

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

May 6, 2011

Jefferson City, Missouri

Volume 28

In The Matter Of Union)	
Electric Company d/b/a)	
AmerenUE's Tariff To Increase)	File No. ER-2011-0028
Its Annual Revenue For)	
Electric Service)	

MORRIS WOODRUFF, Presiding
 CHIEF REGULATORY LAW JUDGE

KEVIN GUNN, Chairman,
 JEFF DAVIS,
 TERRY JARRETT,
 ROBERT S. KENNEY

COMMISSIONERS.

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1 JUDGE WOODRUFF: Let's come to order, please.
2 Okay. Let's get started again this morning. Back for
3 another day of the Ameren Missouri rate case. Mr. Schwarz,
4 you want to be recognized first here.

5 MR. SCHWARZ: Yes, I would. When we heard the
6 issue of property taxes, I offered three exhibits. The
7 Commission asked me to get certified copies of those exhibits
8 from the State Tax Commission. I have done so, however the
9 Tax Commission certified them as a single document, so I
10 would like to withdraw Exhibits 502, 503, 504. And in lieu
11 thereof, submit the combined document, which I would ask be
12 marked as Exhibit 505.

13 JUDGE WOODRUFF: All right.

14 MR. SCHWARZ: I have corrected the page that
15 had Adair County information instead of St. Charles County
16 information. That's the only change.

17 JUDGE WOODRUFF: All right.

18 (Exhibit No. 505 was marked for identification
19 by the Court Reporter.)

20 JUDGE WOODRUFF: All right. 505 has been
21 offered. Any objections to its receipt?

22 MR. BYRNE: No, Your Honor.

23 JUDGE WOODRUFF: All right. Hearing no
24 objections, it will be received.

25 (Exhibit No. 505 was received into evidence.)

1 Any other matters anyone wants to bring up
2 before we go on to our first witness of the day? Hearing
3 none --

4 MR. SCHWARZ: Judge.

5 JUDGE WOODRUFF: Yes.

6 MR. SCHWARZ: I would like to inform the
7 Commission that the non-utility parties, the consumers have
8 reached an agreement in principle on a settlement for rate
9 design.

10 JUDGE WOODRUFF: Really.

11 MR. SCHWARZ: It is not yet unanimous. We
12 have not heard from a couple of them, but I can tell you that
13 the Office of the Public Counsel, MEUA, MRA, MIEC and the
14 AARP, Consumers Counsel of Missouri have reached an
15 agreement.

16 We still need to talk with a couple of others
17 that we haven't heard from yet and we would like to postpone
18 the hearing on rate design until the 12th to give us time to
19 reduce it finally to writing and see if it's going to be
20 unanimous or if there will be -- Staff, I think, will not
21 oppose. I don't know that they'll join it. And that Staff's
22 position will depend on the final elements of the agreement.

23 Mr. Smith would be able to return for the
24 hearing on the 12th, I'm informed, and we believe that moving
25 the hearing will improve the chances for getting a unanimous

1 stip.

2 JUDGE WOODRUFF: All right. The 12th will be
3 next Thursday.

4 MR. SCHWARZ: Next Thursday.

5 JUDGE WOODRUFF: All right. If it did not
6 settle, would we be able to do the entire issue on the 12th?
7 Because I don't want to go into Friday.

8 MR. SCHWARZ: No, no. Well, I'm -- I think
9 the -- yes, I think we would be able to.

10 JUDGE WOODRUFF: All right. And we would
11 still be doing the Union issues on Tuesday.

12 MR. SCHWARZ: We would propose no other
13 changes in the schedule.

14 JUDGE WOODRUFF: All right. All right. I'll
15 ask the other parties who are here if they have any
16 objections to making that change. Start with Staff.

17 MS. KLIETHERMES: Staff has no objection. I'm
18 not quite sure I heard Mr. Schwarz entirely. Just for
19 clarity, Staff is not sure of its position on the settlement
20 or proposed settlement at this time.

21 JUDGE WOODRUFF: Okay. And for Ameren?

22 MR. BYRNE: I don't think we object. Same as
23 Staff. We haven't seen the settlement to know what our
24 position is. But I guess to the extent we're going to delay
25 -- Mr. Smith is going to be taken out of the order, I guess I

1 would ask for a -- maybe a one-hour delay in starting this
2 morning. We're not completely ready and don't completely
3 have all our people here since we were counting on Mr. Smith
4 to be on the witness stand.

5 JUDGE WOODRUFF: Right. Which means we would
6 just go on the LED issue -- and what was the other issue for
7 today?

8 MR. BYRNE: Solar rebates.

9 JUDGE WOODRUFF: Solar rebates.

10 MR. BYRNE: It's going to be a pretty light
11 day, I think, Your Honor, but we're just not quite ready
12 because we expected Mr. Smith to be testifying.

13 JUDGE WOODRUFF: And so if there is no
14 settlement, Mr. Smith would be back on Thursday?

15 MR. SCHWARZ: On Thursday, the 12th.

16 COMMISSIONER DAVIS: Judge, can I inquire of
17 Mr. Woodsmall for one brief moment?

18 JUDGE WOODRUFF: Certainly.

19 COMMISSIONER DAVIS: Mr. Woodsmall, I went
20 back and was looking at the transcript from the ER-2010 case,
21 and there was something that I was a little unclear about and
22 I was hoping that you could clear it up for me. You did get
23 the opportunity to look at Mr. Feign's work papers in the
24 2010 case; did you not?

25 MR. WOODSMALL: I was presented work papers,

1 yes. I got an opportunity to look at them. I don't know if
2 they were complete, but I did look at what they gave me.

3 COMMISSIONER DAVIS: Okay. So one, you don't
4 know if they were complete. And two, it's come up here about
5 the -- I get CRA and CRU confused sometimes.

6 MR. WOODSMALL: CRU.

7 COMMISSIONER DAVIS: The CRU data. Do you
8 recall, was the CRU data that was provided to you in
9 spreadsheet form, was that -- could you tell was that
10 original CRU data or had it been -- was it CRU data that had
11 been extrapolated and put in an Excel work sheet by someone
12 else and provided to you by Mr. Feign?

13 MR. WOODSMALL: The answer to that is neither.
14 As I understand CRU data, it's a database that's on line.

15 COMMISSIONER DAVIS: So you go print the
16 report and print it off.

17 MR. WOODSMALL: That would have to be what
18 happened. From other data requests, I know that Mr. Feign
19 did not have access to CRU, so it was provided by Noranda.

20 COMMISSIONER DAVIS: Right. Okay. But you
21 felt good that it was the original CRU report.

22 MR. WOODSMALL: I have no reason to doubt it.

23 COMMISSIONER DAVIS: All right. That was all
24 I wanted to clear up. Thank you.

25 JUDGE WOODRUFF: Commissioner Jarrett?

1 COMMISSIONER JARRETT: Yes. Mr. Woodsmall --
2 and I know there was some dispute in this case on getting
3 data. Have you gotten the data that you requested or are in
4 the process of getting the data you requested from Noranda?

5 MR. WOODSMALL: I've received all responses to
6 data requests, yes.

7 COMMISSIONER JARRETT: And you're satisfied
8 you got what you asked for?

9 MR. WOODSMALL: Yes.

10 COMMISSIONER JARRETT: Okay. Thank you.

11 MR. WOODSMALL: Thank you.

12 JUDGE WOODRUFF: All right, then. I guess
13 we'll call it a motion that was made to delay Mr. Smith's
14 testimony until next week and allow the parties more time,
15 and also delay the hearing of the class cost of service
16 issues hearing from Tuesday to Thursday to allow the parties
17 time to finalize the stipulation and agreement. I'm going to
18 go ahead and grant that motion. We'll take that up again on
19 Thursday.

20 We still have Union issues then on Tuesday and
21 Ameren had requested a delay of an hour to get the LED
22 lighting witnesses here. We'll grant that. We'll come back
23 at 9:30 to deal with the LED lighting.

24 MR. BYRNE: Thank you, Your Honor.

25 (A break was held.)

1 JUDGE WOODRUFF: All right. Let's come to
2 order, please. We're back from our break and Mr. Byrne, you
3 had something you wanted to bring up.

4 MR. BYRNE: Yes, Your Honor. Commissioner
5 Kenney raised some issues yesterday about the consent
6 agreement and enhancements and parole evidence and I said
7 yesterday that we would think about it and I have thought
8 about it and done a little bit of research on Missouri law
9 and I can briefly address that if you'd like me to.

10 JUDGE WOODRUFF: Go ahead.

11 MR. BYRNE: Okay. Commissioner Kenney, we
12 were able to take a look at some of the case law in Missouri
13 on contracts and parole evidence. And I guess the law in
14 Missouri basically starts out with the premise that if the
15 terms of the contract are unambiguous, then the contract has
16 to be enforced according to its terms without the resort to
17 parole evidence.

18 So the first question is: Are the terms
19 unambiguous. And whether a particular contract term is
20 unambiguous is a matter of law, it's not a matter of fact.
21 And a contract term does not become ambiguous just because
22 parties dispute what it means. It doesn't become ambiguous
23 because parties testify that they had different intents when
24 they entered into the contract. And of course we don't have
25 any of that in this case. We don't have any party saying

1 that they -- that they had a different intent or that they
2 disagree about that term.

3 A contract term under Missouri law is not
4 ambiguous just because it's not defined in the contract. The
5 question -- the question the Court has to decide or the
6 Commission in this case is whether the term has an ordinary
7 -- plain and ordinary meaning. And most of the time when
8 courts are looking at that, since most of the words in the
9 contract don't have separate definitions that are in the
10 contract, most of the time they look at a dictionary or they
11 look at other sources of what the plain and ordinary meaning
12 of the term is.

13 And in this case, in Ameren's view, at least,
14 or Ameren Missouri's view, the term "enhancements" is a term
15 that's susceptible of a plain and ordinary meaning. We
16 provided some testimony with a dictionary definition, but the
17 dictionary definition basically says it's an improvement or a
18 betterment. And, you know, we believe that's the plain and
19 ordinary meaning of the word and it's also a logical meaning
20 in this context because, to us, it is logical that if there
21 are improvements, if the Taum Sauk plant lasts longer or if
22 it produces more energy or if it's a safer, better more
23 stable structure, those enhancements are providing benefits
24 to customers and it's logical that they should pay for those
25 -- you know, pay for those benefits as opposed to, say,

1 clean-up costs or restoration of Johnson Shut-Ins or the
2 other costs -- the other 93 million dollar of costs that we
3 paid that are not asking to seek recovery.

4 COMMISSIONER KENNEY: Can I interrupt for a
5 second?

6 MR. BYRNE: Sure.

7 COMMISSIONER KENNEY: Because two points about
8 that. Well, first, there's no parties disputing the meaning
9 of the word "enhancements" because either they're not a party
10 to this case or because they've decided not to take a
11 position.

12 But secondarily, if that's the definition of
13 enhancements, then arguably the entire reconstruction of the
14 upper reservoir is an enhancement if the baseline against
15 which you're comparing it is the 1963 technology. So I would
16 argue that the term is, in fact, ambiguous unless we know the
17 baseline against which we're measuring. Is it an enhancement
18 other the 1963 technology or is it an enhancement over 2007
19 technology, which I think Dr. Rizzo testified it would not be
20 an enhancement over 2007 technology. I mean, so if the
21 baseline is 1963 technology, then the entire project is an
22 enhancement by that definition.

23 MR. BYRNE: Well, I don't necessarily agree
24 that the entire project is an enhancement, but I do think
25 there's evidence that more than 90 million dollars of the

1 project is an enhancement.

2 But in any event, the second thing I looked
3 at, Commissioner, is let's say you disagree with us and you
4 disagree that there's a plain and ordinary meaning of
5 "enhancements," and so you would -- if you decided that the
6 term is ambiguous, at that point courts do look at parole
7 evidence.

8 But the cases I looked at said that one of the
9 least persuasive forms of parole evidence is testimony from
10 the parties that entered into the contract after the fact
11 about what they intended when they entered into the contract.
12 In contrast, one of the most persuasive forms of parole
13 evidence is the conduct of the parties under the contract.

