
7 on. There would still be encouragement to our
8 customers to use less of our energy, which, from a
9 business standpoint we wouldn't be happy with --

10 Q. Right.

11 A. -- but it is a little bit more proverbsed
12 that we're doing it to ourselves.

13 Q. That's my point. You're essentially
14 encouraging your own customers to use less of your
15 product.

16 Well, if the Commission were to adopt
17 either the billing units adjustment or at some future
18 time exploring and implementing a decoupling
19 mechanism of some sort, would you agree with me that
20 the utility would then have no reason not to increase
21 its spend on energy efficiency programs, you know,
22 exponentially?

23 A. I don't know if I'd characterize it as no
24 reason. I mean, there's still risk associated with
25 the implementation, and there's still cost recovery

1 associated with it and still prudence associated with
2 it, but I think that would remove the largest barrier
3 that we're observing at this point.

4 Q. And as between the billing unit adjustment
5 mechanism and some form of decoupling, which do you
6 think is most effective in solving the so-called
7 throughput disincentive?

8 A. I mean, conceptually, they should be
9 equally effective in dealing with the throughput
10 disincentive, you know, because once you've
11 identified the gap and you're designing something to
12 fill that gap, they should be equally effective in
13 that regard.

14 Now decoupling carries along with it
15 other things that are happening at the same time.

16 Q. Does your proposal have some sort of
17 method by which you can go back and, I guess, like a
18 true up process of some sort so if the number of
19 megawatt hours by which you have reduced the billing
20 that you've made the adjustment is incorrect, either
21 too low or too high, that you can go back and true at
22 that up?

23 A. Yeah, that's what we'd like to do in our
24 next rate case. We're talking about a two-year
25 period between now and our next rate case as a bridge

1 to understand the experiences of other utilities
2 under MIEA rules and to try out, you know, ways of
3 dealing with this, but the idea is, try it in this
4 period of time, and in our next rate case take a look
5 at what savings we have observed through evaluation
6 process and compare that to our expectations.

7 Now, you know, taking a look at what our
8 expectations were compared to our most current
9 evaluation results, what we -- I think what we
10 observed was that the residential came in higher than
11 expected, and the business came in pretty much right
12 on target.

13 And right now, my understanding is we
14 have a tremendous amount of momentum in the market,
15 so I think it's fair to say that at the \$25 million
16 level that those goals are achievable and we should
17 be reaching those.

18 Q. I have two more questions for you. Are
19 you aware of any studies that show that customer
20 growth, either because of new customers' or existing
21 customers' increased usage will, in fact, offset any
22 losses attributable to energy efficiency?

23 A. I'm just trying to digest your question,
24 Commissioner. I'm not sure.

25 Q. It was kind of lengthy. I can rephrase

1 it.

2 A. If you would rephrase it, I think that
3 would help.

4 Q. I'm curious about the concept of customer
5 growth, either because of new customers coming on to
6 the system or existing customers increasing their
7 usage, either because of additional appliances in the
8 home, electrical vehicles in the future.

9 Are you aware of any studies that would
10 demonstrate that that type of increased usage offsets
11 any losses from energy efficiency programs?

12 A. Well, I would say that if there is growth
13 from any source, right, that would be offsetting the
14 energy efficiency effects, but what we are saying is
15 that that's inappropriate, right, that at the same
16 time you're getting those additional revenues,
17 especially from customer growth, you're also
18 occurring additional costs, right?

19 And we also want to make sure that we
20 don't create a disadvantage to energy efficiency.
21 That's really what the throughput disincentive is, is
22 that, yeah, you're experiencing this growth, but if
23 the Company doesn't do energy efficiency, then you
24 don't have any offsetting effects of energy
25 efficiency, and that's a better situation to be in.

1 Now, in terms of what the source of the
2 growth is, what we're seeing is that nearly all of
3 that is attributable to additional customers, not
4 necessarily use per customer. I think even in the --
5 our DSM potential study, it's actually -- there's a
6 pretty good table in there. I think it's Volume III,
7 where they have use per household broken down by end
8 use.

9 And what you will see over time is that
10 the pie of that usage for a residential household
11 stays the same, but the mix of it is changing over
12 time, so you see dramatic reductions associated with
13 heating, cooling, refrigeration, lighting,
14 especially, and then you see -- at the same time
15 you're seeing dramatic increases associated with
16 miscellaneous use, right, miscellaneous devices,
17 larger TVs and such, but those two things are
18 happening at the same time and effectively netting
19 each other out, so from a use-per-customer
20 standpoint, we're not seeing growth. In fact, those
21 two things are almost perfectly netting each other
22 out, so the growth we're seeing and expecting is more
23 associated with additional customers onto the system,
24 which is also associated with additional costs onto
25 the system.

1 Q. Then my last question: The billing unit
2 adjustment, is that a new, novel idea that you've
3 invented, or has that been tried somewhere else in
4 the country?

5 A. Well, I -- I'm not aware of anyone who's
6 implementing it like we are today.

7 Q. Like you guys are trying to implement.

8 A. I'm sorry. Like we're proposing today.

9 Q. Don't get ahead of yourself.

10 A. I'm not aware of anybody who's attempting
11 to implement it as we're proposing to today. I do
12 think -- so in that regard I think it's novel.

13 I think it's a good idea. I mean, what
14 we're seeing is that eventually these effects are
15 going to work themselves into the billing units in
16 the future. The problem we're seeing, and that's the
17 throughput disincentive, is that there's a gap
18 between when they occur and when they actually show
19 up in the test year.

20 For an example, when I'm estimating this,
21 these billing unit adjustments, I can -- I'm looking
22 at this on a monthly basis so I can see how much of
23 these savings are in the test year versus how much
24 are flowing into future periods.

25 And I'd like to talk -- you know, provide

1 a little bit more detail in what I talked about
2 earlier, and that is that a measure that's installed
3 in January -- let's pretend like a test year is
4 January through December of 2010. When a measure has
5 been installed in January, that you have 12 months
6 worth of savings that are observed in the test year
7 associated with that measure, but when the measure is
8 installed in December, you only have one month of
9 savings associated with that measure in the test
10 year, but in future periods you're going to have all
11 12 months worth of savings, so not only is there lag
12 associated with just having a historical test year,
13 but a lag associated with how much energy efficiency
14 is actually showing up in the test year.

15 COMMISSIONER KENNEY: Okay. That's
16 interesting.

17 Thank you, Mr. Davis. I thank you for
18 your time and testimony. I don't have any other
19 questions.

20 JUDGE WOODRUFF: Commissioner Jarrett.

21 COMMISSIONER JARRETT: Yes. I just had
22 another question relating to a few questions that
23 Commissioner Kenney asked.

24 QUESTIONS BY COMMISSIONER JARRETT:

25 Q. I believe you were talking about the fact

1 that under your mechanism there would be some
2 increased rates to customers, whether they
3 participated or not. Is that fair?

4 A. Whether or not they participate in the
5 programs or not, yes. Again, what we're talking
6 about here is the normal costs, the normal costs that
7 would be collected if we weren't doing these energy
8 efficiency programs anyway.

9 Q. Right. And the idea is that there would
10 be enough participation in the energy efficiency to
11 lower the energy output so that you could delay or
12 even eliminate future building of generation?

13 A. Yeah, that's the long-term benefit
14 associated with energy efficiency.

15 Q. So basically, although consumers may pay a
16 little bit more right now in the long run, they're
17 actually going to save because that may delay or
18 eliminate --

19 A. Absolutely.

20 Q. -- the building of generation?

21 A. Absolutely right. Like I said, they're
22 going to observe those fuel savings as it happens.
23 Their rate's going to be a little bit higher now, but
24 if we continue to make this progress and we continue
25 to address this issue, they're going to lock in those

1 long-term benefits.

2 Q. Right. And you'd probably agree with me
3 that that may be a hard concept for consumers to
4 grasp in the current --

5 A. I think, in general, people don't like to
6 pay more now.

7 Q. Right. And so my question is, Does
8 Ameren -- do you think, are they planning or do they
9 have a robust educational program for their customers
10 so that their customers understand this?

11 A. I don't know what plans we have in store.
12 I know that education is a part of the marketing
13 associated with energy efficiency. I mean, the real
14 challenge is, is you have a lot of different things
15 going on at the same time, so to talk about this one
16 particular thing and how it's affecting bills --
17 like, for example, customers are experiencing hot
18 weather, right, and they're doing energy efficiency
19 at the same time, they're really going to scratching
20 their head saying, Gosh. I thought my bill was going
21 to be lower.

22 Well, it's lower than what it would
23 otherwise be, so it's hard to understand the baseline
24 in which you're saving against.

25 COMMISSIONER JARRETT: Thank you.

1 Appreciate it.

2 JUDGE WOODRUFF: Recross based on
3 questions by the bench beginning with DNR?

4 MS. FRAZIER: None, your Honor.

5 JUDGE WOODRUFF: MIEC.

6 MR. DOWNEY: No.

7 JUDGE WOODRUFF: Public counsel.

8 MR. MILLS: No questions.

9 JUDGE WOODRUFF: Staff.

10 MR. WILLIAMS: Just one or two, I think.

11 RECROSS-EXAMINATION BY MR. WILLIAMS:

12 Q. Mr. Davis, do you recall when Commissioner
13 Davis asked you about decoupling the residential
14 class and you responded, It would be good under the
15 right circumstances?

16 A. I think I said it would make sense under
17 the appropriate circumstances, yes.

18 Q. What would those appropriate circumstances
19 be?

20 A. Well, I don't know what all of them would
21 be at this time. I'm sorry. I just can't tell you.
22 You know, there's a lot of stuff going on in terms of
23 the level of DSM the Company's engaging in, the
24 impact that that could have on the level of return
25 that's authorized at the same time. I think there's

1 a lot of factors that need to be considered as we
2 move into considering something like decoupling.

3 Q. Then do you recall when Commissioner
4 Kenney had you compare the decoupling to the billing
5 units adjustment proposal?

6 A. Yes.

7 Q. In your response to that you indicated
8 that the decoupling would involve a lot of other
9 things. What other things were you referring to?

10 A. Oh, in terms of adjustments. I mean, you
11 would see adjustments associated with how weather
12 came in, I think, in terms of it how I'm thinking
13 about decoupling. How weather came in versus
14 expectations, how the economy came in versus
15 expectations, how any other source of usage growth or
16 reductions that happened since rates were set. All
17 of those factors would be considered under what I'm
18 considering decoupling.

19 Q. Then in response to Commissioner
20 questions, you talked about how, basically,
21 normalization adjustments for the impacts of energy
22 efficiency, saying they might occur only in the last
23 month. Did Ameren Missouri do any normalization
24 adjustments for the impacts of energy efficiency
25 programs when it came up with its test year revenue

1 requirement?

2 A. No, those effects were embedded in our
3 proposal in the numbers that we had proposed here, so
4 there was not a need to make that adjustment in a
5 different way, but it wasn't treated separately, no.

6 Q. But those adjustments could have been made
7 to the test year, could they not?

8 A. Yes, they could have been made, and I
9 think that, you know, they're appropriate to be made
10 yes.

11 MR. WILLIAMS: No further questions.

12 JUDGE WOODRUFF: Redirect?

13 REDIRECT EXAMINATION BY MS. TATRO:

14 Q. Mr. Davis, at the beginning of your cross-
15 examination, DNR talked to you about the six years
16 versus the three-year amortization. Do you remember
17 those questions?

18 A. Yes.

19 Q. Does Ameren Missouri oppose a three-year
20 amortization?

21 A. No, it does not.

22 Q. So explain why Ameren Missouri chose to
23 drop that request.

24 A. I think I mentioned this earlier, that
25 although cost recovery is an important aspect of it,

1 dealing with a throughput disincentive is really the
2 hurdle towards -- to the continuation of our program,
3 so changing the cost recovery without adopting that
4 just wouldn't result in the continuation of its
5 programs at the level that's been proposed.

6 Q. So what request is the one that allows
7 Ameren Missouri to continue its investment in energy
8 efficiency?

9 A. It's definitely the adjustment for the
10 billing units. Like I said, without dealing with the
11 throughput disincentive, the cost recovery just isn't
12 going to be enough to sustain the programs.

13 Q. Okay. Then MIEC asked you some questions,
14 and he asked you a question about whether or not you
15 agree the definition of "lost revenue" in the
16 Commission's MIEA rules was different than what the
17 billing unit adjustment solves for. Do you remember
18 that question?

19 A. I don't know if that was the exact
20 question, but I remember him asking me a question
21 about that, yes.

22 Q. All right. Is the billing unit adjustment
23 designed to collect lost revenues?

24 A. No. It's designed to prevent them. Like
25 I said -- like I mentioned earlier, you know, we've

1 identified the gap. We're looking at a way to plug
2 the gap, and I really think it's not a rate design
3 issue, but it's similar to something that a rate
4 design change could accomplish that would prevent
5 them from occurring in the first place, so if we were
6 to go back and measure lost revenues after this was
7 all done, we would expect that answer to be zero.

8 Q. You keep saying "the gap".

9 A. Yes.

10 Q. Tell me what you mean by that.

11 A. "The gap," what I mean by that is a
12 throughput disincentive, so it's the revenues that
13 the Company's losing because of its energy
14 efficiency -- the implementation of its energy
15 efficiency programs.

16 Q. Is that larger or smaller or the same
17 thing as the Commission's definition of "lost
18 revenues"?

19 A. Well, I would say the throughput
20 disincentive is larger than that, so if the lost
21 revenues are defined in such a way that they net out
22 growth, then there is still a gap, if you will, that
23 needs to be filled, and what we're -- what I'm saying
24 is that the throughput disincentive represents that
25 entire gap.

1 So if we were to uses the Commission's
2 definition of "lost revenues," that would only be a
3 portion of that gap.

4 Q. Then the Staff attorney asked you some
5 questions about how the billing unit adjustment
6 caused revenues -- or caused the rates to go up, the
7 rates to be higher than it otherwise would have
8 been. Do you remember that conversation?

9 A. Yes.

10 Q. Okay. Does that change -- negate the
11 benefits of energy efficiency to the customers? I'm
12 talking about benefits to customers.

13 A. No, I think we had that conversation a
14 little bit with Commissioner Jarrett and Commissioner
15 Kenney where the customers will, of course, save
16 their fuel costs, and they'll pay a little bit more
17 now, absolutely, with the rates a little bit higher
18 but, again, in order to lock in those long-term
19 benefits associated with energy efficiency, you know,
20 we need to make sure that the utility financial
21 incentives are aligned with the customers to continue
22 those investments in energy efficiency and continue
23 to realize those savings over a long period of time.

24 Q. There was also quite a bit of discussion
25 about whether or not the billing unit mechanism truly

1 resolved the throughput disincentive. Do you
2 remember those questions? They were the same ones
3 that were asked of Mr. Mark.

4 A. I mean, I remember --

5 Q. I'm asking if you remember those
6 questions.

7 A. Yes.

8 Q. Does Ameren Missouri's billing unit
9 adjustment resolve a throughput disincentive for the
10 time period over which we're requesting the
11 mechanism?

12 A. Yes, I believe it does. And, you know,
13 like, I think even Mr. Baxter indicated that we're
14 not seeing this as the solution; right? What we're
15 looking for here is some constructive treatment in
16 the interim over the next two years to keep these
17 programs going, and we think this is a good way to do
18 it.

19 Q. Then there were some questions about the
20 IRP and how the low-risk case was designed.

21 A. Yes.

22 Q. You talked about the size of the
23 regulatory asset being the main constraint. Do you
24 remember that conversation?

25 A. Yes.

1 Q. Was the throughput disincentive a part of
2 that analysis?

3 A. Well, we know that any time you experience
4 lower savings you're going to have a lower financial
5 impact, but at that time we hadn't done -- we had not
6 completed any of the financing analysis, which was
7 done at the end of the process to inform the level of
8 energy savings associated with the low-risk
9 portfolio.

10 Q. You said "at that time." When was the
11 low-risk portfolio designed?

12 A. I don't know the exact date. It was at
13 least a year ago from today.

14 Q. When was the financing analysis that you
15 discussed done?

16 A. That was probably completed in September
17 or October of 2010.

18 Q. There's been a lot of discussion about
19 decoupling and whether or not that would solve the
20 throughput disincentive program. Do you remember
21 that discussion? You had some with Staff. You had
22 some with Commissioner Kenney.

23 A. Yes.

24 Q. Do you think -- to your knowledge, does
25 the MIEA statute have an impact on whether or not the

1 Commission can allow a utility to decouple in
2 Missouri?

3 A. My understanding is that there needs to be
4 a docket open to study the effects of it since it
5 would be considered a rate design modification.

6 Q. Do you know if a docket has been opened?

7 A. Not to my knowledge. A docket has not
8 been opened, to my knowledge.

9 Q. If a docket were opened tomorrow, in your
10 experience would you anticipate that it would be
11 resolved before the Company's energy efficiency
12 programs expire in September?

13 A. Probably not.

14 Q. Commissioner Kenney talked to you about
15 new growth and the additional costs and the
16 additional revenue that that can create. Do you
17 recall that conversation?

18 A. Yes.

19 Q. Did you quantify in your testimony what
20 percentage of growth comes from -- for new growth
21 will -- let me try to ask that question again.

22 In your prefile testimony, did you
23 quantify what amount of the revenues received from
24 new load are needed to serve new customers?

25 A. Yes. I think it was in my rebuttal

1 testimony. I quantified that for our resource
2 planning -- from our resource planning forecast, we
3 expect 80 percent of growth -- sales growth to come
4 from additional customers, and the remaining 20
5 percent to come from use per customer, and that that
6 20 percent that's a use per customer is associated
7 with the industrial customer class, and that amount
8 of load growth was also considered to be the greatest
9 uncertainty associated with the industrial forecast.

10 Q. So given that information, does load
11 growth offset -- if that were -- assuming for a
12 moment it's appropriate, does that load growth
13 necessarily guarantee that it would offset energy
14 efficiency sales losses, driven sales losses?

15 A. Just trying to make sure I understand your
16 question. You know, we had discussions earlier
17 about, you know, where the sales growth is coming
18 from, from, like, the residential class in terms of
19 it pie remaining the same and the mix of end uses
20 changing over time.

21 I think in general it's just
22 inappropriate to try to offset energy efficiency
23 reduction in revenues from load growth.

24 Q. Let me ask it this way: Why is it
25 inappropriate?

1 A. Well, it's inappropriate because when you
2 add those additional customers, it is true that
3 you're getting additional revenues from those
4 additional customers, but it's also true that those
5 additional revenues are being used to offset
6 additional costs associated with adding those
7 additional customers.

8 Q. Thank you.

9 What kind of costs are associated with
10 new customers?

11 A. I don't know all of them, and I haven't
12 quantified what the additional costs were of adding
13 an additional customer.

14 Q. I'm sorry. I wasn't asking for a dollar
15 amount. Can you tell me what types of costs?

16 A. What types of costs? Well, you would
17 have -- I don't know the whole list but, I mean,
18 clearly that customer would need a new service; they
19 would need -- you know, additional costs from the
20 utility in terms of billing them, customer service
21 being provided to that additional customer. I mean,
22 the fuel costs would go up or -- it would really just
23 increase net fuel costs, but that would flow through
24 the FAC, so I guess I should just limit this to fixed
25 costs.

1 I mean, those are a few examples I have
2 off the top of my head. I don't know anymore. I'm
3 sure there's many other areas in which, when you add
4 a new customer, it impacts how we do business.

5 Q. And those costs would not be in that
6 utility's current revenue requirement?

7 A. No.

8 MS. TATRO: I don't have any further
9 questions. Thank you.

10 JUDGE WOODRUFF: Then Mr. Davis, you can
11 step down.

12 THE WITNESS: Thank you.

13 JUDGE WOODRUFF: It's nearly noon, so
14 we'll take our break for lunch and we'll come back at
15 1:00.

16 MR. BYRNE: Your Honor, at the beginning
17 of the day Ms. Ott was asking about Mr. Finnell and
18 Mr. Wise.

19 JUDGE WOODRUFF: Yes.

20 MR. BYRNE: My understanding, Mr. Finnell
21 will be available on or after 1:00, whenever we
22 reconvene, and I think Mr. Wise is scheduled for
23 tomorrow, so it would probably make sense just to
24 have him questioned tomorrow when he takes the stand.

25 JUDGE WOODRUFF: All right. We'll just

1 work Mr. Finnell in when staff is ready to question.

2 MR. BYRNE: Great.

3 JUDGE WOODRUFF: We're adjourned until
4 1:00.

5 (A lunch recess was taken.)

6 JUDGE WOODRUFF: Let's come to order,
7 please.

8 We're back from lunch, and I believe it
9 was decided during lunchtime that we would take up
10 Mr. Finnell now, actually going back to the fuel
11 adjustment clause issues, so if you want to come on
12 up here, come on up.

13 MR. LOWERY: He has not testified thus far
14 in the hearing.

15 JUDGE WOODRUFF: And I assume you'll
16 introduce him in the preliminaries.

17 MR. LOWERY: I will.

18 JUDGE WOODRUFF: Please raise your right
19 hand.

20 TIMOTHY FINNELL,
21 of lawful age, being sworn, testified as follows:

22 BY MR. LOWERY:

23 Q. Would you state your name for the record,
24 please.

25 A. My name is Timothy D. Finnell.

1 Q. Mr. Finnell, who do you work for?

2 A. I work for Ameren Corporation.

3 Q. What's your title?

4 A. I'm a managing supervisor in the
5 operations analysis group of corporate planning.

6 Q. Mr. Finnell, I'm going to hand you what's
7 been admitted into evidence in this case as Exhibit
8 170 and ask you if you recognize it.

9 A. Yes, I do.

10 Q. What is that?

11 A. That is an affidavit that I had prepared
12 to talk about the 3.190 data.

13 MR. LOWERY: Your Honor, I don't have any
14 further questions. Mr. Finnell is available for
15 cross-examination about his affidavit.

16 JUDGE WOODRUFF: Before Staff, does anyone
17 else wish to cross this witness?

18 (No response.)

19 JUDGE WOODRUFF: All right then. Staff.

20 MS. OTT: Good afternoon, Mr. Finnell.

21 THE WITNESS: Good afternoon.

22 CROSS-EXAMINATION BY MS. OTT:

23 Q. Who asked you to prepare this affidavit?

24 A. Mr. Lowery.

25 Q. When did he ask you to prepare this

1 affidavit?

2 A. I believe it was over the weekend.

3 Q. This past weekend?

4 A. Yes.

5 Q. Why did he ask you to prepare this
6 affidavit?

7 A. Just to provide some supporting
8 information for the Company.

9 Q. And did you know how this affidavit was
10 going to be used when you were preparing it?

11 A. It was just a statement of some facts. I
12 thought it would be used in this case as a -- maybe a
13 piece of evidence.

14 Q. Do you know when this affidavit was first
15 used in this case?

16 A. I believe it was presented yesterday.

17 Q. Are you aware that it was filed, attached
18 to Ameren's Response to Staff's Request for Rulings
19 on the Objections of the deposition of Lena Mantle on
20 April 25, 2011?

21 A. I don't know anything about that part of
22 it.

23 Q. Have you been following this case
24 Mr. Finnell?

25 A. Yes, I have.

1 Q. Do you check the filing on EFIS?

2 A. No, I do not.

3 MS. OTT: May I approach?

4 JUDGE WOODRUFF: You may.

5 BY MS. OTT:

6 Q. I just handed you Ameren Missouri's
7 response to Staff's data request for the rulings on
8 the objection from the deposition of Lena Mantle on
9 April 25, 2011. Do you see that?

