BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

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Jefferson City, Missouri

Volume 22

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

MORRIS WOODRUFF, Presiding
Chief REGULATORY LAW JUDGE
KEVIN GUNN, Chairman,
JEFF DAVIS,
TERRY JARRETT,
ROBERT S. KENNEY
COMMISSIONERS.

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JUDGE WOODRUFF: Let's come to order, please. Let's get started this morning.

Another day of the Ameren rate case hearing. We're going to begin today with the municipal lighting issue, and I'm assuming the parties will want to do mini openings on that. So we will begin with Ameren Missouri.

MS. TATRO: Good morning, Your Honor. As you may remember, Ameren Missouri, in our last rate case, the municipal group asked the Commission to order the company to provide a cost of service study for its lighting class. One had not been completed for many years. We've provided that study in this case.

No party has offered any specific criticism of the lighting portion of that study, and it shows the lighting class is paying significantly less than the cost to serve that class, to be specific, 36 percent less. Remember, the lighting class received no increase in Ameren Missouri's last rate case.

Nonetheless, the company's only proposing to increase rates to the lighting class by the same amount as the increase it's recommending for all customer classes. The cost of service study where this information is contained is in the direct testimony of Mr. William Warwick. Company witness Phillip Difani submitted testimony which discusses how that percentage class increase should be allocated between the various rate schedules within the lighting class. The most commonly used schedules are 5M, which is company-owned lights, and 6M, which is customer-owned lights. Mr. Difani recommends an increase of 9.7 percent to the 5M class and 20 percent to the 6M class.

Now, additionally, Mr. Difani proposes the elimination of the pole and span charges which primarily impacts the 5M customers. This charge is paid by customers who, prior to September of 1988, requested lighting which required the installation of new poles. Of course, the elimination of that charge does not mean the costs required to serve the class are decreased by that amount. The cost to serve is the cost to serve.

Instead of recovering a portion of that cost through the pole and span charge, it is recovered elsewhere. Ameren Missouri has chosen to keep those costs within the 5M class, resulting in a percentage change of more or less in the class increase for each customer depending on whether that customer was previously paying the pole and span charge.

Now, the municipal group, likely due to its witnesses' unfamiliarity with rate design and the rate-making process, describes this as disingenuous and misleading and even cites an e-mail I sent their attorney which clearly laid out how the 5M class was impacted by removal of this charge. They claim the increase is 22 percent for some customers.

Commissioners, There is nothing hidden or underhanded by Ameren Missouri's proposal. The company is not requesting a 22 percent increase, the number that you'll repeatedly hear from them. Rather, it's requesting a 9.7 percent increase from the 5M customers. Now, the remainder of the amount of which they're discussing is the amount that's no longer being collected through the pole and span charge. So it's not an increase, it's not a new revenue requirement; it's merely a different method to recover the same costs.

Put another way, the revenue requirement for this class is not decreasing just because a collection measure is being removed. The municipal group's initial confusion about this issue does not mean the company did anything wrong.

This Commission is familiar with how the rate-making process occurs. First, the Commission determines the revenue requirement of the company, and that amount is the bucket of prudently incurred costs required to provide service to the company's customers. Then the Commission allocates those costs to the various customer classes in the manner it believes most equitably distributes that bucket of costs.

At the end of the day, rates are set to collect costs. If the Commission removes a charge, it's not reducing the revenue requirement bucket; it's only changing how the bucket of costs is allocated. To the extent a revenue requirement for one class is reduced, it must be increased for another because the size of the overall bucket remains the same.

Now, the municipal group's testimony starts from a false premise, that is, that this Commission can directly tie rates to the cost of a particular asset or group of assets. Rate-making is not so specific as to tie the cost to serve a particular customer to the exact cost of each pole, wire, and generating unit used to serve that customer.

Now, generally is the goal to end up with a cost that accurately reflects the cost to serve the customer class? Of course it is. But the municipal group seems to want a level of direct cost measurement that does not occur in the rate-making process. This misunderstanding of the rate-making process leads them to conclude that if the pole and span charge is removed, the company should not collect that portion of the revenue even though it's required to serve the lighting class, that bucket, the size of which has not changed. The revenue requirement for the lighting class must still be recovered.

Now, the municipal group calls this subsidization, and, of course, it's clear that the lighting rates are already highly subsidized or the class cost of service would not find that they're underpaying by over 36 percent. But the municipal group's proposal would move lighting rates even further away from the cost of service, which would increase the already existing material subsidization of the class by other customers, and that's not the direction the Commission should be removing rates in this case.

Thank you.

JUDGE WOODRUFF: Thank you. We'll move on to the municipals.

MR. CURTIS: Thank you. If it please the Commission, thank you.

The municipal and streetlighting and outdoor lighting category is about a $30 million annually revenue number. At Ameren's proposed increase of about ten percent, that's a $3 million number. It's not a Taum Sauk number, but it is one that is very vital to the municipalities who are struggling daily with their revenue requirements.

As you've heard in streetlighting and outdoor lighting, there are three categories of tariffs, 5M, 6M, and 7M. We're here primarily to talk about 5M, and that is the tariff that applies to -- to municipalities and other outdoor lighting customers where the company owns the poles and the lights. 6M is a tariff for customers who actually own the poles and the lights. That does not represent any of the cities here before you in the municipal group. We are all essentially predominantly 5M customers, company-owned poles and lights.

Now, 5M is the majority of the revenue that makes up the municipal and outdoor lighting, 30 million. It's approximately -- I think it is 90 percent -- approaching 90 percent of the revenue, so about 27 million of the 30 million total is 5M customers. So we're not here to talk about the 6M customers. It's the 5M that is critical.

You've heard Ms. Tatro, and Ameren's witness, of course, has said expressly that the -- the rate increases for the 5M customer is 9.7 percent. That was their original recommendation. They recommended an increase for 20 percent for the 6M.

Now, the cost of service study which the Commission ordered in the last case, Ms. Tatro indicated it showed that the entire lighting category should be increased by 36 percent to properly reflect cost of service is broken down this way: The 5M customer class -- again, that's the majority of it -- would probably need to be moved up by about 15 percent to be in line with the cost of service study. The 6M customers' class would need to be increased by 216 percent. We're not here talking about 6M. They are the ones that are vastly, you know, under -- undercollecting as far as the revenue according to the cost of service study.

Now, Ameren had -- is recommending for the 5M -- again, that's our cities -- 5M, a 9.7 percent increase. That's what their testimony has said. And for the 6M, a 20 percent. And we really don't even care about the 6M, as I indicated.

The problem is that Ameren does not really tell you quite directly what they're doing. They say they're increasing the rates on 5M customer class by 9.7 percent. In fact, they are increasing it by 22 percent. As Ms. Eastman has shown in her surrebuttal testimony, which is Exhibit No. 752 at page 2 -- pages 2 and 3, she takes each one -- the existing tariff for each one of the 5M categories. First one is HBS 9500. Lumen's current rate is $8.59. The proposed new rate is $10.50. That calculates to a 22 percent increase. She has done that for each one of these 5M lighting categories, and each time the increase by -- from the existing tariffs to the new tariffs is 22 percent. It's simple math. Ameren does not tell you that.

Mr. Difani's testimony, Ms. Tatro said no, the 5M lighting class is only going up by 9.7 percent. How do you reconcile that? You reconcile it and -- but Ameren does not really tell you this. The way they reconcile it is by the elimination, they say, of the pole charges, the pole installation charges. The pole installation charges are found in Ameren's existing tariff, which is tariff sheet

Number 40, and that's a 5M, and there are -- for installations prior to September 27, 1988, for wood poles -- that's the one we're going to deal with primarily because that's the predominant pole that's out there -- each pole -- each wooden pole that the company owns will send a monthly bill for pole installation charge of $7.68 per pole. And that is for poles that were installed prior to September 27, 1988.