14 And I think in this case, there is conduct of
15 the parties that we can look at. And in particular, I'm
16 referring to the fact that -- that pursuant to the terms of
17 the contract, Ameren Missouri was required to and did provide
18 written notification that we were seeking recovery of the
19 costs in this case. And we went beyond providing the written
20 notification.

21 We actually sat down and met with each of the
22 agencies, the senior leaders at each of the agencies, the
23 exhibit that you asked us to put together has the PowerPoint
24 slide that we presented that showed the -- you know, the
25 arguments about the enhancements to Taum Salk.

1 And the conduct of the parties is two things.
2 One is if those parties who signed that agreement thought we
3 were violating it, first of all, we would be in contempt of
4 court in Reynolds County. The attorney general and the
5 Department of Conservation and the Department of Natural
6 Resources would not sit idly by while we violated the
7 contract if that's what they thought we were doing. I'm sure
8 we would be back in Reynolds County. And secondly, they --

9 COMMISSIONER KENNEY: Can I stop you there for
10 a second?

11 MR. BYRNE: Sure.

12 COMMISSIONER KENNEY: Because that's a very
13 good point. And one that I've given quite a bit of thought
14 and I guess what we could assume -- and not even assume it
15 but it would be great if the parties just came out and said
16 it. That neither the Attorney General's office, MDNR or the
17 Conservation Commission has any objection to the recovery of
18 these costs as enhancements under the settlement -- the
19 consent judgment.

20 I mean, that -- that affirmative statement
21 from all the signatories to the consent judgment would
22 frankly put everything to rest because I suspect that the
23 cases that you're citing that say that the -- that the
24 parties' intent at the time of contracting is least reliable
25 and the conduct of the parties is most reliable, I have a

1 sneaking suspicion that those cases were in a commercial
2 context, which is quite different than this where there is
3 not -- it's not a commercial context in the sense that you
4 have buyers and sellers and consideration on both sides of
5 the equation. It's not a traditional commercial transaction.

6 MR. BYRNE: Sure, that's fair, Commissioner.

7 COMMISSIONER KENNEY: But I think --

8 MR. BYRNE: But I do think you have --

9 COMMISSIONER KENNEY: But the circumstance
10 would distinguish -- because of that distinction, I think
11 that that may -- in my mind, at least and I haven't done the
12 research that you've done -- but I would imagine that that
13 commercial circumstance has something to do with why the
14 parties' recollection of their intent at the time of
15 contracting is not as reliable. But the conduct of the
16 parties, I agree with you. There is -- nobody's objecting
17 and I'm the only one making a big deal out of this.

18 MR. BYRNE: And Commissioner, in this case,
19 sort of unusually, there's no doubt they fully understood
20 what we were doing because we gave them the notice and we met
21 with them and talked with them about it. So it's not like
22 they could have missed it.

23 COMMISSIONER KENNEY: The notice itself
24 doesn't clearly indicate what you'll be seeking and if you
25 look at the press release that Ameren released, and it's in

1 EFIS and it's part of the initial filing package, it says
2 that Ameren intended to seek 15 million dollars of
3 construction costs relative to Taum Salk, not 89 million.

4 So I don't know what the parties -- I don't
5 know what happened in those meetings and I don't know how
6 much they thought Ameren was going to be seeking. But your
7 press release that was issued at the time says it would be 15
8 million dollars, and the letter that I read doesn't
9 specifically enumerate. And I don't have it in front of me.
10 Maybe it does.

11 MR. BYRNE: The reason the press release says
12 15, Commissioner, and I don't know -- I haven't looked at it
13 in awhile, but the reason it says 15 is that's the revenue
14 requirement impact, approximately, of the 90 million dollars.

15 COMMISSIONER KENNEY: Well, and the notice
16 that you sent out doesn't say -- it says you'll be seeking
17 these enhanced, state-of-the-art, et cetera, et cetera. But
18 it doesn't specify what you're going to be seeking, does it,
19 in terms of dollars?

20 MR. BYRNE: In terms of dollars? I don't -- I
21 don't think the notice has a dollar amount in it.

22 COMMISSIONER KENNEY: And that's in August and
23 in September is when the press release came out.

24 MR. BYRNE: We met late August and we filed
25 September 3rd.

1 COMMISSIONER KENNEY: Right. Well, you're
2 saying that all the parties clearly knew what you would be
3 seeking. Did they clearly know the dollar amount that you'd
4 be seeking?

5 MR. BYRNE: I believe we told them that, but
6 of course, it was -- but it was public information once we
7 filed the case.

8 MS. FRAZIER: Excuse me, Commissioner Kenney.
9 This is Jennifer Frazier with the Attorney General's office.
10 I can address your question, I think. The -- I am authorized
11 to say that the Attorney General's office did review Ameren's
12 request for reimbursement after this case was filed and we
13 have no evidence to believe that the request is inconsistent
14 with or in violation of the consent judgment on record in
15 Reynolds County.

16 And in reaching that conclusion, we did
17 consult, as you've heard, with the Staff, with the Office of
18 Public Counsel, the Department of Natural Resources. We did
19 not consult independently with the Department of
20 Conservation, but they did not approach us after their
21 meeting with Ameren and we just did not do that.

22 And further, we do recognize that the Public
23 Service Commission was not a party to the consent judgment
24 and that it's not binding upon the Commission. But that the
25 Commission's role, in some respect, is to use the consent

1 judgment as a basis for disallowing costs. But that is --
2 but we have no reason to believe that the costs requested are
3 in violation of the consent judgment. And in fact, after
4 this rate case was filed, the action in Reynolds County was
5 closed by the Court without objection by the Attorney
6 General's office, recognizing that if we thought it was --
7 they were in violation, we could seek contempt, but we have
8 not done so.

9 COMMISSIONER KENNEY: Well, that's helpful,
10 and I appreciate that very much. I know the consent judgment
11 isn't binding on us, but my position is, at least, that it's
12 -- it was a bargain struck between Ameren and the people of
13 the State of Missouri and we should do our best to -- as a
14 state agency, we should do our best to make sure that the
15 intent of it is carried out. So that's why I'm making such a
16 big deal about it. And I hate to be a pest, but that helps
17 quite a bit, Ms. Frazier. That's very helpful. And I'm
18 assuming that's the same position that DNR would take and
19 that's the same position that the Department of Conservation
20 would take. It's good to get that on the record.

21 MR. BYRNE: And one final point I was going to
22 make, which is maybe less important than the ones we've
23 talked about, but you know, the parties who are against us on
24 Taum Salk are not -- are not making this argument. You know,
25 the Office of Public Counsel, AARP, Consumer's Council argue

1 that it's inappropriate for us to recover any costs at all
2 associated with it because it's all due -- you know, their
3 view is it's all due to the breach.

4 And I would note that in his opening
5 statement, Mr. Mills specifically said they're not -- they're
6 not arguing that these are not allowed costs under the
7 contract, that their argument is different than that.

8 COMMISSIONER KENNEY: And that's the argument
9 we'll have to ultimately decide. And that's a separate
10 argument. I just want to make sure that we're doing justice
11 to the consent judgment that was negotiated on behalf of the
12 people of the state of Missouri and making sure that it's --
13 that it is given the -- its intended effect.

14 MR. MILLS: May I address that question? This
15 is Lewis Mills.

16 COMMISSIONER KENNEY: Certainly.

17 MR. MILLS: Because I think with all due
18 respect to the people who are negotiating the consent
19 judgment, I don't think that the ultimate rate recovery was
20 really a primary factor in the negotiation. If you look at
21 the consent judgment, it's really not a primary
22 consideration.

23 What was going on then is, you know, the
24 Department of Natural Resources, Department of Conservation
25 were trying to get messes cleaned up and the ultimate rate

1 recovery down the road essentially got punted to the Public
2 Service Commission.

3 So I think even if we have all of those
4 agencies on record saying, you know, we don't object to rate
5 recovery, I think that's because in the consent judgment,
6 they gave that responsibility to you to determine what was
7 appropriate rate recovery.

8 COMMISSIONER KENNEY: I think that's
9 absolutely right. And I'm not -- I'm certainly not trying to
10 advocate our duty, but you're right. I think those -- I
11 think you're right. Those are two separate and distinct
12 questions and we still have a job to do in determining the
13 prudence and appropriateness of those expenditures.

14 But I think in the first instance, it's in my
15 mind at least there was a threshold question about whether it
16 was appropriate to even ask. Now, once that issue's disposed
17 of, then the inquiry doesn't end and we do -- our duties kick
18 in, and I understand that.

19 MR. BYRNE: That's all I had, Your Honor.

20 JUDGE WOODRUFF: Anything else, Commissioner?

21 COMMISSIONER KENNEY: I wasn't entirely clear
22 on Mr. Byrne's answer when he said that UE was seeking to
23 recover the 15 million dollars associated with Taum Sauk in
24 its press release. I didn't understand your response to
25 that.

1 quiet now. Thank you.

2 MR. BYRNE: Thank you, Commissioner.

3 JUDGE WOODRUFF: Mr. Mills, did you want to
4 respond also?

5 MR. MILLS: No. Well, maybe. At the risk of
6 mudding it even further, the 15 million dollars that Mr.
7 Byrne referred to depends to a certain extent on taxes and
8 the return that you assume. So I think that the actual
9 reconciliation that the Commission has from the Staff shows
10 that to be nine million dollars on an annual basis rather
11 than 15.

12 MR. BYRNE: When we issued the press release,
13 it was based on what we were asking for and you're right. It
14 depends -- it depends on the rate of return that the
15 Commission approves, it depends on a lot of things. And that
16 number can change. But at the time the press release was
17 issued, we were trying to report the rate impact -- the
18 impact the customers would see from what we were proposing.

19 JUDGE WOODRUFF: All right. Then let's move
20 on. Ms. Kliethermes.

21 MS. KLIETHERMES: And to really muddy the
22 waters in response to that last thing Mr. Byrne just said, I
23 think that the change in depreciation expense associated with
24 Taum Salk that Ameren requested is such that even with the
25 putting Taum Sauk into rates in this case, the change in

1 depreciation rates nets that. I'm not saying this well.

2 I think that without -- without the change in
3 depreciation rates associated with Taum Sauk, there would be
4 more dollars associated in Taum Sauk in this case than there
5 are now.

6 JUDGE WOODRUFF: Okay. Well, let's move on
7 then, and let's -- I'll just give you a framework for what
8 we're going to do for the rest of the day. We're going to do
9 LED lighting first, followed by Staff's additional cross on
10 Mr. Weiss about his affidavit that was put in on the --
11 whichever issue that was. I guess that was the fuel
12 adjustment clause issue. And then we'll do the solar
13 rebates. All right?

14 So let's start with LED lighting. Do we want
15 to do mini openings on that? All right. For the Company.

16 MR. MITTEN: If it please the Commission. In
17 this case, the Staff is asking the Commission to order Ameren
18 Missouri to complete an LED lighting study within 12 months
19 of the Report and Order in this case, and at the conclusion
20 of that study to either file an LED lighting tariff or tell
21 the Commission when the Company intends to file an LED
22 lighting tariff.

23 Now, as explained in its prepared testimony in
24 this case, Ameren Missouri opposes the Staff's proposal for
25 reasons that I guess can collectively be categorized or

1 described as concerns about the emerging nature of LED
2 lighting technology and the numerous questions that still
3 surround that technology and whether or not it will
4 ultimately prove to be useful and economical as an outdoor
5 lighting technology.

6 But the Company's opposition is underscored in
7 this case because in the recently completed Kansas City Power
8 & Light case, Case No. ER 2010-0355, a stipulation and an
9 agreement was approved by the Commission whereby the
10 Commission agreed to convene a workshop on a whole range of
11 outdoor lighting issues, including LED lighting. And in that
12 stipulation, it was pointed out that a whole range of
13 stakeholders should be invited to participate in that
14 workshop, including all investor-owned electric utilities in
15 this case -- or in the state, excuse me.