10 A. Yes, I do.

11 Q. If you just want to look through and see
12 that and say what date this document was filed on.

13 MR. LOWERY: Your Honor, I guess I'm going
14 to object to the relevance of these questions. I'll
15 stipulate that we filed that motion on Monday. I'll
16 stipulate that Mr. Finnell's affidavit was an
17 attachment and exhibit to that motion.

18 Not sure if Mr. Finnell's knowledge of a
19 filing date of a motion is relevant to the veracity
20 of his affidavit, which I think is what we're here to
21 talk about today.

22 JUDGE WOODRUFF: I'll overrule the
23 objection at this time and allow the Staff to
24 proceed.

25 MS. OTT: Well, if he's going to stipulate

1 that it was attached, I was just trying to lay the
2 foundation.

3 JUDGE WOODRUFF: Okay.

4 BY MS. OTT:

5 Q. Did you draft this affidavit yourself?

6 A. No, I had some help with that.

7 Q. So did you do the original draft, or did
8 somebody do the original draft and then have you
9 review it?

10 A. Mr. Lowery helped with this.

11 Q. So did Mr. Lowery do the first draft and
12 then you review it and make --

13 A. Yes. That's correct.

14 Q. Was your first contact with Mr. Lowery
15 with this affidavit -- did he present this affidavit
16 to you already drafted and then ask you to review it?

17 A. Yes, he had prepared it, and then I
18 reviewed it and made some changes, and then I signed
19 it.

20 Q. Is this the first time that you have filed
21 an affidavit related to the. 3.190 data?

22 A. Yes, it is.

23 Q. So then you would have never filed an
24 affidavit attesting to the 3.190 data in Case
25 ER-2010-0274, which is referred to as the true-up

1 case?

2 A. No, I did not.

3 Q. Do you know whether MISO has defined "net
4 system input"?

5 A. I don't believe that MISO has that -- uses
6 a term like that.

7 Q. Do you know if they have a definition of
8 "net system output"?

9 A. I don't think they use that term either.

10 Q. Now, you're not here today as a -- you did
11 not file prefiled testimony on the issue of the fuel
12 adjustment clause, did you?

13 A. I have filed some testimony relating to
14 the net base fuel costs.

15 Q. Okay. But not to the design of the fuel
16 adjustment clause mechanism?

17 A. Oh, no, nothing on the design.

18 Q. The net based fuel costs, those issues are
19 being resolved right now through a stipulation and
20 agreement; correct?

21 A. Yes, they are being resolved now.

22 Q. Now, you've worked with Staff witness Dave
23 Elliot on fuel cost in this case; correct?

24 A. Yes, I have.

25 Q. And particularly with planned outage data

1 for the Sioux plant?

2 A. What kind of outage data was that?

3 Q. The planned outage and the derated outage
4 information.

5 A. Yes, we have worked on the plan
6 availability statistics.

7 Q. Do you recall having a conversation with
8 Mr. Elliot regarding some of the information
9 contained within his direct testimony on the derated
10 numbers he used?

11 A. I don't recall talking to him about it
12 during his direct testimony.

13 Q. After his direct testimony was filed.

14 A. It was probably after his rebuttal
15 testimony.

16 Q. Okay. So after Mr. Elliot's rebuttal
17 testimony, you noticed an error in a number he was
18 using related to the Sioux derated outage number?

19 A. There was some problems with the Sioux
20 availability reports, yes.

21 Q. Okay. And his initial number came from
22 the 3.190 data; correct?

23 A. Yes, it did.

24 Q. And you called him and informed him that
25 number was incorrect?

1 Mr. Elliot prepared when?

2 MS. OTT: Prepared for -- after he found out
3 about the error. I'm just going to ask about a
4 number.

5 BY MS. OTT:

6 Q. So have you seen these numbers before that
7 should be contained within the 3.190 data?

8 A. I'm trying to understand what these
9 numbers are here.

10 Q. Well, the top line is the original data
11 that was used in Mr. Elliot's direct testimony.

12 A. Okay. Okay. Where it say "Original"?

13 Q. Yes.

14 MR. LOWERY: I'm going to object unless
15 there's foundation laid for the fact that that's
16 actually true, unless Mr. Fennell knows it's true. I
17 don't know that Mr. Finnell knows that this data
18 matches data that he's seen before that's actually in
19 Mr. Elliot's testimony.

20 MS. OTT: I think he's testified that he
21 has called Mr. Elliot to tell him of an error in his
22 number, as well as he --

23 JUDGE WOODRUFF: Are the actual numbers
24 relevant here or is this just the -- are you trying
25 to get to the fact that he called him about the

1 error?

2 MS. OTT: Numbers are not relevant.

3 JUDGE WOODRUFF: Is there any reason to go
4 into them then?

5 MR. LOWERY: That's part of my question.

6 MS. OTT: I'm establishing there was an
7 error.

8 JUDGE WOODRUFF: All right.

9 Well, let's move on to that then. I'll
10 sustain that objection.

11 BY MS. OTT:

12 Q. So the number provided, the original
13 number for the duration of the outage for the
14 derated -- and I won't get into the number because
15 it's highly-confidential -- but then if you look at
16 the corrected number and the difference between it --
17 do you see that number?

18 A. The 1,347?

19 Q. Yes.

20 JUDGE WOODRUFF: Was that a highly-
21 confidential number?

22 MS. OTT: I have the document labeled as
23 highly-confidential. I don't know if it's a
24 confident number.

25 JUDGE WOODRUFF: There's no context for it

1 so --

2 MR. LOWERY: May it I ask Mr. Finnell if
3 it's highly-confidential. I suspect it's not.

4 THE WITNESS: I do not think it's highly-
5 confidential.

6 BY MS. OTT:

7 Q. And that's the same number that the
8 original -- the planned outage number equals;
9 correct?

10 MR. LOWERY: I'm going to object, again,
11 for improper foundation. Is she asking him, Does he
12 know if it's the same number, if it's the actual
13 number, or is she asking him to assume it is? I
14 don't think she's laid the foundation that he knows
15 that these numbers are accurate from whatever source
16 they came from.

17 JUDGE WOODRUFF: Can you modify your
18 question?

19 BY MS. OTT:

20 Q. Mr. Finnell, you are familiar with the
21 3.190 data you submitted to the Staff?

22 A. Yes, I am.

23 Q. And you are familiar with 3.190 data
24 related to derated and planned outages on the plants?

25 A. Yes, I am.

1 Q. And you are aware -- you testified earlier
2 that you called Mr. Elliot notifying him of an error
3 of the number he used in his direct testimony;
4 correct?

5 A. Yes. When if I called Dave, I told him
6 that he had misused some of the data that we had
7 provided to him, and I'm not really familiar with
8 this particular report, but I could explain what
9 happened with the data that was provided to him.

10 Q. Well, my understanding, there were some
11 errors in Mr. Elliot's report but, in particular, not
12 just related to the Sioux derated numbers.

13 A. The errors that I remember had to do with
14 how Dave used the information that we provided and
15 that he had not used the information properly.

16 Q. So is it your testimony, then, that the
17 3.190 data for the planned outages was not also
18 included in the 3.190 data of the derated outages?

19 A. When we provide outage information, in
20 this particular case, we have an outage -- a derate
21 on our Sioux unit that lasted from July through, I
22 guess, the start of an outage in -- looks like here
23 it was in November.

24 I think at the same time there was
25 another outage going on at the unit and so the

1 information was reported twice, and that's
2 appropriate if somebody's trying to track an
3 equipment outage over the life of the equipment so
4 that we can, you know, determine the reliability of
5 that equipment.

6 The fact that there's another outage
7 going on at the same time is also important to track,
8 so our reports have both outages in the database, and
9 it's really up to the users to understand, you know,
10 the quality of the data, you know, overlapping
11 events, and then they can take -- make the proper
12 analysis.

13 In this case, Dave had actually accounted
14 for the outage twice and therefore had -- you know,
15 in our case had said the plant was going to be less
16 available than it should have been, so when I called
17 Dave, I said, You've got a problem. You're
18 understating the availability of our units. We need
19 to make this change. So that was what happened with
20 this derate issue that you're talking about.

21 Q. Isn't that because during the planned
22 outage that there was also a derate outage that
23 happened during the planned outage?

24 A. No. I mean, the derate here says it
25 started July 14, and it continued on until some point

1 in time. That event is not necessarily ended until
2 they've actually fixed that equipment, so that
3 equipment would still be out of service until, you
4 know, the plant information person, you know,
5 determines that it's been repaired and it's back into
6 service.

7 So you can have two outages -- you know,
8 two reports going on at the same time, or you could
9 have four or five reports going on at the same time.

10 Q. So your planned outage coincides with the
11 derated outage?

12 A. Yes. This is one piece of equipment, and
13 it's not identified here. Had a problem that began
14 on July the 14th and continued to be -- you know, in
15 the GADS reporting system, it continued to be
16 reported as an outage.

17 Q. So then is it your testimony that
18 Mr. Elliot improperly used the data that you provided
19 in the 3.190 data?

20 A. Yes, it is. I mean, I -- in fact, I
21 called him up and notified him that the availability
22 was 2-0 for the unit for the use in our production
23 cost model, and we talked through the reason why that
24 happened and why it might be recorded in our database
25 that way, and so, yes, I'm saying that, you know --

1 Q. So you called him up. Did you provide him
2 any written information to show him where the error
3 was in the 3.190 data?

4 MR. LOWERY: Objection. Mischaracterizes
5 Mr. Finnell's testimony. He didn't say there was an
6 error in the data. He said the data was misused. I
7 object to mischaracterization of the evidence.

8 JUDGE WOODRUFF: I'll sustain that
9 objection.

10 BY MS. OTT:

11 Q. When you talked to Mr. Elliot on the
12 phone, did you give him guidance where the misuse of
13 that number, the 3.190 data, was?

14 A. Yes. We both looked at the database. I
15 believe it was his database that he had shared with
16 me, and we noticed the starting event, the starting
17 time of the event, and the end time of the event, and
18 it overlapped with the planned outages and Dave, once
19 I pointed that out to him, he recognized, you know,
20 the discrepancy with, you know, what the proper
21 action was supposed to be, and he did make that
22 correction to his model or to his analysis.

23 Q. He made that correction. Do you know if
24 he made that correction based on 3.190 data or on
25 reliance on your word that the number he used was not

1 correct?

2 A. He used the 3.190 data and then he saw
3 that there were overlapping outages that should not
4 be double- counted, and once he recognized that after
5 I talked to him, he made a change.

6 Q. Do you know how the 3.190 data is
7 submitted to the Staff?

8 A. No, I do not.

9 Q. So you don't submit the 3.190 data to the
10 Staff?

11 A. I provide -- or have provided different
12 pieces of information to a person in power
13 operations, who sends is information to the Staff.

14 Q. Do you know who sends the information to
15 the Staff?

16 A. I submit my information to Marlene Wade.

17 Q. And who is Marlene Wade?

18 A. She's the executive secretary to Mark
19 Birk, vice president of power operations.

20 Q. So you're not attesting to the information
21 you provided to Ms. Wade that is then submitted the
22 Commission -- n or to the Staff of the Commission;
23 correct?

24 A. The affidavit I was -- that I had prepared
25 talked about my knowledge of the 3.190 data

1 specifically related to the hourly loads.

2 Q. But when Ameren submits the 3.190 data to
3 the Staff, you do not submit an affidavit to the
4 accuracy of it?

5 A. No, I do not.

6 Q. So you said you only participate in the
7 3.190 data that is related to net loads; correct?

8 A. I -- I said I -- that was what my
9 affidavit was about.

10 Q. Well, I'm going to -- have you changed the
11 information contained within the 3.190 data that you
12 provide to Staff over the years?

13 A. Roles and responsibilities have changed.
14 I'm also not sure what piece of the 3.190 data that
15 you're referring to.

16 Q. Well, I'm going to try to see if maybe we
17 can walk through some of them.

18 MS. OTT: May I approach?

19 JUDGE WOODRUFF: (Nodded.)

20 BY MS. OTT:

21 Q. If you could, take a look at that for a
22 home moment.

23 Does this look like some of the
24 information you would have provided to Staff for the
25 3.190 data?

1 A. This was provided in 2009. There was
2 another person doing the reporting at the time, but
3 I'm familiar with it.

4 Q. Okay. So would this be what you would
5 have submitted as the net system input?

6 A. Yes.

7 Q. Now, do you know if that under Net Load,
8 Megawatt Hours, that that is actually the net system
9 input?

10 A. I believe there's another part of the
11 filing that describes what all's in this information,
12 in this hourly net load number, so it's -- it does
13 include our net system input. Well, maybe it's
14 easier to describe what is in here.

15 Q. Well, from looking at this document, if
16 this was provided as a 3.190 sub --or 1(C), which is
17 supposed to be the net system input, how do you know
18 if it is just the native load or if the control load
19 has been backed out of it, the number?

20 A. I'm not sure what you mean by the "control
21 load."

22 Q. The municipals are not or part of the --
23 the area that's not part of the native load.

24 A. They're -- do you have the other -- I
25 think there's another tab on this example that gives

1 you the definition of what's all in this.

2 Q. If you look at the bottom of the print
3 screen, there doesn't appear to be another tab in
4 this data.

5 A. Was there another -- I think there might
6 have been another file that was sent with this that
7 had -- called "descriptions."

8 Q. I do not have that information. I do know
9 you have gone back and since modified this document
10 that was provided in April of -- starting in April of
11 2010, which I can show you, and maybe that document
12 is what you're referring to.

13 A. I think the file that I'm thinking of is
14 called MPSC Descriptions.

15 Q. Do you know when you would have started
16 providing MPSC descriptions?

17 A. 2004, 2005.

18 Q. Let me hand you the one that you modified
19 coming forward in 2010 and see if maybe that's what
20 you're referring to.

21 MS. OTT: May I approach?

22 JUDGE WOODRUFF: Yes.

23 BY MS. OTT:

24 Q. So starting in April 2010, you started
25 providing Staff with a more detailed description of

1 what I think is the same information contained within
2 the first document I handed you.

3 Do you see a difference between the two
4 documents?

5 A. Yes, I do.

6 Q. The second document is quite a bit more
7 detailed, is it not?

8 A. Yes, it has a lot more columns of
9 information in it.

10 Q. So if you wanted to compare January 1,
11 2009, in the first document -- has net load of 5,063,
12 to the second document on January 1, 2009, hour one,
13 and it says, 5,063, that's the same number; correct?

14 A. Yes 5,063.

15 Q. Then when you continue, it then contains
16 MISO losses and then a group of municipalities, and
17 there's actually three sheets. It goes across to
18 column, Year. It also has a partial requirement and
19 then it totals a number, UE Native at Transmission.
20 Do you see that?

21 A. Yes, I do.

22 Q. Then if you go to the last page, it has UE
23 Retail at Transmission. Is that the number for -- at
24 generation? Is that the net system input number?

25 A. You mean where it says UE Retail at

1 Transmission?

2 Q. Yes.

3 A. No, that would be at transmission.

4 Q. Okay. So what number on this document is
5 the net system input that's supposed to be supplied
6 to Staff pursuant to 3.190(C?)

7 MR. LOWERY: Objection. The question's
8 vague, unless she defines what she means by "net
9 system input."

10 JUDGE WOODRUFF: Go ahead.

11 BY MS. OTT:

12 Q. How do you define "net system input."

13 A. Do you want my definition of it?

14 Q. What's your definition of "net system
15 input"?

16 A. I would say it would be our net
17 generation, plus our purchase power, minus our
18 off-system sales.

19 Q. So where is that on this document?

20 A. This document contains all the pieces to
21 calculate the net system input, but it's not spelled
22 out specifically.

23 Q. So Staff would have to perform a
24 calculation, then, to get the net system input?

25 A. Yes. That's true.

1 Q. What columns would they have to either add
2 or subtract to get the net system input number?

3 A. It would be up to the definition that they
4 want to have for "net system input." In this case,
5 if you wanted to include the municipalities that are
6 served, you would, you know, use a certain
7 combination of information.

8 If you wanted to look at Ameren Missouri
9 only, you would use a different combination. This
10 report was actually prepared in this, you know,
11 extended format after meeting with the Staff back in
12 April or May of last year at the end of the last rate
13 case to try to, you know, provide better reports to
14 them so, you know, they've been getting it for quite
15 a while.

16 I would think they would know which
17 columns they wanted to use for their analysis and
18 when it was appropriate to use one set of columns or
19 another, so we tried to provide as much detail so
20 they could look at the data in numerous ways.

21 Q. So you didn't actually ever provide Staff,
22 then, with the net system input number. They were
23 just supposed to do a calculation to determine the
24 net system input.

25 A. That's correct. We've been providing them

1 with control area loads, as you saw in the first
2 exhibit that you gave me with just one number, and
3 then we provided them with details to get to a value
4 that they might want in the second -- in the new
5 format.

6 Q. So if Staff was using a number on a
7 document that they believed was the net system input,
8 wouldn't that have been the same kind of situation as
9 Dave Elliot using what he believed was the derated
10 outage number, but then you called him up and told
11 him it was an error?

12 A. We've been providing this information in
13 the first format for -- I don't know -- many years.
14 I personally have been doing it since 1998 or 1999,
15 and they really never came back and said this was a
16 bad format. If they would have, we would have
17 changed it and put formulas in it and done it in a
18 different way but, you know --

19 Q. Hasn't this 3.190 data been the subject
20 of -- been contained within several stipulation and
21 agreements that Ameren is supposed to supply
22 additional information or more information?

23 A. Which -- no. This hourly load information
24 has never been part of a stipulation that I'm aware
25 of.

1 Q. My question was the 3.190 data.

2 A. The 3.190 data, there's -- I don't know.
3 There's numerous sections of it. As far as I know,
4 the stipulation from the last rate case really talked
5 about off-system purchases and sales statistics.

6 MS. OTT: I have no further questions.

7 JUDGE WOODRUFF: Commissioner questions?

8 COMMISSIONER DAVIS: No, thank you.

9 COMMISSIONER JARRETT: I don't have any
10 questions.

11 JUDGE WOODRUFF: Redirect?

12 REDIRECT EXAMINATION BY MR. LOWERY:

13 Q. Mr. Fennell, I want to pick up where
14 Ms. Ott left off. When did the Company change the
15 reports -- and these weren't marked for
16 identification or anything, but I'm talking about the
17 one that has the multiple columns that Ms. Ott had
18 up? When did the Company add those columns?

19 A. I believe it was in probably the March or
20 April 3.190 filing of last year. It would have
21 been -- I don't know -- I guess, probably, the end of
22 a calendar month. It might've been the end of May.
23 It might have showed April data.

24 Q. Is the data that was provided since
25 1998 -- your affidavit indicates essentially the same

1 data was provided since the early 2000s, all the way
2 up to about April or May of 2010?

3 A. Yes.

4 Q. Was the data that was provided -- the
5 hourly load data provided in the 3.190 reports from
6 at least the early 2000s all the way up to the spring
7 of 2010, is that data still in this expanded column
8 report, I'll call it?

9 A. Right. I mean, the same data -- well,
10 it's in Column C in the original report. It's also
11 in Column C in the new report, so the information is
12 still there in the same -- actually, the same
13 format. We just added more pieces of information to
14 the report.

15 Q. You didn't take away data; you added data;
16 is that correct?

17 A. Yes, we did.

18 Q. Now, were you here yesterday when
19 Ms. Mantle testified?

20 A. Yes, I was.

21 Q. Did you hear her agree that in the MISO
22 world that you could define "net system input" as
23 generation, plus purchasing, minus sales, where the
24 sales included the transmission losses that are
25 settled financially?

1 A. Yes.

2 Q. In the MISO world, is what -- and you
3 heard the discussion yesterday about net system input
4 versus net system output?

5 A. I did hear that discussion.

6 Q. Once the MISO market started, are they the
7 same thing?

8 A. As far as Ameren Missouri's concerned,
9 yes, they would be the same.

10 Q. Or as far as any other participant in the
11 MISO, they would be the same?

12 A. I think so, yes.

13 Q. Were you here when she was questioned
14 about the Staff's ability to take the 3.190 data and
15 back out the municipals and get what they defined to
16 be net system input for Ameren Missouri?

17 A. I don't remember the part about the
18 municipals. I know that was part of the missing
19 information that we didn't provide, you know, in the
20 earlier, you know, format.

21 Q. The 3.190 data that was reported at the
22 time of the 0002 case and the 0318 case -- you know
23 the cases I'm talking about, do you?

24 A. Yes, I do.

25 Q. The 3.190 data that was reported at that

1 time, was that at generation?

2 A. Yes. That Column C that's -- in all these
3 reports was at the generation level.

4 Q. Which means it included transmission
5 losses?

6 A. Yes.

7 Q. I should have probably asked you this when
8 I put you on the witness stand, but everything in --
9 all the facts alleged in your affidavit, are they
10 true and correct?

11 A. Yes, they are.

12 Q. Have you ever drafted an affidavit from
13 scratch before?

14 A. No, I have not.

15 Q. Have you been asked to draft affidavits or
16 sign affidavits before in your 25-year career at
17 Ameren?

18 A. I don't recall.

19 Q. Don't recall. Okay. That's fair enough.
20 Would you have signed this if it
21 wasn't -- this affidavit if it wasn't true and
22 correct?

23 A. No, I would not. In fact, I did make some
24 changes before I signed it.

25 Q. Did I tell you not to make those changes?

1 A. No.

2 Q. Did I tell you you had to sign this
3 affidavit?

4 A. No, you did not.

5 Q. Let's talk about Mr. Elliot's -- the
6 mistake that he made. When you called Mr. Elliot and
7 you explained how he had misused the data, did he
8 agree with you?

9 A. We -- when Dave and I discussed the
10 available reporting issues, we were both looking at
11 the information that was utilized, and I was able to
12 point out where the beginning and ending events ran
13 over more than the monthly time period that was used
14 in the report and pointed out where maybe
15 enhancements could be made on how he collects and
16 audits the data.

17 Q. I think Ms. Ott asked you about whether
18 the fuel-related issues in the case -- essentially
19 had been settled pursuant to a stipulation that will
20 soon be filed; correct?

21 A. Yes. That's true.

22 Q. The fuel run that underlies that
23 stipulation, it's ultimately Staff's final fuel run;
24 correct?

25 A. Yes. It's produced by the realtime model

1 run by David Elliot.

2 Q. And you've audited and examined that
3 model, and the Company agrees with the results at
4 this point; correct?

5 A. By auditing it, we've looked at the
6 results and compared them to the results we would get
7 from our own, you know, model and agreed with the
8 results.

9 Q. Do those results reflect the correction to
10 the Sioux outage information that Mr. Elliot had
11 previously had an error about?

12 A. Yes, they do.

13 Q. The report -- I'll, again, call it the
14 expanded column report that Ms. Ott showed you -- do
15 you know whether or not that report has a definition
16 of "net system input" in it in another tab or another
17 file that comes along with this data?

18 A. I'm not familiar with that. There is a
19 tab called "Notes" at the very front -- the bottom
20 right-hand corner. It may contain some kind of a
21 descriptor, but I'm not positive on this one.

22 Q. You used the acronym GADS a minute ago.
23 Could you just for the record what that is.

24 A. Yes. GADS is -- it's actually called a
25 NERC GADS system, and it's -- NERC is North American

1 Electric Reliability Counsel, Inc., and the GADS
2 acronym is Generating Availability Data System, and
3 it's the system that we track all of our power plant
4 outages and we, you know, track power plant
5 availability with this GADS system.