For poles that are installed -- new poles or replacement poles after 1988, Ameren's tariffs provide the customer pays the price up front fully. Currently, that's about $2,000 for the pole and the cable, just for a wood pole installation. And those customers who have post-1988 poles installed and they've paid for them, they don't get this pole installation charge.

But -- and so what happens is the older cities, like University City, and you'll see others in our examples. The older cities, like University City, had many of their poles installed much prior to 1988, probably 1950, 1960 poles. So they have been paying roughly this $7.68 per month per pole for -- certainly since 1988 to present, 22 years, 23 years. It calculates to about $2,000. And that doesn't even take into consideration the fact that many of these poles were probably installed in the '60s and '70s. So it's much more that they've been paying under this pole installation charge.

Now, Ameren -- we raised this point the last time. We didn't have the information on it, that's why we wanted the cost of service study. We really could not understand how this pole installation charge was justified. In fact, Ameren has not even attempted to justify the pole installation charge. Here in this case, they say, oh, no, no, we're just going to eliminate that. That's not going to be an issue. We don't have to justify this charge that we've been making for the last 40 years or so on these poles. And the effect of eliminating that is the difference because what happens is they -- they've eliminated the charge on those cities, the older cities that have many pre-1988 poles. That gets eliminated, but then it gets spread to the entire group of municipalities of 5M customers.

And that includes the newer cities, such as O'Fallon, which is an example in Ms. Eastman's testimony. O'Fallon is a newer city. Many of its poles were installed post-1988, okay? So they paid for all their poles up front. And what Ameren has done here is they've taken this pole installation charge, they say we're eliminating that charge, we're no longer going to charge the older cities that amount for those old poles, and we're just going to put it in the base and spread it to all the customers.

The consequence is, the newer cities like

O'Fallon who have paid up front for their poles post-'88 are now going to receive this increased pole installation charge. And that's about $2.8 million. They're taking it from the ones, you know, the pre -- the older cities who had pre-1988 poles installed and spreading it to the whole class, and that's fundamentally unfair.

And we think they did this for two reasons. One, they didn't want to have to justify this pole installation charge that has never been looked at. And, goodness sakes, how many times has University City or these older cities paid for poles at that rate at 2,000 -- $2,000 over a 20-year period of time. And current pole installation cost is about $2,000. Adjusted for inflation back to 1988, it's probably about $1,000 to put a pole in. So, you know -- and you'll see this developed in our case.

Ms. Eastman, you know, does show at page -- in her direct testimony at pages 7 and 8 the difference that spreading the pole installation charges to all of the 5M customers makes with regard to, say, University City, again, an older city. And we will show that the effect of what Ameren is proposing here is a decrease for University City of 11 percent. Not -- the rates go up by 22 percent, but because their pole installation charge annually was so high, University City was paying $172,000 a year for these -- this pole installation charge at $7.68 times -- divided into

172,000, that will tell you how many wood poles they have. So University City, by having the pole installation charge spread to all of the 5M cities, gets a decrease of 11 percent.

On the other hand, O'Fallon, the newer city who pays currently about $813,000 a year for streetlighting and who had paid up front for virtually all of its poles, paid Ameren post-1988 the full cost of the pole up front. They have to pay -- now, they're spread, their portion of this pole installation charge which Ameren says it's eliminating.

The consequence for O'Fallon is, if you accept what Ameren has filed, O'Fallon's rates go up by 22 percent -- over 22 percent. And we will have a chart that will show you a variety of -- of differentials for municipalities based on Ameren's filed rate because they are -- they say they've eliminated the pole charge. They haven't really eliminated it. They've just spread it to everybody and spread it unfairly because they did not believe they could justify that pole charge standalone in this rate case. So they just got rid of it.

And what we're telling the Commission, what we're asking the Commission is truly make them get rid of the pole charge, eliminate it completely, and that's 2.8 million. They have been overcollecting in the past, and they should not be permitted to do that in the future.

Thank you.

COMMISSIONER DAVIS: Mr. Curtis, can I inquire of you just for a second?

MR. CURTIS: Yeah.

COMMISSIONER DAVIS: Okay. So I think I understand your argument, and I guess the question is, what is your recommended solution here?

MR. CURTIS: Our recommended solution is that you require Ameren to eliminate the 2.8 million in pole charges that they have been charging annually and not just spread it to everybody, but eliminate it completely out of their -- out of their revenue requirement.

Our contention is that the -- the cities who have been paying that pole charge for decades and decades have more than enough paid for those poles, and Ameren did not want to continue it. And Ameren eliminated that charge from its tariff in this case, and we think they eliminated it because they didn't think they could justify it. And so rather than try to justify it, the charge to those older cities, they just said, well, we're just going to spread it to all the cities. And that's not fair. It's not fair to the O'Fallons and the St. Peters, the newer cities who paid for the overwhelming majority of their poles up front, for them to have this charge, the effect of which is to increase their rates by 22 percent while University City would go down 11.

The other reason we think Ameren did this is, obviously, the divide-and-conquer theory.

COMMISSIONER DAVIS: Uh-huh.

MR. CURTIS: And that is, let's split the cities up. We've polled the cities and the cities basically say, even the older ones said we think we should be charged fairly. If there is a proper charge for a pole installation that we should be paying, pole rent, whatever they want to call it, we ought to be paying it. It should not be spread to the other cities.

So we think it should be eliminated completely, and we think this Commission has the authority to do that.

COMMISSIONER DAVIS: Okay. And do you -- do you think that eliminating that charge -- I guess, let's just assume that this is going to be the only time this Commission addresses this issue for the next 30, 40, or 50 years.

MR. CURTIS: Right.

COMMISSIONER DAVIS: And do you think that eliminating the pole charge is the most equitable way to do this for all perpetuity?

MR. CURTIS: I would say so. I would say until they can -- Ameren can come in and justify the pole installation charge, which would be charged the cities who have poles installed prior to 1988, they need to come in and justify that. And if they're not prepared to come in and justify it to the Commission, they should not be permitted to charge it, either directly to the older cities or spread it to all the cities as they're trying to do. They're trying to sweep it under the rug.

COMMISSIONER DAVIS: It ought to be fairly easy to calculate what -- what a wood pole costs.

MR. CURTIS: Exactly.

COMMISSIONER DAVIS: And what it costs a crew to install it.

MR. CURTIS: Right.

COMMISSIONER DAVIS: Now, let me ask you this: There are some -- and I do not know much about what I'm about to ask you, so forgive me if I'm getting this question wrong.

But it's my understanding that there are some new federal highway guidelines that require, like, poles that are -- that are near streets to be, quote, breakaway.

MR. CURTIS: Uh-huh.

COMMISSIONER DAVIS: And does that have any effect on this at all in -- I don't know.

MR. CURTIS: I don't know. And that is a good question. I would say this. We had asked for records, and it's hard, I think, for Ameren to do it because this is in a mass property category, but a typical case might be, you know, for a wood pole, not the breakaway, but the ones that just break a car and get busted themselves, when those things happen, obviously, a car runs into it and damages it and causes the pole to be completely replaced, there is insurance that covers that. I mean, the driver who has collided and wrecked a wooden pole, you know, has incurred some real damages, which his insurance company typically will have to handle.

So the cost really to Ameren for -- for those sorts of things and that maintenance and upgrade is recouped, We would submit.

COMMISSIONER DAVIS: Okay. All right. Thank you, Mr. Curtis.

JUDGE WOODRUFF: Opening for Staff?