16 It's Ameren's position that if a workshop on a
17 whole range of outdoor lighting issues is going to be
18 convened, and LED lighting is one of the issues that's going
19 to be looked at in that workshop, why is there any need to
20 take action on that issue in this rate case. Now, putting
21 that overarching question aside for a moment, Ameren's
22 evidence in this case will show that it is not prudent for
23 Ameren Missouri to file an LED lighting tariff at this time
24 and it's not prudent for the Commission to order the Company
25 to file one now or in the near term future.

1 The Company's evidence in this case will show
2 that LED lighting fixtures are currently three to five times
3 as expensive as conventional lighting fixtures. The evidence
4 will also show that there are numerous unanswered questions
5 about LED lighting technology and whether or not it is
6 suitable for widespread application in outdoor lighting.

7 The evidence will also show that if Ameren is
8 required to implement an LED lighting tariff, that fact alone
9 will impose on the Company numerous costs that it is not
10 accruing presently. The Company will have to train a
11 workforce to deal with LED lighting fixtures, which are not
12 currently part of the company offering. And the Company will
13 have to acquire an inventory of LED lighting fixtures in case
14 someone requests service under that tariff.

15 There's also no evidence in this case that
16 there is a real demand for LED lighting. The Commission
17 should note that The Municipal Group was an intervenor in
18 this case, and The Municipal Group did not propose the LED
19 lighting tariff and it didn't indicate in its pre-filed
20 testimony in this case that it supported Staff's proposal.
21 So if the very customer group that you would expect to take
22 this technology has not indicated its support, again, we
23 wonder what the hurry is.

24 There's also no evidence in this case that the
25 quality of the lighting that's going to be provided by these

1 LED fixtures is something that's going to be positively
2 received by the public. There is a qualitative difference
3 between the light that an LED fixture provides compared to
4 the light that current technology provides. And again,
5 there's no evidence that the public is going to consider the
6 LED lighting superior to the current lighting.

7 As best Ameren can determine, Staff's LED
8 lighting proposal in this case is a solution in search of a
9 problem. And as far as that solution is concerned, it may
10 not be a solution at all because, again, there are many, many
11 unanswered questions about LED lighting. So rather than a
12 solution, Staff's proposal in this case may just be a bundle
13 of additional problems and additional costs that is
14 masquerading as a solution.

15 So it's Ameren's position in this case that
16 given the fact that a workshop is going to be organized to
17 deal with outdoor lighting issues, that this issue should
18 simply be deferred to that workshop. Thank you.

19 JUDGE WOODRUFF: Thank you. Opening for
20 Staff.

21 MS. McCLOWRY: May it please the Commission.
22 Staff's recommendation concerning light-emitting diode, or
23 LED lighting, is that the Commission should order Ameren
24 Missouri to complete its currently ongoing LED street and
25 area lighting system evaluation. And no later than 12 months

1 following the Commission's Report and Order in this case, the
2 Company should file either a proposed LED lighting tariff or
3 an update to the Commission on when it will file a proposed
4 tariff.

5 The Staff's intent as reflected in Staff
6 witness Dr. Hojong Kang's testimony is to encourage the
7 Company to offer its customers better lighting options. The
8 Staff understands that the Company is engaged in ongoing
9 studies regarding LED technology. But the Staff's
10 recommendation is prepared for that. And has left it open so
11 that in 12 months, the Company can come back and say when
12 they will be ready to do so.

13 And to address Mr. Mitten's mention of the
14 workshop ordered by the Commission, until the Commission
15 opens a docket for that workshop, the Staff is unsure if it
16 will or when it will occur and would still like the Company
17 to file a proposed tariff on this issue. Thank you.

18 JUDGE WOODRUFF: Okay. Opening for Public
19 Counsel?

20 MR. MILLS: I have no opening for this issue.
21 Thank you.

22 JUDGE WOODRUFF: MIEC?

23 MR. DOWNEY: No opening.

24 JUDGE WOODRUFF: DNR?

25 MS. FRAZIER: No opening.

1 JUDGE WOODRUFF: I believe that's everyone.
2 Then we'll call our first witness who will be Mr. Cooper.

3 JUDGE WOODRUFF: Good morning, Mr. Cooper. I
4 believe this is the first time you've testified.

5 THE WITNESS: That's correct.

6 (The witness was sworn.)

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. MITTEN:

9 Q. Would you please state your name and business
10 address for the record?

11 A. Wilbon L. Cooper, 1901 Chouteau, St. Louis,
12 Missouri 63103.

13 Q. Mr. Cooper, did you cause to be filed in this
14 case direct, rebuttal and surrebuttal testimony, which have
15 been marked for identification as Exhibits 133, 134 and 135?

16 A. Yes, I did.

17 Q. Do you have any changes or corrections to make
18 to that testimony at this time?

19 A. No, I do not.

20 Q. Were all three of those pieces of testimony
21 prepared by you?

22 A. Yes.

23 Q. If I asked you the questions that are
24 contained in those three pieces of testimony today, would
25 your answers be the same as reflected in there?

1 A. Yes, they would be.

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

5 A. Yes.

6 MR. MITTEN: I have no further questions for
7 Mr. Cooper. I would move for the admission of Exhibits 133,
8 134, and 135.

9 JUDGE WOODRUFF: All right. 133, 134 and 135
10 have been offered. Any objections to their receipt? Hearing
11 none, they will be received.

12 (Exhibits 133, 134, and 135 were received into
13 evidence.)

14 MR. MITTEN: Mr. Cooper is available for
15 cross-examination.

16 JUDGE WOODRUFF: All right. We'll begin with
17 DNR.

18 MS. FRAZIER: No questions.

19 JUDGE WOODRUFF: MIEC?

20 MR. DOWNEY: No questions.

21 JUDGE WOODRUFF: Public Counsel?

22 MR. MILLS: No questions.

23 JUDGE WOODRUFF: Staff?

24 MS. McCLOWRY: Yes, please.

25

1 CROSS-EXAMINATION

2 QUESTIONS BY MS. McCLOWRY:

3 Q. Good morning, Mr. Cooper.

4 A. Good morning.

5 Q. In your rebuttal testimony, you state that
6 Ameren Missouri would not be opposed to providing meter
7 lighting service to customer-owned LED SAL installations
8 under service classification number 6, street and outdoor
9 lighting. That's correct?

10 A. That is correct.

11 Q. Okay. And if one of your current 6M unmetered
12 lighting customers wanted to retrofit their equipment to be
13 LED, they would not fit under that tariff, that's correct?

14 A. That is correct.

15 Q. And on page 15, lines 15 through 18 of your
16 rebuttal testimony, you refer to the Company's existing
17 tariff \$100 charge for early termination of company-installed
18 lighting facilities, that's correct?

19 A. That is correct, under the service 5M
20 classification.

21 Q. Okay. And you say that that expense, along
22 with other costs of LED lighting, would make it unlikely that
23 existing customers would request a conversion of their
24 current lighting systems LED, that's correct?

25 A. That's correct.

1 Q. Yes or no, Mr. Cooper: If a customer wants to
2 convert their lighting system, is that a company's decision
3 to make?

4 A. I don't know if I can answer that yes or no.

5 Q. Can the Company say for a customer that --
6 never mind.

7 MS. McCLOWRY: I have no further questions.

8 JUDGE WOODRUFF: All right. Then we'll come
9 up with questions from the bench. Commissioner Jarrett?

10 COMMISSIONER JARRETT: Good morning, Mr.
11 Cooper.

12 THE WITNESS: Good morning.

13 COMMISSIONER JARRETT: I don't have any
14 questions. Thank you.

15 THE WITNESS: Thank you.

16 JUDGE WOODRUFF: Commissioner Kenney?

17 COMMISSIONER KENNEY: No questions. Thanks,
18 Mr. Cooper.

19 JUDGE WOODRUFF: No questions from the bench,
20 so no need for recross. Any redirect?

21 MR. MITTEN: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 QUESTIONS BY MR. MITTEN:

24 Q. Mr. Cooper, Staff's counsel asked you about
25 your pre-filed direct testimony wherein the Company stated

1 that it would be willing to implement an LED lighting tariff
2 in the 6M classification; is that correct?

3 A. The existing 6M lighting tariff under the
4 metered option would allow customers to utilize LED lighting.

5 Q. Now under the 6M tariff, are the lighting
6 fixtures owned by the Company or owned by the customer?

7 A. Those are owned by the customer.

8 Q. Mr. Cooper, is it your understanding that
9 Staff's proposal in this case is limited to an LED tariff for
10 the 6M classification only?

11 A. No.

12 Q. What is -- would Staff's proposal include the
13 5M classification?

14 A. That is correct, and that would be the
15 company-owned or customer-owned lighting.

16 Q. And is Ameren opposed to implementing an LED
17 tariff for the 5M classification?

18 A. Yes.

19 Q. Could you tell me why?

20 A. Again, as you stated in your opening
21 statement, the LED lighting is an emerging technology. We
22 feel it would be a bit premature at this time from both a
23 technological perspective and also considering the workshop
24 that was established in a docket that you mentioned in your
25 opening statement.

1 Q. Now, let's get back to the 6M tariff offering
2 for a moment. What costs would the Company incur if it were
3 required to implement an LED lighting tariff for its
4 6M classification?

5 A. Under the metered lighting option in 6M, there
6 would be no additional costs but for the providing of energy
7 to those lighting facilities and the meter itself. Under the
8 unmetered obligation, the Company would be responsible for
9 essentially some -- I'll say basic maintenance for those
10 facilities, which would require us to train our personnel and
11 also to maintain a spare parts inventory for the items that
12 we would replace under the standard maintenance options.

13 Q. Does Ameren currently maintain an inventory --
14 MS. McCLOWRY: I'm going to object as that
15 being beyond the scope of cross-examination.

16 JUDGE WOODRUFF: Your response?

17 MR. MITTEN: She asked him questions about the
18 6M classification, and I think the witness is entitled to
19 answer questions about that tariff classification and
20 specifically what Staff's proposal is with regard to that
21 tariff classification.

22 JUDGE WOODRUFF: I'll overrule the objection.

23 THE WITNESS: Could you repeat the question,
24 please?

25 MR. MITTEN: Certainly.

1 BY MR. MITTEN:

2 Q. I was asking you what additional costs the
3 Company would incur if the Commission ordered Ameren to
4 implement an LED lighting tariff under the 6M classification?

5 A. Yeah, under the energy and maintenance option,
6 we would incur the costs of training our personnel, of
7 course, to do the basic maintenance as required under that
8 tariff in the energy and maintenance column, and then also we
9 would be required to maintain a spare parts inventory for
10 those particular lighting options.

11 Q. Does Ameren currently have spare parts that
12 would be used to fix LED lighting fixtures?

13 A. No, we do not, as we have no LED lighting on
14 our system, but for the pilot program we have in the city of
15 Ballwin.

16 Q. Tell me the kind of spare parts that the
17 Company would have to acquire if it were required to
18 implement an LED lighting tariff for the 6M classification.

19 MS. McCLOWRY: Objection.

20 JUDGE WOODRUFF: What is your objection?

21 MS. McCLOWRY: Beyond the scope of
22 cross-examination.

23 JUDGE WOODRUFF: Again, I'll overrule.

24 MS. McCLOWRY: Improper redirect.

25 JUDGE WOODRUFF: Overruled.

1 BY MR. MITTEN:

2 Q. Mr. Cooper, do you recall my last question?

3 A. I do. Under the 6M tariff, the basic
4 maintenance option that I mentioned, the Company will furnish
5 electric energy, furnish and replace lamps, wash lamps and
6 luminaires, and adjust and replace control mechanisms as
7 required.

8 Q. Staff's counsel also asked you about the \$100
9 early termination charge under the Company's tariff. Do you
10 recall those questions?

11 A. Yes, I do.

12 Q. Could you describe that early termination
13 charge?

14 A. Yeah, that early termination charge is
15 applicable to company-owned lighting only, and it's
16 applicable to customers who are under contract who request an
17 early termination or a disconnect of the light or customers
18 who are out of contract and request a discontinuous of the
19 lighting service and then request a -- a recontinuing, so to
20 speak, of the lighting service within a one-year time frame.