6 Q. The mistake that Mr. Elliot had made,
7 after that was corrected, effectively what that meant
8 is the model was going to reflect more megawatt hours
9 being generated from Sioux than it did when it
10 contained his mistakes; is that true?

11 A. That's correct.

12 Q. Which means more off-system sales are
13 being modeled in the final fuel run in the case; is
14 that correct?

15 A. It would be more off-system sales, or it
16 might be the fact that we didn't need to purchase
17 power if it was economical. It would probably reduce
18 the net fuel costs in some manner.

19 Q. So the error you pointed out to him
20 actually reduced the revenue requirement the Company
21 would be asking for in the case; is that true?

22 A. Yes, that's true.

23 MR. LOWERY: Thank you, Mr. Finnell. I
24 don't have anything else.

25 JUDGE WOODRUFF: Okay. Thank you,

1 Mr. Finnell. You may step down.

2 MR. DOWNEY: Judge, I may be out of order
3 here, but this is not my issue. I haven't seen this
4 affidavit. I haven't seen any of these exhibits.

5 Jim, could you tell me, Does this have
6 anything to do with the fuel stipulation?

7 MR. LOWERY: No. It has to do with the
8 sharing percentage argument we're having in the fuel
9 adjustment clause.

10 MR. DOWNEY: Thank you indulging me.

11 JUDGE WOODRUFF: Thank you. You can step
12 down, and we'll go on, then, back to the energy
13 efficiency DSM issues. JUDGE WOODRUFF: Mr. Rogers
14 is taking the stand, and I believe this is your first
15 time testifying also; right?

16 THE WITNESS: Yes.

17 JOHN ROGERS,
18 of lawful age, being sworn, testified as follows:

19 JUDGE WOODRUFF: Mr. Williams, you can
20 inquire when you're ready.

21 DIRECT EXAMINATION BY MR. WILLIAMS:

22 Q. Would you please state your name.

23 A. John A. Rogers.

24 Q. By whom are you employed and in what
25 capacity?

1 A. Missouri Public Service Commission as
2 utility regulatory manager.

3 Q. Mr. Rogers, did you make a contribution to
4 the Staff report, Requirement, Revenue Requirement
5 Cost of Service that was filed February 8, 2011, in
6 this case?

7 A. Yes.

8 Q. Which pages of that report are you
9 responsible for or does that contribution appear?

10 A. It's on pages 35 through 43, and then
11 there's several schedules that I sponsored.

12 Q. If I were to ask you whether or not those
13 pages, 35 through 43 -- I believe you said -- 43 of
14 the Staff Report, Revenue Requirement Cost of
15 Service, that was prefiled on February 8, 2011,
16 that's been marked as Exhibit 201, if I asked you if
17 that was your -- is part of your testimony here
18 today, would it be?

19 A. Yes.

20 Q. Would you make any changes before it would
21 be your testimony?

22 A. No.

23 Q. Then turning to -- did you also file
24 rebuttal testimony in March of this year, on March 25
25 of this year, that's been marked for identification

1 as Exhibit No. 221?

2 A. Yes.

3 Q. If I were to ask you if that's part of
4 your testimony here today, would it be, or would you
5 have changes to it?

6 A. It is my testimony. There's one
7 correction.

8 Q. Where would that correction appear?

9 A. On page 4, line 17.

10 Q. What is?

11 A. There's a figure \$28 million. It should
12 be \$23 million.

13 Q. Would there be any other changes to
14 Exhibit 221?

15 A. No.

16 Q. Did you also file April 15 of this year,
17 which has been marked as Exhibit 222, surrebuttal
18 testimony in this case?

19 A. Yes, I did.

20 Q. If I were to ask you if Exhibit 222 is
21 part of your testimony here today, would it be or
22 would you have changes to it?

23 A. I have changes.

24 Q. Where would those changes be within that
25 exhibit?

1 A. On page 13, line 10, last word in line 10
2 is "for," and it should be "from," f-r-o-m. And on
3 page 14 beginning on line 11 through the top of page
4 15 through line 3, should be struck from my
5 testimony.

6 Q. Why would you strike what you prefiled on
7 page 14 from line 11 through page 15 at -- I believe
8 you said line 4 -- or I'm sorry -- line three?

9 MS. TATRO: Nathan, I'm sorry. Can you
10 tell me which testimony that is?

11 MR. WILLIAMS: Surrebuttal testimony.

12 THE WITNESS: At the time I prepared
13 surrebuttal testimony, I believe that that part of my
14 testimony was correct, and since that time I've
15 looked at Mr. Davis' work papers more thoroughly and
16 believe that I was in error.

17 BY MR. WILLIAMS:

18 Q. Mr. Rogers, did you also file on April 27
19 some -- what's been marked as -- described as
20 supplemental testimony that has not yet been marked
21 for identification?

22 A. Yes.

23 Q. If I were to ask you if that supplemental
24 testimony is part of your testimony here today, would
25 it be, or would you have changes to it before it

1 would be?

2 A. It's my testimony, and there's no changes.

3 MR. WILLIAMS: Judge, I don't believe we
4 have an Exhibit number yet for the supplemental
5 testimony of John A. Rogers.

6 JUDGE WOODRUFF: That's correct. Your
7 next number is 246.

8 (Staff Exhibit No. 246
9 was marked for identification.)

10 BY MR. WILLIAMS:

11 Q. Mr. Rogers, with the corrections you've
12 just put on the record, would the pages that we
13 referred to earlier in exhibit 201, 221, 222, and
14 Exhibit No. 246 your testimony here today?

15 A. Yes.

16 MR. WILLIAMS: Judge, I offer Exhibits --
17 portions of Exhibits 201, the reference pages 35
18 through 43, plus the relevant appendices; Exhibit
19 221; Exhibit 222; and Exhibit 246 as they've been
20 modified by Mr. Rogers' testimony here today.

21 THE COURT: Any objection to those
22 documents?

23 MS. TATRO: (Shook head.)

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

1 (Staff Exhibit Nos. 201, 221, 222.

2 and 246 were admitted.)

3 MR. WILLIAMS: And with that I offer
4 Mr. Rogers for examination by others.

5 JUDGE WOODRUFF: Okay. For cross-
6 examination we'll begin with DNR.

7 MS. FRAZIER: No questions.

8 JUDGE WOODRUFF: MIEC.

9 MR. DOWNEY: No questions.

10 JUDGE WOODRUFF: Public counsel.

11 MR. MILLS: No questions.

12 For Ameren.

13 MS. TATRO: Yes. Good afternoon,
14 Mr. Rogers.

15 THE WITNESS: Good afternoon.

16 CROSS-EXAMINATION BY MS. TATRO:

17 Q. Are you familiar with the phrase
18 "throughput disincentive"?

19 A. Yes.

20 Q. Can you define it for me, please.

21 A. To the extent that utilities provide
22 energy efficiency programs and to the extent that
23 they're successful in they reduce the level of sales
24 for the utility, that represents a disincentive,
25 because through the lost volumetric sales, there's

1 lost revenue.

2 Q. And you agree that the throughput
3 disincentive, it's exists?

4 A. Yes.

5 Q. Do you agree that the reduction in energy
6 sales negatively impacts the utility's revenues?

7 A. Yes.

8 Q. Do you agree that the reduction in energy
9 sales discourages the aggressive promotion of energy
10 efficiency?

11 A. All else equal, it would.

12 Q. And all else equal, do you agree that the
13 reduction in energy sales puts pressure on utility
14 earnings?

15 A. Yes.

16 Q. And do you agree that the Commission's
17 definition of "lost revenue" does not address the
18 entirety of the throughput disincentive as you
19 defined it earlier for me?

20 A. Can you repeat the question, please?

21 Q. Do you agree that the Commission's
22 definition of "lost revenue," and by that I mean the
23 definition in the newly-adopted MIEA rules, does not
24 address the entirety of the throughput disincentive?
25 And when I say "throughput disincentive," I'm using

1 the definition you provided earlier.

2 A. Not by itself, it does not.

3 Q. You agree that lost revenues are a portion
4 of the throughput business disincentive?

5 A. I believe lost revenues would represent
6 all of the throughput disincentive.

7 Q. In a period when a utility is experiencing
8 natural growth, are lost revenues -- using the
9 Commission's definition -- larger or smaller than the
10 throughput disincentive?

11 A. Oh, I wasn't answering in the context of
12 the definition that the Commission has. You didn't
13 phrase it that way --

14 Q. Okay.

15 A. -- so maybe we should start over.

16 Q. Let's do this: If I use the phrase "lost
17 revenue," let's presume I'm using the Commission --
18 how the Commission defined "lost revenue" in the
19 not-yet effective, but soon-to-be effective MIEA
20 rules.

21 A. Okay.

22 Q. All right? So given that definition, I'm
23 going to have you read back the question.

24 (The requested portion of the record
25 was read back by the court reporter.)

1 THE WITNESS: One more time. I'm sorry.

2 (The requested portion of the record
3 was read back by the court reporter.)

4 THE WITNESS: It would be smaller.

5 BY MS. TATRO:

6 Q. In that scenario, you would agree that
7 under the Commission's MIEA rules the utility would
8 not recover any lost revenue?

9 A. Again, it depends. It depend upon the
10 level of actual sales that they experience.

11 Q. If you're in a period where natural growth
12 is higher than your energy efficiency savings,
13 megawatt-hour savings --

14 A. Okay.

15 Q. -- would you agree with the Commission
16 definition that the Company is not able to recover
17 any lost revenues?

18 A. I believe that's correct.

19 Q. Okay. Mr. Rogers, is it correct to state
20 that you did not dispute Mr. Davis' rebuttal
21 testimony statement that 80 percent of Ameren
22 Missouri's load growth is from new customers and 20
23 percent is customer use growth?

24 A. Correct.

25 Q. Would you agree that serving new customers

1 means the Company will experience additional cost to
2 serve those new customers?

3 A. There would be some cost and some revenue.

4 Q. Okay. Those costs are not included in the
5 Company's current revenue requirement; right?

6 A. Correct.

7 Q. Are you familiar with the phrase
8 "fiduciary duty"?

9 A. Yes.

10 Q. In your nonlegal opinion -- you're not an
11 attorney; right?

12 A. Correct.

13 Q. -- can you tell me what that is?

14 A. I believe the fiduciary responsibility of
15 the utility's officers are to make decisions that
16 benefit their shareholders.

17 Q. In your opinion, is that an appropriate
18 thing for a utility officer to consider when making a
19 decision about expenditures?

20 A. Yes.

21 Q. Would you agree that company management
22 cannot prudently set energy efficiency expenditure
23 levels without knowing how costs will be recovered?

24 A. I would agree with that.

25 Q. Would you agree that company management

1 can't prudently set energy expenditure levels without
2 knowing how the throughput disincentive is going to
3 be resolved?

4 A. As well as cost recovery and as well as
5 the utility incentive. As long as all three
6 components are being considered, I would agree.

7 Q. Okay. When I say "MIEA," you know what
8 I'm referring to?

9 A. Yes.

10 Q. Would you agree that the MIEA statute
11 requires alignment of utility interests and customer
12 interests?

13 A. Yes, it does.

14 Q. In reference to that statute, what
15 customer interest is being aligned?

16 A. I think the intent is the interest of
17 having reliable, safe, and low-cost energy service.

18 Q. Would you agree the utility interest is
19 shareholder return?

20 A. Yes.

21 Q. If I understand your testimony correctly,
22 one of your objections to the billing unit mechanism
23 is that it is a perspective adjustment rather than a
24 retrospective recovery. Is that a correct summation?

25 A. That's one objection, yes.

1 Q. Okay. And that's based on the
2 Commission's rules?

3 A. Yes.

4 Q. Does the Commission -- does the MIEA
5 statute contain a requirement that it only be
6 retrospective?

7 Do you have the statute with you?

8 MR. WILLIAMS: Judge, I'm going to object
9 to that as calling for a legal conclusion. I am
10 objecting to it for calling for a legal conclusion.

11 JUDGE WOODRUFF: Could you repeat the
12 question, or I'll have the court reporter read it
13 back, if you can't.

14 MS. TATRO: All right.

15 BY MS. TATRO:

16 Q. I'm wanting to know the basis for your
17 objection to the billing unit. I'm going to try it a
18 different way.

19 You've already indicated that you believe
20 it's not consistent with the Commission regulations.
21 I want to know if you also believe it's inconsistent
22 with the statute itself.

23 A. That's Staff's position.

24 Q. I'm sorry. You have the statute in front
25 of you?

1 A. Yes.

2 Q. Can you look at part four, The Commission
3 shall permit electric corporations to implement
4 Commission-approved demand-side programs. Do you see
5 that section?

6 A. Uh-huh. Yes.

7 Q. Do you see the word "result" in the third
8 line?

9 A. Yes, I do.

10 Q. Does it say "result" or "resulted"?

11 A. It says "result."

12 Q. So it's not past tense?

13 A. Correct.

14 Q. Can you point to me where in MIEA it says
15 that recovery has to be historical?

16 A. It's Staff's position that the reference
17 that we just looked at means "historical," and I
18 understand it can be interpreted different ways.

19 Q. Okay. Thank you.

20 Under the Commission's MIEA rules, can a
21 utility change rates outside of a rate case to
22 recover lost revenues?

23 A. No.

24 Q. Under the Commission's MIEA rules, can a
25 utility change rates outside of a rate case to

1 recover incentives?

2 A. No.

3 Q. Would you agree with me that the only
4 thing that can change rates -- the only thing the
5 Commission can change outside of a rate case under
6 MIEA is for program costs?

7 A. Under the Commission's MIEA rules, that's
8 true.

9 Q. Do you agree with me: The Commission has
10 the authority to waive a portion of its rules if they
11 find costs to do so?

12 A. Yes.

13 Q. Do you agree: The Commission rules allow
14 for incentives such as shared net benefits?

15 A. Yes.

16 Q. Is there a cap on the percentage share a
17 utility can receive?

18 A. No, there's not.

19 Q. Do you believe that shared net benefits
20 violates the Commission's definition of "lost
21 revenues"?

22 A. I don't understand what you mean by
23 "violate."

24 Q. Okay. Let me try it a different way.

25 A. Okay.

1 Q. Is part of your objection to the
2 throughput disincentive the fact that the Commission
3 defined "lost revenues" as being offset by growth,
4 and you don't believe that's consistent? Is that
5 correct?

6 A. That's correct.

7 Q. Okay. Isn't it also your belief that the
8 Company could request some kind of sharing mechanism
9 to offset the rest of -- we can have lost revenue
10 recovery under the Commission rules and then we can
11 use an incentive mechanism to get the rest of the
12 throughput disincentive; right?

13 A. Right.

14 Q. And if you don't believe that violates the
15 "lost revenue" definition?

16 A. No.

17 Q. Because it's just a different mechanism?

18 A. The definition's the definition. The
19 utility incentive component of a DSIM would be
20 another way for the utility to receive compensation
21 through the form of the utility incentive for the
22 programs.

23 And some of that could make up for some
24 lost revenue that is, in fact, not being recovered
25 through the utility lost revenue component of an

1 improved DSIM.

2 Q. So you don't object in theory, at least,
3 to the recovery of the throughput disincentive?

4 A. No. No.

5 Q. In your surrebuttal testimony, on page 5,
6 I think line 15, you quote from a recent KCPL order?

7 A. Yes, I do.

8 Q. Let me know when you're there.

9 A. I'm there.

10 Q. That quote says that a utility has to
11 comply with MIEA; correct?

12 A. Correct.

13 Q. Do you believe that's referring to the
14 statute or rules?

15 A. Would be both.

16 Q. Did I take your deposition on this matter?

17 A. I believe so.

18 Q. Do you have that with you?

19 A. Yes, I do.

20 Q. Can you turn to page 64, please.

21 A. Page number again?

22 Q. 64.

23 A. 64. Okay.

24 Q. Line 20 -- tell me if I read this
25 correctly. Question, When the Commission says

1 utilities must comply with MIEA, is it your
2 understanding they are referring to the law or to the
3 regulations? Answer, The law. Is that correct?

4 A. That's what I have in my deposition. When
5 I'm looking at the Commission's order from the KCPL
6 case, it's more clear to me that it's both.

7 Q. Are the rules in effect?

8 A. No.

9 Q. Okay. And the last sentence that's quoted
10 there on page 5 in your surrebuttal testimony says,
11 The language of MIEA would let a utility propose a
12 different method of recovery even if the specific
13 Commission rules aren't in place; right?

14 A. Right.

15 Q. So the Commission anticipated that a
16 utility might come up with something that wasn't
17 specifically stated in the rules; right?

18 A. The rules are very broad in terms of what
19 a utility is allowed propose.

20 Q. Okay. Are the Commission's MIEA rules
21 currently under appeal?

22 A. Yes, they are.

23 Q. Do you agree there's some uncertainty of
24 whether the rules are going to remain in the same
25 form as they currently have been approved by the

1 Commission?

2 A. I don't know.

3 Q. It's possible?

4 A. It's possible.

5 Q. Now, Mr. Rogers, I know you struck
6 portions of your testimony today because you had gone
7 back and reviewed some of the work papers, so is it
8 your testimony now that the billing unit adjustment
9 as proposed by Mr. Davis, you no longer have issues
10 with the numbers that he's using? I understand
11 philosophically you don't like the mechanism.

12 A. No, I still have some concerns with the
13 numbers, and I believe I address that in the
14 supplemental testimony with regard to the EM&V
15 discussion.

16 Q. Okay.

17 A. What I no longer have an objection to or a
18 basis for objecting to the billing unit adjustment
19 mechanism, has to do with the double-accounting and
20 the annualization, and the three points that I struck
21 from my testimony.

22 Q. Okay.

23 A. I still have some concern about the
24 numbers themselves. I guess specifically with
25 respect to the lighting and appliance program and the

1 estimate of energy savings that were developed by
2 Cadmus for the market transformation part of that
3 program, which has to do with the compact florescent
4 light to CFL bulbs.

5 Q. When you use the word "concern," are you
6 telling the Commission there is something wrong, or
7 at this point you're not sure if there's something
8 wrong?

9 A. I suspect that -- I have reason to believe
10 that the net-to-gross calculation may be
11 overstated --

12 Q. Okay.

13 A. -- and that's my concern. And if it is,
14 then the amount of energy and demand savings for that
15 program would be overstated, and my concern -- the
16 reason I have a concern is we're going into a period
17 where that becomes more important --

18 Q. Okay.

19 A. -- if those -- if that information is tied
20 to utility's incentive, performance incentive or --
21 and/or to its lost revenue recovery.

22 Q. And Ameren Missouri hasn't requested an
23 incentive mechanism; correct?

24 A. Correct.

25 Q. We haven't requested lost revenues;

1 correct?

2 A. I believe you have.

3 Q. You consider the billing unit mechanism a
4 lost revenue?

5 A. Yes.

6 Q. Okay. Even with your concerns, do you
7 agree that TRC for the lighting and appliance program
8 is still above one?

9 A. Yes.

10 Q. Even with your concerns, you believe it's
11 causing Ameren Missouri's customers to use less
12 energy?

13 A. Yes.

14 Q. So there would still be a throughput
15 disincentive associated with that; correct?

16 A. Correct.

17 Q. Do you agree Ameren Missouri's current
18 energy efficiency programs expire September 30 of
19 this year?

20 A. Yes.

21 Q. When are the Commission rules expected to
22 become effective?

23 A. May 31.

24 Q. Now, in your surrebuttal, you testified
25 that a reasonable date for Ameren Missouri to file

1 under MIEA might be January 1st of 2012; correct?

2 A. Correct.

3 Q. Would you agree with me it'll likely take
4 several months from the filing date until approval?

5 A. Yes, probably four months, because within
6 the MIEA rules there's a four-month window for the
7 Commission to issue an order related to approving
8 programs.

9 Q. So you agree there's a gap between
10 September 30 and April or May of next year?

11 A. Oh, yes. Yes there is.

12 Q. So you would agree that a MIEA filing
13 can't resolve that issue?

14 A. I agree.

15 Q. So would you agree it's appropriate for
16 the Commission to address that transition in this
17 rate case?

18 A. Yes.

19 Q. Earlier when Mr. Davis was on the stand,
20 there was a lot of questions about how the billing
21 unit mechanism does or does not remove the throughput
22 disincentive. Can you tell me if the lost revenue
23 mechanism in the MIEA rules removes the throughput
24 disincentive?

25 A. Does not.

1 Q. Does the incentive mechanism in the MIEA
2 rules remove the throughput disincentive?

3 A. It could.

4 Q. How would that happen?

5 A. Well, that's really what the incentive,
6 the utility incentive mechanism, is designed to do is
7 to provide the utility with the incentive to
8 aggressively promote demand-side resources.

9 Q. Would you agree with me that incentives
10 rely upon the EM&V results?

11 A. Yes.

12 Q. Are EM&V discrepancies unique to Ameren
13 Missouri's programs?

14 JUDGE WOODRUFF: I'm sorry. Before you
15 answer that, what are you saying?

16 MS. TATRO: EM&V -- I'm sorry --
17 Evaluation -- Tom, help me.

18 MR. BYRNE: -- Measurement.

19 MS. TATRO: -- and Verification.

20 JUDGE WOODRUFF: Thank you.

21 MS. TATRO: Thank you. Sorry.

22 BY MS. TATRO:

23 Q. Are EM&V discrepancies, disagreements
24 about the final number, discussions about the final
25 number, unique to Ameren Missouri's programs or does

1 that occur with most all energy efficiency programs?

2 A. I wouldn't say most all, but my experience
3 is that there's normally not discrepancies.

4 I believe one reason we have concern over
5 the CFL portion of the lighting and appliance program is
6 because it's a market transformation program, which
7 by its very nature, is difficult to measure.

8 Q. Would that be unique to the billing unit
9 proposal, or is it just because of that type of
10 program that Staff is going to have concern with any
11 of the evaluations?

12 A. It's just that type of program.

13 Q. So that would happen if we were asking for
14 incentives? You would have that concern about the
15 EM&V results if we were asking for an incentive like
16 shared net benefits?

17 A. If you let me --

18 Q. I'm sorry. I thought you were done. Go
19 ahead?

20 A. If you let me speak on that issue, we have
21 a meeting in St. Louis on May 16 of this month, and
22 the stakeholders in the utility will be reviewing all
23 of the EM&V reports.

24 And as part of that meeting, I intend to
25 explore that issue with everyone, you know. If -- is

1 there -- am I the only one that has some discomfort
2 with the estimate and, you know, I'd like to discuss
3 it with the group. I'd like to get the stakeholders
4 and the utility on the same page on how to do EM&V
5 for market transformation programs so we can agree on
6 that and not have a dispute later.

7 Q. Do you agree with me that meeting is going
8 to happen too late for you to come back and tell the
9 Commission you no longer have a problem, or you do
10 have a problem?

11 A. I agree.

12 Q. So in the meantime, you're asking the
13 Commission to not to adopt something because you
14 might have concerns; right?

15 A. That's just one issue.

16 Q. Okay.

17 MS. TATRO: That's all the question I
18 have. thank you.

19 JUDGE WOODRUFF: All right. Questions
20 from the bench.

21 Commissioner Jarrett.

22 COMMISSIONER JARRETT: I don't have any
23 questions. Thank you, Mr. Rogers.

24 JUDGE WOODRUFF: Commissioner Kenney, do
25 you have any questions for Mr. Rogers?

1 COMMISSIONER KENNEY: Just a few.

2 Hi, Mr. Rogers. How are you?

3 THE WITNESS: Hello, Commissioner.

4 QUESTIONS BY COMMISSIONER KENNEY:

5 Q. You said there is an event May 16 in
6 St. Louis in which you will discuss with the
7 stakeholders all of the EM&V reports it; is that
8 right?