MS. KLIETHERMES: Good morning, Judge. Good morning, Commissioner. Staff has determined that the lighting class is underpaying by about 17 percent and, therefore, we recommend the system average increase plus an additional one percent to bring them closer to their cost of service.

We also recommend retaining the existing lighting tariff, the rate design and to keep the billing determinants as currently billed including the pole and span charges because Ameren's requested lighting rate design changes are inequitable and they haven't been given an adequate justification for the elimination of the pole and span charges. We do not recommend redesigning the lighting tariffs at this time.

When Ameren says you can't tie down rates to individual customers, that's true, but it's also kind of disingenuous in this circumstance because they have been tying down rates to these two types of customers since at least 1988.

So, again, we do recommend the system average plus one percent increase, and we also recommend the lighting schedules to stay the same. However, if you don't listen to us on that, we do recommend that you at least keep the -- the revenue shortfall caused by the elimination of the pole and span charges within the lighting class.

Commissioner, you look confused.

COMMISSIONER DAVIS: No, I'm just -- I'm just trying to -- to digest it all, and then you said, well, if we didn't listen to you, then we need to keep it all within -- so you would spread it to the 6M and to the other customers?

MS. KLIETHERMES: Yeah. We do not recommend eliminating the pole and span charges.

COMMISSIONER DAVIS: Okay.

MS. KLIETHERMES: But if you do eliminate them, don't spread them to the industrial, commercial, residential, keep it all within lighting. And what specific tariff schedules that falls into, I will have to defer to Mr. Scheperle here.

COMMISSIONER DAVIS: Okay. And I guess let me ask you this. Hypothetically speaking, let's say we were to -- to split the difference and say instead of -- on the pole and span charges and say we're going to make it half of what it was --

MS. KLIETHERMES: Sure.

COMMISSIONER DAVIS: -- what effect does that have? Can we do it, you know, assuming that there would be evidence in the record to support it?

MS. KLIETHERMES: I think, lawfully, you probably could do that. Whether or not that's a good idea, I think Staff would recommend you retain the existing pole and span charges.

COMMISSIONER DAVIS: Okay. And why is that, Ms. Kliethermes?

MS. KLIETHERMES: Well, we haven't seen a good reason for getting rid of them. There's certainly an equitable argument that these cities that have been paying these additional costs should -- these cities that haven't been paying the additional costs of the pole and span charges that have just been paying -- let me start over.

COMMISSIONER DAVIS: Okay.

MS. KLIETHERMES: You phrased that the opposite way of how I thought you were going to.

COMMISSIONER DAVIS: However you want to tell me, Ms. Kliethermes, I'm fine.

MS. KLIETHERMES: They haven't given us a good reason for doing it, and these -- yes?

COMMISSIONER DAVIS: If they haven't given you a good reason for doing it, then why are we allowing them to charge it?

MS. KLIETHERMES: No, they haven't given a good reason for eliminating them.

COMMISSIONER DAVIS: Okay. So you feel confident that the $2,000 pole charge is the right charge?

MS. KLIETHERMES: We're not talking about the $2,000 pole charge, I don't believe. I believe we're talking about the $7 per year pole charge.

COMMISSIONER DAVIS: $7 per year pole charge.

MS. KLIETHERMES: Per month. I'm sorry.

COMMISSIONER DAVIS: Per month. Okay. No mas. No mas.

JUDGE WOODRUFF: Public Counsel?

MR. MILLS: I don't have an opening for this issue. Thank you.

JUDGE WOODRUFF: I don't see anyone else looking to make an opening. So we'll move on to the first witness, which is Mr. Difani for Ameren.

Good morning, sir.

THE WITNESS: Good morning.

(The witness was sworn.)

JUDGE WOODRUFF: Thank you. You may inquire.

DIRECT EXAMINATION

QUESTIONS BY MR. MITTEN:

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

A. My name is Phillip B. Difani, Jr., and I work at 1901 Chouteau, St. Louis, Missouri.

Q. Are you the same Phillip Difani that caused to be filed direct testimony which has been marked for identification as Exhibit 119 and rebuttal testimony which has been marked for identification as Exhibit 120?

A. Yes, I am.

Q. Was that testimony prepared by you?

A. Yes, it was.

Q. Do you have any changes or corrections to make to either your direct or rebuttal testimony in this case?

A. Yes, I do.

Q. Would you please tell me what those are?

A. If I could start with rebuttal testimony on page 6, I would like to delete part of the sentence starting on line 18 and ending on 19. I would like to delete the words "future operating and maintenance O & M cost and."

Also, on my rebuttal testimony on page 13, line 4, in the question on line 4, it is grammatically incorrect, and I would like to insert or make the sentence read, "Why is it fair and reasonable to require municipal customers to enter into a franchise contract for a minimum of 20 years?" I did not have the "enter into" in that sentence.

Also, in my direct testimony on page 9, lines 17 and 18, I state that "Paragraph one would remain unchanged, as that is the current provision for providing excess distribution lighting facilities." That is incorrect. We did change that paragraph. We eliminated the first three, four words, something like that.

With that, my testimony is correct.

Q. So with regard to the last item that you mentioned, is there a specific change you want to make to your testimony?

A. I'm sorry, yes, there is. I would like to delete on lines 17 and 18 the sentence starting with "Paragraph one" and ending with "lighting facilities" on line 18.

Q. Are there any other changes or corrections you need to make to either your direct or rebuttal testimony?

A. There is not.

Q. If I ask you the questions that are contained in your direct and rebuttal testimony today, would your answers be the same as are reflected therein?

A. Yes, they would.

Q. And with the changes that you have already made, is the information contained in your direct and rebuttal testimony true and correct to the best of your knowledge and belief?

A. It is.

MR. MITTEN: Your Honor, I move for the admission of Exhibits 119 and 120.

JUDGE WOODRUFF: 119 and 120 have been offered? Any objection to their receipt? Hearing none, they will be received.

(Exhibit Nos. 119 and 120 were received in evidence.)

MR. MITTEN: And Mr. Difani is available for cross-examination.

JUDGE WOODRUFF: Cross, we'll begin with Public Counsel.

MR. MILLS: No questions.

JUDGE WOODRUFF: Staff?

MS. KLIETHERMES: No questions.

JUDGE WOODRUFF: Municipals?

MR. CURTIS: Your Honor, before I begin, I would like to at least add one amendment to the opening statement, and that is, after the elimination of the pole installation charges, we would accept a system of average increase to the entire class.

JUDGE WOODRUFF: Okay.

MR. CURTIS: I thought that was understood, but I wanted to make that clear.

CROSS-EXAMINATION

QUESTIONS BY MR. CURTIS:

Q. Good morning, Mr. Difani.

A. Good morning, Mr. Curtis.

Q. I'm going to ask you a question initially with regard to the change that you made, I guess, to your direct testimony at page 9 regarding paragraph one of the sheet 20 tariff?

A. Certainly.

Q. Currently, paragraph one of that -- of sheet 40 -- and that's Paragraph E-1 -- reads: "After September 27, 1988, the installation of all standard poles and cables shall be paid for in advance by customer with all subsequent replacements of said facilities provided by company."

A. That is correct.

Q. How would that read now?

A. Our proposal that we have in Mr. Cooper's testimony, I believe it just takes out the "After

September 27th" -- here it is. "The installation of all standard poles and cables shall be paid for in advance by customer with all subsequent replacements of said facilities provided by company."

Q. Great. Thank you.

You have indicated in your direct testimony, I believe, that the cost of service study showed that the 5M class needed to be increased by roughly 15 percent; is that correct?