21 Q. Since the \$100 early termination charge only
22 applies to company-owned facilities, would that only apply to
23 service taken under the 5M category?

24 A. That is correct.

25 MR. MITTEN: I don't have any further

1 questions. Thank you, Your Honor.

2 JUDGE WOODRUFF: All right. Then Mr. Cooper,
3 you can step down. Then you're excused.

4 THE WITNESS: Thank you.

5 JUDGE WOODRUFF: And your next witness is Mr.
6 Shoff, I believe?

7 MR. MITTEN: Yes.

8 (The witness was sworn.)

9 JUDGE WOODRUFF: You may inquire.

10 DIRECT EXAMINATION

11 QUESTIONS BY MR. MITTEN:

12 Q. Would you please state your name and business
13 address for the record?

14 A. My name is Kyle F. Shoff, I'm at 1901 Chouteau
15 Avenue, St. Louis, Missouri 63103.

16 Q. Mr. Shoff, did you cause to be filed in this
17 case rebuttal testimony, which has been marked for
18 identification as Exhibit 149?

19 A. Yes.

20 Q. Was that testimony prepared by you?

21 A. It was.

22 Q. Do you have any changes or corrections you
23 need to make to that testimony today?

24 A. I do not.

25 Q. If I asked you the questions that are

1 contained in that testimony, would your answers be the same
2 as are reflected there?

3 A. It would.

4 Q. And is the information contained in your
5 answers true and correct to the best of your knowledge and
6 belief?

7 A. It is.

8 MR. MITTEN: Your Honor, I offer into evidence
9 Exhibit 149.

10 JUDGE WOODRUFF: 149 has been offered. Any
11 objections to its receipt? Hearing none, it will be
12 received.

13 (Exhibit No. 149 was received into evidence.)

14 MR. MITTEN: I have no further questions for
15 Mr. Shoff. He's available for cross-examination.

16 JUDGE WOODRUFF: All right. For cross,
17 beginning with DNR.

18 MS. FRAZIER: No questions.

19 JUDGE WOODRUFF: MIEC?

20 MR. DOWNEY: No questions.

21 JUDGE WOODRUFF: Staff?

22 MS. McCLOWRY: I have no questions.

23 JUDGE WOODRUFF: All right. Questions from
24 the bench, then, Commissioner Jarrett?

25 COMMISSIONER JARRETT: No questions.

1 JUDGE WOODRUFF: Commissioner Kenney?

2 COMMISSIONER KENNEY: No, thank you very much.

3 JUDGE WOODRUFF: All right. Then no need for
4 recross or redirect and you can step down.

5 JUDGE WOODRUFF: That completes Ameren's
6 portion. We'll move over to staff's witness, which is Mr.
7 Kang.

8 JUDGE WOODRUFF: Good morning.

9 (The witness was sworn.)

10 JUDGE WOODRUFF: You may inquire.

11 DIRECT EXAMINATION

12 QUESTIONS BY MS. McCLOWRY:

13 Q. Good morning, Dr. Kang.

14 A. Good morning.

15 Q. Would you please state your name for the
16 record?

17 A. My name is Hojong Kang.

18 Q. And by whom are you employed, Dr. Kang, and in
19 what capacity?

20 A. I'm employed by Missouri Public Service
21 Commission as a regulatory economist three.

22 Q. And are you the same Hojong Kang who prepared
23 and caused to be filed the street and area lighting
24 recommendation portion of the Staff's rate design and class
25 cost of service report marked as Exhibit 204?

1 A. Yes, I am.

2 Q. And are you the same Hojong Kang who prepared
3 and caused to be filed surrebuttal testimony in this matter
4 marked as Exhibit 215?

5 A. Yes.

6 Q. Do you have any corrections to your portion of
7 the report or to your surrebuttal that have not been
8 addressed in subsequent testimony?

9 A. No.

10 Q. Dr. Kang, is the testimony that you have filed
11 in this matter true and accurate to the best of your
12 knowledge and belief?

13 A. Yes.

14 Q. If asked the same questions today as are
15 contained in your testimony, would your answers be the same?

16 A. Yes.

17 MS. McCLOWRY: At this time, I would move for
18 admission of Dr. Kang's portion of the Staff rate design and
19 class cost of service report marked as Exhibit 204, as well
20 as Exhibit 215 representing his surrebuttal testimony. And
21 also at this time, I would like to offer and move for
22 admission of Staff's revenue requirement and cost of service
23 report, Exhibit 201.

24 JUDGE WOODRUFF: Okay. This is the final
25 witness, I guess, on revenue requirement.

1 MR. THOMPSON: I think we've actually had the
2 final witness on revenue requirement.

3 JUDGE WOODRUFF: All right. Well, all of
4 201-HC and NP has been offered. Any objections to its
5 receipt? Hearing none, it will be received.

6 (Exhibit No. 201-NP and 201-HC were received
7 into evidence.)

8 JUDGE WOODRUFF: I've been offered a portion
9 of 204 and all of 215. Any objections to those documents
10 being allowed into evidence? Hearing none, they will be
11 received.

12 (Exhibit Nos. 204 and 215 were received into
13 evidence.)

14 JUDGE WOODRUFF: And for cross-examination,
15 again begin with DNR.

16 MS. FRAZIER: No questions, thank you.

17 JUDGE WOODRUFF: MIEC?

18 MR. DOWNEY: No questions.

19 JUDGE WOODRUFF: Public Counsel?

20 MR. MILLS: No questions.

21 JUDGE WOODRUFF: Ameren Missouri.

22 MR. MITTEN: Your Honor, may I approach the
23 witness for purposes of handing him a document?

24 JUDGE WOODRUFF: You may.

25 MR. MITTEN: Thank you.

CROSS-EXAMINATION

1
2 QUESTIONS BY MR. MITTEN:

3 Q. Dr. Kang, let me begin by apologizing for
4 mispronouncing your last name when I introduced myself to you
5 earlier this morning.

6 A. It's okay.

7 Q. I have handed you a copy of a document, which
8 is entitled Non-unanimous Stipulation and Agreement as to
9 Outdoor Lighting Issues, which was filed in Case Numbers
10 ER-2010-0355 and ER-2010-0356.

11 Have you ever seen this document before?

12 A. Yes.

13 Q. When did you first see it?

14 A. I don't remember exact date, but yeah, after
15 they made the argument, I saw this paper.

16 Q. Do you know if it was before or after you
17 filed your surrebuttal testimony in this case?

18 A. I know I saw this paper after surrebuttal
19 testimony, but I don't know if I looked at this paper before.
20 Sorry about the testimony. I'm not sure.

21 Q. Could I ask you to turn to page 2, paragraph 4
22 of the document?

23 A. Okay.

24 Q. Paragraph four says, and I quote, "The
25 signatories jointly recommend that the Missouri Public

1 Service Commission sponsor a workshop regarding outdoor
2 lighting issues that would address a variety of issues,
3 including but not limited to LED lighting, converting tariff
4 lamp listings from wattage lumens to illuminates-based rates,
5 the propriety of referencing/associating outdoor lighting
6 with safety, security, and/or crime prevention, and shielding
7 methodologies. The signatories agree that a broad group of
8 stakeholders should be invited to participate in such
9 workshop including but not limited to representatives of
10 International Dark Sky Association, investor-owned municipal
11 and cooperative utilities, municipal customers, customer
12 program, advisory group, law enforcement, Missouri Department
13 of Natural Resources, environmental groups, homeowner's
14 associations and commercial and industrial customers." Did I
15 read that correctly?

16 A. Uh-huh. Yes.

17 Q. If you could turn to page 5.

18 A. Uh-huh.

19 Q. Would you agree with me that Staff was not a
20 signatory to that non-unanimous stipulation?

21 A. I think --

22 MR. MITTEN: Your Honor, I would ask the
23 Commission to take administrative notice of the conclusion in
24 the Commission's Report and Order in Case No. ER-2010-0355
25 where the Commission approved this stipulation and indicated

1 that Staff did not oppose the stipulation.

2 JUDGE WOODRUFF: All right. Any objection to
3 the Commission taking administrative notice of that document?
4 Hearing none, the Commission will take notice.

5 BY MR. MITTEN:

6 Q. Dr. Kang, if the Commission has agreed in the
7 Kansas City Power & Light rate case to convene a workshop on
8 a broad range of outside lighting issues, including LED
9 lighting, and has agreed to invite all of the investor-owned
10 utilities -- electric utilities in the state to participate
11 in that workshop, why does Staff believe it's important for
12 the Commission to require Ameren Missouri in this rate case
13 to complete an LED lighting study, and at the end of that
14 study either file an LED lighting tariff or tell the
15 Commission when it intends to file an LED lighting tariff?

16 A. Could you rephrase your question?

17 Q. If the Commission has agreed as part of its
18 Report and Order in the Kansas City Power & Light case to
19 convene a workshop on a broad range of outside lighting
20 issues, including LED lighting, and to invite all
21 investor-owned electric utilities to participate in that
22 workshop, why does Staff believe that it is appropriate in
23 this rate case for the Commission to order Ameren Missouri to
24 complete an LED lighting study, and at the end of that study
25 either file an LED lighting tariff or tell the Commission

1 when it intends to file an LED lighting tariff?

2 A. I think you can go back to all the utilities,
3 still each utility -- investor-owned utility has different
4 opinion for this workshop, even though it's the same
5 workshop. So I -- that's why they each utility make a report
6 to the Commission about their LED study. That's my position.

7 Q. Well, let me ask you this: To your knowledge,
8 has Kansas City Power & Light Company been required by the
9 Commission to complete an LED lighting study, and at the end
10 of that study to file a tariff or tell the Commission when
11 the Company intends to file an LED lighting tariff?

12 A. Not exactly. Even though the KCP&L didn't
13 make the tariff at the time point, still they can make a
14 decision about the LED still light (sic). If the research
15 said the LED still lighting is not good enough for our
16 customer, then they make that kind of report to the
17 Commission.

18 Q. Isn't the purpose of the workshop --

19 A. Uh-huh.

20 Q. -- that is going to be ordered under the
21 Report and Order in the KCP&L rate case, to look at the whole
22 range of issues related to LED lighting and get input from
23 all of the various groups that would be interested in that,
24 including the utilities and the potential customers of that
25 service? Would you agree with that?

1 A. Yes, possibly.

2 Q. So wouldn't it make sense to wait until you
3 had an opportunity to have that workshop and get that input
4 before the Commission orders any utility in Missouri to
5 actually implement an LED lighting tariff?

6 A. I'm not sure about the output of that workshop
7 because after I start work at here, then I attend a light
8 workshop. But still, the conclusion of each of the parties
9 is different. So maybe still at the workshop, you can put
10 all the information and all the opinions. But still, each
11 party of the workshop can have different opinion. So they
12 can show the kinds of opinion in the report.

13 Q. But isn't that the purpose of a workshop, to
14 hear all those different opinions --

15 A. Uh-huh.

16 Q. -- and weigh them before you decide what
17 you're going to do in a particular issue?

18 A. Yes, of course.

19 Q. And isn't Staff jumping the gun on the LED
20 lighting issue by requiring Ameren to complete a study and at
21 the end of that study file a tariff before the workshop has
22 had an opportunity to do what workshops do?

23 A. The Staff position is just to want to know the
24 -- I mean, the decision of -- decision of utilities, what
25 they -- what their decision about the study, even though we

1 have the same workshop for the -- it's not proper
2 information. But even though you have -- we attend the same
3 workshop, we can have a different opinion. Even though they
4 show up their kinds of opinions still. And after we agree,
5 some kind of topics, still they are not -- they are not
6 agreed to whole things. So still, I think it's better to
7 report to each individual utility, make the report to the
8 Commission.

9 Q. And you don't think that you should wait until
10 after every utility has had an opportunity to express its
11 viewpoint in the workshop to impose an obligation on Ameren
12 with regard to LED lighting?