9 A. There's a meeting in St. Louis and -- we
10 have a quarterly meeting, or Ameren does, where they
11 invite the stakeholders, and we review various
12 aspects of their demand-side programs, and the focus
13 of the meeting on May 16, as I understand it, is to
14 review the EM&V reports for a number of different
15 programs.

16 Q. Okay. You said you have discomfort -- I
17 think was the phrase you used -- with all of the
18 evaluation measurement and verification programs or
19 just specific ones?

20 A. It's very specific. I haven't had a
21 chance to review all the reports yet, but I have
22 reviewed the lighting and appliance, the residential
23 lighting and appliance program, EM&V report, and
24 based upon the information in the report and what I'm
25 able to understand from reading the report and

1 through my conversations with Ameren and with the
2 evaluation contractor, who's Cadmus, I haven't been
3 able to develop a level of confidence in the
4 methodology that they're using to calculate the
5 net-to-gross ratio that's used to derive the estimate
6 of energy and demand savings for a part of the
7 program. It's only the part related to the sale of
8 CFL bulbs.

9 Q. Maybe it -- was it Ms. Tatro that was
10 questioning you? I can't tell.

11 A. Yes.

12 MS. TATRO: Yes, it was, your Honor.

13 BY COMMISSIONER KENNEY:

14 Q. So maybe Ms. Tatro asked you this
15 question, is your discomfort specific to the Company
16 that was doing the EM&V or is it because it's --
17 there's something inherently flawed with trying to
18 measure the efficacy of these programs?

19 A. There's nothing inherently flawed. My
20 discomfort has to do with the fact that it's -- much
21 of it is just my -- I don't want to say my inability,
22 but the fact that I don't understand how the model
23 works.

24 I've had conversations with Cadmus over a
25 number of hours, and I haven't received enough

1 information about their methodology to trust it. On
2 the other hand, there's data within the report itself
3 that can be used in a very straightforward way to
4 determine what the net-to-gross ratio is for that
5 measure, and when I do that, I get an estimate that
6 is about one-third the amount that Cadmus gets with
7 their sophisticated computer approach.

8 Q. So the data is present, but you question
9 the methodology?

10 A. Well, I think there's different methods
11 that can be used, all in an attempt to understand the
12 program and how it impacts market transformation.

13 And the approach that Staff used that
14 came up with the result that was one-third of what
15 Cadmus did is an approach that's commonly used. In
16 fact, in the EM&V report that Cadmus produced, there
17 were several references to them having performed that
18 same calculation that Staff performed, and when I
19 asked them about that, they said that, Well, that was
20 in error. We shouldn't have said that. We decided
21 not to use that approach.

22 Q. Interesting. Well, maybe you'll have some
23 more explanation on May 16.

24 A. Yes I hope so.

25 Q. When we were going through the rulemaking

1 process for the MIEA rules, did you have any
2 discomfort with the provisions allowing for lost --
3 for the recovery of lost revenues?

4 A. At the time Staff was not in favor of any
5 lost revenue recovery.

6 Q. I don't think it's any secret that I also
7 was not in favor of that.

8 What was Staff's hesitance with respect
9 to allowing for the recovery of lost revenues?

10 A. Well, we had involved -- in our rulemaking
11 workshops and to some extent drafting our rules, we
12 relied upon Rich Sedano from the Regulatory
13 assistance project, and Dan York for ACEEE to both
14 facilitate our workshops and also to provide some
15 guidance to Staff and to the workshop participants on
16 various aspects of this issue of an investment
17 mechanism to include, you know, all three components,
18 cost recovery, to deal with a throughput
19 disincentive, and also to address the utility
20 incentive.

21 And the advice that we received from Rich
22 Sedano, in particular, was that the lost revenue
23 component is very difficult to deal with, and his
24 suggestion to us was to put the focus on the
25 incentive, which we did. Very specifically, our

1 Missouri rules have no cap on the portion of the
2 utility incentive that the utility can request and
3 that the Commission can approve.

4 Q. So theoretically with a sufficient-enough
5 incentive, the incentive by itself could offset any
6 lost revenues?

7 A. That's the idea.

8 Q. Was part of Staff's hesitance with respect
9 to the provisional allowing for recovery of lost
10 revenues the fact that it had been tried in other
11 states with less than great success?

12 A. I believe that's true, and that's why you
13 see, if you go back and look at the history, a number
14 of states have gone down the lost revenue trail, and
15 they end up going to decoupling, ultimately, because
16 of some of those problems.

17 Q. That kind of brings me to my next
18 question. If a utility's -- if the product that
19 their selling is energy and the goal of an energy
20 efficiency program is to consume less energy, is
21 there any way to ever completely remove the so-called
22 throughput disincentive?

23 A. I believe decoupling goes a long way
24 towards doing that.

25 Q. Then would you say that decoupling is a

1 more efficacious way of removing the throughput
2 disincentive than allowing for lost revenues
3 recovery?

4 A. I would agree with that.

5 Q. Now, let me take you to the billing unit
6 adjustment. Were you around for Mr. Davis'
7 testimony?

8 A. Yes, I was.

9 Q. I think he agreed and he acknowledged that
10 by reducing the number of billing units, it will
11 cause the price per kilowatt hour to increase. Do
12 you agree with that?

13 A. Yes, I do.

14 Q. And do you agree with him that that will
15 be the case for all customers in the customer class
16 irrespective of their participation in the programs?

17 A. To the extent that the rates are
18 incrementally higher as a result of the billing unit
19 adjustment, it would apply to all customers in each
20 rate class.

21 Q. Would it be fair to characterize Ameren's
22 billing unit adjustment proposal as a rate design
23 modification?

24 A. I'm afraid I can't answer that.

25 Q. Okay. What would you call it?

1 A. Well, I call it a lost revenue recovery
2 mechanism, and I've referred to it --

3 Q. Ameren does not agree with that
4 characterization; is that correct?

5 A. No. No, they don't.

6 Q. Do you have a statute in front of you
7 still?

8 A. Yes, I do.

9 Q. I asked if you would call the billing unit
10 adjustment a rate design modification, and you said
11 you can't answer that. Is that because you don't
12 know or because it just -- you haven't given it
13 enough thought, or am I just wrong?

14 A. No, I don't know.

15 Q. Have you encountered anything like the
16 billing unit adjustment before in your reading and
17 research and your experience in energy efficiency?

18 A. I think -- like I said, it is a form of
19 lost revenue recovery mechanism, but I'm -- not
20 specifically, and I think Mr. Davis acknowledges that
21 he wasn't aware of any either.

22 Q. He did.

23 Are you aware of any states that have
24 removed from the utility the responsibility for
25 promoting energy efficiency and placed that

1 responsibility either with the state energy office or
2 a state commission?

3 A. I know the state of Vermont has, and I
4 believe the state of Oregon has.

5 Q. Do you know what success, if any, Oregon
6 or Vermont has had with that approach?

7 A. There's some -- they are two of the
8 leading states in terms of demand-side management
9 programs.

10 Q. Do you know what moved them to adopt that
11 approach rather than a utility-centered approach?

12 A. I believe it was some of the concerns that
13 you expressed earlier about the -- just the conflict
14 that the widget maker has with promoting the
15 reduction in widget sales.

16 Q. Okay. Can you take a look at 393.1075.5,
17 and it's the section that begins, To comply with this
18 section.

19 A. Yes.

20 Q. Do you see that?

21 A. Uh-huh.

22 Q. Can you read the last sentence aloud for
23 me?

24 A. Yes. Prior to approving a rate design
25 modification associated with demand-side cost

1 recovery, the Commission shall include a docket
2 studying the effects thereof and promulgate an
3 appropriate rule.

4 Q. What is your understanding of what that
5 last sentence contemplated or contemplates?

6 A. Well, it contemplates having a docket to
7 study the effects of rate design modification and
8 possibly promulgating rules related to rate design
9 modification with respect to demand-side cost
10 recovery.

11 Q. Would that embrace decoupling?

12 A. Yes, I believe it would.

13 Q. And any other kind of rate design
14 modification designed to recover demand-side costs?

15 A. Correct.

16 Q. Are you reading that statute to mean that
17 we cannot approve any such cost recovery mechanism
18 until we've included a docket studying the effects of
19 that?

20 A. If it were related to what was -- related
21 to what was, I guess, ultimately determined to be a
22 rate design modification in the -- within that docket
23 but, again, we're sitting here today and we don't
24 know what will be determined within the docket to be
25 defined as a rate design modification. It's not

1 clear from the statute.

2 COMMISSIONER KENNEY: Okay. Mr. Rogers, I
3 don't have any other questions. Thanks for your
4 time.

5 THE WITNESS: You're welcome.

6 JUDGE WOODRUFF: Commissioner, any
7 questions.

8 COMMISSIONER DAVIS: I just have a few
9 questions.

10 Good afternoon, Mr. Rogers.

11 THE WITNESS: Good afternoon.

12 QUESTIONS BY COMMISSIONER DAVIS:

13 Q. Mr. Rogers, can you guess what I'm going
14 to ask you about?

15 A. I hope.

16 Q. Well, I just have to ask this question.

17 A. Okay.

18 Q. You're here testifying as Staff's expert
19 witness, energy efficiency programs; correct?

20 A. Correct.

21 Q. And you've also been reviewing the KEMA
22 study?

23 A. Yes.

24 Q. In your professional opinion, can we rely
25 on that KEMA study for anything?

1 A. You gave quite an opening there. Again,
2 I'll use the word "concern." I have concerns about
3 the KEMA study.

4 Q. Would you have concerns about us relying
5 on the KEMA study for making public policy decisions?

6 A. Yes.

7 Q. Would you have concerns about the Missouri
8 General Assembly relying on the KEMA study to make
9 public policy decisions?

10 A. Yes, I would.

11 Q. Would you have concerns about the Governor
12 or anyone else making public policy decisions based
13 on the KEMA study?

14 A. My person opinion is, Yes.

15 Q. Would you have concerns about anyone, say
16 the American Council for an Energy Efficiency Economy
17 making recommendations to this state based on the
18 results of the KEMA study?

19 A. If they were based exclusively on the KEMA
20 study, yes.

21 COMMISSIONER DAVIS: Okay. Thank you. No
22 further questions.

23 JUDGE WOODRUFF: All right.

24 Recross based on questions from the
25 Bench, beginning with DNR.

1 MS. FRAZIER: I have none, your Honor.

2 JUDGE WOODRUFF: MEG.

3 MS. LANGENECKRT: None.

4 JUDGE WOODRUFF: MIEC.

5 MR. DOWNEY: No.

6 JUDGE WOODRUFF: Public counsel.

7 MR. MILLS: Just briefly.

8 RE-CROSS-EXAMINATION BY MR. MILLS:

9 Q. Mr. Rogers, in the last portion of your
10 exchange with Commissioner Kenney, is it your opinion
11 that based upon the MIEA statute that the Commission
12 needs to open and conclude a docket before it can
13 decide what is a rate design modification?

14 A. No, I think they could make that
15 determination outside of the docket.

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

17 JUDGE WOODRUFF: For Ameren.

18 MS. TATRO: Thank you.

19 RE-CROSS-EXAMINATION BY MS. TATRO:

20 Q. Mr. Rogers, Commissioner Kenney was asking
21 you about Cadmus and the light and appliance
22 evaluation. Do you remember that?

23 A. Uh-huh.

24 Q. Is it possible after May 16 and maybe
25 after additional conversations that you will become

1 comfortable with Cadmus' approach?

2 A. Yes, it's possible.

3 Q. He also was talking to you about -- he
4 asked you if any states remove energy efficiency from
5 the utility and have an outside agency other group
6 run those programs. Do you remember that
7 conversation?

8 A. Yes.

9 Q. In those cases, would the utilities still
10 face a loss of revenue from a decrease of energy
11 efficiency sales?

12 A. Yes.

13 MS. TATRO: Thank you.

14 JUDGE WOODRUFF: Redirect?

15 MR. WILLIAMS: Thank you, Judge.

16 REDIRECT EXAMINATION BY MR. WILLIAMS:

17 Q. Mr. Rogers, do you recall when Ms. Tatro
18 asked you about the Missouri Energy Efficiency
19 Investment Act and the Missouri Energy Efficiency
20 Investment Act rules.

21 A. Yes.

22 Q. Does a utility have an obligation to
23 comply with rules, to your understanding?

24 A. And statutes.

25 Q. So your answer is, Yes --

1 A. Yes.

2 Q. -- as well as statutes?

3 A. Uh-huh.

4 Q. And do you recall when Ms. Tatro was
5 asking you about when the current program that Ameren
6 Missouri has for demand-side management, that they're
7 expiring in September of this year?

8 A. I recall that.

9 Q. Is there any reason why Ameren Missouri
10 couldn't propose to continue those programs --

11 A. No.

12 Q. -- that you're aware of?

13 A. No, there's no reasons they couldn't
14 propose that.

15 Q. And have they with certain conditions?

16 A. Yes.

17 Q. And Staff disagrees with those conditions?

18 A. Yes.

19 Q. Do you recall when Commissioner Kenney was
20 asking you about the process involved in the Missouri
21 Energy Efficiency Investment Act rule?

22 A. I believe so.

23 Q. Would it be fair to say that those rules
24 are the result of extensive input by stakeholders --

25 A. Yes.

1 Q. -- and that there were lots of differing
2 considerations say taken into account whenever those
3 rules were drafted?

4 A. Yes.

5 MR. WILLIAMS: No further questions.

6 JUDGE WOODRUFF: Mr. Rogers, you can step
7 down.

8 We'll go ahead and take a break now.

9 We'll come back at 2:50.

10 (A recess was taken.)

11 JUDGE WOODRUFF: We're back from our break
12 and Lena Mantle has taken the stand for Staff, and
13 you are still under oath from last night.

14 THE WITNESS: Okay.

15 LENA MANTLE,

16 Previously sworn, testified as follows:

17 JUDGE WOODRUFF: You may inquire.

18 DIRECT EXAMINATION BY MR. WILLIAMS:

19 Q. Would you please state your name.

20 A. Lena Mantle.

21 Q. And have you previously testified in this
22 hearing before this Commission live?

23 A. Yes, I have.

24 Q. Did you cause -- prepare supplemental
25 testimony that was filed on April 27th of 2011 in

1 this case?

2 A. Yes, I did.

3 Q. If I were to ask you if that testimony is
4 part of your testimony here today, would it be or
5 would you have changes to make to it?

6 A. I have a few changes to make.

7 The first would be to put page numbers at
8 the bottom of my pages. I'm sorry. We didn't have
9 any clerical support that night, and that got left
10 off. So if you have page numbers on it, you go to
11 the third page, and the line that starts, Expected
12 outcome -- it says, Expected outcome, as long as the
13 reduced billing units actually occur, and change that
14 to, Expected outcome as long as the reduced kilowatt-
15 hour sales due to Ameren Missouri's energy efficiency
16 programs actually occur as predicted.

17 MS. TATRO: Can you say that again
18 slower?

19 THE WITNESS: Okay. Yeah. I'm sorry.
20 It's just better explains what's already there:
21 Expected outcome as long as the reduced kilowatt-
22 hours sale due to Ameren Missouri's energy efficiency
23 programs actually occur as predicted.

24 BY MR. WILLIAMS:

25 Q. Would you have any other changes?

1 A. Yes. At the bottom of page 4, the fourth
2 page, line 13, currently reads, Would the Ameren
3 Missouri build the higher revenues, and I'd like to
4 remove the word "the." That would be all.

5 Q. Subsequent to preparing this supplemental
6 testimony that was filed on April 27th of 2011 --
7 well, first of all, what was the purpose of the
8 testimony that you filed on April 27th of 2011, the
9 supplemental?

10 A. The billing units adjustment proposed by
11 AmerenUE has some impacts on the rest of the case.
12 Mr. Davis included in his surrebuttal how they would
13 take out fuel cost. The purpose of my supplemental
14 was to give Staff's recommendation on how that should
15 be done, if the Commission would agree to that
16 proposal and -- and other changes, then, to parts of
17 the case that would need -- would be necessary if
18 billing units were reduced.

19 Q. Did you include all of the changes that
20 you were aware of at the time whenever you filed that
21 testimony on April 27?

22 A. I included all that I was aware of at that
23 time.

24 Q. Have you become aware of some additional
25 concerns since then?

1 A. Yes, I have.

2 Q. What additional concerns are you aware of
3 now?

4 MS. TATRO: I'll going to object. There
5 was no additional testimony filed by Ameren
6 Missouri. There's no reason it couldn't have --
7 whatever this additional concern is, couldn't have
8 been addressed in her supplemental testimony. The
9 fact that she didn't discover it until afterwards
10 doesn't justify additional live testimony on the
11 stand.

12 MR. WILLIAMS: Judge, that would be
13 prejudiced if it's not allowed to include that
14 additional information, because we were given a very
15 short time to respond. Well, actually, we weren't
16 even given an opportunity to respond until the
17 Commission ruled on Staff's motion today, but under
18 the timeframe we had very little time to prepare and
19 file some responsive testimony to the billing units
20 adjustment impacts on other parts of the case.

21 This will be very limited. It's just an
22 additional concern or issue that Staff became aware
23 of and wants to bring to the Commission's attention.

24 JUDGE WOODRUFF: I believe it is -- would
25 be improper to allow additional direct testimony at

1 this time, so I'm going to have to sustain the
2 objection.

3 MR. WILLIAMS: Well, Judge, it's not
4 direct testimony, and it's just an additional concern
5 that's brought about if the billing units adjustment
6 is to be put in place by the Commission.

7 JUDGE WOODRUFF: If it's inquired upon by
8 anybody's questions, then you'll have an opportunity
9 to do it in redirect, but at this point I'm going to
10 have to sustain the objection.

11 MR. WILLIAMS: Judge, may I have an
12 exhibit number for the supplemental testimony of Lena
13 Mantle?

14 JUDGE WOODRUFF: Yes. It would be 247.

15 MR. WILLIAMS: Judge, I'd like to make an
16 offer of proof of the additional testimony that Lena
17 Mantle would deduce.

18 JUDGE WOODRUFF: Let's deal with the
19 exhibits first, and I'll let you do that.

20 MR. WILLIAMS: Okay.

21 JUDGE WOODRUFF: I also notice that 218
22 was her surrebuttal, and I think this is the last
23 time she's going to be testifying or is she
24 testifying again, because 218 hasn't been admitted?

25 MR. WILLIAMS: Well, I'll offer 218.

1 JUDGE WOODRUFF: 218 has been offered as
2 well as 247. Are there any objections to receipt of
3 those documents?

4 MS. TATRO: Is 247 the supplemental?

5 JUDGE WOODRUFF: That's the supplemental.

6 MS. TATRO: I have an objection to a
7 portion of the supplemental. I believe it's page 8,
8 comes up on page 8, second-to-last page, lines 10
9 through 16 talks about an energy efficiency charge
10 included on proposed tariff sheets that she believes
11 resulted in additional \$109 million.

12 You know, that's been there since we
13 filed in September. That was not something knew in
14 Bill Davis' rebuttal or surrebuttal, so I think it's
15 improper supplemental and should be struck.

16 JUDGE WOODRUFF: Which page number?

17 MS. TATRO: I think it's page 8. It's the
18 second-to-last of her supplemental.

19 JUDGE WOODRUFF: Rights.

20 MS. TATRO: The question is, Is the
21 increase in revenue sought by Ameren Missouri through
22 the reduced billing units the only demand-side cost
23 to Ameren Missouri customers in this case? And it
24 talks about an energy efficiency charge on the tariff
25 sheets and her belief that that resulted in

1 additional revenue.

2 JUDGE WOODRUFF: I see what you're talking
3 about here.

4 MS. TATRO: So it ends at line 16.

5 JUDGE WOODRUFF: Okay. Staff's response?

6 MR. WILLIAMS: If you could give me a
7 moment --

8 JUDGE WOODRUFF: Sure.

9 MR. WILLIAMS: Judge, I think it is
10 admissible. It just elaborates on how this billing
11 units adjustment is an additional impact on customers
12 beyond what the Company had requested originally.

13 MS. TATRO: Your Honor, it has nothing to
14 do with the billing unit adjustment. It is a line
15 item on a tariff that was filed with the original
16 rate case filing in September.

17 JUDGE WOODRUFF: I'm going to overrule the
18 objection and not strike the question and answer.

19 So there was no objection to 218. It
20 will be received.

21 (Staff Exhibit No. 218 was admitted.)

22 JUDGE WOODRUFF: 247, there was an
23 objection from Ameren. That is overruled.

24 MR. DOWNEY: What is 247?

25 JUDGE WOODRUFF: 247 is Mantle's

1 supplemental testimony.

2 MR. DOWNEY: I'm sorry. What was the
3 other one that was offered then?

4 JUDGE WOODRUFF: 218 was her surrebuttal
5 testimony.

6 MR. DOWNEY: Thank you.

7 JUDGE WOODRUFF: The objections to 247 are
8 overruled, and 247 is received.

9 (Staff Exhibit No. 247 was admitted.)

10 JUDGE WOODRUFF: And now you want you
11 wanted to make an offer of proof.

12 MR. WILLIAMS: Yes.

13 JUDGE WOODRUFF: Go ahead.

14 MR. WILLIAMS: May I approach?

15 JUDGE WOODRUFF: (Nodded.) This will be
16 248.

17 MS. TATRO: Do you have other copies?

18 MR. WILLIAMS: I have a limited number.

19 (Staff Exhibit No. 248
20 was marked for identification.)

21 MR. WILLIAMS: Judge, if I might inquire
22 of Ms. Mantle for an offer of proof.

23 JUDGE WOODRUFF: Yes.

24 BY MR. WILLIAMS:

25 Q. Ms. Mantle, what additional concerns do

1 you have about -- what concerns do you have about
2 Ameren Missouri's billing units adjustment proposal
3 as it impacts other parts of the case that you did
4 not include in your supplemental testimony that's
5 been marked for identification as Exhibit No. 247?

6 A. The concern that I have is with the
7 billing unit adjustment being done after everything
8 else, is that the allocation of cost -- any cost that
9 is allocated using an energy allocator will not
10 allocate cost based off those final billing units
11 that Ameren Missouri is forecasting will be
12 accomplished and raising the rates because of that,
13 but we will not be able -- the customer classes will
14 not get benefits of their DSM in proportion to what
15 they pay, so some classes that pay more for DSM will
16 still be allocated cost as if there was no DSM in the
17 case.

18 Q. Did you provide a document to help in your
19 explanation of what your additional concern is?

20 A. Yes, I did.

21 Q. Is that what's been marked as Exhibit 248?

22 A. Yes.

23 Q. Would you explain briefly how that
24 information on Exhibit 248 -- or how what's on
25 Exhibit 248 helps explain your concern?

1 A. I did a very simplistic example of how
2 this could impact the costs that are used to set each
3 classes' revenue requirement. I took -- I just --
4 two basic classes, one residential, nonresidential,
5 to make it simple, demand-side programs for
6 residential class only.

7 And I have what the energy allocation
8 factor would have been or is before billing units
9 adjustment, and given a fuel cost, how that cost
10 would then be allocated to each classes' revenue
11 requirement. Then I also calculated -- I reduced the
12 residential, which was -- that's the reduction due
13 to demand-side, and calculated new energy allocation
14 factors and applied that to both the normalized fuel
15 cost and, according to Staff, my testimony in the
16 supplemental testimony, the fuel run should be rerun,
17 and if it was rerun, what the difference that would
18 make in the costs that were allocated to each class
19 for recovery by that class.