A. Yes, roughly.

Q. And the 6M customer class needed to go up by about 216 percent; is that correct?

A. I believe that's correct.

Q. Okay. And that's at page 7 of your direct testimony, too, isn't it?

A. 216 percent. I'm there. Thank you.

Q. Great. And directing you to page 7 of your direct testimony, look at lines 15 and 16. And there you were recommending -- excuse me.

You had previously recommended and are recommending that the 6M class be increased by 20 percent, obviously not the full 216 percent, but a 20 percent increase for that group. But you also state at lines 15 and 16 that the 5M customers should be increased by 9.7 percent; is that correct?

A. That is correct.
Q. Okay. You have seen Ms. Eastman's testimony, have you not --
A. I have.
Q. -- where she has calculated, in fact, that the -- the rate increases for the various categories under the tariffs for the 5M customers is actually a 22 percent increase and not a 9.7 percent increase? You have seen that, correct?
A. I have seen it. It's incomplete, but it's certainly there, and it's also in my testimony.
Q. I'm going to hand you a copy of what is Exhibit 752, which is Ms. Eastman's surrebuttal testimony, and I would direct you to pages 2 and 3.
A. I'm there.
Q. You're there. Do you see the -- the schedule that Ms. Eastman has there for the 5M customer class by particular light -- streetlighting type?
A. I see it.
Q. And the first column is the current rate per month?
A. Correct.
Q. The next is the proposed rate increase for that particular light per month?
A. Well, the proposed rate for that month, yes.

Q. For that month, right. And then the -- she has calculated the increase as 22 percent in the far column?

A. That is correct.

Q. And it is 22 percent, is it not, for each one of those items?

A. For each one of the items that she has listed.

Q. Correct. So it's not quite exactly correct to say that the -- the 5M lighting class tariffs have been increased by only 9.7 percent, is it?

A. Yes, it absolutely is. The lighting class, if I may --

Q. Go ahead.

A. -- explain, consists also of all the charges under our tariffs. And those include pole and span charges. And whenever you take a weighted average of all of the charges that we have currently and all the charges that we expect to recover under our proposed rates, the rate increase to that class is 9.7 percent.

Q. Uh-huh. But you do not disagree with Ms. Eastman's calculation of the -- of the lighting charge per month and the increase that she has calculated at pages 2 and 3 of her surrebuttal testimony?

A. Absolutely not. I have already calculated that and have it in my work papers and in my testimony.

Q. So -- but nowhere in your testimony did you tell the Commission that you're increasing these lighting categories by 22 percent, did you?

A. I am -- I told the Commission that I'm providing an increase of 9.7 percent. That's the weighted average.

Q. The weighted average?

A. Yes, sir.

Q. But that's not true for every city, is it?

A. Absolutely not. Some cities will be getting a decrease, some cities will be getting an increase.

Q. And that is because you are proposing to eliminate the pole installation charge?

A. I really want to say yes, Mr. Curtis. The pole installation charge, we've been bickering back and forth. Would you please finally define that for me? It isn't in our tariff.

Q. Well, that's what I was going to ask you. It is in your tariff. It is in your tariff currently.

A. Well, I know that we have pole charge monthly rates. I don't know that that's the same thing as a pole installation charge.

Q. Well, that was my question. I'll refer you to --

MR. CURTIS: I've marked this, Your Honor, Exhibit 752A.

(Exhibit No. 752A was marked for identification by the Court Reporter.)

BY MR. CURTIS:

Q. Mr. Difani, do you recognize what has been marked as Exhibit 752A?

A. I do.

Q. And what is it?

A. It's a sheet of our tariff. I believe that's our current tariff.

Q. Current tariff. Right. And so it -- and Paragraph 2-E says?

A. E-2?

Q. E-2, excuse me, E-2. "For installations prior to September 27, 1988, for wood poles, $7.68 per month per pole"; is that correct?

A. That is absolutely correct.

Q. Okay. And my question to you is, what's that for?

A. In 1988, my understanding of that charge is the life cycle cost of Ameren UE, Ameren Missouri back when it was Union Electric, the cost of the installation, upkeep, and replacement of the pole for life.

Q. For life. And what's the average life?

A. For as long as the customer wants the light.

Q. Right. Okay. And -- and so -- but after

September 27, 1988, any municipalities that wanted a streetlight put in would have to pay up front --

A. There was a fundamental change in 1988, yes, sir.

Q. Okay. So going -- after 1988, customer pays for the pole and the installation?

A. Yes.

Q. And cables that may be needed, and wiring to go with that pole for that light?

A. That is correct.

Q. Okay. And the customer paid that 100 percent up front?

A. They paid for the initial cost of it 100 percent, yes.

Q. And because they paid for that up front, they did not have to pay this monthly $7.68?

A. That is absolutely correct.

Q. Okay. So it does relate to the -- the cost of the pole, does it not, the cost to install the pole?

A. The installation and whatnot. We charged a fee up front for that. We own the pole, we replace it, we take care of it. But there was a charge up front. It's just a different mechanism for paying.

Q. Okay. Let me refer you to page 8 of your direct testimony, lines 1 and 2. And there you -- in response to the question at page 7: "Are there any other changes to the lighting tariffs being proposed in this case?" And you say, "Yes, we are proposing to discontinue collecting the monthly charges on distribution facilities installed specifically for lighting equipment which are delineated in Paragraph E-2 on sheet 40" that we just talked about.

A. That's correct.

Q. And there you describe them as monthly charges on distribution facilities? What are distribution facilities?

A. The way I was referring to it as opposed to generation or transmission, these are distribution -- this is a distribution plant.

Q. Okay. Yes. And so the poles typically are used as part of the distribution system out to the various houses in the neighborhood; is that correct?

A. These would be -- I think we're talking about lighting poles which are generally standalone. Well, certainly the poles that are being charged rent on would be not part of the distribution lines generally going to the homes. These would be a pole along a street.

Q. Are you saying that the pole installation charge is strictly for a wooden pole on which there is a streetlight and nothing else?

A. Whenever it was conceived in 1988, I believe that's what the charge was for.

Q. Well, you look at a typical wood pole with a streetlight on it, you will see many other wires hanging on it, sometimes cable, sometimes the telephone lines?

A. We have a number of poles -- well --

MR. MITTEN: I'm going to object. That assumes facts not in evidence.

MR. CURTIS: And I'm merely asking his knowledge.

JUDGE WOODRUFF: I think it was phrased improperly, in that you were stating that you were making a statement rather than a question. Was it intended to be a question?

MR. CURTIS: It was intended to be a question. I'll try to rephrase it.

BY MR. CURTIS:

Q. In your answer at lines 1 and 2, you say you're going to discontinue collecting the monthly charges on the distribution facilities. Those are your words.

You didn't say discontinue collecting the monthly charges on wooden poles?

A. That's correct. And I'm not discontinuing monthly charges on just wooden poles.

Q. Right.

A. I am discontinuing -- I am proposing

discontinuing monthly charges on wood poles, on the ornamental concrete poles, on steel breakaway poles, on standard two-conductor overhead cable, underground cable. I am proposing doing away with special facilities.

Q. Well, let me ask this question then. Your answer further is that you're proposing to discontinue collecting monthly charges on distribution facilities installed specifically for lighting equipment?

A. I believe that's correct, yes.

Q. Are you saying that there are no pole installation charges -- monthly pole installation charges for wooden poles that are used to distribute electricity in the neighborhood that happened to have a streetlight attached to them also?

A. We have a number of poles that are hung on distribution poles. Did I say poles? I meant lights hung on distribution poles. And typically, there is no charge for that. The pole is already there, and the customer requests a light, and we hang a pole on an -- we hang a light on an existing pole, and there would not be any pole rental on that.

Q. Have you read Ms. Eastman's testimony?

A. I have.

Q. Did you read the portion where she described University City, and I believe the annual pole installation charge per sheet -- tariff sheet Number 40 is $172,000 per year; do you recall that?