13 A. I'm sorry, could you --

14 Q. You don't think it would be beneficial to wait
15 until after the workshop is completed to require Ameren to do
16 something in particular with regard to LED lighting?

17 A. It's okay. Time is not important. Even
18 though the -- if the Ameren is not ready to file their LED
19 tariff after 12 months, then just to make some report to the
20 Commission, we are not ready, then you can extend the time.
21 So if -- if you think you need to wait until after you finish
22 the workshop and you make the file, then you can wait.

23 Q. So you believe time is not important with
24 regard to the LED lighting tariff?

25 A. If you research about the LED still lights,

1 then that's enough, and you do report to the Commission.

2 Q. Dr. Kang, in the Staff report and in your
3 rebuttal testimony in this case, you mention that an LED
4 lighting tariff is currently in effect for PG&E and Southern
5 California Edison; is that correct?

6 A. Yes.

7 Q. Do you know whether either or both of those
8 utilities implemented their LED lighting tariff in response
9 to a particular customer request or was it more like Staff's
10 proposal in this case?

11 A. I'm not sure about that. I don't know exactly
12 who requested that tariff. But only I mention about PG&E and
13 Southern California Edison. But at this time, there is a lot
14 of utilities that have the LED still light tariff. I just --
15 after I made the surrebuttal testimony, I look up the -- I
16 surfing the web sites, and I also find some other utility
17 like the Progress Energy and Central Edison Energy and
18 Georgia Power, they also have LED still light tariff.

19 So these days, even though there is many
20 different kind of a still light, the LED still light is one
21 of the favorite topic of the market.

22 Q. Now, you just mentioned three utilities that
23 you didn't discuss in your prepared testimony.

24 A. Uh-huh.

25 Q. Do you know if they implemented their tariffs

1 in response to customer demand or in response to a proposal
2 to the one Staff's making in this case?

3 A. I'm not sure. I didn't think about that kind
4 of things, but.

5 Q. Now, would you agree with me that
6 municipalities are the most likely customers of the LED
7 lighting service that Staff is proposing in this case?

8 A. I'm sorry, could you --

9 Q. Would you agree with me that municipalities
10 are the most likely potential customers for LED lighting
11 service?

12 A. Possibly, yes.

13 Q. Who would the other customers likely be?

14 A. Like when I attend some of the still light
15 conference and lots of people mention about the big customer
16 like Wal-Mart because Wal-Mart has big parking lot. So if
17 they -- some of Wal-Mart already changing LED lighting system
18 from the HPS, then they -- they said -- they said that they
19 have better -- better response from their customers. So not
20 only municipal -- municipality, also the big customer concern
21 about the change to the still light system.

22 Q. Okay. Municipalities aren't the only
23 potential customers, but would you agree with me that they
24 are a significant customer group that could potentially take
25 service under an LED lighting tariff?

1 A. Yes. That's why I'm concerning the 5M -- we
2 should add the LED-type light in the 5M. Because most
3 municipalities still light system under the 5M, as I know in
4 the Ameren metering subterritory.

5 Q. Dr. Kang, are you aware that a group of
6 municipalities intervened in this rate case?

7 A. Yes.

8 Q. Have you reviewed the prepared testimony that
9 -- that those municipalities filed in this case?

10 A. Not much.

11 Q. Do you know if anywhere in that testimony they
12 indicate, one, that they want LED lighting, or two, that they
13 support Staff's proposal in this case?

14 A. I'm not sure about the -- the municipality on
15 the Ameren surface territory.

16 Q. And I'm just asking about the municipalities
17 that intervened in this case. Do you know whether or not in
18 the prepared testimony they filed in this case they
19 indicated, one, that they want an LED lighting tariff and --
20 or two, that they support Staff's proposal in this case? If
21 you don't know, that's fine.

22 A. I don't know at this point.

23 Q. Do you know that Wal-Mart is an intervenor in
24 this case?

25 A. Yes.

1 Q. Do you know whether Wal-Mart has filed any
2 testimony in this case indicating, one, that it wants an LED
3 lighting tariff; or two, that it supports Staff's proposal in
4 this case? And again, if you don't know, that's fine.

5 A. I don't think Wal-Mart intervened in this
6 case, but they not concerned about the still light and the
7 area lighting system at this moment.

8 Q. Dr. Kang, as part of your rebuttal testimony
9 in this case, you attached some slides that indicate the
10 results or at least part of the results of a municipal LED
11 lighting program that was implemented in the city of Los
12 Angeles. Do you recall that?

13 A. Yes.

14 Q. Now, Staff didn't conduct an audit of any of
15 the results of that program, so you can't verify the accuracy
16 of anything that's reflected in the slides that are attached
17 to your testimony; is that correct?

18 A. Actually, that slides -- I obtained the slides
19 from the conference hold by the Illuminating Engineering
20 Society last year and I have handout of that presentation.
21 But they just supplied the handout for black and white
22 printout. So it's hard to look at it, but I took the picture
23 of the presentation and during his presentation, he mentioned
24 about their LED still light project and also that information
25 comes from his presentation. So he verified about that

1 information during his presentation.

2 Q. But my question, Dr. Kang: The Staff didn't
3 audit any of those results, so you can't verify the accuracy
4 of anything that was presented on the slides that you saw at
5 that conference; is that correct?

6 A. You mean audit that program?

7 Q. Yes.

8 A. No.

9 Q. Do you know if the city of Los Angeles is
10 served by an investor-owned utility or municipal-owned
11 utility?

12 A. It's municipal-owned utility.

13 Q. And would there be any differences between a
14 program -- an experimental program, such as that, that is
15 operated by a municipal utility and one that's operated by an
16 investor-owned utility?

17 A. I can expect that there is a big difference
18 between municipal-owned utility and the investor-owned
19 utility.

20 Q. And would one of those differences be that the
21 municipal utility doesn't have to come to the Public Service
22 Commission --

23 A. Uh-huh.

24 Q. -- and seek recovery of the costs that it
25 incurs as part of that program?

1 A. I'm not sure how they operate the program.

2 Q. Do you know whether or not the municipal
3 utility that serves the city of Los Angeles has to get its
4 rates approved by the California Public Utilities Commission?

5 A. I do not have any information.

6 Q. You don't know the answer to that question?

7 A. I don't know. I just -- I just made the
8 comment from the presentation and their -- they supplied the
9 information.

10 Q. In his prepared rebuttal testimony in this
11 case, did you read Mr. Shoff's testimony in this case?

12 A. Yes.

13 Q. Mr. Shoff states that, "Currently, LED
14 fixtures are three to five times as expensive as conventional
15 fixtures." Do you recall that testimony?

16 A. He only compared the fixture price, not the
17 whole system price.

18 Q. And my question was just about the fixture.

19 A. Yeah, just the fixture, yes.

20 Q. And he testified that those fixtures are three
21 to five times as expensive as conventional fixtures; is that
22 correct?

23 A. Yes, he said, yes.

24 Q. And you didn't dispute that in your
25 surrebuttal testimony, did you?

1 A. I didn't.

2 Q. And did you hear -- were you hear when Mr.
3 Cooper testified earlier today?

4 A. Yes.

5 Q. And did you hear Mr. Cooper testified that if
6 Staff's proposal in this case is adopted and the Company
7 files an LED lighting tariff, that the Company will have to
8 incur additional costs for training personnel and for
9 stocking inventories of LED fixtures?

10 A. Yes, he said.

11 Q. What would Staff's position be about the
12 recovery of those additional costs?

13 A. Recovery of those costs? Actually, if, as
14 economists, if your company hire more people at this moment
15 of our economy, it's good for our economy because they --
16 they can -- they can low down the unemployment rate, but the
17 cost of maintenance, most of the paper mention the LED still
18 light has a low maintenance cost. That's why the -- for the
19 long-term, the LED still light is good to have because LED
20 still light has a much longer lifetime and also because it
21 has a longer lifetime, it has a very low maintenance cost
22 than HPS or the metal highlight still light system.

23 Q. But my question was: If the company incurs --

24 A. Uh-huh.

25 Q. -- additional costs because it implements an

1 LED lighting tariff as Staff has proposed in this case --

2 A. Uh-huh.

3 Q. -- would Staff be in favor of the company
4 recovering those additional costs through rates?

5 A. I'm not special in rate design, so I don't
6 know about that question.

7 Q. So Staff is not willing today to commit to
8 support the Company's recovery of those costs through rates?
9 Is that what you're testifying?

10 MR. THOMPSON: Objection, he said he didn't
11 know.

12 JUDGE WOODRUFF: I'll sustain that objection.

13 BY MR. MITTEN:

14 Q. In Mr. Shoff's rebuttal testimony, he also
15 indicated that there are questions as to whether or not you
16 can simply replace an existing outdoor lighting fixture with
17 an LED lighting fixture because of the qualitative difference
18 between the light that is provided by a conventional fixture
19 versus an LED lighting fixture. Do you recall that
20 testimony?

21 A. Yes. I used the information from the Company
22 supplied for the IRP filing and also that information comes
23 from Mr. Shoff's presentation in last year.

24 Q. Well, Doctor --

25 A. Actually, the Company also mentioned about the

1 differences between the HPS and the LED still light. I took
2 that -- that -- I took those pictures in my surrebuttal
3 testimony from the Company's paper, not from -- any other
4 place.

5 Q. Well, Dr. Kang, if the Company is required to
6 replace or relocate poles to accommodate LED lighting
7 fixtures, who would be propose bear those costs?

8 A. As you know -- actually, this is just -- I
9 didn't think about that.

10 MR. MITTEN: I don't think I have any further
11 questions. Thank you, Dr. Kang.

12 JUDGE WOODRUFF: All right. We'll come up
13 with questions from the bench. Commissioner Jarrett?

14 COMMISSIONER JARRETT: I have no questions,
15 thank you.

16 JUDGE WOODRUFF: Commissioner Kenney.

17 COMMISSIONER KENNEY: No, thank you, Doctor.
18 Thank you.

19 JUDGE WOODRUFF: All right. No need for
20 recross. Any redirect?

21 MS. McCLOWRY: Yes.

22 REDIRECT EXAMINATION

23 QUESTIONS BY MS. McCLOWRY:

24 Q. Dr. Kang, I want to go back to when Mr. Mitten
25 was asking you about the workshop.

1 A. Uh-huh. Yes.

2 Q. Do you know, has the Commission set a schedule
3 for an outdoor lighting workshop?

4 A. I don't know yet.

5 Q. Has the Commission opened a docket for that
6 workshop?

7 A. I don't know yet.

8 Q. Do you know if a workshop would guarantee that
9 the Company would file a tariff?

10 A. I don't think so.

11 Q. And do you know if a workshop can result in a
12 Commission order that the Company must obey?

13 A. I don't know at this moment.

14 Q. And in response to one of Mr. Mitten's
15 questions, you said that time is not important. But for the
16 filing -- for the filing of a tariff and the results from the
17 study.

18 A. Uh-huh.

19 Q. And even though time is not important, isn't
20 it important to obtain either a commitment from Ameren or a
21 Commission Order in this case in this issue?

22 A. Yes, I believe Commission Order -- Order for
23 the -- Order to prepare the LED still light tariff in this
24 case because there is some -- some demand for the LED still
25 light. If actually -- LED product is very popular these

1 days, like we have several LED TV here and it's good
2 technology in our future.

3 So even though this is an uncertain technology
4 at this moment, but still, it's a good implement. That's why
5 the Department of Energy give lots of stipulate money to the
6 LED industry, too, LED still light industry, too. So I think
7 it's a good point to start to concern about the LED still
8 light tags.

9 Q. And Ameren Missouri's counsel also asked you
10 about the municipalities who are a part of this case. Do you
11 remember that? Just that he asked you about that. Do you
12 recall that a few minutes ago?

13 A. Yes.

14 Q. Okay. He asked you if they filed testimony
15 supporting Staff in this case. Do you know if they filed
16 testimony opposing Staff's recommendation in this case?