20 MR. WILLIAMS: Judge, just to be clear,
21 what Lena Mantle just testified to in Exhibit 248 is
22 Staff's offer of proof.

23 JUDGE WOODRUFF: All right.

24 It's been offered as an offer of proof.
25 It will be received in an offer of proof. It is now

1 received into evidence.

2 MR. WILLIAMS: And with that, I believe
3 we're at the point of letting Ms. Mantle respond to
4 queries by others.

5 JUDGE WOODRUFF: We'll begin with the DNR.

6 MS. FRAZIER: No questions. Thank you.

7 JUDGE WOODRUFF: MEG.

8 MS. LANGENECKERT: No questions.

9 JUDGE WOODRUFF: MIEC.

10 MR. DOWNEY: No questions, but can you
11 tell me which exhibit number this offer of proof is?

12 JUDGE WOODRUFF: That's 248.

13 Public Counsel.

14 MR. MILLS: Judge, before I begin, can I
15 ask you to reconsider the offer of proof and allow
16 that testimony in?

17 JUDGE WOODRUFF: Does Ameren have a
18 response?

19 MS. TATRO: I do. I think it's the same
20 argument I made before. There was nothing that
21 Ameren did that caused her to learn new facts after
22 she filed supplemental.

23 Maybe she reran the fuel model, but she
24 could have done that prior to filing supplemental,
25 and it would prejudice Ameren Missouri to allow this

1 into the record.

2 I had not had an opportunity to have my
3 experts look at it and see if what she's proposing
4 even makes sense. I don't have the ability to
5 respond. I don't think it's appropriate this late.

6 JUDGE WOODRUFF: I'll stand on my previous
7 ruling.

8 CROSS-EXAMINATION BY MR. MILLS:

9 Q. Ms. Mantle, do you have a copy of your
10 supplemental testimony there with you?

11 A. Yes, I do.

12 Q. Have you discovered any additional
13 concerns since you filed your testimony about the
14 billing unit adjustment proposal?

15 A. Yes, I have.

16 Q. Can you explain those to me, please.

17 A. My concern is that with the billing unit
18 adjustment being done at the very last stage after
19 costs have been allocated to the classes, that too
20 much cost will be allocated to the classes that have
21 the most demand side or energy efficiency programs.

22 Q. Which classes would those be?

23 A. The class that has the most reduction in
24 its usage would be the residential class. The
25 nonresidential classes, which are the small general

1 service, large general service, and small primary
2 service and the large primary service all have some
3 reduction due to energy efficiency program, but I
4 believe it's about 50 percent of it is -- does come
5 from the residential class.

6 Q. Can you explain to me what is shown on
7 Exhibit 248?

8 A. It is just a simple example. The numbers
9 are entirely made up, so it was just to get an idea
10 of how -- what -- that it would make a difference if
11 the billing units were not -- the class cost of
12 service revenues were not adjusted by the same amount
13 that the billing unit adjustment was.

14 Q. Did you prepare Exhibit 248?

15 A. Yes, I did.

16 Q. Is the information accurate in terms of
17 its -- I mean, obviously you said it -- it's only
18 sort of exemplar data, but do the numbers track out?

19 A. The relationship of the numbers do, and
20 it's just simple multiplication and division.
21 There's not another fuel run that was done. I did
22 run it past Staff that do class cost of service to
23 make sure that -- that I take --

24 MS. TATRO: I'm going to object to this
25 unless those individuals are testifying.

1 JUDGE WOODRUFF: Is that a hearsay
2 objection?

3 MS. TATRO: Yes.

4 MR. WILLIAMS: Judge, she's an expert and
5 entitled to rely on information from other experts.

6 JUDGE WOODRUFF: I'm going to overrule the
7 objection.

8 THE WITNESS: I had the Staff that does
9 class cost of service look at it to -- to see if they
10 could find any wrong assumptions or any wrong
11 calculations, and they thought it showed the
12 relationship quite well.

13 MR. MILLS: Judge, I'd like to offer
14 Exhibit 248 into the record.

15 JUDGE WOODRUFF: Let's give it a new
16 number so it will be an OPC exhibit. It will be
17 No. 312.

18 (OPC Exhibit No. 312
19 was marked for identification.)

20 JUDGE WOODRUFF: 312 has been offered into
21 evidence. Are there any objections to its receipt?

22 MS. TATRO: Surprisingly, I'm going to
23 object.

24 JUDGE WOODRUFF: What is your objection?

25 MS. TATRO: Well, she indicated all these

1 numbers are made up. There's no indication that it
2 is relevant to the proposals that Ameren Missouri has
3 set forth that this problem she's identifying is
4 actually occurring in Ameren Missouri's billing unit
5 adjustment proposal, and I don't think it should
6 be -- I don't think it's appropriate to allow it into
7 the record on this basis.

8 JUDGE WOODRUFF: I'm going to overrule
9 your objection.

10 MR. DOWNEY: Judge?

11 JUDGE WOODRUFF: Yes, sir.

12 MR. DOWNEY: Is this still within the
13 offer of proof, cross-examination?

14 JUDGE WOODRUFF: No.

15 MS. TATRO: Your Honor, may I reserve the
16 ability to be bring a witness back to talk about this
17 exhibit later on?

18 JUDGE WOODRUFF: If you wish to -- I'm not
19 going to make a ruling on this at this time, but if
20 you want to make a specific request later in the
21 proceeding, you can.

22 MS. TATRO: Thank you.

23 JUDGE WOODRUFF: So 312 has been received.

24 (OPC Exhibit No. 312 was admitted.)

25 MR. MILLS: That's all the questions I

1 have.

2 Judge, just for the record, if Ms. Tatro
3 does try to bring in another witness to testify
4 against this, I will quite strenuously object. There
5 are things that other parties have raised on cross-
6 examination that I have been displeased with and
7 would love to have a chance to bring in additional
8 witness at the hearing to address cross-examination
9 questions.

10 I think we'd be going down a very
11 disastrous path if every time if every time somebody
12 doesn't like cross-examination they call an
13 additional witness. I understand you haven't ruled
14 on it. It hasn't even happened yet. I just wanted
15 to state that for the record.

16 JUDGE WOODRUFF: That's fine, and we'll
17 deal with all those objections and so forth when
18 there's something actually forming.

19 MR. DOWNEY: Judge, I may be out of order,
20 but I understood that this was cross-examination
21 within the offer of proof, and that's why I didn't
22 have any. If this is actually part of the evidence
23 in the case, I do have some.

24 JUDGE WOODRUFF: I'm sorry. This was not
25 part of the offer and proof and so I'll come back to

1 you.

2 MR. DOWNEY: All right. Thank you.

3 JUDGE WOODRUFF: MIEC.

4 MR. DOWNEY: Thank you, Judge.

5 Just a couple questions. I'm not sure if
6 we're talking about Exhibit 248 or if it's now got a
7 different number on it.

8 JUDGE WOODRUFF: It is now 312.

9 All right.

10 CROSS-EXAMINATION BY MR. DOWNEY:

11 Q. With the billing units adjustment that's
12 proposed by Ameren, we're talking about this blow-
13 through on the various classes; correct?

14 A. Yes.

15 Q. Okay. If there are fewer billing units
16 because of energy efficiency, aren't there then fewer
17 units against which this higher cost applies?

18 A. In this case, the fuel amount has been
19 set. The allocation factors have been set so, yes,
20 in the future there should be less fuel, but for this
21 case, we have a fuel amount set and that's the amount
22 that will be allocated to the classes for that
23 classes revenue requirement regardless of how -- of
24 the billing adjustments.

25 That's AmerenUE's -- or Ameren Missouri's

1 proposal, is that the rates go ahead and be -- you
2 know, the revenue requirement for the classes not
3 change any at all, according to those billing
4 adjustments, that those stay the same.

5 Q. I'm trying to understand this exhibit, so
6 you're going to have to forgive me as I try and muck
7 my way through it.

8 But if a particular customer because of,
9 you know, energy efficiency measures consumes 20
10 percent less power, for instance, won't there be 20
11 percent fewer billing units, both for the fuel
12 adjustment surcharge and for the base rate?

13 A. In the future, yes --

14 Q. Okay.

15 A. -- but not to set the rates on in this
16 case.

17 Q. I'm asking horrible questions, so you're
18 just going to have to bear with me.

19 If the customer uses 20 percent less
20 power, doesn't the customer realize 20 percent less
21 of a charge?

22 A. Yes, but it would be even more if the fuel
23 and the energy allocation factors had been correctly
24 set in this case.

25 Q. Okay. So you're saying the customer would

1 have realized a larger benefit but for this billing
2 units adjustment?

3 A. An individual customer, yes. This is
4 on -- this example is at the class level. One of
5 the -- you know, the costs are being assigned to the
6 classes based on the cost of energy efficiency
7 program.

8 If it's a residential class, that's the
9 class that gets the cost. The way -- one of the ways
10 that the class receives the benefits, sees that
11 benefits, is in the future its usage declines, so its
12 allocation -- the allocation factor will change also
13 for the class, so that's what I'm trying to get to is
14 the fact that the class -- that customer that doesn't
15 implement energy efficiency, they're paying for
16 energy efficiency for the customers that do, and
17 they -- because they pay for it, they should receive
18 some of the benefits from it, and it won't flow
19 through -- because they're doing it on a projected
20 basis, it won't flow through until the next rate case
21 when those class kilowatt hours are actually lower.

22 MR. DOWNEY: Thank you.

23 Judge, thank you for letting me go out of
24 order.

25 JUDGE WOODRUFF: Then cross for Ameren

1 Missouri.

2 MS. TATRO: Yes.

3 CROSS-EXAMINATION BY MS. TATRO:

4 Q. Let's start with 312. You said part of
5 the problem was that -- this cause was that the
6 customer class doesn't get the benefit of the
7 decreased usage that it otherwise would get -- would
8 receive because of energy efficiency. Is that a fair
9 restatement of what you said?

10 A. Cost for allocated as if the energy
11 efficiency did not occur.

12 Q. Would you agree with me that billing units
13 are reset in each rate case?

14 A. Yes.

15 Q. Would you agree with me that in the next
16 rate case billing units will be reset again?

17 A. Yes.

18 Q. And that when that occurs, that takes into
19 account the increase of usage that happens with
20 energy efficiency?

21 A. But this is charging those customers for
22 the energy efficiency before they get the benefit.

23 Q. I'm talking about the next rate case.

24 A. In the next rate case, the allocation
25 factors will be lower, if everything's done correctly

1 to exactly match your-all's the adjusted billing
2 units.

3 Q. Let's presume that we're in that magical
4 world and that happens.

5 A. Okay.

6 Q. Then they're going to be reset in the next
7 rate case; right?

8 A. Yes.

9 Q. Would you agree with me that the total
10 revenue requirement is not being changed by the
11 billing unit adjustment?

12 A. Not by the way AmerenUE has proposed, no,
13 it is not.

14 Q. On your chart you have normalized usage.
15 It says, Residential, 30; nonresidential, 70; and
16 then under Adjusted you have residential, 20, and
17 nonresidential 70; correct?

18 A. Yes.

19 Q. If residential had gone down as much --
20 and you just made those numbers up; right?

21 A. That's correct.

22 Q. So if residential had gone down by the
23 same -- if nonresidential had gone down by the same
24 factor as residential, wouldn't that make the
25 difference about what you're discussing smaller, much

1 smaller?

2 A. I don't -- I don't even know that the
3 difference would exist so, yes, much smaller. May
4 actually be zero.

5 Q. So your example presumes that residential
6 usage decreases and nonresidential usage does not
7 decrease?

8 A. Yes.

9 Q. Can you turn to your supplemental,
10 please.

11 A. Yes.

12 Q. Page 8, the question and answer that
13 starts on line 10 and ends online 16.

14 A. Yes.

15 Q. Have you had discussions with Will Cooper
16 about this?

17 A. Yes, I have.

18 Q. Do you still consider this an additional
19 \$19 million in revenue?

20 A. This is the \$19 [sic] and the revenue
21 requirement that is for energy efficiency.

22 Q. Okay. I just want to be very clear.
23 You're not saying it's a \$19 million energy
24 efficiency charge that the Company tacked on to its
25 revenue requirement?

1 A. No, it's additional to revenue -- any
2 revenue that would be generated through higher rates.

3 Q. So you agree that the 19,000,000
4 represents the energy efficiency dollars being pulled
5 out of the general revenue requirement and being
6 added, this charge?

7 A. That's my understanding of what that is
8 from Mr. Cooper, yes.

9 Q. Are you familiar with the MIEA statute,
10 the Missouri Energy Efficiency Efficient Investment
11 Act statute?

12 A. I'm not an expert like some of my people
13 are, but I am familiar with it, yes.

14 Q. Does it require that energy efficiency
15 charges be broke out separately on customer bills?

16 A. Yes, it does --

17 Q. Okay.

18 A. -- but only if the Commission approves a
19 program and there's a program that's going through
20 that is enacted under MIEA.

21 Q. I understand that.

22 MS. TATRO: Thank you.

23 JUDGE WOODRUFF: Questions from the Bench
24 then?

25 Commissioner Davis, do you have any

1 questions?

2 COMMISSIONER DAVIS: Is this Ms. Mantle's
3 last opportunity to testify?

4 JUDGE WOODRUFF: I believe so, yes. She's
5 got a big smile on her face.

6 COMMISSIONER DAVIS: Ms. Mantle, I forgot
7 to ask you a couple questions last night.

8 THE WITNESS: Okay.

9 QUESTIONS BY COMMISSIONER DAVIS:

10 Q. How long have you been employed here?

11 A. Twenty-seven-and-a-half years.

12 Q. If we were to reduce your salary by 15
13 percent and put it aside until the end of the year
14 and give you a performance review on that, would that
15 motivate you to work any harder than you already do?

16 A. I have a hard time believing I could work
17 harder than I already do.

18 Q. So the answer to that would be "no"?

19 A. That's correct.

20 Q. And you work hard, don't you?

21 A. I think so, yes.

22 Q. And I know I've come in here on holidays
23 and I've seen you here before.

24 A. Yes, I've been here.

25 Q. Okay. But you do think that reducing the

1 fuel adjustment from a 5 percent to 15 percent would
2 provide Ameren more incentive?

3 A. Yes, I do.

4 Q. Okay. Do you think their employees are
5 any less dedicated than you are?

6 A. They're a large organization. I would
7 guess there's probably some that are less dedicated
8 than I am.

9 Q. Are there some employees here that are
10 less dedicated than you?

11 A. Yes.

12 Q. I'm not going to ask you to name them.

13 COMMISSIONER DAVIS: Thank you, Judge. No
14 further questions.

15 JUDGE WOODRUFF: Commissioner Jarrett.

16 COMMISSIONER JARRETT: I don't think I'm
17 going to have any questions, and I'm not going to ask
18 you it to name names either. Thank you, Ms. Mantle.

19 JUDGE WOODRUFF: Commissioner Kenney.

20 COMMISSIONER KENNEY: Ms. Mantle, how are
21 you?

22 THE WITNESS: Just fine.

23 QUESTIONS BY COMMISSIONER KENNEY:

24 Q. I have one question about the proposed
25 billing units adjustment, and I asked Mr. Rogers if

1 he would characterize it as a rate design
2 modification, so I want to ask you the same
3 questions. Would you characterize it as a rate
4 design modification?

5 A. To the extent that it modifies the rates
6 that would be implemented, yes.

7 COMMISSIONER KENNEY: Okay. Thank you.

8 JUDGE WOODRUFF: Recross based on
9 questions from the Bench? Anyone?

10 MS. TATRO: I have some.

11 JUDGE WOODRUFF: Go ahead.

12 RE-CROSS-EXAMINATION BY MS. TATRO:

13 Q. Ms. Mantle -- sorry I can't see you
14 because of Mr. Rogers.

15 Commissioner Kenney just asked you about
16 the rate design modification. Do you recall that
17 question?

18 A. Yes.

19 Q. And your answer was, If it modifies rates,
20 yes.

21 A. Right.

22 Q. So wouldn't any input, under your
23 definition, modify rates?

24 A. I'm sorry. Any input?

25 Q. If you change the revenue requirement,

1 it's going to modify rates, wouldn't it?

2 A. Yes.

3 Q. Isn't the revenue requirement different
4 than rate design?

5 A. Revenue requirement is part of rate
6 design.

7 Q. So the cost of service study submitted by
8 Staff is part of rate design?

9 A. You can't do rate design unless you know
10 how much revenue you're going to recover.

11 Q. So you define rate design so broadly as to
12 encompass to include anything -- anything in this
13 hearing?

14 A. It changes revenue that requires a change
15 in the rates. That can be rate modification, yes.
16 Rate design -- it doesn't -- it doesn't change
17 whether we put a demand charge in or put different
18 blocks in, but it is modifying the rate.

19 Q. So the level of off-system sales you
20 consider a rate design modification?

21 A. If it changed, yes.

22 Q. The level of incentive compensation
23 allowed in rates is a rate design modification.

24 A. It changed the level of rates, yes.

25 Q. Any input?

1 A. Yes.

2 MS. TATRO: Thank you.

3 JUDGE WOODRUFF: Redirect?

4 MR. WILLIAMS: Thank you, Judge.

5 REDIRECT EXAMINATION BY MR. WILLIAMS:

6 Q. Do you recall when Ms. Tatro asked you
7 about billing units being reset in rate cases?

8 A. Yes.

9 Q. Could you explain -- and you mentioned
10 something about perspective versus retrospective.
11 Can you explain what you mean by that in connection
12 with Exhibit 312 and the billing units being reset in
13 each case?

14 A. In this case, AmerenUE is asking for what
15 it expects future impacts of energy efficiency to be,
16 and what it's asking, then, is that the change in
17 rates to give customers benefits would not actually
18 occur until the next rate case, so AmerenUE would get
19 the benefits of its billing adjustments, but the
20 customer classes do not see the benefits until the
21 next rate case.

22 Q. Then do you recall Ms. Tatro asked you
23 about the residential versus the nonresidential on
24 Exhibit 312 and that you were shown adjusted usage
25 for residential, but not nonresidential?

1 down.

2 I believe that completes Staff's
3 testimony, and we'll move on to MIEC with
4 Mr. Brubaker.

5 MR. DOWNEY: Judge, Mr. Brosch is going to
6 address the billing units adjustment. Mr. Brubaker
7 is going to address a slightly different issue. If
8 you want to take them in the order they are on this
9 sheet, but it might have more continuity if we take
10 Brosch first.

11 JUDGE WOODRUFF: It makes no difference to
12 me, so if you want to take Mr. Brosch first, that's
13 fine.

14 Good afternoon. Please raise your right
15 hand.

16 MICHAEL BROSCH,
17 Of lawful age, being sworn, testified as follows:

18 MR. DOWNEY: May I approach?

19 JUDGE WOODRUFF: You may.

20 MR. DOWNEY: Judge, I was told to give two
21 copies of all the prefiled testimony they're going to
22 identify. I assume I give one copy to the witness
23 and one copy to you.

24 JUDGE WOODRUFF: Well, actually, the court
25 reporter.

1 MR. DOWNEY: Okay.

2 JUDGE WOODRUFF: Since it's prefiled
3 testimony, I don't need to have another copy.

4 (MIEC Exhibit Nos. 418, 419 and 420
5 were marked for identification.)

6 DIRECT EXAMINATION BY MR. DOWNEY:

7 Q. Good afternoon, Mr. Brosch.

8 A. Good afternoon.

9 Q. Have you been sworn?

10 A. Yes.

11 Q. Okay. Would you please tell the
12 Commission your name and your business address?

13 A. Michael L. Brosch, P.O. Box 481934, Kansas
14 City, Missouri.

15 Q. Mr. Brosch, have you filed in this case
16 what I'm going to call prefiled testimony?

17 A. Yes, I have.

18 Q. In front of you at the witness stand there
19 should be Exhibits 418, 419, and 420. Do you see
20 those?

21 A. I do, yes.

22 Q. Exhibit 418, is that the direct testimony?

23 A. It is, yes, the HC version of the direct
24 testimony.

25 Q. And is Exhibit 419 the NP version of that?

1 A. It is.

2 Q. And 420 your supplemental testimony?

3 A. Yes, sir.

4 Q. If I asked you the questions in those
5 three testimonies, would your answers be as written?

6 A. They would, yes.

7 Q. So I take it, then, you have no
8 corrections or changes.

9 A. That's correct.

10 MR. DOWNEY: Judge, I would offer Exhibits
11 418 through 420 and tender the witness for cross.

12 JUDGE WOODRUFF: 418 and 419 and 420 have
13 been offered. Are there any objections to their
14 receipt?

15 (No response.)

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

18 (MIEC Exhibit Nos. 418, 419 and 420 were admitted.)

19 JUDGE WOODRUFF: For cross-examination
20 we'll begin with DSM.

21 MS. FRAZIER: Thank you, your Honor. No
22 questions.

23 JUDGE WOODRUFF: MEG.

24 MS. LANGENECKERT: No questions.

25 JUDGE WOODRUFF: Public Counsel.

1 MR. MILLS: Thank you.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. Mr. Brosch, the only -- is it true that
4 the only testimony that you filed that addresses the
5 loss revenue adjustment is your direct testimony? Is
6 that correct, or am I in the wrong testimony?

7 A. The billing unit adjustment is addressed
8 solely within my supplemental testimony. My direct
9 testimony responded to the Company's fixed-cost
10 recovery mechanism their prior recommendation.

11 MR. MILLS: I don't have any questions for
12 this witness then. Thank you.

13 JUDGE WOODRUFF: Okay. For Staff?

14 MR. WILLIAMS: No questions.

15 JUDGE WOODRUFF: For Ameren Missouri.

16 MS. TATRO: No questions.

17 JUDGE WOODRUFF: Brings up questions from
18 the Bench. Commissioner Davis?

19 COMMISSIONER DAVIS: None.

20 JUDGE WOODRUFF: Commissioner Jarrett?

21 COMMISSIONER JARRETT: None for me
22 either.

23 COMMISSIONER KENNEY: Just one question,
24 Mr. Brosch.

25 QUESTIONS BY COMMISSIONER KENNEY:

1 Q. Would you characterize the billing unit
2 adjustment as a rate design modification?

3 A. I'm not sure I would. It falls somewhere
4 in the gray area between revenue requirement as rate
5 design, as I think of those two distinctions. If
6 revenue requirement is defined as the total gross
7 amount of revenues the utility needs to meet its cost
8 of service, then the answer would be no.

9 If the revenue requirement is, How much
10 incremental revenue does the Company need in this
11 rate case, then the answer would be that the billing
12 unit adjustment is a revenue requirement issue
13 because it impacts the revenues produced by present
14 rates, and then and in corresponding fashion it would
15 impact the incremental revenue required by the
16 Company in this case.

17 Q. But the way I'm understanding the billing
18 unit adjustment is that the revenue requirement is
19 determined and then the rate design is determined and
20 then the billing units are modified, and so the
21 billing units from which the revenue requirement, I
22 guess, would be collected is adjusted downward, which
23 has the effect have of increasing the overall price
24 per kilowatt hour; correct?

25 A. I think of it if this way: The billing

1 unit adjustment reduces the amount of revenues Ameren
2 is collecting at present rates, and because of that
3 reduction, the Company needs more of a revenue
4 increase in this case to generate total revenues
5 equal to the revenue requirement.

6 Q. Okay. That's a little more clear, but not
7 100 percent.

8 So there's really no clear answer then?

9 A. Well, that's my opinion. It's somewhere
10 in the gray air between revenue requirement, clearly
11 in the design of final rates and proving the revenues
12 so that at the end of the day the Company is able to
13 collect the intended amount of total revenues.