A. I recall a number like that, yes.

Q. Do you recall her also testifying that the city of University City did a survey and found that the overwhelming majority of their wood poles are used for distribution and that there were very few -- in fact, I think she may have indicated the number was five poles, wooden poles where there was -- there was a wooden pole and a streetlight alone on it?

A. My recollection is entirely different. Could you please refer me to that part of her testimony?

Q. I'm just asking if you remember it.

A. I remember it differently.

Q. How do you remember it?

A. I remember it that she said there were no poles that had no pole attachments, and that's why I think in my -- in my rebuttal that I showed her pictures --

Q. Right.

A. -- of poles.

Q. Right.

A. With no pole attachments.

Q. So you disagree with Ms. Eastman -- if Ms. Eastman has testified that University City, the overwhelming majority of the wood poles on which there is a streetlight also have distribution lines on it and very few wood poles exist where -- where only a single streetlight is the attachment, you would disagree with her testimony?

A. I have a limited disagreement with her testimony. She said that there were none. I do not know how many there are. I know that there are some, and I showed that. So that's the extent of my knowledge on the University City.

Q. Let me understand if I'm understanding you correctly. You are saying that if a -- if a wooden pole on which a streetlight is hung is also used in the distribution system to -- for wires and lines, that there should be no pole -- monthly pole installation charge made to that city for that pole?

A. What I believe I said was that if there was a pole already there and a customer, be it a residential customer or University City or any other customer, wants a light hung on a pole that is already there prior to 1988, you would not have charged.

Q. There should be no charge?

A. There would not be a pole rental charge included in that.

Q. Well, if Ms. Eastman is saying that there are only a handful, maybe set to the number five, five poles like that in University City, five poles on which it is a wooden pole with a streetlight fixture on it and nothing else, then University City's monthly pole installation charge should be five times $7.68, is that correct, assuming my numbers are --

A. I don't think your numbers are correct. I don't think I can make that --

Q. Well, just assume for the purpose -- if there are only five standalone streetlighting poles, that would be the only monthly charge University City should receive?

A. I'm saying that from our books and records, the number of poles that they asked us to install are what they are. I don't know what they are, and I don't agree with your number of five.

Q. Okay. If you accept Ms. Eastman's number of $172,000 annually for pole installation charges -- do you remember seeing that in her testimony?

A. I do.

Q. Do you have a calculator with you?

A. I do.

Q. Would you divide $172,000 by $7.68?

A. Okay.

Q. What do you have?

A. 22,395.

Q. And that would be the number of poles that -- that University City is being charged for?

A. No, sir. That's just the calculation that you asked me to do.

Q. Well, if you accept the billing number of $172,000 annually for University City for pole installation charges, right?

A. Right.

Q. And if you accept the current tariff rate is $7.68 per month --

A. And that's the division I made.

Q. Right. Excuse me. Let's do this calculation since we're talking about annual numbers. Take $7.68 times 12.

A. $92.16.

Q. Okay. And now divide that $92 -- what did you say?

A. And sixteen cents.

Q. $.16. Divide that into the 172,000 figure.

A. I get about 1866.

Q. 1866?

A. That's correct.

Q. And that should be the number of standalone streetlighting wooden poles for University City if we accept the -- the base number of their annual billing at 172,000; is that correct?

A. I seem to recall their number of wood poles being different than that, but -- I mean, you're including on ornamental poles and whatnot.

Q. Yeah, but approximately that many. So -- but 1866 wooden poles, standalone, for streetlighting is a big number, is it not, as compared to Ms. Eastman suggesting that it was only five or six?

A. Compared to five or six, sure.

Q. Yeah. Now, in your rebuttal testimony, Mr. Difani, I think you attached a number of pictures of wood poles with streetlights?

A. Yes, I did.

Q. And I'm not sure those pages were numbered, but -- here they are. It appears that Schedule PBD ER 9 --

A. Yes, sir.

Q. I think you've got three pictures, and each one of those shows a wood pole with only a streetlight on it; is that correct?

A. Streetlight and the wires serving it.

Q. And the wires serving it, right, right.

A. And I believe I have more -- more pictures than just those first three.

JUDGE WOODRUFF: Are you going to mark this as Exhibit 755?

MR. CURTIS: 755, correct.

(Exhibit Nos. 755, 756 and 757 were marked for identification by the Court Reporter.)

BY MR. CURTIS:

Q. Mr. Difani, I've handed you what's been marked as Municipal Group Exhibits 755, 756, and 757.

A. Yes, sir.

Q. Do you see those?

A. I do.

Q. Do you see that these are wood poles?

MR. MITTEN: I'm going to object to any questions about these exhibits until they're -- somebody can testify as to what they are and they are otherwise authenticated.

MR. CURTIS: Ms. Eastman will be identifying these when she's on the stand as pictures she took of wood poles of lights in University City.

MR. MITTEN: Then I would wait until Ms. Eastman has a chance to do that before Mr. Difani answers any questions about them.

JUDGE WOODRUFF: Well, there's no foundation for them at this point. It's proof of what they are, but --

MR. CURTIS: Well, we can get that, obviously, when we get to Ms. Eastman's testimony, but, you know, subject to there being later authenticated and introduced, I would like to request the privilege of crossing him on these.

MR. MITTEN: Judge, you can't unring the bell. Once the testimony is in, it's very difficult to -- you can excise it from the record, but people have already heard the testimony, and I don't know whether or not these exhibits are going to be authenticated and allowed into the record, so I object to any cross-examination of this witness on these exhibits.

JUDGE WOODRUFF: I'm going to overrule the objection as to any questions. I think he can ask -- we'll see what kind of questions he asks, and I'll rule on individual questions if you have objections.

BY MR. CURTIS:

Q. Mr. Difani (sic), you've got before you Municipal Group Exhibits Number 755, 756 and 757, and if you will assume, for the nonce, that these are wood poles in University City on which you see a streetlight and other distribution facilities. Can you see that clearly from each one of those pictures?

A. I have no idea from any of these pictures where they are, but --

Q. Right. Accepting what I'm saying right now, just for the purpose of the question --

A. If you're just asking a question about a wood pole with a light on it as distribution lines on it?

Q. Right. Would it be your testimony that in each one of these cases, that University -- or the city, whoever -- wherever these poles are located, according to your testimony and understanding of the tariffs, that city should not be charged, assuming these are pre-1988, should not be charged pole installation charges under tariff sheet Number 40 of AmerenUE?

A. What I'm seeing here is a distribution pole that may or may not have been a distribution pole 20 years ago, 30 years ago, whatever period of time it was. But if this was a distribution pole, the way it looks now back in 1988, that customer would not be charged a rental fee for that light -- for that pole.

Q. Because, as you stated in your -- in your direct testimony, that the monthly pole installation charge is for, as you say, distribution facilities installed specifically for lighting equipment?

A. That is correct.

Q. And if those poles were needed for distribution and were actually in place for distribution, and the city said we'd like to have a streetlight put on it, they would not be charged this installation fee; is that correct?

A. That is correct.

Q. Further on at page 8 of your direct testimony, Mr. Difani, at lines -- at the end of line 9, you state, "In September 1988, the mechanism to charge for these excess facilities changed to a one-time up-front charge." And then you continue: "Customers have the option to pay the one-time charge for their existing facilities or continue to pay the monthly charge for those facilities already in place in September 1988"; do you see that?

A. I do.

Q. And this is the 1988 change to the tariff. Do you -- how were municipalities advised in 1988 of their option to pay a one-time charge in order to discontinue the monthly charge?

A. That particular portion of my testimony was taken from interviews with other people. I wasn't in the rate department in 1988.