17 A. No, they do not have any opposing.

18 MS. McCLOWRY: Those are all the questions I
19 have.

20 JUDGE WOODRUFF: Okay. Thank you. And Dr.
21 Kang, you can step down.

22 THE WITNESS: Okay. Thank you.

23 JUDGE WOODRUFF: And I believe that completes
24 the LED lighting issue. At this time, then, we'll bring Gary
25 Weiss up to the stand to withstand cross-examination on the

1 FAC additional.

2 JUDGE WOODRUFF: All right. Welcome back, Mr.
3 Weiss.

4 THE WITNESS: Thank you.

5 JUDGE WOODRUFF: And you are still under oath
6 from previous appearances.

7 THE WITNESS: Yes, I am.

8 JUDGE WOODRUFF: All right. You may inquire.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. LOWERY:

11 Q. Mr. Weiss, I'm going to hand you what's been
12 admitted into evidence as Exhibit 172 and ask you if you can
13 identify that document.

14 A. This is my affidavit.

15 Q. Is that affidavit true and correct to the best
16 your knowledge and belief?

17 A. Yes, it is.

18 MR. LOWERY: Your Honor, I tender Mr. Weiss
19 for cross-examination.

20 JUDGE WOODRUFF: Before I go to Staff, does
21 anyone else wish to cross? For staff.

22 CROSS-EXAMINATION

23 QUESTIONS BY MS. OTT:

24 Q. Good morning, Mr. Weiss.

25 A. Good morning.

1 Q. Who contacted you about the preparation of
2 this affidavit?

3 A. My attorney, Mr. Lowery.

4 Q. And when did you contact you?

5 A. It was after Ms. Mantle's surrebuttal
6 testimony.

7 Q. And can you narrow that down a little bit? Do
8 you know what date he contacted you?

9 A. Unfortunately, I think it was on a Saturday,
10 so it was probably two weeks ago.

11 Q. Do you know if it was before or after her
12 second deposition?

13 A. It was before her second deposition, I
14 believe.

15 Q. Were you provided with a draft for your review
16 of the affidavit?

17 A. I was first asked to provide Mr. Lowery my
18 comments and my, you know, history of the events that took
19 place. I provided him a more explanation of all the events
20 that took place. He then put it into writing. I reviewed
21 the draft he prepared, made changes and corrections, and his
22 final affidavit is as filed.

23 Q. Were you aware that your affidavit was going
24 to be attached to a response to Staff's request that the
25 Commission rule on objections during Ms. Mantle's second

1 deposition?

2 A. Yes, I was.

3 Q. Now, in this affidavit, you mention a phone
4 call with Mr. Rackers. When was that phone call?

5 A. There again, you're asking me to recall things
6 that took place two years ago, so I do not recall. It was
7 after we had the final stipulations agreed to in the last
8 rate case, and that rate case, I guess it was ER-2008-0318,
9 that we had to calculate the net base fuel cost for a tariff
10 filing based on the Order and the stipulations.

11 And so I attempted to do that first on my own
12 and then I asked Mr. Rackers and the MPSC staff to review
13 that calculation and see if they agreed or wanted to make
14 changes.

15 Q. And that was what -- that's your recollection
16 of what the phone call was? You didn't contact Mr. Rackers
17 recently, correct, about that phone call?

18 A. I don't think so.

19 Q. Do you have a record of that phone call?

20 A. I do not.

21 Q. So your affidavit is your belief of what
22 happened during that phone call, not what Mr. Rackers' belief
23 was in that phone call?

24 MR. LOWERY: Objection, calls for speculation
25 about what Mr. Rackers did or didn't believe. How can he

1 know what Mr. Rackers believed.

2 MS. OTT: The question was --

3 JUDGE WOODRUFF: Yeah, I'm going to overrule
4 the objection. That wasn't the question.

5 MR. LOWERY: I may have misheard it.

6 BY MS. OTT:

7 Q. So your statements in your affidavit are your
8 recollection of that phone call?

9 A. Yes, and I have the exhibits to back up what
10 took place after the phone call. I did one calculation, the
11 Staff sent me Back another calculation that I accepted.

12 Q. Okay. Let's -- if you prepare an entire
13 spreadsheet containing multiple numbers therewithin
14 (phonetic) and you provide it to another person and they
15 change one number, do you consider that spreadsheet your
16 spreadsheet or the person that changed one number?

17 A. Well, it depends on what number was changed.
18 And the main number that got changed was the kilowatt hours,
19 which is the main item on the schedule. It calculates
20 exactly what the net base fuel cost factor is and that was
21 the numbers that were changed by the Staff.

22 Q. So if somebody makes one change to a
23 spreadsheet, it then becomes their spreadsheet?

24 A. I think it becomes our -- both our
25 spreadsheets. We agreed that that was the appropriate

1 calculation and we agreed to file that as a backup of the
2 tariff.

3 Q. Now, when you used that number from that
4 spreadsheet in a tariff, that then became Ameren's number,
5 correct?

6 A. It was put on Ameren's tariff and it was
7 approved by the MPSC staff.

8 Q. But when Ameren submits that tariff, that is
9 Ameren submitting that tariff that that's their number,
10 correct?

11 A. That is correct.

12 Q. Now, besides your direct testimony where you
13 filed some information on the net base fuel cost, you are not
14 here for a witness on that fuel adjustment clause sharing
15 mechanism, are you?

16 A. I am not.

17 MS. OTT: I have no further questions. Thank
18 you. Thank you, Mr. Weiss.

19 JUDGE WOODRUFF: Commissioner Jarrett, do you
20 have any questions?

21 COMMISSIONER JARRETT: I have no questions,
22 thank you.

23 JUDGE WOODRUFF: Commissioner Kenney?

24 COMMISSIONER KENNEY: No, thank you.

25 JUDGE WOODRUFF: No need for recross. Any

1 redirect?

2 MR. LOWERY: Briefly, Your Honor. My I
3 approach the witness.

4 JUDGE WOODRUFF: You may.

5 REDIRECT EXAMINATION

6 QUESTIONS BY MR. LOWERY:

7 Q. Mr. Weiss, Ms. Ott asked you some questions
8 about when that draft affidavit was presented to you. Do you
9 recall those?

10 A. Yes, I do.

11 Q. I'm going to ask you to look at an e-mail
12 message, and I want you to confirm that, in fact, it is an
13 e-mail message -- and if I need to make it bigger, I will --
14 from me to you and ask you if that refreshes your
15 recollection about when you were provided a draft affidavit?

16 A. Yes, it does. It was May 1st.

17 MS. OTT: Judge --

18 BY MR. LOWERY:

19 Q. And is that, in fact, an e-mail from me to you
20 that transmits the draft affidavit to you?

21 A. Yes, it is.

22 Q. And that occurred -- and just to be clear,
23 that the record's clear, we didn't discuss and I didn't
24 transmit a draft affidavit relating to this issue to you
25 prior to this day; is that true or false?

1 A. This is the day I got the draft affidavit.

2 Q. And that was May 1st?

3 A. May 1st.

4 JUDGE WOODRUFF: Do you wish to make an
5 objection.

6 MS. OTT: Staff has not had a staff to review
7 the e-mail, so.

8 MR. DOWNEY: Can we mark this?

9 JUDGE WOODRUFF: We'll take the iPhone into
10 evidence.

11 MR. LOWERY: I didn't know I was going to need
12 a copy, Your Honor. I don't have any further questions, Your
13 Honor.

14 JUDGE WOODRUFF: All right. Then Mr. Weiss,
15 that concludes this portion of the proceeding on FAC. You
16 can stay there if you'd like because you are going to be the
17 first witness on the next issue.

18 THE WITNESS: I will do that.

19 JUDGE WOODRUFF: Solar rebates. And I assume
20 we'll be doing mini openings on this as well. So we'll begin
21 with mini openings for Ameren.

22 MS. TATRO: Good morning. Commissioners, the
23 good news is I think this is one of the simpler issues that
24 you've been asked to decide in this case. On the schedule,
25 it's been referred to as the solar rebate issue, but really

1 it's broader than that.

2 The issue before you is the appropriate way to
3 account for Ameren Missouri's expenditures related to the new
4 Renewable Energy Standard requirements. Those expenditures
5 to date have been rebates. They may in the future include
6 REC purchases.

7 Everyone agrees that the expenses Ameren
8 Missouri has incurred to date is prudent and the question
9 really is only how those should be recovered. Specifically,
10 Ameren Missouri is asking you to do two things: First, the
11 Commission should include in the Company's revenue
12 requirement an amount for the compliance costs that the
13 Company will incur going forward.

14 We believe the Commission should use the test
15 year true-up level of expenditures, which is \$885,000. This
16 is primarily the cost of the solar rebates required by law
17 that Ameren Missouri has been paying to its customers. Staff
18 suggests using calendar year 2010 expenses, which was only
19 \$488,000, an amount that the Company anticipates to be
20 insufficient for what it will experience going forward.

21 The second thing Ameren Missouri asks this
22 Commission for is an accounting authority order, or AAO.
23 This AAO would collect the amount the Company has spent on
24 compliance with the RES statute between January of 2010 and
25 July of this year. This is money the Company was required to

1 spend and for which nothing has been included in the revenue
2 requirement to date.

3 These expenses include additional solar
4 rebates and payments under the Company's standard offer
5 contract, which purchases solar renewable energy credits,
6 sometimes referred to as RECs, R-E-C, from its customers.
7 Additionally, the Company asks the Commission to allow it to
8 place in the AAO the difference between the \$885,000, which
9 would be in the Company's new revenue requirement from this
10 case, and the actual expenditures incurred after the date of
11 new rates. The prudence of these expenditures would then be
12 reviewed in the Company's next rate case.

13 Similar to the situation Ameren Missouri faced
14 when the Commission implemented its new vegetation management
15 infrastructure inspection rules, these expenditures are
16 required by law and not currently reflected in rates. In
17 other words, the Company's required to make these
18 expenditures, has very little control over the expenditures,
19 and does not have anything in the revenue requirement to
20 reflect these expenditures.

21 Now, other parties in this case asks the
22 question why doesn't the Company file for treatment under the
23 Commission's RES rules. By that, I presume they want the
24 Company to file for a RESRAM. That's the Renewable Energy
25 Standard rate adjustment mechanism.

1 But Commissioners, we are asking for the
2 treatment that's explicitly allowed by your rules. 4 CSR 240
3 20.100(6)(d) explicitly allows the utility to recover
4 RES-compliance costs in a general rate proceeding, which we
5 are in, and also explicitly allows the utility to defer costs
6 in a regulatory asset in between general rate proceedings.

7 We think given the level of expenditures and
8 uncertainty, that is the appropriate mechanism to use at this
9 point in time and we ask you to approve that.

10 Thank you.

11 JUDGE WOODRUFF: Thank you. Opening for
12 Staff?

13 MS. LEWIS: Yes, Your Honor. Good morning,
14 may it please the Commission. I am not Kevin Thompson for
15 this issue. I'm Rachel Lewis for Staff today.

16 This morning we are here to present the
17 different positions on solar rebates which was separated into
18 three different issues as presented in the position
19 statements that were filed in this case. The first two
20 issues concern the appropriate accounting mechanism for
21 Ameren Missouri to recover costs incurred for compliance with
22 the Missouri Renewable Energy Standard. One issue is for the
23 period after January 28th, 2011, which is the end of the
24 true-up period in this case.

25 The other issue is the appropriate treatment

1 for the period up to the true-up date. For both of these
2 issues, there is a discussion and dispute as to whether a
3 Renewable Energy Standard rate adjustment mechanism, RESRAM
4 for short, or an accounting authority order, AAO for short,
5 is the appropriate way to resolve the issue.

6 On both of these issues, Staff supports the
7 RESRAM as the appropriate accounting mechanism. RESRAM is
8 defined in 4 CSR 240-20.100(1)(m), also known as the
9 Commission rule. As a mechanism that allows periodic rate
10 adjustments to recover prudently incurred Renewable Energy
11 Standard, often referred to as RES, compliance costs and pass
12 through to customers the benefits of any savings achieved in
13 meeting the requirements of the Renewable Energy Standard.