14 You have to have billing units, and in
15 this matter, the Company is proposing a post-test
16 year adjustment to billing units for that select
17 issue of, if we look only at projected DSM effects,
18 how much would our billing units and corresponding
19 revenues at present rates be impacted?

20 COMMISSIONER KENNEY: Okay. Thank you.

21 THE WITNESS: Thank you.

22 JUDGE WOODRUFF: Recross based on
23 questions of the Bench?

24 Anyone wish to recross?

25 (No response.)

1 JUDGE WOODRUFF: Redirect.

2 MR. DOWNEY: No.

3 JUDGE WOODRUFF: Then Mr. Brosch, you may
4 step down.

5 We'll get Mr. Brubaker.

6 MR. DOWNEY: Judge, may a approach again?

7 JUDGE WOODRUFF: Certainly.

8 MAURICE BRUBAKER,
9 of lawful age, being sworn, testified as follows:

10 JUDGE WOODRUFF: You may inquire when
11 you're ready.

12 MR. DOWNEY: Thank you.

13 DIRECT EXAMINATION BY MR. DOWNEY:

14 Q. Please state your name and your business
15 address.

16 A. My name is Maurice Brubaker. My business
17 address is 16690 Swingly Ridge Road, St. Louis,
18 Missouri 63017.

19 Q. Mr. Brubaker, did you file prefilled direct
20 testimony on revenue requirement?

21 A. I did.

22 Q. And did you file rebuttal on revenue
23 requirement and class cost of service?

24 A. Yes.

25 Q. Did you also file surrebuttal testimony on

1 revenue requirement and class cost of service?

2 A. I did.

3 Q. Are those respectively Exhibits 403, 405
4 and 406?

5 A. They are.

6 Q. Are they before you now?

7 A. Yes, I have them.

8 Q. If I were to ask you the questions in
9 those testimonies today, would you give the same
10 answers?

11 A. Yes, I would.

12 MR. DOWNEY: Judge, I would offer Exhibits
13 403, 405 and 406 and tender the witness for cross.

14 JUDGE WOODRUFF: 403, 405 and 406 have
15 been offered. Any objections to their receipt?

16 (No response.)

17 JUDGE WOODRUFF: Hearing none, they will
18 be received.

19 (MIEC Exhibit Nos. 403, 405 and 406 were admitted.)

20 JUDGE WOODRUFF: Cross-examination
21 beginning with DNR.

22 MS. FRAZIER: No questions. Thank you.

23 JUDGE WOODRUFF: MEG.

24 MS. LANGENECKERT: No questions.

25 JUDGE WOODRUFF: Public counsel.

1 MR. MILLS: No questions.

2 JUDGE WOODRUFF: Staff.

3 MR. WILLIAMS: No questions.

4 JUDGE WOODRUFF: And Company.

5 MS. TATRO: No questions.

6 JUDGE WOODRUFF: Questions from the Bench?

7 Mr. Davis.

8 COMMISSIONER DAVIS: Good to see you,

9 Mr. Brubaker.

10 THE WITNESS: Good to see you too.

11 JUDGE WOODRUFF: Commissioner Jarrett.

12 THE WITNESS: I'd like to ask you about

13 KEMA, but I won't do that. No questions.

14 JUDGE WOODRUFF: Mr. Kenney.

15 COMMISSIONER KENNEY: Mr. Brubaker, how

16 are you?

17 THE WITNESS: I'm good, sir. How are you?

18 COMMISSIONER KENNEY: I'm well also. I

19 have no questions. Good to see you.

20 JUDGE WOODRUFF: Anyone want to recross

21 about his name?

22 (Laughter.)

23 COMMISSIONER JARRETT: Any redirect? No

24 need for redirect. All right. You may step down.

25 THE WITNESS: Thank you.

1 COMMISSIONER JARRETT: I believe that is
2 all the testimony for MIEC.

3 We'll move on to DNR and Ms. Frazier.

4 MS. FRAZIER: Thank you, your Honor. I'd
5 like to call Laura Wolfe, please.

6 MS. TATRO: Your Honor, before we call
7 another witness, Ameren Missouri and DNR have reached
8 an agreement between the two on the evaluation of the
9 low-income weatherization. Would it be appropriate
10 to -- it's not a written agreement, but I can tell
11 you what we've agreed to and put that on the record
12 now.

13 COMMISSIONER JARRETT: That would be fine.

14 MR. WILLIAMS: Judge, it's my
15 understanding Commissioner Kenney is going to ask you
16 questions of Ms. Wolfe that relate to another issue.
17 Do you know when that will be?

18 JUDGE WOODRUFF: I assume that will occur
19 now while she's on the stand.

20 COMMISSIONER KENNEY: I heard my name,
21 but nothing else. What was that?

22 MR. WILLIAMS: My understanding is that
23 you have some questions for Ms. Wolfe regarding
24 another issue, and I was just asking procedurally
25 when that would occur.

1 JUDGE WOODRUFF: And I indicated that
2 would occur now while she's on the stand.

3 MR. WILLIAMS: I understood that, but
4 there's another attorney handling that issue --

5 JUDGE WOODRUFF: I see.

6 MR. WILLIAMS: -- is what I'm asking.

7 COMMISSIONER JARRETT: Let's deal with
8 this issue, then, and then we'll switch gears to the
9 other when we get there.

10 MR. WILLIAMS: Thank you.

11 JUDGE WOODRUFF: Ms. Tatro, you had
12 something you wanted to put on the record.

13 MS. TATRO: I do.

14 I believe that Ameren Missouri and DNR
15 have reached the following agreement for the
16 low-income weatherization program to which Ameren
17 contributes annually.

18 Ameren agrees to do an impact and process
19 evaluation every two would years, that \$120,000,
20 which would be 60,000 out of each annual funding,
21 that would be the cap for the evaluation. The first
22 evaluation will be completed April of 2012 and will
23 cover the time period of January 2010 through
24 December 2011.

25 Is that correct?

1 MS. FRAZIER: That is correct. Thank you.

2 MS. TATRO: Thank you.

3 JUDGE WOODRUFF: Was that listed as an
4 issue for decision?

5 MS. TATRO: I believe that it was.

6 JUDGE WOODRUFF: Okay.

7 MS. TATRO: I don't have the issues listed
8 in front of me, but the weatherization and evaluation
9 of it was still an issue.

10 COMMISSIONER JARRETT: All right. Are you
11 going to be doing a written stipulation and
12 agreement?

13 MS. TATRO: I had not intended to do
14 that. I intended to just put the terms on the
15 record, but if you would like a written, we certainly
16 can.

17 JUDGE WOODRUFF: I think that would be
18 clear just in case there would be an objection to it.

19 COMMISSIONER DAVIS: Put it in writing.

20 MS. TATRO: I will certainly do so, but I
21 wanted to offer it so if the other parties, if they
22 had a question about it or something, we'd realized
23 that, so I will put it in writing and get it in the
24 record. Thank you.

25 JUDGE WOODRUFF: Thank you. All right.

1 You may proceed with direct.

2 MS. FRAZIER: Thank you, your Honor. As a
3 preliminary matter, I'd like to address Commissioner
4 Jarrett's question to me this morning when he asked
5 me about the status of the Department of Natural
6 Resources budget. I have checked with my clients,
7 and they have indicated that they would not know the
8 outcome of the Division of Energy's budget until the
9 General Assembly completes work on the budget, which
10 may not occur until tomorrow evening, and that's the
11 most they could say at this point.

12 COMMISSIONER JARRETT: Okay. I thank you
13 for the update. Appreciate it.

14 DIRECT EXAMINATION BY MS. FRAZIER:

15 Q. Ms. Wolfe, would you please state your
16 full name and spell your last name for the court
17 reporter.

18 A. Just a reminder, I haven't yet been sworn
19 in.

20 MS. FRAZIER: Oh. I'm sorry.

21 JUDGE WOODRUFF: Thank you for noticing
22 that.

23 LAURA WOLFE,
24 of lawful age, being sworn, testified as follows:

25 BY MS. FRAZIER:

1 Q. Now would you please state your name and
2 spell your last name for the court reporter.

3 A. My name is Laura Wolfe, W-o-l-f-e.

4 Q. Where are you employed and in what
5 capacity?

6 A. I'm an Energy Specialist III for the
7 Missouri Department of Natural Resources, Division of
8 Energy.

9 Q. For whom are you testifying in this rate
10 case?

11 A. On behalf of the Department of Natural
12 Resources.

13 Q. Are you the same Laura Wolfe who prepared
14 or caused to be prepared direct testimony marked
15 Exhibit 800?

16 A. Yes.

17 Q. And are you the same Laura Wolfe who
18 prepared or caused to be prepared rebuttal testimony
19 marked Exhibit No. 801?

20 A. I am.

21 Q. And the same question with respect to
22 surrebuttal testimony marked Exhibit No. 802?

23 A. Yes, I am.

24 Q. Was that testimony prepared by you or
25 under your supervision?

1 THE WITNESS: Good afternoon.

2 MR. DOWNEY: I promise not to talk to you
3 about billing units.

4 THE WITNESS: Thank you.

5 CROSS-EXAMINATION BY MR. DOWNEY:

6 Q. But I do want to talk to you about
7 recovery of the utility's demand-side management or
8 DSM expenditures, okay? Do you agree that what we're
9 talking about is the actual expenditures that the
10 utility incurs on the demand-side management projects
11 or programs?

12 A. Yes, I do. I sometimes refer to them as
13 the program costs.

14 Q. Okay. And have you reviewed all of the
15 witnesses' testimony, the witnesses that have
16 addressed the issue we're here to discuss right now?

17 A. Yes, I have.

18 Q. Okay. Would you agree that all the
19 witnesses understand that the utility should recover
20 these expenditures?

21 A. Yes, I do.

22 Q. Where you really disagree is over the
23 period of time that utility should recover them?

24 A. Yes.

25 Q. Now, you recommended that the expenditures

1 be expensed; is that right?

2 A. That's correct.

3 Q. Meaning they're recovered in the year that
4 they're incurred?

5 A. Yes.

6 Q. The other witnesses all recommended that
7 the expenditures be recovered over a period of time;
8 is that right?

9 A. That's correct.

10 Q. Some of the witnesses said six-years and
11 two of the witnesses said ten years; is that correct?

12 A. Correct.

13 Q. You're -- you're --

14 A. Ameren initially said three years, and
15 then changed to six years later in their testimony.

16 Q. Okay. I thought you wanted to explain.

17 You agree that the Commission keeps track
18 of these expenditures in something it calls a
19 regulatory asset?

20 A. Yes.

21 Q. The Commission requires depreciation or
22 amortization of regulatory assets?

23 A. That's correct.

24 Q. Because you're with DNR, I'm going to
25 assume that you're familiar with a lot of these DSM

1 programs. Is that fair?

2 A. That's fair.

3 Q. Is there a program where the utility
4 provides incentives to customers to buy high-
5 efficiency air conditioning units? Is that one of
6 the programs?

7 A. Give me just a moment to refresh my memory
8 on that specific programs. Are you talking
9 residential, business, or both?

10 Q. Any customer.

11 A. Any? Looking at the review of the
12 programs that I compiled in my direct testimony, I do
13 see a residential program that is a Check Me program
14 for HVAC, which is designed to check and tune up
15 heating, ventilation, and air conditioning systems
16 and perhaps replace less efficient systems with
17 working central cooling systems.

18 Q. Okay. You would agree that that HVAC
19 Check Me program would benefit those customers who
20 take advantage of it because they would then have
21 more efficient air conditioning units?

22 A. That's true.

23 Q. Because it's more efficient, they consume
24 less energy and, thus, pay for less energy?

25 A. Correct.

1 Q. And that program would benefit those
2 customers for more than one year, would it not?

3 A. It would.

4 Q. And you're familiar with some of the other
5 DSM programs as well, are you not?

6 A. I am.

7 Q. Many of those benefit customers for more
8 than a year as well, do they not?

9 A. That's true.

10 Q. And frequently over ten years?

11 A. Some items, yes. I could see that in
12 HVAC, insulation, those kinds of items.

13 Q. You understand that Ameren Missouri has
14 what's called an integrated resource plan, IRP?

15 A. Yes.

16 Q. And in that IRP, Ameren lists the periods
17 of time over which its DSM programs benefit
18 customers?

19 A. Yes.

20 Q. Have you reviewed Mr. Brubaker's
21 testimony?

22 A. I have.

23 Q. You understand that in his testimony he
24 ran an analysis of those benefit periods for the DSM
25 programs for Ameren Missouri?

1 A. I saw a brief summary of his analysis in
2 his testimony, yes.

3 Q. He comes up with a weighted average
4 benefit period for the programs, does he not?

5 A. He does weighted average. I think the
6 life spans range from roughly 2 to 28 years.

7 Q. Do you recall what his weighted average
8 result was from his analysis? If you don't, that's
9 fine. I'll tell you it's 12 years.

10 A. I was thinking it was 12 years, but I
11 wasn't absolutely positive.

12 Q. Do you have any doubts that he ran the
13 numbers correctly?

14 A. No, I do not.

15 MR. DOWNEY: Thank you. No further
16 questions.

17 JUDGE WOODRUFF: Public counsel?

18 MR. MILLS: Judge, I have questions for
19 Ms. Wolfe about Taum Sauk. Do I ask those at a
20 different time.

21 JUDGE WOODRUFF: We'll bring her back
22 immediately after concluding this one -- on Taum
23 Sauk.

24 MR. MILLS: Okay. Thank you.

25 JUDGE WOODRUFF: For Staff.

1 Does Staff have any questions?

2 MR. WILLIAMS: No.

3 JUDGE WOODRUFF: For Ameren.

4 MS. TATRO: No.

5 JUDGE WOODRUFF: Questions from the Bench.

6 Commissioner Davis.

7 COMMISSIONER DAVIS: Good afternoon,

8 Ms. Wolfe.

9 THE WITNESS: Good afternoon, Commissioner

10 Davis.

11 COMMISSIONER DAVIS: Are you still playing

12 softball?

13 THE WITNESS: Not so much. My knees can't

14 handle it.

15 COMMISSIONER DAVIS: Too bad. The

16 season's about to start.

17 I don't have any questions.

18 THE WITNESS: Thank you.

19 JUDGE WOODRUFF: Commissioner Jarrett.

20 COMMISSIONER JARRETT: I don't have any

21 questions either. Thank you,.

22 JUDGE WOODRUFF: Commissioner Kenney, any

23 questions on the DSM issue? We'll come back on the

24 Taum Sauk.

25 COMMISSIONER KENNEY: Yes. Hi. How are

1 you?

2 THE WITNESS: I'm fine. And you, sir.

3 COMMISSIONER KENNEY: I'm well. Thanks.

4 QUESTIONS BY COMMISSIONER KENNEY:

5 Q. I have a question about the billing unit
6 adjustment as proposed by Ameren. On page 6 of your
7 surrebuttal testimony, you set forth three criteria,
8 that if they were present, would satisfy MDNR in
9 supporting this pilot or experimental use of
10 methodology for a fixed amount of time, and it's at
11 lines 16 through 19. Do you recall that --

12 A. Yes.

13 Q. -- in your testimony?

14 A. I have it in front of me.

15 Q. Are you satisfied that those three
16 elements, as you set them forth, have been satisfied?

17 A. No, not as of yet. MDNR is still
18 analyzing Ameren's recently-filed IRP, and we noticed
19 in the RAP plan that is laid out in that IRP that
20 there are some DSM programs that are identified as
21 cost-effective that did not end up in their preferred
22 plan labelled, The Low-Risk Plan.

23 Primarily Home Performance with Energy
24 Star, which is a program that's achieving some
25 success on the west side of our state, we've not seen

1 it yet implemented. I know that -- I know that
2 another utility on that state -- on the east side of
3 the state is ready to roll that program out, and
4 they're trying to work cooperatively with Ameren, but
5 we were concerned because the low-risk plan did not
6 include it, if I recall correctly. I do not have the
7 IRP in front of me, so there's still that concern.

8 I've talked to at length with a couple of
9 the witnesses from Ameren on the billing unit
10 adjustment. I think I'm getting a clearer picture of
11 what that is, but I don't see anything that actually
12 was entered into the record that supports the number
13 of billing units for the adjustments, and I was kind
14 of looking for that in the record before -- I guess
15 it doesn't have to be in the record, but I'd like to
16 see that calculation clearly laid out.

17 And finally, at the time that I wrote and
18 submitted my surrebuttal testimony, I had not
19 obviously seen Mr. Davis' surrebuttal testimony where
20 he talked about the true-up mechanism using an EM&V
21 to determine the amount of savings for any true-up
22 adjustments at the end of the set period for his
23 program, so that is not as much as of a concern,
24 although DNR is hoping at some point the State moves
25 forward with a technical reference manual so it's

1 known in advance how energy savings will be measured.

2 Q. As it stands today, however -- well,
3 strike that. Let me back up.

4 You said you had discussions with Ameren
5 witnesses -- I'm assuming that's Mr. Davis.

6 A. Yes.

7 Q. -- regarding the determination of the
8 billing unit --

9 A. Uh-huh.

10 Q. -- adjustment?

11 A. Yes.

12 Q. And just Mr. Davis?

13 A. I talked some with Mr. Laurent as well.

14 Q. Okay. And you have a better understanding
15 of it, but you still aren't entirely certain of how
16 they arrived at that?

17 A. I understand the ideas -- the idea that
18 they're presenting, that when you pick a particular
19 point in time for a test year and you're looking at
20 the usage for that test year, it may not account for
21 savings that will incur the following year for energy
22 efficiency items that were implemented for only a
23 short amount of time in a test year.

24 I've seen some worksheets that work
25 through that calculation. I've not really been able

1 to duplicate that entirely, but I think that's simply
2 because I haven't seen all the backup data. I think
3 it's possible to support what they've presented.

4 Q. And you said that the Energy Star program
5 that you're describing was in their IRP but didn't
6 make it into the low-risk DSM program?

7 A. Yes. The program in particular that I'm
8 thinking of is the Home -- pardon me. I'm starting
9 to stutter a bit -- Home Performance with Energy
10 Star. It does appear in their IRP, and it's listed
11 as one of the programs under the RAP, the RAP plan --

12 Q. Correct.

13 A. -- but when I looked at the DSM programs
14 under the low-risk plan, which Ameren has chosen as
15 their preferred plan, it was not -- the Home
16 Performance with Energy Star program did not appear
17 there.

18 And I think there was one other program.
19 But it's slipping my mind which one it is. I don't
20 have the IRP in front of me.

21 COMMISSIONER KENNEY: All right,
22 Ms. Wolfe, thank you very much. I don't have any
23 other questions regarding the DSM or the billing unit
24 adjustment.

25 JUDGE WOODRUFF: I do have one question.

1 QUESTIONS BY JUDGE WOODRUFF:

2 Q. We've been using a lot of acronyms in here
3 that you just used and other witnesses have used as
4 well. I want to be clear. What is R-A-P?

5 THE WITNESS: The RAP is the integrated
6 resource plan Ameren filed recently in a separate
7 docket. RAP is the --

8 COMMISSIONER KENNEY: Regulatory
9 Assistance Project.

10 THE WITNESS: Yes, in another situation.

11 MR. WILLIAMS: Realistic Achievable
12 Potential.

13 THE WITNESS: That's it. Realistic
14 Achievable Potential. That's it.

15 BY JUDGE WOODRUFF:

16 Q. And that is a term that's used in the IRP,
17 I believe.

18 A. That's correct.

19 Q. Okay. Well, I might as well ask you: Can
20 you define what am RAP, Realistic Achievable
21 Potential, is?

22 A. That's tough. I think it's a look at all
23 the potential energy savings that's out there, but
24 some things just really aren't achievable. There's
25 so costly that perhaps they're not worth doing.

1 JUDGE WOODRUFF: Or maybe no one would go
2 for it.

3 THE WITNESS: Ever go for it, yeah.
4 You're switching back to candles in the evening, or
5 something like that.

6 So the realistic is really more of a
7 point or an amount of savings that could
8 realistically be achieved, and given the economy and
9 given the cost of the programs and the receptiveness
10 of consumers.

11 JUDGE WOODRUFF: Thank you.

12 Any recross based on those questions by
13 the Bench.

14 MS. TATRO: I have no --

15 JUDGE WOODRUFF: Oh. Recross. Public
16 counsel first.

17 RE-CROSS-EXAMINATION BY MR. MILLS:

18 Q. With respect to the question you got from
19 Commissioner Davis, is that what they call a softball
20 question?

21 A. I don't think I'm qualified to answer
22 that.

23 MR. MILLS: That's all I have.

24 COMMISSIONER JARRETT: You've been waiting
25 your whole career to ask that.

1 JUDGE WOODRUFF: Did Ameren have any?

2 MS. TATRO: I just have a couple.

3 RECROSS EXAMINATION BY MS. TATRO:

4 Q. Ms. Wolfe, Commissioner Kenney was talking
5 to you about what it would take for you to support
6 the billing unit adjustment, and you indicated that
7 you hadn't seen anything that showed how the
8 adjustment was calculated. Do you remember that?

9 A. Yes.

10 Q. Do you review Mr. Davis' work papers?

11 A. Yes, I did.

12 Q. And you said you had a discussion with
13 Mr. Davis, yes?

14 A. Yes.

15 Q. Did you ask Mr. Davis where that -- for
16 that calculation?

17 A. I did.

18 Q. Did you send a data request for that
19 calculation?

20 A. I don't believe so it.

21 MS. TATRO: That's it.

22 JUDGE WOODRUFF: Any redirect?

23 DNR.

24 MS. FRAZIER: No, your Honor. But

25 recognizing we're going into Taum Sauk, I would like

1 to apologize to the Commission. We had asked to have
2 Laura's, Mrs. Wolfe's name removed from the list of
3 witnesses, and we received no objection.

4 The reason for that was that she offered
5 information only and has taken no position on Taum
6 Sauk, but we different consider that the Commission
7 might have questions, so we apologize and just wanted
8 to state that for the record.

9 JUDGE WOODRUFF: So if the record is
10 clear, what we're doing here, we're going to go back
11 to the Taum Sauk issue and deal with questions on
12 that. Ms. Wolfe had some brief testimony about that.

13 Was it your direct testimony?

14 THE WITNESS: Yes, sir.

15 JUDGE WOODRUFF: All right. I don't think
16 there's any need for direct at this point, so I'll
17 ask if there's any of the parties who wish to ask any
18 questions. Then we'll ask for questions from the
19 Bench.

20 Mr. Mills indicates he has questions for
21 Public Counsel.

22 CROSS-EXAMINATION BY MR. MILLS:

23 Q. Ms. Wolfe, do you have your testimony
24 there in front of you?

25 A. I do.

1 Q. If I can have you turn first, please, to
2 page 12 of your direct testimony, and specifically
3 the section from lines 5 to approximately line 28.
4 You're quoting a couple of paragraphs from the
5 consent judgment; is that correct?

6 A. That's correct.

7 Q. The paragraph that's entitled, Ratepayer
8 Protection, does that generally preclude AmerenUE
9 from recovering from ratepayers construction costs
10 incurred in the reconstruction of the upper
11 reservoir, but it allows exceptions to that general
12 provision?

13 A. I'm sorry. Can you say that one more
14 time?

15 Q. Does the ratepayer protection paragraph
16 generally preclude AmerenUE from seeking recovery of
17 construction costs from the reconstruction of the
18 upper reservoir, but then allows exceptions to that
19 general prohibition?