Q. Okay.

A. I was advised that they were given the option, and I don't know how they were given that option.

Q. Okay. Do you know whether any cities accepted that -- that option?

A. I don't know that anybody accepted that option.

Q. Okay. What does it cost currently to put in a -- to install a wood pole and attach cables in order to render that pole available for streetlighting?

A. I heard you mention a charge of $2,000.

Q. Yes.

Q. As part of my work in gathering costs and doing a cost of service, I asked how much did it cost to install a pole today. I was told that's about $650. That does not include the wire, and I did not specifically ask on average how much the wire costs to run the -- the cable to the pole.

So I don't want to say that your $2,000 is wrong, but the number that I had for just the pole was $650.

Q. But there would be additional wiring to go with that?

A. Yes, there would.

Q. Do you know a person by the name of Les Nolan, who is a PE, professional engineer, with Ameren?

A. I know Les.

Q. You do. And is his title customer service engineer?

A. I don't know him that well.

Q. We've got an e-mail from Mr. Nolan and let me just read it and see if you would accept -- and this is an e-mail which we'll later introduce from Mr. Nolan to Mariela Tapia at University City.

MR. MITTEN: Again, Your Honor, I object to the lack of foundation of this exhibit that Mr. Curtis is reading from.

JUDGE WOODRUFF: It's not been offered as an exhibit at this point.

MR. CURTIS: It's not.

JUDGE WOODRUFF: I'm going to overrule the objection. You can go ahead and read it, understanding it's not evidence now, it's just your --

MR. CURTIS: Correct, absolutely. We're trying to get to a --

BY MR. CURTIS:

Q. And this is what Mr. Nolan says in the e-mail. "The charge for setting a pole depends on size and location, but the cost is about 1200 to $1,400. The charge for stringing wire over to the light is about $4.16 per foot. There is also a cost to connect spans to the energized system of $62, so one pole and one span of wire would be about $2,000. I suggest that you call AmerenUE Construction hotline if you want a specific quote."

Having heard that --

A. And what do you want me to do with that?

Q. Does that sound approximately right to you?

A. I don't have a feel for -- for -- I never worked in construction.

Q. Right.

A. I don't have a feel for that. The number that I got was from the energy delivery people that installed the poles, and I was told $650 for the pole and its installation.

MR. CURTIS: Thank you. I have nothing further.

JUDGE WOODRUFF: All right. And I have no questions from the bench.

Commissioner Kenney, do you have any questions?

COMMISSIONER KENNEY: No. No, thank you. I have no questions.

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

MR. MITTEN: Thank you, Your Honor, I do have questions.

REDIRECT EXAMINATION

QUESTIONS BY MR. MITTEN:

Q. Mr. Difani, do you recall Mr. Curtis asking you to make a calculation as to the number of poles that University City was being billed for under the 5M tariff?

A. Yes, I do.

Q. Do you have a copy of Ms. Eastman's direct testimony?

A. I do.

Q. Could you please turn to what has been designated as PAE Exhibit 2 attached to that testimony?

A. I'm there.

Q. Now, Mr. Curtis, during his examination, suggested that University City was being billed for 1866 poles. Do you recall that?

A. Yes, I do.

Q. Is there anything on that exhibit that tells you exactly how many poles University City is being billed for?

A. At the very bottom, it says that they are being billed for 314 ornamental poles and 1166 wood poles.

Q. So the actual number is closer to 1500; is that correct?

A. That is correct.

Q. Now, are there any other charges that University City is being billed for that would show up in the 176,000 -- roughly $176,000 annual figure that Mr. Curtis indicated was for poles?

A. Yes, there are. There's underground cable and wiring, there's under -- there's two lines of those. One is for in dirt and one is for under concrete or asphalt. I don't know, there's a municipal lighting discount amount, there's a municipal charge for University City. I don't know what all is included in his charges, but certainly there's additional things besides just the wood poles on the bottom.

Q. Well, let me direct your attention to Exhibit 752A. Do you have a copy of that?

A. The tariff?

Q. Yes.

A. I have it.

Q. Now, there's a charge on the tariff for wood poles; is that correct?
A. That is correct.
Q. Is there a line item on the University City bill for wood poles?
A. There is.
Q. There's also a charge for ornamental poles on the tariff; is that correct?
A. There is.
Q. And is that the corresponding charge on University City's bill?
A. It is.
Q. There's a charge in the tariff for underground cable installed in and under dirt; is that correct?
A. That is correct.
Q. And is there a corresponding charge for that on University City's bill?
A. There is.
Q. And there's another charge for all underground cable installations. Do you see that?
A. Yes, I do.
Q. And is there a corresponding charge on University City's bill?
A. There is.
Q. So the 176-odd thousand dollars that

Mr. Curtis is referring to, that's not just a charge for wood poles; is that correct?

A. Absolutely correct.

Q. Looking at the pictures that Mr. Curtis gave you, which have been designated Exhibits 755 through 757, do you see those pictures?

A. I do.

Q. Now, assuming, as Mr. Curtis did, that those are pictures of poles in University City, would you agree that there are distribution facilities on those poles?

A. I would.

Q. And if, in fact, those poles are in University City, would the city be billed a pole charge for those poles since there's a light fixture on it?

A. No. I made a quick calculation of the number of poles that -- I keep calling it lights poles. I'm sorry. The number of lights that are on this bill that you talked about PAE 2. Pardon me if my math is incorrect, I did it quickly, but I calculated 3,334 poles or 334 -- 3,334 lights that they are being charged for.

With this 1100 wood poles and the 300 ornamental poles, that leaves somewhere in excess of or close to 2,000 poles or lights that they are not being charged for. I would suspect that these would be one of those.

Q. When you say they're lights that are not being charged for, did you mean to say that there are no poles associated with those --

A. No pole charges associated with those lights. Thank you.

Q. Mr. Curtis also asked you a number of questions about a chart that appears in Ms. Eastman's surrebuttal testimony. And that chart appears on pages 2 and 3, even though there's no page numbers to that testimony; is that correct?

A. That is correct.

Q. And do you recall those questions?

A. I do.

Q. Now, there's a column on that chart that indicates current rate per month. Do you see that?

A. I do.

Q. Does that fully reflect all of the charges that University City is currently paying for municipal lighting?

A. No. Well, there's a number of charges that they are paying that is not included in these light charges. Is that what you're asking me?

Q. Yes, that's what I'm asking you.

A. There are pole and span -- just going back to this PAE 2, looking at the bill, there are a number of lights on here, there are a number of overhead spans -- standard overhead spans, there's ornamental poles, wood poles, there's underground cable, there's various discounts, there's a municipal lighting discount, there's the FAC adjustment, there's municipal tax that all the residents of University City pay. Evidently they pay it, too. So there are a number of other things that -- that they pay besides just these rates for the light fixtures.

Q. And if all of the costs that University City currently pays for lighting had been included in this chart, would that likely have affected the 22 percent increase that's reflected in the fourth column?

A. It absolutely would have.

Q. Let me next turn to your rebuttal testimony and specifically the pictures that you attached to that rebuttal testimony. Are you there?

A. I'm there.

Q. Now, I believe you testified earlier that in her pre-filed testimony, Ms. Eastman indicated that there were no poles in University City that didn't have a distribution line or some other pole attachment attached to the facility?

A. That is correct.

Q. And I believe Mr. Curtis indicated that the story now is that there are five such poles; is that correct?

A. That's what I heard.

Q. Let me first direct your attention to Schedule PBD, ER 9. Could you tell me what that shows?

A. That shows a wood pole in University City. If you go back two or three pages, it would be identified as far as the street and location for it and has a number designation. The first one is U303, and it will show up on -- as I said, on the street designator map a couple pages down. It is a wood pole. It has a light on it, and it has a wire coming to that pole to feed that light.