14 Staff recommends the Commission approve costs
15 associated with the solar rebates in the form of a RESRAM
16 because it allows the Company to recover its expense faster
17 than An AAO. It also prevents the Company from carrying
18 costs because the RESRAM may be initiated inside or outside a
19 rate case proceeding. RESRAM would also show up as a line
20 item on the customer bills.

21 This rule came into existence as a result of
22 voter-approved Proposition C. One can assume, then, that
23 some of the customers want the Company to invest in renewable
24 energy. The RESRAM assures that the voters and customers see
25 the company's efforts. With the RESRAM, customers will be

1 informed that the company is, in fact, investing in renewable
2 energy.

3 The third and final issue is what amount of
4 solar rebate costs should Ameren Missouri be allowed to
5 include in the revenue requirement for this particular case?
6 Staff recommends including the Company's actual solar
7 rebates, rebate expenses incurred during the calendar year
8 2010 because it does not exceed the one percent rate cap
9 addressed in the Commission's rules. That cap is found in
10 paragraph 6 of the Commission rule for your convenience. In
11 the future, 12 months will be useful as companies will be
12 required to file a report on the status of the utility's
13 compliance with the Renewal Energy Standards for the most
14 recently completed calendar year beginning April 15th of
15 2012.

16 In conclusion, Staff requests the Commission
17 consider its position and approve a RESRAM for recovery of
18 expenses associated with RES compliance including solar
19 rebates. Staff also recommends the actual amount of expenses
20 incurred during calendar year 2010 be the number used in the
21 revenue requirement for this case.

22 Thank you.

23 JUDGE WOODRUFF: Thank you. Opening for
24 Public Counsel?

25 MR. MILLS: No, thank you.

1 JUDGE WOODRUFF: MIEC?

2 MR. DOWNEY: Yes, please. Good morning, may
3 it please the Commission. Edward Downey on behalf MIEC.

4 We agree with Ameren on a couple of points it
5 made in its opening statement. While it may seem like this
6 is a small issue relative to this rate case, we're concerned,
7 like Ameren is, that there will be a precedent set here and
8 there will be much bigger dollars down the road.

9 The MIEC's issue, the only subissue we focused
10 on is how to recover the expenditure. And because the solar
11 rebates benefit the parties for more than ten years, we have
12 proposed that they be amortized over ten years.

13 Thank you.

14 COMMISSIONER KENNEY: Can I ask Mr. Downey a
15 question real quick?

16 JUDGE WOODRUFF: Sure.

17 COMMISSIONER KENNEY: Are you following the
18 litigation in Cole County Circuit Court relative to the rules
19 that we drafted?

20 MR. DOWNEY: Yes, Commissioner, we are.

21 COMMISSIONER KENNEY: And what's the status of
22 that litigation?

23 MR. DOWNEY: It is fully briefed. We have not
24 notified the judge to go ahead and decide it because there is
25 legislation pending. At least I can speak for myself, I have

1 not notified the judge that the case is ready for its
2 decision because I'm waiting to see what happens this week or
3 next week with House Bill 613. And that is --

4 COMMISSIONER KENNEY: Go ahead. Sorry.

5 MR. DOWNEY: That's a bill that is supposed
6 to, if it is passed, resolve all the issues that we have in
7 the litigation.

8 COMMISSIONER KENNEY: So assuming it doesn't
9 and then session is over May 13th, then the parties intend to
10 ask the judge or inform the judge that the case is ready for
11 decision, perhaps?

12 MR. DOWNEY: That is my intention. I can't
13 speak for all the other parties.

14 COMMISSIONER KENNEY: Okay. All right. Thank
15 you.

16 MR. DOWNEY: Thank you.

17 JUDGE WOODRUFF: All right. DNR?

18 MR. FRAZIER: We waive opening. Thank you.

19 JUDGE WOODRUFF: All right. And I believe
20 that's all the parties on this issue. So we'll move to Mr.
21 Weiss, who's already on the stand and you can inquire.

22 MS. TATRO: It's my belief both of his
23 testimony's already been admitted; is that correct?

24 JUDGE WOODRUFF: Let me check and make sure.
25 I've got his rebuttal as 131 and surrebuttal as 132 and both

1 have been received.

2 MS. TATRO: Didn't you have direct?

3 THE WITNESS: Direct is 130.

4 JUDGE WOODRUFF: Yes, I'm sorry.

5 MS. TATRO: All right. Then I will tender
6 Mr. Weiss for cross-examination.

7 JUDGE WOODRUFF: Okay. Beginning with DNR.

8 MS. FRAZIER: No questions.

9 JUDGE WOODRUFF: MIEC?

10 MR. DOWNEY: No questions.

11 JUDGE WOODRUFF: Public Counsel?

12 MR. MILLS: No questions.

13 JUDGE WOODRUFF: Staff?

14 MS. LEWIS: Just a few.

15 CROSS-EXAMINATION

16 QUESTIONS BY MS. LEWIS:

17 Q. Good morning, Mr. Weiss.

18 A. Good morning.

19 Q. In your rebuttal testimony, page 16, line
20 1620, you compare the solar rebates with vegetation
21 management and infrastructure inspection, correct?

22 A. That is correct.

23 Q. Okay. And with vegetation management, that is
24 managed by the Company, correct?

25 A. It is managed by the Company based on the

1 rules passed by the Commission.

2 Q. The Company decides when to go do the
3 vegetation management, correct?

4 A. That is correct.

5 Q. And the Company determines the amount that it
6 will spend on this vegetation management, correct?

7 A. Why, I think there is some, you know,
8 requirements we have to meet the rules of the Commission, so
9 to the extent that we have to spend X number of dollars in
10 order to meet the rules, we do not have that control.

11 Q. And the Company can make future plans to do
12 the vegetation management, correct?

13 A. Yes, it can.

14 Q. And the Company can combine this obligation
15 with other obligations that the Company has, correct?

16 A. I guess that's correct. I mean, it's an
17 operation we have to do so we can do the tree trimming. If
18 we're out there doing our activities, I'm sure we can combine
19 it, yes.

20 Q. And in terms of infrastructure inspection,
21 that also is managed by the Company, correct?

22 A. There, again, it's managed by the Company to
23 meet the requirements of the Commission.

24 Q. And the Company determines when the activity
25 is done, correct?

1 A. Right, as long as it meets the requirements of
2 the Commission.

3 Q. And the company can make future plans to do
4 this, correct?

5 A. That is correct.

6 Q. And the Company can combine this obligation
7 with other company obligations, correct?

8 A. Correct.

9 Q. With solar rebates, the Company has no control
10 over when a customer applies for this rebate, correct?

11 A. That is correct.

12 Q. And the Company has no control over when the
13 panels are installed beyond perhaps an inspection, correct?

14 A. That seems correct. There again, I'm not an
15 expert on the rules dealing with the actual installation of
16 the facilities, but I think I've read it in the rules.

17 Q. Okay. And the customer decides to make this
18 investment, correct?

19 A. Correct.

20 Q. And at the time the Company filed this rate
21 case, this rule that we discussed in our openings was not in
22 effect, correct?

23 A. No, I think the -- the actual solar rebates
24 were effective January 1, 2010 --

25 Q. Okay.

1 A. -- before we filed this rate case.

2 Q. The rule went into effect in September of
3 2010.

4 A. But the law wasn't in effect. We simply had
5 to implement the solar rebate credits.

6 Q. And there is another legal way other than the
7 AAO to recover solar rebates, correct?

8 A. Correct.

9 Q. And in your pre-filed testimony, isn't it true
10 that you simply advocated for an AAO and chose not to provide
11 an explanation opposing the use of a RESRAM?

12 A. I think the Commission rules give us a choice
13 of a RESRAM or an AAO, and the Company chose the option of
14 the AAO at this time.

15 Q. And you provided no reason for not choosing
16 the RESRAM in your testimony, correct?

17 A. That is correct.

18 Q. Okay.

19 MS. LEWIS: I have no further questions for
20 this witness. Thank you.

21 JUDGE WOODRUFF: Questions from the bench
22 then.

23 COMMISSIONER JARRETT: No questions for me,
24 thanks.

25 THE WITNESS: Thank you.

1 JUDGE WOODRUFF: Commissioner Kenney?

2 COMMISSIONER KENNEY: No questions, thank you.

3 THE WITNESS: Thank you.

4 JUDGE WOODRUFF: No need for recross. Any
5 redirect?

6 MS. TATRO: Yeah. May I approach?

7 JUDGE WOODRUFF: You may.

8 REDIRECT EXAMINATION

9 QUESTIONS BY MS. TATRO:

10 Q. It's not an iPhone, I'm sorry.

11 MS. TATRO: I just handed him a copy of the
12 regulations. I'm not going to offer it as an exhibit and I
13 didn't want to kill trees, so I don't have copies.

14 BY MS. TATRO:

15 Q. Mr. Weiss, can you identify what document I
16 handed you?

17 A. Yes, it is the Commission's rules on the
18 renewable energy.

19 Q. And can you please turn to Section 6? There's
20 a sticky note identifying it.

21 A. Yes, I have it.

22 Q. Staff asked you some questions about why you
23 didn't explain in your direct why we were not proposing a
24 RESRAM or why we opposed a RESRAM. Do you remember those
25 questions?

1 A. Yes, I do.

2 Q. In the section that I handed you, does it --
3 does it allow the Company to request an AAO?

4 A. Yes, it does.

5 Q. Does it indicate that the Company has to
6 explain why it's choosing an AAO over the RESRAM?

7 A. No, it does not.

8 Q. You've testified a lot of years, correct?

9 A. Yes, I have.

10 Q. Do you generally put in your testimony all the
11 reasons why we don't do something?

12 A. No, I always put in my testimony why we do
13 something.

14 MS. TATRO: I have no further questions.

15 JUDGE WOODRUFF: All right. Mr. Weiss, you
16 can step down.

17 THE WITNESS: Thank you.

18 JUDGE WOODRUFF: Next witness, then, is for
19 Staff. It is Mike Taylor.

20 And Mr. Taylor, I believe this is your first
21 time testifying in this case.

22 THE WITNESS: Yes, it is.

23 (The witness was sworn.)

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

1 DIRECT EXAMINATION

2 QUESTIONS BY MS. LEWIS:

3 Q. Good morning. Would you please state your
4 name for the record?

5 A. Michael Lee Taylor.

6 Q. And what is your employment, Mr. Taylor?

7 A. I work at the Missouri Public Service
8 Commission as a utility engineering specialist.9 Q. Are you the same Mike Taylor that prepared or
10 caused to be prepared rebuttal testimony marked as Staff
11 Exhibit 229 in this matter?

12 A. Yes.

13 Q. Do you have any corrections to make to that
14 testimony?

15 A. No.

16 Q. Was it -- was it true and accurate to the best
17 of your knowledge and information at the time you prepared
18 it?

19 A. Yes.

20 Q. If I asked you the same questions today, would
21 your testimony be the same?

22 A. Yes.

23 MS. LEWIS: Judge, I offer Exhibit 229 into
24 evidence at this time.

25 JUDGE WOODRUFF: 229 has been offered, any

1 objections to its receipt? Hearing none, it will be
2 received.

3 (Exhibit No. 229 was received into evidence.)

4 BY MS. LEWIS:

5 Q. Mr. Taylor, did you prepare or cause to be
6 prepared any portion of Staff's cost of service report or the
7 Sioux Scrubbers construction audit in this matter?

8 A. Yes.

9 Q. Do you have any corrections to make to either
10 of those contributions at this time?

11 A. No.

12 Q. And was your testimony true and accurate to
13 the best of your knowledge and belief at the time you made
14 those contributions?

15 A. Yes.

16 Q. If I asked you the same questions today, would
17 it -- would it change those contributions at all?

18 A. No.

19 MS. LEWIS: Judge, I offer Mr. Taylor's
20 portion of Exhibit 200. I believe there's an HC and an NP
21 version into evidence at this time, as well as Staff's cost
22 of service report in its entirety as I believe he is the last
23 witness that contributed to it.