20 A. That's correct.

21 Q. Would it be consistent with your
22 understanding of this provision for the vast bulk of
23 the reconstruction cost to be borne by the insurance
24 company and the ratepayers with only a small portion
25 being borne by AmerenUE?

1 A. I don't know that I could speak to the
2 distribution of the costs of rebuilding in terms of
3 what would be covered by an insurance policy or
4 multiple insurance policies versus rebuilding it to
5 restore what was there versus what should be sought
6 or could be sought in recovery.

7 My area of expertise is not in terms of
8 cost allocation in that sense. My understanding and
9 reason for putting this into testimony was simply to
10 inform the Commission of this this consent judgment
11 and what the expectations were in terms of DNR in
12 this consent judgment.

13 Primarily that was to preserve the
14 Commission's authority to make those kind of
15 determinations that you're laying out and also the
16 determination that Ameren did dually notify the
17 parties, as the latter part of paragraph three talks
18 about, in order to then allow them, if they so chose,
19 to seek recovery in this case.

20 Q. So just to be clear on the question that I
21 asked: You don't have an opinion or DNR does not
22 have a position on that, or both?

23 A. Both.

24 Q. Okay. Now turning, then, to your rebuttal
25 testimony at page 1 and 19, you briefly address Taum

1 Sauk again.

2 A. Oh. Sorry. I guess I did. Uh-huh.

3 Q. Specifically on page 19 at lines 10 and
4 11, is that sort of restating what you just said --

5 A. Yes, it is.

6 Q. -- that DNR is relying on the Commission
7 to determine whether appropriate cost recovery is
8 taking place?

9 A. That's correct.

10 Q. Okay. Now, with respect to the question
11 of allowed costs, which is a term used in the consent
12 judgment, do you have an opinion as to whether
13 allowed costs means costs that shall be recovered
14 from ratepayers or costs for which UE can seek
15 recovery from ratepayers?

16 A. Give me just a moment to refresh my memory
17 of that language.

18 Q. Sure.

19 A. Now I'm going to ask you to repeat the
20 question.

21 Q. With respect to the phrase "allowed costs"
22 as it's used in the consent judgment, are those costs
23 that UE shall be allowed to recover from ratepayers,
24 or costs that UE is allowed to seek recovery from?

25 A. Keeping in mind I'm not an attorney and,

1 therefore, you know, reviewing court documents, which
2 is what this is from, in my opinion, allowed costs
3 would be whatever this Commission determines is
4 appropriate for Ameren to receive recovery.

5 Q. So the rate recovery is up the Commission
6 and not to Ameren?

7 A. That's correct.

8 Q. Okay.

9 MR. MILLS: That's all the questions I
10 have. Thank you.

11 JUDGE WOODRUFF: For Staff or for Ameren
12 any cross?

13 MR. BYRNE: Just a couple, your Honor.

14 MS. KLIETHERMES: I'm sorry. Was that for
15 Staff or Ameren?

16 JUDGE WOODRUFF: I said for either one of
17 you. You go first, if you want.

18 MS. KLIETHERMES: I do have just a few.

19 JUDGE WOODRUFF: Go ahead.

20 MS. KLIETHERMES: Good afternoon.

21 THE WITNESS: Good afternoon.

22 CROSS-EXAMINATION BY MS. KLIETHERMES:

23 Q. Did Staff meet with DNR regarding Taum
24 Sauk?

25 A. At what point?

1 Q. Well, that was going to be my next
2 question.

3 A. Not to my knowledge, but that is not to
4 say that didn't happen.

5 Q. Okay. Do you know if Staff met with the
6 AG's office representatives who are representing
7 DNR? Can I strike that?

8 Were you in a meeting -- do you know
9 Commission Room 810? Do you know what I refer to by
10 that?

11 A. I do recall a meeting now that you've
12 refreshed my memory, yes.

13 Q. Were you present at that meeting?

14 A. Yes, I was.

15 Q. Briefly, to the best you can recall, Ho
16 what parties had representatives at that meeting?

17 A. I recall Staff being there. We were
18 there.

19 Q. Who is "we?" I'm sorry.

20 A. I'm sorry. DNR, as well as our attorney
21 from the Attorney General's office that is
22 representing us. I don't recall any other parties
23 being there. Oh. I'm -- was Office of Public
24 Counsel there for some point? I don't think so.
25 Never mind. I'm confusing my meetings.

1 Q. Understandable in a case such as this.

2 Would you describe that meeting as

3 contentious?

4 A. No.

5 Q. Would you describe that meeting as

6 cooperative and collaborative?

7 A. I'd describe it as more informative.

8 Q. Could you tell me what you mean by that.

9 A. Different parties discussing what they

10 were seeing their -- their -- the road they were

11 following to develop their positions.

12 This was very early on in the case, so it

13 was more of a sharing of information and, I'd say, a

14 discussion, you know, yes, of different parties'

15 positions or understandings or take on where the --

16 this issue would go.

17 Q. So would you agree with the statement that

18 the parties at that point were open to hearing what

19 each other had to say and taking that information

20 under advisement in, perhaps, the formation of their

21 own positions?

22 A. Yes.

23 Q. Did DNR provide any recommendations to

24 Staff regarding their position on Taum Sauk?

25 A. Not that I recall.

1 MS. KLIETHERMES: I think that's all I
2 have for you that's not related to softball. Thank
3 you.

4 JUDGE WOODRUFF: Then for Ameren Missouri?

5 CROSS-EXAMINATION BY MR. BYRNE:

6 Q. Ms. Wolfe, in your rebuttal testimony on
7 page 19, your testimony refers to the portion of the
8 consent agreement that talks about the audit powers
9 of the Commission. Do you see that.

10 A. Yes.

11 Q. And I guess, would it be your
12 understanding that to the extent that the Commission
13 audited the costs of reconstructing the upper
14 reservoir, even to the extent that there were allowed
15 costs, that that audit determined that they were
16 imprudently incurred or wasteful, the Commission
17 would still have the power to disallow them, even if
18 they were allowed costs under the agreement?

19 A. It's the position of DNR that any
20 determination on these costs, whether to include or
21 not to include recovery or allow recovery, is
22 entirely up the Commission.

23 Q. Okay. I mean, but more specifically, my
24 question was: If the Commission found them to be
25 wasteful or imprudently-incurred, would you expect

1 the Commission to be able to disallow the cost?

2 A. Yes, I would.

3 Q. If the Commission found them to be
4 imprudently incurred, would you expect them to be
5 recoverable if they also qualified as allowed costs?

6 A. Yes, if the Commission determined that
7 they qualified as allowed costs, yes.

8 Q. I guess, more specifically, I'm asking:
9 If the Commission found that they were prudently
10 incurred, that they weren't wasteful, would you
11 expect them to allow them if they were allowed cost?

12 A. If they met both of those criteria, yes.

13 MR. BYRNE: Thank you, ms. Wolfe.

14 JUDGE WOODRUFF: Questions from the Bench.
15 Commissioner Davis.

16 COMMISSIONER DAVIS: No questions. Thank
17 you, Ms. Wolfe.

18 JUDGE WOODRUFF: Commissioner Jarrett.

19 COMMISSIONER JARRETT: Ms. Wolfe, I just
20 have a couple of questions.

21 QUESTIONS BY COMMISSIONER JARRETT:

22 Q. Looking at your direct testimony, page 13,
23 you talk about the damage to having extensive damage
24 to Johnson Shut-Ins State Park, and you talk about
25 the consent and judgment requiring Ameren to pay

1 damages of \$179,705,000. Is that to clean up and
2 restore the state park, for the most part?

3 A. Yes.

4 Q. Is DNR's-- what is DNR's position? Are
5 they satisfied with the cleanup and restoration of
6 the park done by Ameren?

7 A. I don't have direct contact with our parks
8 and historic preservation unit, but I have heard
9 nothing that we were dissatisfied with -- the park
10 has been restored and is open again to the public.

11 Q. Good. The other question I wanted to ask
12 you is on page 12, and Mr. Mills asked you several
13 questions about the quoted paragraphs from the
14 consent judgment. And I'll paraphrase. Maybe I'll
15 say this -- hopefully say it nearly the same way as
16 Mr. Mills does. I'm not trying to change the -- what
17 he said, that basically there's a general prohibition
18 from Ameren recovering any construction costs from
19 the rebuild of the dam, but there are some
20 exceptions, and those exceptions are defined as
21 "allowed costs".

22 A. Correct.

23 Q. And allowed costs is specifically defined
24 in that consent agreement, isn't it?

25 A. Yes.

1 Q. It means enhancements, costs incurred due
2 to circumstances or conditions that were currently
3 not reasonably foreseeable, and costs that would have
4 been incurred absent the occurrence as allowed by
5 law. Did I read that correctly?

6 A. You did.

7 Q. Then it says, Ameren can seek recovery for
8 those allowed costs, provided they give the proper
9 notice. I think you testified that they did give the
10 proper notice.

11 A. They did.

12 Q. Then I think you also said it would be up
13 the Commission to decide.

14 A. That's correct.

15 COMMISSIONER JARRETT: I just wanted to
16 make sure I understood that. Thank you so much.

17 JUDGE WOODRUFF: Commissioner Kenney.

18 COMMISSIONER KENNEY: Okay. I've got some
19 more questions about the consent judgment itself, but
20 before I get to that, the attorney from the
21 Commission Staff -- and I don't know who it is
22 because I can't see who it was.

23 JUDGE WOODRUFF: It's Ms. Kliethermes.

24 COMMISSIONER KENNEY: That's who I thought
25 but --

1 QUESTIONS BY COMMISSIONER KENNEY:

2 Q. Ms. Kliethermes was asking you about a
3 meeting, and I just didn't hear. When did that
4 meeting take place?

5 A. I'm not sure of an exact date. If I
6 recall correctly, it was around the time that direct
7 testimony was going to be done. I'm trying to recall
8 if it was prior to direct or shortly after direct.

9 Q. So sometime --

10 A. February. Yeah, I'd say late January,
11 early February.

12 Q. Of 2011?

13 A. Yes.

14 Q. Where did that meeting occur?

15 A. The conference room on the eighth floor of
16 the Governor office building, Room 810.

17 Q. You said that our Staff members were
18 there, DNR's was there, and along with a
19 representative of the AG's office, and I didn't hear
20 who else was there.

21 A. I briefly thought that Office of Public
22 Counsel had been there, but rethought. No, I was
23 mixing that up with a different meeting.

24 Q. So it was just Staff and DNR?

25 A. Correct.

1 Q. No representatives from any other -- from
2 Department of Conservation Commission?

3 A. No, sir.

4 Q. Was the purpose of the meeting to talk
5 about Taum Sauk or just talk about the rate case
6 generally?

7 A. Taum Sauk?

8 Q. It was specifically to talk about Taum
9 Sauk?

10 A. Yes, sir.

11 Q. Who called that meeting?

12 A. We were contacted, I believe, by Staff.

13 Q. What was the purpose in Staff contacting
14 DNR specifically about Taum Sauk, if you know?

15 A. Mostly, it was just -- as I discussed with
16 Ms. Kliethermes, the meeting was more of an exchange
17 of ideas and first thoughts of possible positions and
18 seeing if there was information that we needed to
19 share. Nothing concrete.

20 It was not like -- I wouldn't call it a
21 meeting to set strategy, just simply a meeting to
22 gather some information and start talking about this
23 issue where it might go in this case.

24 Q. All right. I'm going to come back after I
25 ask some other questions, just some kind of

1 background questions.

2 You began your employment at DNR in 2007;
3 right?

4 A. Yep.

5 Q. When about in 2007?

6 A. April.

7 Q. So you got there before the consent
8 judgment was signed?

9 A. Correct.

10 Q. Were you involved at all in the
11 negotiation or drafting of the consent judgment?

12 A. No, sir.

13 Q. Have you seen the consent judgment in its
14 entirety?

15 A. I have.

16 Q. When was the first time you saw it in its
17 entirety?

18 A. Prior to filing direct testimony in this
19 case.

20 Q. Okay. So you didn't see it at the time in
21 2007 when it was executed?

22 A. No, sir.

23 Q. Who was the director of DNR when you
24 started?

25 A. Doyle Childers.

1 Q. Would you have ever had any conversations
2 with Mr. Childers about the circumstances of the
3 execution of the consent judgement?

4 A. I would not have, no.

5 Q. Would you have had conversations with
6 anybody at DNR about the consent judgment and the
7 negotiations of the terms and its subsequent
8 execution?

9 A. I would not have personally, no.

10 Q. So when's the first time that you were --
11 forget that question.

12 You said on page 12 of your direct
13 testimony, and it's the first sentence of your answer
14 to the question that's on the preceding page -- you
15 express concern with these costs, and you say that,
16 My concern with these costs is related to a consent
17 judgment, and then the rest of the language sets
18 forth the title of the consent judgment and the
19 circuit court it was filed in, but you never
20 specifically say what the nature of your concerns
21 is. What exactly is the nature of your concern?

22 A. My concern, really, was that the
23 Commission be aware of this consent judgment in this
24 particular case and that these provisions were in
25 that, because we knew from the filing from Ameren

1 that they were seeking recovery of some of the costs
2 associated to rebuilding the Taum Sauk reservoir.

3 Q. So you just wanted us to be aware of the
4 existence of the consent judgment itself?

5 A. That's correct.

6 Q. Was there some question about whether the
7 Commission would be aware of the consent judgment
8 itself?

9 A. No, not really. I just wanted to ensure
10 that it was in the record here in this particular
11 case.

12 Q. Why did you decide to pull out those two
13 specific paragraphs as opposed to anything else in
14 those 40 or 50 pages?

15 A. I could have put the whole 40 or 50 pages
16 in, I guess. Mostly because these focused on costs
17 for which Ameren might seek recovery.

18 Q. Okay.

19 A. In other words, it would have a specific
20 rate impact.

21 Q. Okay. Now, you've testified in other rate
22 cases before this Commission, and you've even worked
23 here; right?

24 A. Yes.

25 Q. How at DNR are the positions determined

1 that are going to be taken in a particular rate case?

2 A. They're discussed within a particular
3 group within the Division of Energy. We have a
4 section called the Policy and Planning Division, and
5 whenever a new rate case is opened at the Commission,
6 there is a discussion as to who will work on that
7 particular case.

8 And from that point forward it's a bit of
9 a team effort, as I think it is with most parties,
10 involving whatever the Staff person is that's working
11 on it, the manager of that department or that section
12 of the Division of Energy, which is Brenda Wilburs.

13 In the last slightly more than a year we
14 also now have some internal assistants from Ms. Mary
15 Ann Young and then we also engage our attorney from
16 the Attorney General's office.

17 Q. Who is Ms. Frazier; right?

18 A. Yes, sir.

19 Q. Has it been Ms. Frazier throughout this
20 case?

21 A. Yes, it has.

22 Q. Who's on the team at DNR that worked
23 specifically on this Taum Sauk issue?

24 A. Me.

25 Q. Let me ask it another way. Was anybody

1 else at that meeting with you in January of 2011 --

2 A. No.

3 Q. -- for DNR?

4 A. No.

5 Q. Okay.

6 A. Ms. Wilburs, by the way, was not present
7 at that meeting. It was just myself, Ms. Young, and
8 Ms. Frazier.

9 Q. Did you have conversations with anybody at
10 DNR that would have been on your team specifically
11 about the position DNR was going to take with respect
12 to Taum Sauk?

13 A. Yes, sir.

14 Q. With whom did you have those discussions?

15 A. Brenda Wilburs, manager of the Policy and
16 Planning group within the Division of Energy; Mary
17 Ann Young, who is in-house counsel. A young
18 gentleman new to our Staff has been assisting some,
19 Mr. Eric Jasso, J-a-s-s-o. And if there was anyone
20 else, it would have only been very much in passing.

21 Q. So Brenda Wilburs, Mary Ann Young, and
22 Eric Jasso?

23 A. Yes.

24 Q. I'm assuming Mr. Jasso was not around in
25 '07 when the consent judgment was signed.

1 A. That's correct.

2 Q. What about Ms. Young and Ms. Wilburs?

3 A. Ms. Wilburs would have been. Ms. Young
4 joined our Staff approximately a year and a half ago.

5 Q. How many discussions would you have had
6 specifically about what DNR's position was going to
7 be with respect to Taum Sauk?

8 A. Oh, that's difficult for me to say. We
9 often get together to discuss the case as a whole and
10 touch on, you know, all of the issues that we're
11 focusing, but I would say just preceding each round
12 of written testimony we would definitely have a very
13 specific meeting to discuss where to go with each
14 issue.

15 Q. So in February of 2011, when your direct
16 testimony was filed, you would have had a discussion
17 about what your position was going to be?

18 A. Yes, sir.

19 Q. In February of 2011, DNR didn't take a
20 position at that point; right?

21 A. We did not take a position in terms of
22 whether or not any of the recovery amounts -- the
23 amounts of cost that Ameren was seeking to recover,
24 as to whether or not those are allowed.

25 Q. But then -- go ahead. I'm sorry.

1 A. As I stated earlier, we believe that that
2 really is the jurisdiction of the Commission, and not
3 DNR.

4 Q. And I agree with you, but between February
5 8, 2011, and then March 25, 2011, when you filed your
6 rebuttal testimony, there's a specific sentence, an
7 explicit sentence, on page 19 that reads, MDNR has no
8 position on the determination of what costs, if any,
9 et cetera, et cetera.

10 A. Correct.

11 Q. So between February and March, was it a
12 conscious decision to be affirmatively more explicit
13 in your rebuttal testimony?

14 A. Yes, it was.

15 Q. Why?

16 A. For the very reason you brought up
17 earlier, the very first sentence on page 12 of my
18 direct, where I stated that -- my concern with these
19 costs is related to the consent judgment, and then I
20 didn't think we had been very clear and we wanted to
21 clarify that our concern only was that the Commission
22 be aware of this consent judgment, but that we
23 have -- our concern in terms of the costs that are
24 being requested to be recovered are outside of the
25 jurisdiction, or even the arena, that DNR would be

1 comfortable expressing a specific opinion.

2 Q. I'm going to ask you a question that may
3 be confusing, so I'm going to try to be very careful
4 about it. The determination of whether specific
5 costs would be recovered is the Commission's
6 determination; correct?

7 A. Correct.

8 Q. Would you agree with me that the consent
9 judgment specifies whether particular costs are
10 allowed to be pursued in the first place?

11 A. Yes.

12 Q. Okay. Did you and Ms. Wilburs and
13 Ms. Young ever have a conversation about what is
14 meant by "enhancements" as it's used in the ratepayer
15 protection paragraph?

16 A. We have had discussions.

17 Q. I'm not asking -- I'm just asking you
18 whether you had those conversations or not at this
19 point.

20 A. Yes.

21 Q. You did have a discussion about what was
22 meant by "enhancements"?

23 A. Yes.

24 Q. Okay. Did you have that conversation
25 because it was not readily apparent what was meant by

1 "enhancements"?

2 A. Yes, that probably started the
3 conversation and, then it grew from there to, How
4 would one identify an enhancement given the change in
5 time from the time the original Taum Sauk reservoir
6 was built until this rebuild, but it was really more
7 of a -- what I would characterize as a discussion of
8 interest because we had realized that in terms of
9 determining what really is truly allowable is, as
10 we've stated before, and you agree, is definitely the
11 Commission's jurisdiction, not ours.

12 Q. I agree with you about that. I'm just
13 curious if there was ever a discussion about what was
14 mean by the word "enhancements" when the consent
15 judgment was drafted.

16 A. I'm not aware. I wasn't with DNR at the
17 time it was drafted.

18 Q. No, I understand you weren't there when it
19 was drafted.

20 My question is slightly different. Did
21 you and Ms. Wilburs and Ms. Young sit around and have
22 a discussion and say, Gee. I wondered what they
23 meant by "enhancements" when they drafted this thing.

24 MS. FRAZIER: Excuse me, your Honor. I do
25 need to caution my witness about the issue of

1 attorney-client privilege.

2 COMMISSIONER KENNEY: About what?

3 MS. FRAZIER: Attorney-client privilege,
4 Commissioner.

5 COMMISSIONER KENNEY: I'm asking about
6 conversations with Brenda Wilburs and Mary Ann Young
7 and Eric Jasso and whether those conversations
8 happened at this point.

9 MS. FRAZIER: And Mary Ann Young is the
10 Department's in-house counsel, sir.

11 COMMISSIONER KENNEY: Are you instructing
12 her not to answer then?

13 MS. FRAZIER: If she can answer in a way
14 that won't reveal the substance of those privileged
15 conversations, I'd like her to go ahead and try to
16 answer.

17 COMMISSIONER KENNEY: All right. So
18 you're asserting attorney-client privilege. Let me
19 withdraw the question and ask it a different way.

20 BY COMMISSIONER KENNEY:

21 Q. Did you and Ms. Wilburs and Ms. Young and
22 Mr. Jasso -- and the question I'm going to ask is
23 whether you had the conversation or not, not the
24 substance of it -- whether you-all had a conversation
25 specifically about what the drafters of the consent

1 judgment intended by the word "enhancements"?

2 A. No.

3 Q. You never had that conversation?

4 A. The gist of the conversation would be --
5 it would be more accurate to say there were
6 discussions as to what might be considered an
7 enhancement, not so much what the drafters of the
8 consent judgment thought would be an enhancement.

9 Q. Are you aware of whether Ms. Young or
10 Ms. Wilburs or Mr. Jasso or yourself ever had any
11 conversations with the people that drafted the
12 consent judgment?

13 A. I'm unaware.

14 Q. Were you deposed in this case?

15 A. No, sir.

16 Q. How was it determined that you would be
17 the witness to present the Department's position in
18 this case as opposed to Ms. Wilburs or somebody else?

19 A. It was a decision made within our
20 department -- within our division. My -- if you're
21 asking -- my understanding --

22 Q. Who decided you would be the one to file
23 testimony?

24 A. My understanding is Brenda Wilburs did.

25 Q. Say that again.

1 A. My understanding is Brenda Wilburs made
2 that decision.

3 Q. Do you know why that decision was made?

4 A. No, sir.

5 Q. Okay. Did you ever ask anybody other than
6 your lawyer -- I guess that would just leave
7 Ms. Wilburs, or anybody else at DNR, what was meant
8 by the word "enhancements"?

9 A. No, I did not.

10 Q. Did it happen at some point that you-all
11 decided, that's the PSC's department. Let's not keep
12 bothering ourselves about that?

13 A. After reviewing the consent agreement,
14 yes, basically. We felt like the consent agreement
15 and the consent judgment maintained that
16 determination as being the PSC's jurisdiction, not
17 ours.

18 Q. The determination about what?

19 A. Whether --

20 Q. Whether it was, in fact, an enhancement
21 or --

22 A. Yes, the costs associated to any part of
23 the construction, whether or not those were an
24 enhancement, and then therefore an allowed cost.

25 Q. So it was determined at some point at DNR

1 that PSC should determine what was actually an
2 enhancement?