Q. Isn't that a distribution facility, that wire?

A. That is a distribution facility.

Q. But is it necessary to provide power to that light?

A. It is.

Q. Would the fact that there is a line attached to the pole that's necessary to provide power to the light entitle University City to be exempt from the pole charge associated with that pole?

A. Absolutely not.

Q. Let me direct your attention now to Exhibit PBD -- the next section -- or next page on PBD, ER 9.

A. I'm there.

Q. Which I believe is indicated as 01388 in the lower left-hand corner.

A. That's correct.

Q. What's that a picture of, Mr. Difani?

A. That's another wood street pole light in University City fed by wire.

Q. And what's the purpose of the wire that's on that pole?

A. Again, the purpose of that wire is to feed that light.

Q. So just because there's a wire to feed the light wouldn't exempt University City from the obligation to pay the pole charge?

A. That is correct.

Q. Let me direct your attention to the next picture in PBD ER 9, which I believe is designated U1382?

A. I'm there.

Q. What's that a picture of, Mr. Difani?

A. It looks like a wood pole with a light that appears to have a span of wire coming to it to feed it and a span continuing to feed the next light.

Q. Would the fact that there is a span continuing to feed the next light entitle University City to be exempt from the pole charge associated with that pole?

A. No, sir, it would not.

Q. Let me direct your attention to the next picture in PBD ER9, which I believe is designated in the lower left-hand corner as U919.

A. I'm there.

Q. What's that a picture of, Mr. Difani?

A. That's a wood pole in University City being fed, again, by wire and, again, it looks like there's another wire continuing feeding another streetlight.

Q. Again, under the tariff, would University City be exempt from the pole charge for that fixture?

A. No, they would not.

Q. Let's look next at the picture that -- in the lower left-hand corner indicates it's U929.

A. I'm there.

Q. What's that a picture of?

A. Again, it's a wood pole in University City with a span of wire coming to it to feed the light. Again, it would not be considered distribution, and University City -- well, excuse me, that is distribution, but U City would have to pay a pole charge for that assuming that it was prior to 1988.

Q. Well, let me next -- let me see if I can speed this up. You also have pictures in PBD ER 9 which are designated U930, U932, U934, U1761, U3722; is that correct?

A. That is correct.

Q. Do any of those pictures portray a situation where University City would be exempt from the pole charge because there are distribution facilities attached to the pole?

A. No.

Q. By my account, there are ten pictures that were included in PBD ER 9; is that correct?

A. That is correct.

Q. So based on the fact that there are ten pictures of poles in University City that do not have distribution facilities on them that would exempt those poles from the pole charge, what conclusions can you reach about Ms. Eastman's claim that there are only five poles in University City that would not qualify for the exemption?

A. I hate to correct you, but Ms. Eastman said there were zero. It was Mr. Curtis that said there were five, and I think both are incorrect.

MR. MITTEN: I don't think I have any further questions. Thank you, Mr. Difani.

JUDGE WOODRUFF: Mr. Difani, then, you can step down.

THE WITNESS: Thank you.

JUDGE WOODRUFF: We'll move on to Staff's witness, Mr. Scheperle.

MR. CURTIS: Your Honor, is there recross?

JUDGE WOODRUFF: No.

MR. CURTIS: On redirect?

JUDGE WOODRUFF: No.

(The witness was sworn.)

DIRECT EXAMINATION

QUESTIONS BY MS. KLIETHERMES:

Q. Good morning, Mr. Scheperle.

A. Good morning.

Q. Could you please state and spell your name for the record.

A. My name is Michael Scheperle, M-i-c-h-a-e-l, S-c-h-e-p-e-r-l-e.

Q. And are you the same Michael Scheperle who submitted direct rebuttal, surrebuttal testimony in this matter and contributed to the Staff's class cost of service and rate design report?

A. Yes.

Q. I believe your direct has been premarked as 226, your rebuttal 227 and your surrebuttal 228. Does that sound correct?

A. Yes.

Q. And did you author several sections of the Staff's class cost of service and rate design report, Exhibit 204?

A. Yes.

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

A. Yes. I have one correction to make to the surrebuttal testimony.

Q. And what is that correction?

A. And it's on page 4. And it would be line 2. Instead of 17 percent, it should be 36 percent.

Q. If I were to ask you to answer the same questions today or to draft the same sorts of reports, would your product be substantially the same?

A. Yes.

MS. KLIETHERMES: Judge, Mr. Scheperle is scheduled to take the stand at least one more time. Would you like me to offer his -- the sum of his product now or wait?

JUDGE WOODRUFF: What is his other issue?

MS. KLIETHERMES: Class cost of service, rate design.

JUDGE WOODRUFF: Is anything -- any of his testimony limited just to this issue?

MS. KLIETHERMES: I don't think so.

JUDGE WOODRUFF: All right. What we've usually done, I believe, is that you would offer it and I defer ruling on it until all his other issues come --

MS. KLIETHERMES: Then I offer it.

JUDGE WOODRUFF: That was 226, 227 and 228.

MS. KLIETHERMES: As well as Exhibit 204 -- or his portions.

JUDGE WOODRUFF: His portion of Exhibit 204.

MS. KLIETHERMES: Is anyone else testifying on 204? I believe the remaining issues of that may have settled, so I suspect I'll offer all of 204.

MR. CURTIS: There could be on LED lighting.

MS. KLIETHERMES: You're right. I'm sorry.

JUDGE WOODRUFF: Just his portion. Then I will defer ruling on their admission.

MS. KLIETHERMES: Thank you. I tender the witness for cross.

JUDGE WOODRUFF: For cross-examination, then we begin with -- does AARP wish to cross?

MR. COFFMAN: No, thank you.

JUDGE WOODRUFF: Public Counsel?

MR. MILLS: No questions.

JUDGE WOODRUFF: Ameren?

MR. MITTEN: No questions.

JUDGE WOODRUFF: All right. I have no questions from the bench. Commissioner, do you have any questions?

COMMISSIONER KENNEY: No, thank you.

JUDGE WOODRUFF: All right. So no need for recross and no need for redirect. And, Mr. Scheperle, you can step down.

THE WITNESS: Thank you.

JUDGE WOODRUFF: We'll move on to the Municipal's witness.

(The witness was sworn.)

DIRECT EXAMINATION

QUESTIONS BY MR. CURTIS:

Q. State your name.

A. Petree Eastman, spelled P-e-t-r-e-e, last name E-a-s-t-m-a-n.

Q. Are you the same Petree Eastman that has caused to be filed in this case direct, rebuttal and surrebuttal testimony marked Municipal Exhibits 750, 751 and 752?

A. I am.

Q. Okay. Do you have any additions or corrections to make to any of your testimony?

A. I actually do. It would be in the direct testimony on page 13, starting with -- I'll just start with line 22. It says, "Recently the city of University City inventoried all its poles and found that all wood poles, which are the predominant pole type being charged to 5M customers, have other facilities attached and never only have a streetlight on them." I'd like to correct that.

That was misunderstanding -- miscommunication between myself and the engineer who did the survey, and we did find that there are some, very few, some streetlights on wood poles where that is the only item on the pole is the streetlight. The remainder of them, and I think the percentage is around 90 percent of the 1166 wood poles for which we're being charged a pole charge have -- are on distribution lines and have other facilities -- in some cases other facilities besides distribution, including cable and telephone service. So it's gone from none to very few, probably less than ten percent of the 1166 wood poles that we are currently being billed.