24 JUDGE WOODRUFF: Okay. He would also be the
25 last witness on 200, I assume, isn't he?

1 MS. LEWIS: Yeah, we'll go ahead and offer it.
2 I believe he is.

3 JUDGE WOODRUFF: Okay. The entirety of 200,
4 the portions that have not already been admitted has been
5 offered. Any objections to its receipt?

6 MR. DOWNEY: Judge, may I ask a question?
7 Does this relate to the solar rebate issue?

8 MS. LEWIS: No, it does not.

9 MR. DOWNEY: I'm just wondering if the correct
10 attorney is here in the room today for MIEC in order to make
11 a decision on whether or not to object.

12 JUDGE WOODRUFF: Okay.

13 MR. DOWNEY: I don't even know if we join that
14 issue.

15 JUDGE WOODRUFF: Well, that's the construction
16 audit report on the Sioux Scrubbers.

17 MR. DOWNEY: No objection.

18 JUDGE WOODRUFF: All right. We need to listen
19 to our clients, right? 200 will be received.

20 (Exhibit No. 200 was received into evidence.)

21 JUDGE WOODRUFF: You were also asking the
22 report -- I believe you're offering all of 204 then?

23 MS. LEWIS: Yes.

24 JUDGE WOODRUFF: That's the rate design and
25 class cost of service report?

1 MS. LEWIS: Yes.

2 JUDGE WOODRUFF: The remaining portions of 204
3 have been offered. Any objections to receipt of that
4 document?

5 MR. MILLS: I think we -- as of this morning,
6 we sort of deferred class cost of service and rate design
7 until next Thursday, so I think it may be premature to offer
8 that one.

9 JUDGE WOODRUFF: Any response?

10 MS. LEWIS: It was my understanding that we
11 had offered all of our testimony on it, but we can hold it
12 open.

13 JUDGE WOODRUFF: Well, Staff does have
14 Mr. Scheperle listed as a witness on rate design yet. So
15 since it's not necessarily settled yet, we will defer ruling
16 on that.

17 MS. LEWIS: Okay. Thank you, Your Honor. I
18 now tender Mr. Taylor for cross-examination.

19 JUDGE WOODRUFF: Okay. And for cross, we'll
20 begin with DNR.

21 MS. FRAZIER: No questions.

22 JUDGE WOODRUFF: For MIEC?

23 MR. DOWNEY: No questions.

24 JUDGE WOODRUFF: Public Counsel?

25 MR. MILLS: No questions.

1 JUDGE WOODRUFF: For Ameren Missouri.

2 MS. TATRO: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 QUESTIONS BY MS. TATRO:

5 Q. Good morning, sir.

6 A. Good morning.

7 Q. Do you agree with me that the Commission's
8 rules explicitly allow Missouri utilities to request an AAO
9 to recover the RES compliance cost?

10 A. Yes.

11 Q. Did you provide a draft RESRAM tariff?

12 A. No.

13 Q. Can the company break out RES compliance costs
14 on its bill even if it doesn't have a RESRAM?

15 A. I'm not aware of any specific mechanism for
16 that, but I don't know for sure.

17 Q. Could the Commission order the Company to
18 break those costs out on a separate line on the bill in this
19 case?

20 A. I assume they could. But again, I'm not the
21 person to answer that.

22 Q. Does the Company have to file an annual RES
23 compliance plan under the these rules?

24 A. Yes.

25 Q. Do you know if the Company did so?

- 1 A. Yes.
- 2 Q. Do you know when that was?
- 3 A. April 15th, if I recall correctly.
- 4 Q. So that requirement that that be filed has
5 nothing to do with whether the Company collects their costs
6 through a RESRAM or AAO, correct?
- 7 A. Correct.
- 8 Q. And will the Company have future filings with
9 complaints (sic) report?
- 10 A. Yes.
- 11 Q. And when will that have to be filed?
- 12 A. The first filing for the report is April 15th,
13 2012.
- 14 Q. And that obligation is upon the Company
15 whether it's recovering its costs through a RESRAM or an AAO,
16 right?
- 17 A. Yes.
- 18 Q. Is it your position that the Commission can
19 force the Company to recover its costs through a RESRAM if
20 the Company prefers to recover it through an AAO?
- 21 A. I'm not in position to answer that.
- 22 Q. But your testimony is that the Company should
23 have a RESRAM?
- 24 A. That's the Staff's position.
- 25 Q. But you don't take a position on whether or

1 not that is a legal request?

2 A. It is the --

3 MS. LEWIS: I'm going to object that that
4 calls for a legal conclusion. He's not an attorney.

5 JUDGE WOODRUFF: She's asking for his --
6 Staff's position and then I'll allow it. Objection is
7 overrule.

8 THE WITNESS: Staff's position is that the
9 RESRAM is the appropriate mechanism.

10 BY MS. TATRO:

11 Q. Would you intentionally ask the Commission to
12 do something you didn't think was legal?

13 A. No.

14 MS. TATRO: I have no further questions.

15 JUDGE WOODRUFF: All right. Questions from
16 the bench, Commissioner Jarrett?

17 COMMISSIONER JARRETT: No questions, thank
18 you.

19 JUDGE WOODRUFF: Commissioner Kenney.

20 COMMISSIONER KENNEY: Just one question.

21 EXAMINATION

22 QUESTIONS BY COMMISSIONER KENNEY:

23 Q. Mr. Taylor, how are you?

24 A. Just fine, sir.

25 Q. Good. As I understand it, Ameren is asking

1 for \$885,000 in compliance costs based on future expected
2 expenses and Staff's position is 488,000 based on the
3 calendar year 2010; is that right?

4 A. That's correct.

5 Q. And Staff's calculation is based -- or Staff's
6 assertion is that that doesn't exceed the one percent rate
7 cap as required by the RES law, correct?

8 A. That's correct.

9 Q. How did -- what method or how did Staff
10 calculate the one percent rate cap?

11 A. We did a simplistic calculation of just
12 looking at the one percent of their current revenue
13 requirement and that's far in excess of the number.

14 Q. Okay. So is one percent of the current
15 revenue requirement, meaning the revenue requirement
16 established in the 2010-036 case, in the last rate case?

17 A. Yes.

18 COMMISSIONER KENNEY: Okay. That's all I
19 have. Thank you.

20 JUDGE WOODRUFF: All right. Any recross based
21 on that question from the Commissioner? Redirect.

22 MS. TATRO: I do.

23 JUDGE WOODRUFF: I'm sorry, go ahead.
24
25

1 RE-CROSS-EXAMINATION

2 QUESTIONS BY MS. TATRO:

3 Q. Commissioner Kenney asked you about the
4 885,000 that Ameren Missouri's using. He used the word
5 "estimated." Do you know where that number comes from?

6 A. The 885,000.

7 Q. Is it an estimated number or is it the true-up
8 number through February 28th?

9 COMMISSIONER KENNEY: Oh, I'm sorry.

10 THE WITNESS: It would be the true-up number.

11 MS. TATRO: Thank you.

12 JUDGE WOODRUFF: Redirect?

13 MS. LEWIS: I have none, thank you.

14 JUDGE WOODRUFF: Okay. And Mr. Taylor, you
15 can step down.

16 And we'll go to MIEC's witness, Mr. Brubaker.
17 Good morning, Mr. Brubaker. Is this the first time you
18 testified in this proceeding?

19 THE WITNESS: No, sir, I testified previously.

20 JUDGE WOODRUFF: Then you're still under oath.
21 And you may inquire.

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. DOWNEY:

24 Q. Mr. Brubaker, you did testify yesterday, and
25 at that time, was your direct on revenue requirement, Exhibit

1 403, introduced and accepted?

2 A. I believe -- yeah, it was introduced, yes.

3 JUDGE WOODRUFF: It was accepted as well.

4 THE WITNESS: Okay.

5 MR. DOWNEY: I tender the witness for cross.

6 JUDGE WOODRUFF: All right. For cross, we
7 begin with DNR.

8 MS. FRAZIER: No questions.

9 JUDGE WOODRUFF: Public Counsel.

10 MR. MILLS: No questions.

11 JUDGE WOODRUFF: Staff?

12 CROSS-EXAMINATION

13 QUESTIONS BY MS. LEWIS:

14 Q. Good morning, Mr. Brubaker.

15 A. Good morning.

16 Q. The solar panels we're discussing in this
17 issue will not be in the possession of the Company, correct?

18 A. That's true.

19 Q. And the Company does not install its solar
20 panels, correct?

21 A. That's my understanding.

22 Q. And your proposed ten-year amortization is
23 based on the requirement that the customer must purchase
24 panels with a ten-year warranty, correct?

25 A. That is one of the reasons for that

1 recommendation.

2 Q. Okay.

3 MS. LEWIS: I have no further questions.

4 JUDGE WOODRUFF: All right. For Ameren?

5 MS. TATRO: I have no questions. Thank you.

6 JUDGE WOODRUFF: All right. Come up with
7 questions from the bench. Commissioner Jarrett?

8 COMMISSIONER JARRETT: Mr. Brubaker, thank you
9 for being here.

10 JUDGE WOODRUFF: Thank you.

11 THE WITNESS: Thank you.

12 JUDGE WOODRUFF: Commissioner Kenney?

13 COMMISSIONER KENNEY: No, thank you very much.

14 JUDGE WOODRUFF: Okay. Mr. Brubaker, you can
15 step down.

16 THE WITNESS: Thank you.

17 JUDGE WOODRUFF: Ms. Wolfe for DNR. And Ms.
18 Wolfe, I know you testified yesterday, so you are still under
19 oath as well.

20 THE WITNESS: Okay.

21 JUDGE WOODRUFF: You may inquire.

22 MS. FRAZIER: Thank you, Your Honor. I
23 believe all of Ms. Wolfe's exhibits -- 800, 801 and 802 --
24 were admitted yesterday, so I will tender her for
25 cross-examination.

1 JUDGE WOODRUFF: Okay. For cross, we will
2 begin with MIEC.

3 MR. DOWNEY: No cross.

4 JUDGE WOODRUFF: Public Counsel?

5 MR. MILLS: No questions.

6 JUDGE WOODRUFF: Staff?

7 MS. LEWIS: No questions.

8 JUDGE WOODRUFF: For Ameren?

9 MS. TATRO: No questions.

10 JUDGE WOODRUFF: Okay. Any questions from the
11 bench? Commissioner Jarrett?

12 COMMISSIONER JARRETT: Ms. Wolfe, have a good
13 weekend.

14 THE WITNESS: Thank you, Commissioner.

15 JUDGE WOODRUFF: Commissioner Kenney?

16 COMMISSIONER KENNEY: Um. Just kidding. No
17 questions.

18 JUDGE WOODRUFF: No questions for recross or
19 redirect. And Ms. Wolfe, you can step down. And I believe
20 that will conclude the evidence for today's session. We will
21 come back on Tuesday on the union issues on May 10. Since we
22 only have that one issue now on Tuesday, I would suggest we
23 start at ten o'clock. Anybody have any objection to that?

24 MR. THOMPSON: Thank you, Judge.

25 JUDGE WOODRUFF: I will send out a notice so

1 the unions know that also.

2 MR. THOMPSON: Judge, Staff has a question.
3 Do you have any preference or any idea when you would like
4 the stipulations and agreements presented?

5 JUDGE WOODRUFF: As far as on-the-record-type
6 presentations?

7 MR. THOMPSON: Yes, does the Commission want
8 something along those lines?

9 JUDGE WOODRUFF: I expect they probably will.
10 I don't know when.

11 MR. THOMPSON: Okay.

12 JUDGE WOODRUFF: But we'll let you know
13 hopefully on Tuesday or as soon as possible.

14 MR. THOMPSON: Thank you, Judge.

15 JUDGE WOODRUFF: All right. With that, then,
16 we are adjourned until Tuesday at ten a.m.

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)

) ss:

COUNTY OF GASCONADE)

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #11080, and Certified Realtime Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witness/es was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Court Reporter

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