3 A. Correct.

4 Q. Okay. Do you know -- do you have a copy
5 of the consent judgment in front of you?

6 A. I don't have the entire judgment, no, sir.

7 Q. Commissioner Jarrett was asking you about
8 those two paragraphs that are in your testimony on
9 page 12.

10 A. Yes, sir.

11 Q. And the ratepayer protection paragraph has
12 the phrase "allowed costs" in quotes; right?

13 A. Yes.

14 Q. Then it goes on to say what allowed costs
15 means.

16 A. Correct.

17 Q. Right?

18 In the consent judgment itself, is there
19 a separate section that's denominated "Definitions"?

20 A. Not that I'm aware of, but it's been a
21 time since I read the entire --

22 Q. Does anybody there have a copy of the
23 consent judgment?

24 MS. FRAZIER: I do, your Honor, if I may
25 approach.

1 JUDGE WOODRUFF: You certainly may.

2 BY COMMISSIONER KENNEY:

3 Q. Do you have a copy of it?

4 A. I do.

5 Q. Take a look at pages two and three.

6 A. Okay.

7 Q. What's on the bottom of page 2 and top of
8 page 3?

9 A. Do you want me to begin with definition?

10 Q. Right. So there's a section denominated
11 "Definitions"; right?

12 A. Yes.

13 Q. Does the phrase "allowed costs" appear
14 anywhere in those definitions?

15 A. No, sir.

16 Q. How about "enhancements"?

17 A. No.

18 Q. Okay. Did you ever have any discussions
19 with anybody at DNR about why those phrases weren't
20 more specifically defined?

21 A. No.

22 Q. How about at the meeting between Staff,
23 our Staff, and DNR? Was there ever any discussion
24 specifically about the phrase "enhancements"?

25 A. Yes.

1 Q. Was there ever any discussion about what
2 was intended at the time that the consent judgment
3 was drafted?

4 A. I don't recall any discussion about what
5 the intended definition or what the intended meaning
6 was. It was more of, How do we interpret that now at
7 this point in time?

8 Q. What was the substance of those
9 conversations, as best you can recollect?

10 A. I think a lot of it hinged -- a lot of it
11 focused on the difficulty in identifying what is an
12 enhancement, mostly because it would be impossible to
13 rebuild that reservoir as it was built originally
14 because of changes in requirements.

15 That's my understanding from listening to
16 members from the Staff, that the standards had
17 changed, building methods had changed, those kinds of
18 things, so it was hard -- wasn't -- wasn't going to
19 be an easy exercise, necessarily, to just look at
20 each thing that had been constructed now and say
21 that's simply replacing, versus this is an
22 enhancements.

23 Q. Were any conclusions reached?

24 A. No, sir.

25 Q. So it was virtually impossible to

1 determine what was an enhancement because of the
2 changed circumstances between 1963, when it was
3 built, and 2006 when the construction began?

4 A. It was -- I wouldn't say it was
5 impossible, more that -- the fact that the building
6 standards had changed was just going to make it
7 difficult. In other words, it wasn't going to be an
8 easy task of saying, Well, we've just replaced this
9 exactly as we've done it, and now all of these extras
10 have been done. The construction and various
11 standards have changed. That was my understanding
12 from that discussion.

13 Q. Who from our Staff was contributing to
14 that discussion?

15 A. Staff counsel was there,
16 Ms. Kliethermes --

17 Q. Okay.

18 A. -- and Mr. Dottheim. Guy Gilbert was
19 there. And for a time I believe Lisa Cramer was
20 there and Bob Shallenberg. Those are the only ones I
21 can recall.

22 Q. Do you know if anybody from our Staff or
23 from DNR Staff ever reached out to anybody from
24 Department of Conservation Commission?

25 A. I'm not aware of that. I'm sorry?

1 Q. Okay. No, go ahead, I'm sorry.

2 A. Could you finish the question?

3 Q. Whether anybody from DNR or from our Staff
4 every reached out from any representatives from the
5 Conservation Commission?

6 A. Not that I'm aware of.
7 I'm sorry. I keep cutting you off.

8 Q. That's okay. That's all right.
9 You said "not that you're aware of." I'm
10 thinking. I'm sorry.

11 A. It's okay.

12 COMMISSIONER KENNEY: I don't think I have
13 any more questions right now. Thank you for your
14 indulgence.

15 THE WITNESS: You're welcome.

16 JUDGE WOODRUFF: Commissioner Davis, did
17 you have something else?

18 QUESTIONS BY COMMISSIONER DAVIS:

19 Q. Ms. Wolfe?

20 A. Yes, sir.

21 Q. Does Bill Bryan still work at the --
22 William James Brian, Bill Brian, does he still work
23 at DNR?

24 A. I'm not sure. Sorry. I can deliver a
25 message, if you like.

1 Q. Well, no. I was just curious, because he
2 is a signer on this document for Attorney General Jay
3 Nixon in this case, and he was appointed director of
4 the Division of State Parks at DNR in September of
5 2009, and so --

6 A. I think he is still there.

7 Q. You think he is --

8 A. I think so, yeah.

9 Q. Still there? Okay.

10 Was he ever involved in any of these
11 conversations?

12 A. I was not involved in any conversation
13 with him. I don't know if there were other
14 conversations that took place.

15 Q. He even served as interim department
16 director, didn't he?

17 A. No, we had Mr. Bid Boyle for a time.

18 COMMISSIONER DAVIS: Okay. No further
19 questions, Judge.

20 JUDGE WOODRUFF: Any recross based on
21 questions from the Bench?

22 Looks like Public Counsel is first in
23 line.

24 RECROSS-EXAMINATION BY MR. MILLS:

25 Q. Ms. Wolfe, Commissioner Kenney asked you a

1 number of questions about conversations you had about
2 the word "enhancements." Do you recall that?

3 A. Yes, sir.

4 Q. In those conversations, was the concept of
5 a discrete enhancement ever discussed?

6 A. Like a specific identifiable --

7 Q. Specifically the phrase "discrete
8 enhancements".

9 A. Not that I recall.

10 Q. You mentioned a number of staff members
11 that were in the meeting at 810. Was Aaron Carley,
12 who did the auditing side of the construction audit,
13 there? Do you recall?

14 A. I don't recall meeting Aaron, no.

15 Q. Now, you were asked a number of questions
16 about the consent judgment, and just sort of as a big
17 picture view, the consent judgment was essentially a
18 settlement between AmerenUE and various state
19 entities; is that correct?

20 A. That's correct.

21 Q. In terms of the settlement, is it your
22 understanding that Ameren gave up some things and got
23 some things and the State gave up some things and got
24 some things?

25 A. That would -- yeah.

1 Q. One of the things that that give-and-take
2 led to is reflected on page 12 of your direct
3 testimony in paragraph two from the consent
4 agreement, is it not? AmerenUE agreed to rebuild the
5 reservoir?

6 A. Yes, sir.

7 Q. They not only agreed to rebuild it, but
8 they agreed to rebuild it according to all
9 requirements of construction of any federal agency
10 that had oversight; correct?

11 A. Correct.

12 Q. That would include the FERC, correct --

13 A. Correct.

14 Q. -- specifically mentioned there?

15 Is anything in that paragraph that says
16 that changes from the original construction to meet
17 the, quote, all requirements of construction of the
18 federal agencies, constitutes an enhancement?

19 A. There's no language in that paragraph
20 defining an enhancement.

21 Q. Could there have been?

22 A. I suppose, yes.

23 MR. MILLS: Nothing further. Thank you.

24 JUDGE WOODRUFF: For Staff?

25 MS. KLIETHERMES: Just briefly.

1 RE-CROSS-EXAMINATION BY MS. KLIETHERMES:

2 Q. You were asked about who was at that
3 meeting with Staff in 810. Do you recall if there
4 were some conference call participants from the
5 St. Louis Staff office.

6 A. I don't recall.

7 Q. Would it surprise you if Aaron Carley and
8 Steve Rackers were conference call participants?

9 A. It would not surprise me?

10 Q. Might there have been additional
11 conference call participants?

12 A. Possible, yes.

13 Q. I strongly encourage your counsel to
14 redirect you on these points if I get anything wrong
15 on what I'm about to ask you about, but do you know
16 whether Ms. Frazier is a former employee of state
17 Parks under DNR?

18 A. I'm not aware of that. I don't know.

19 Q. Do you know whether she worked for State
20 Parks while she was at the Attorney General's office?

21 A. I don't know.

22 Q. Do you know if she was involved in the
23 drafting of the consent judgement in any capacity?

24 A. I do not know.

25 MS. KLIETHERMES: Thank you.

1 JUDGE WOODRUFF: For Ameren.

2 MR. BYRNE. Hi, Ms. Wolfe.

3 THE WITNESS: Hi.

4 RE-CROSS-EXAMINATION BY MR. BYRNE:

5 Q. I wanted to ask about a couple of people
6 that were participants in these discussions. One
7 person that you mentioned was Ms. Brenda Wilbur.

8 A. Wilburs.

9 Q. Wilburs. I'm sorry.

10 And what's Ms. Wilburs' title again?

11 A. Manager, Policy and Planning Section, I
12 guess. something like that.

13 Q. To whom does Ms. Wilburs report, if you
14 know?

15 A. At this point in time?

16 Q. Yes.

17 A. She reports to -- we have an acting
18 director and an acting assistant director. The
19 acting director is Joe Gillman, and the acting
20 assistant director is Andrea Kliethermes.

21 Q. And which one of those does she report to?

22 A. My guess is it's directly to Andrea.
23 That's my understanding. Mr. Gillman is not always
24 available.

25 Q. Do you know how long Ms. Wilburs has

1 worked at the Department of Natural Resources?

2 A. Not exactly, but several years.

3 Q. Would she have been employed there as long
4 ago as 2005 when the Taum Sauk breach occurred?

5 A. Possibly. Quite likely.

6 Q. Do you know if she would have had any
7 involvement with the Taum Sauk issues following the
8 breach?

9 A. I don't know.

10 Q. Do you know if she had any involvement in
11 working on the consent agreement?

12 A. I don't know.

13 Q. Would you have expected her to have had
14 involvement in that?

15 A. I don't know. The issue at the time, I
16 think, focused more on our parks and historic
17 preservation and restoring Johnson Shut-Ins, moreso,
18 than an energy issue at the time.

19 Q. I was also going to ask -- maybe you've
20 gotten these questions about Ms. Frazier. Do you
21 know to what extent she was involved in any of the
22 things around Taum Sauk?

23 A. No, I don't know.

24 MR. BYRNE: All right. Thank you,
25 Ms. Wolfe.

1 JUDGE WOODRUFF: Redirect.

2 MS. FRAZIER: Thank you.

3 REDIRECT EXAMINATION BY MS. FRAZIER:

4 Q. commissioner Kenney asked you a couple of
5 questions regarding this meeting that occurred with
6 the Staff, and one of those questions was, Who
7 initiated that meeting? And I believe you testified
8 it was the Public Service Commission. You weren't
9 involved in the arrangements for that meeting, were
10 you?

11 A. No, I was not.

12 Q. Would it surprise you to know that I'm
13 actually the one who contacted the Staff and asked
14 for the meeting?

15 A. It would not surprise me, no.

16 Q. And do you remember Commissioner Kenney
17 asking you some questions about who within the
18 Department worked on developing or not developing the
19 Department's position on Taum Sauk in this rate case?

20 A. Yes.

21 Q. You indicated that your only conversations
22 were with Mary Ann Young, Brenda Wilburs and
23 Mr. Jasso; right?

24 A. Correct.

25 Q. Does Brenda Wilburs and/or Mary Ann Young

1 ever consult with higher persons within the DNR
2 management in developing positions in rate cases?

3 A. Yes, they do.

4 Q. Would you have any knowledge of them
5 consulting with higher management in DNR on this rate
6 case?

7 A. I'm sure they did.

8 Q. There's been some questions about my
9 involvement in the negotiation of the consent
10 decree. Have I ever talked to you about my
11 involvement?

12 A. No, ma'am.

13 Q. Would it surprise you to learn that I had
14 no involvement in the ratepayer protection provision?

15 A. No, it would not.

16 MS. FRAZIER: I have no further questions.

17 JUDGE WOODRUFF: All right. Thank you.

18 COMMISSIONER KENNEY: I have more now.

19 JUDGE WOODRUFF: All right.

20 COMMISSIONER KENNEY: Sorry. I think
21 Ms. Frazier is dangerously close to turning herself
22 into a witness.

23 THE WITNESS: Can I trade seats with her?

24 QUESTIONS BY COMMISSIONER KENNEY:

25 Q. Ms. Frazier asked you whether you were

1 aware of Ms. Wilbur's and Ms. Young consulting with
2 other folks in developing positions.

3 A. Yes.

4 Q. And you responded, "yes"; right?

5 A. Yes.

6 Q. Do you know if that is the case
7 specifically with respect to DNR's position on Taum
8 Sauk, whether they discussed that with anybody else?

9 A. Only in passing did I hear while chatting
10 with them, literally in the hallway, that they were
11 meeting later with some of the management team. I
12 don't know the specific individuals, but that they
13 would be meeting with the management team to discuss
14 Taum Sauk.

15 Q. Was that before your direct testimony was
16 prepared?

17 A. Yes.

18 Q. How long before your direct testimony was
19 prepared did you have that conversation in passing?

20 A. I would say it was probably three to three
21 and a half weeks before.

22 Q. Did Ms. Wilburs ever tell you the
23 substance of the discussions she had with management?

24 A. Yes.

25 Q. What were those -- what were the substance

1 of those discussions?

2 A. She told me in terms of what we would be
3 putting in -- you know, what we would be presenting
4 as our position -- or what I would be presenting as
5 DNR's position and testimony and that that -- the
6 determination of enhancements and therefore allowed
7 costs would be the jurisdiction of the PSC and that
8 we would not take a position on that.

9 Q. All right. So that position that you
10 developed in your direct and rebuttal testimony was
11 directly as a result of a meeting that Ms. Wilburs
12 had with upper management at DNR?

13 A. I think that could be assumed from that,
14 yes.

15 Q. So Ms. Wilburs told you that this is going
16 to be DNR's position with respect to Taum Sauk?

17 A. Yes.

18 Q. Did she discuss with you the substance of
19 the conversations that got her and upper management
20 to arrive at that conclusion?

21 A. No, sir.

22 Q. Okay. Did you ask?

23 A. No, sir.

24 Q. Okay. Who is generally believed to have
25 been upper management at that time?

1 MS. KLIETHERMES: Just one for the utter
2 sake of clarity.

3 FURTHER CROSS-EXAMINATION BY MS. KLIETHERMES:

4 Q. To your knowledge, is the name Kliethermes
5 a very common name in Jefferson City.

6 A. In Jefferson City, and only in Jefferson
7 City.

8 Q. Would it surprise you that to my knowledge
9 I'm no relationship to the Andrea Kliethermes that
10 you mentioned?

11 A. No.

12 JUDGE WOODRUFF: Any redirect?

13 MS. FRAZIER: No.

14 JUDGE WOODRUFF: Then Ms. Wolfe, you can
15 step down.

16 We've got two more witnesses back on the
17 energy efficiency issue, and we've also been going
18 over two hours. We'll take a break if these
19 witnesses are going to take very long. If they're
20 just going to come up and say "hello" and "good"-bye,
21 then we'll go straight through.

22 Does anybody give me any guidance on
23 that?

24 MR. WILLIAMS: Staff has no questions of
25 either, unless it would be on recross after.

1 MS. TATRO: Same for Ameren Missouri.

2 JUDGE WOODRUFF: Let's push forward then.

3 Next witness, then, is Ryan kind.

4 Mr. Kind, you have previously testified
5 also, I believe --

6 MR. KIND: That's correct.

7 JUDGE WOODRUFF: -- so you're still under
8 oath.

9 RYAN KIND,
10 previously sworn, testified as follows:

11 MR. MILLS: He's still under oath. His
12 testimony has been admitted. He's ready for cross.

13 JUDGE WOODRUFF: Cross, beginning with
14 DNR.

15 MS. FRAZIER: None. Your Honor.

16 JUDGE WOODRUFF: MEG.

17 MS. LANGENECKERT: None, your Honor.

18 JUDGE WOODRUFF: MIEC.

19 MR. DOWNEY: No, your Honor.

20 JUDGE WOODRUFF: Staff.

21 MR. WILLIAMS: No questions.

22 JUDGE WOODRUFF: Ameren.

23 MS. TATRO: No questions.

24 THE WITNESS: Questions from the Bench?

25 Commissioner Davis.

1 COMMISSIONER DAVIS: I saw Mr. Kind last
2 night. Thank you.

3 JUDGE WOODRUFF: Commissioner Jarrett.

4 COMMISSIONER JARRETT: No.

5 JUDGE WOODRUFF: Commissioner Kenney.

6 COMMISSIONER KENNEY: No. Thank you.

7 JUDGE WOODRUFF: All right. Then if
8 there's no need for recross and redirect, you can
9 step down.

10 The next witness, then, is for MEG,
11 Ms. Sulaconte.

12 BILLIE SULACONTE,
13 previously sworn, testified as follows:

14 MS. LANGENECKERT: She's already been
15 sworn in and testimony has been admitted.

16 JUDGE WOODRUFF: You could tell us your
17 name, please, for the court reporter.

18 MS. SULACONTE: Billie Sulaconte.

19 JUDGE WOODRUFF: And for cross-
20 examination, then, again beginning with DNR?

21 MS. FRAZIER: No questions. Thank you.

22 JUDGE WOODRUFF: MIEC.

23 MR. DOWNEY: No questions.

24 JUDGE WOODRUFF: Public counsel.

25 MR. MILLS: No questions.

1 JUDGE WOODRUFF: Staff.

2 MR. WILLIAMS: No questions.

3 JUDGE WOODRUFF: Ameren.

4 MS. TATRO: No question.

5 JUDGE WOODRUFF: Questions from the
6 Bench? Commissioner Davis.

7 COMMISSIONER DAVIS: It's good to see you,
8 Ms. Sulaconte. No questions.

9 THE WITNESS: I don't get a waive?

10 COMMISSIONER DAVIS: It's almost 5:00
11 somewhere.

12 JUDGE WOODRUFF: Commissioner Jarrett.

13 COMMISSIONER JARRETT: No questions.

14 THE WITNESS: Thank you.

15 JUDGE WOODRUFF: Commissioner Kenney.

16 COMMISSIONER KENNEY. No. Thank you.

17 JUDGE WOODRUFF: So no need for recross or
18 redirect, and you can step down.

19 And that concludes energy efficiency and
20 DSM.

21 Anything we need to take up while we're
22 on the record?

23 COMMISSIONER KENNEY: Judge, I've got a
24 question.

25 JUDGE WOODRUFF: All right, Commissioner.

1 COMMISSIONER KENNEY: I'm full of them
2 today, and maybe it's for Mr. Byrne or Ms. Tatro.

3 JUDGE WOODRUFF: Go ahead.

4 COMMISSIONER KENNEY: Can they hear me?

5 JUDGE WOODRUFF: They can hear you.

6 COMMISSIONER KENNEY: I am struggling with
7 the notion that "allowable costs" and "enhancements"
8 didn't find -- those terms didn't find their way into
9 the definition section, and maybe I am concerned for
10 nothing, and maybe I'm just missing the practice of
11 law, and so -- I don't know.

12 But it just occurs to me that there
13 should be somebody that can satisfy me about the
14 origins of those two terms, in particular, and the
15 discussions that were had that I'm just -- I'm not
16 satisfied, and I'm wondering if anybody can help me
17 to be satisfied with respect to the definition of
18 those two terms.

19 MR. BYRNE: Commissioner, I would like to
20 help you be satisfied.

21 COMMISSIONER KENNEY: I know.

22 MR. BYRNE: "Allowable costs," I think,
23 is -- even though it's not in the definition section,
24 I think it's defined in that section of the contract
25 that we've been looking at but --

1 COMMISSIONER KENNEY: It's in quotes, and
2 then it says "which means."

3 MS. BYRNE: Right. So there is a
4 definition. I think the problem you're having is the
5 word "enhancements" is not -- is part of that
6 definition and then that's not defined.

7 You're right, it's not defined in the
8 contract. I -- I did not draft the contract, but
9 I -- there's lots of words in the contract that
10 aren't defined, and I guess my -- from a contract
11 law --

12 COMMISSIONER KENNEY: Not as critical as
13 "enhancements" though.

14 MR. BYRNE: From contract law, I mean, my
15 understanding is you use dictionary definitions of
16 words that don't have a specific definition in the
17 contract.

18 COMMISSIONER KENNEY: Well, my
19 recollection of contract law is that when there's an
20 ambiguous term that we rely on parole or extrinsic
21 evidence to help us to determine the definition of
22 that term, and I'm just trying to get my brain around
23 what that extrinsic evidence might be.

24 MR. BYRNE: I think you may be right about
25 that. I think I was sick that day, but I do think

1 you're right.

2 COMMISSIONER KENNEY: I was there. I
3 wasn't.

4 Well, we don't have to solve the problem
5 now, but it's just something that's rattling around
6 in my brain that I'm going to continue to give more
7 thought to.

8 MR. BYRNE: Let us give some thought to
9 it, too, Commissioner, and perhaps we'll come back
10 with an idea.

11 COMMISSIONER KENNEY: Maybe DNR might want
12 to give some more thought to it. I don't know if
13 anybody from the Conservation Commission, if you-all
14 are in contact with any of those folks that might
15 want to give some thought to it as well. That's just
16 a thought that I had.

17 COMMISSIONER DAVIS. Commissioner Kenney,
18 while we're here on the record, I'm just going to
19 make a suggestion to you, and I don't know that this
20 is worth anything or not, but as I look on this
21 document, there are four signers on the document.
22 There are Bill Bryant, who is currently employed at
23 DNR. There's Steve Sullivan, who is still currently
24 employed by Ameren., there is John Hoskins, who I
25 believe has retired, and Doyle Childers, who is now a

1 lobbyist, so I guess if you're looking for more
2 guidance, I mean, you could potentially subpoena
3 those people and bring them in.

4 COMMISSIONER KENNEY: Well, yeah. Listen,
5 I think that's not an unoriginal thought, but I don't
6 know that that's the most efficient way to do it, and
7 I'm not necessarily sure that the folks who signed
8 this were the actual folks that negotiated it and had
9 the discussions about what specific terms meant, so
10 that's why I'd like to -- I'd like to give the
11 parties the opportunity to come up with an answer to
12 my questions before we go down that road, but I thank
13 you for the suggestion, Commissioner Davis.

14 MS. BYRNE: Let us think about it,
15 Commissioner, and we'll come back and tell you what
16 we think.

17 COMMISSIONER KENNEY: Thank you.

18 JUDGE WOODRUFF: We have at least two more
19 days of hearing, so we'll have an opportunity.

20 COMMISSIONER KENNEY: Thanks, Judge.

21 JUDGE WOODRUFF: Thanks, Commissioner.

22 Okay. Well, anything else anyone wants
23 to put on the record while we're here? Otherwise,
24 we'll come back tomorrow morning with -- actually, I
25 believe we'll start with Kip Smith tomorrow and then

1 move into solar rebate AEO and LED lighting.

2 With that we are adjourned for the day,

3 and it's 5:00.

4 (WHEREUPON, the hearing adjourned until

5 8:30 a.m. on Friday, May 6, 2011.)

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CERTIFICATE

1
2 I, Nancy L. Silva, RPR, a Certified Court
3 Reporter, CCR No. 890, the officer before whom the
4 foregoing hearing was taken, do hereby certify that
5 the witness whose testimony appears in the foregoing
6 hearing was duly sworn; that the testimony of said
7 witness was taken by me to the best of my ability and
8 thereafter reduced to typewriting under my direction;
9 that I am neither counsel for, related to, nor
10 employed by any of the parties to the action in which
11 this hearing was taken, and further, that I am not a
12 relative or employee of any attorney or counsel
13 employed by the parties thereto, nor financially or
14 otherwise interested in the outcome of the action.

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16 _____
17 Nancy L. Silva, RPR, CCR
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Staff Exhibit No. 245

Lost Revenue Recovery Mechanism 1882 1887

Staff Exhibit No. 246

Supplemental Testimony of John Rogers 1960 1961

Staff Exhibit No. 247

Supplemental Testimony of Lena Mantle 2001 2001