Q. Thank you. Do you have any other additions or corrections to make?

A. On that note, I would also add that currently University City is paying for 1166 wood poles, and our inventory showed that there were only 900 -- 989 wood poles with streetlights on them. So we're currently being overbilled by several hundred and, therefore, any wood pole with a light on it is being charged a wood pole charge, including 90 percent of the 1166 that are -- have distribution lines. So --

MS. TATRO: Your Honor, can I inquire what change we're making to testimony here? Are we doing additional live testimony? I'm unclear what's going on here.

BY MR. CURTIS:

Q. Tell them the specific revisions or additions to that testimony.

A. I'm just adding that we are being -- we are being -- we only have 989 wood poles for which all of which we're being billed pole charges. That's my addition.

Q. Okay. Thank you. Are there any other additions or corrections to make?

A. No, there's not.

Q. And if you were asked these same questions today, would your answers be the same as you have stated in these -- in this testimony as amended?

A. Yes.

Q. Okay.

MR. CURTIS: Thank you. I will offer Exhibits 750, 751 and 752 into evidence.

JUDGE WOODRUFF: All right. 750, 751, 752 have been offered. Any objections to their receipt?

MS. TATRO: I object.

JUDGE WOODRUFF: What's your objection?

MS. TATRO: May I voir dire the witness, please?

JUDGE WOODRUFF: You may.

VOIR DIRE EXAMINATION

QUESTIONS BY MS. TATRO:

Q. Ms. Eastman, do you have an undergraduate degree?

A. Yes, I do.

Q. What is that degree?
A. In business management.
Q. Any other educational degree?
A. Yes. I'm a lawyer, have a JD from St. Louis University, and I have a master's in city planning from the University of California Berkeley.
Q. By whom are you employed?
A. I am self-employed.
Q. Prior to Ameren Missouri's last rate case, have you ever testified on class cost of service issues?
A. No.
Q. Prior to Ameren Missouri's last rate case, have you ever testified on rate design issues?
A. No.
Q. Have you ever had any training on class cost of service studies?
A. No.
Q. Have you ever had any training on rate design issues?
A. No.
Q. Have you ever participated in conducting class cost of service studies?
A. No.
Q. Have you ever participated in designing rates?
A. No.

Q. Do you consider yourself an expert on utility revenue requirement issues?
A. No.
Q. Do you consider yourself an expert on customer class cost of service studies?
A. No.
Q. Do you consider yourself an expert on rate design issues?
A. No.
Q. Do you consider yourself an expert on utility tariffs?
A. No.
Q. Do you know the difference between a class cost of service study, such as what was done by Mr. Warwick, and the work sponsored by Mr. Difani?
A. No.
Q. Do you understand the relationship between the class cost of service, the cost of service, and rate design?
A. I'm sorry, say that again.
Q. Do you understand the relationship between cost of service, class cost of service, and rate design?
A. Minimally.
Q. I'm going to hand you a copy of -- is it true that you were deposed by me?
A. Yes.

Q. I'm going to hand you a copy of the deposition.

A. I have a copy.

Q. Do you? Great. Would you please turn to page 29.

MR. CURTIS: Your Honor, if I might. I don't know how long this inquiry is going on, but --

MS. TATRO: I'm close to done.

MR. CURTIS: AmerenUE previously filed a motion to strike Ms. Eastman's testimony, and we responded to that, and the Commission has ruled in denying Ameren's motion to strike. I believe we are maybe replowing that ground here.

JUDGE WOODRUFF: We'll see where Ms. Tatro is going with it. Ms. Tatro, go ahead.

MS. TATRO: Thank you.

BY MS. TATRO:

Q. On the bottom of page 29, starting at line 23. Are you there?

A. I'm there.

Q. Do you agree it reads:

"Q And is the relationship between rate design and class cost of service and the cost of service?"

And then on the next page, on page 30, starting at line 1, the answer is:

"Now, that's an interesting question because I think that's the most confusing part for me, and I think for others is that there may be a global cost to providing streetlighting, for example, but then when you get to the individual rates for subclasses within a class, how those particular rates are determined, those monthly rates, I have not been able to figure out the length between that and the overall cost."

Did I read that correctly?

A. Yes, you did.

MS. TATRO: Okay. Your Honor, I would ask again for the Commission to reconsider its order and to strike Ms. Eastman's testimony. While it's true Ms. Eastman testified in ER 2010 0036, she testified as an employee of one of the cities and as a fact witness. She testified about the city's attempt to cut costs and her questions about how this company's streetlighting tariffs worked. She testified about what information the company could and could not provide.

She asked the Commission to freeze rates. She did not offer any rate design, she did not offer any expert testimony. In this case, she is no longer a city employee, and she's not testifying as a fact witness. Instead, she is testifying as an expert witness who's making recommendations for specific rate design changes. She asked the Commission to create a separate class for city streetlighting and a specific method to determine the cost cities pay for 5M rates by removing those costs that were previously associated with the pole and span charges.

Now, Your Honor, Missouri law says that an individual can be qualified as an expert by knowledge, skill, experience, training or eduction, and the Missouri Supreme Court has held that this statute is a fundamental rule of evidence which must be followed even in administrative hearings. Now, the Commission -- or Missouri law does allow the Commission some discretion, but it doesn't allow the Commission to ignore the requirement than an expert witness have some qualification to testify. And by her own admission, she has none of these qualifications. She's not an expert on cost of service, class cost of service or rate design. She has no formal training or education that is relevant to cost of service, class cost of service or rate design, and she certainly has no experience.

So I renew my request the Commission strike her direct rebuttal and surrebuttal because she does not meet the minimum requirements under Missouri law to be considered an expert witness.

JUDGE WOODRUFF: Mr. Curtis, do you wish to respond?

MR. CURTIS: I think the Commission has

already ruled on that. Ms. Eastman has experience in this area by virtue of her education and her work with the cities. She has testified before. She has testified to numerous issues of facts just within the tariffs and the calculations she's made.

As I said, I think the Commission has already ruled and her testimony should be admitted.

JUDGE WOODRUFF: All right. I'm going to overrule the objection. I'll certainly consider Ameren's concerns about her qualifications, or the Commission can consider those as far as the weight to give to her testimony, but I will allow her to testify.

MR. CURTIS: Thank you. If I might?

JUDGE WOODRUFF: Well, first of all, let me rule on the admission of the document that was the -- that was objected to. The testimony was Number 750, 751, 752, and they will all be received.

MR. CURTIS: Thank you.

(Exhibit Nos. 750, 751 and 752 were received in evidence.)

MR. CURTIS: If I might?

JUDGE WOODRUFF: There's not been an objection yet, but I'm sure there's going to be one very quickly here in that she has already filed her direct testimony. At this point, she should be subject to cross-examination rather than additional testimony.

MR. CURTIS: That will be fine. Thank you, Your Honor.

JUDGE WOODRUFF: For cross-examination, I guess we begin with Public Counsel.

MR. MILLS: No questions.

JUDGE WOODRUFF: AARP wish to cross?

MR. COFFMAN: No questions.

THE COURT: Staff?

MS. KLIETHERMES: Just one.

CROSS-EXAMINATION

QUESTIONS BY MS. KLIETHERMES:

Q. Possibly might have to ask you prior questions to understand how to ask the one I want to ask.

In your counsel's opening comments, he -- he stated a figure that was currently attributable to the pole and span charges and said something along the lines of that Ameren shouldn't be allowed to collect that money from anyone.

Did I roughly paraphrase that? Does that sound about right?

A. I think what he was getting at is that the monies that were being charged to the cities that had post -- or pre-1988 poles should no longer have those charges applied to them, and in addition, the spreading of those previous charges to the entire class should not occur either because the result of which would be the unfair application of a much higher percentage increase to cities that already had prepaid for their light installations.

So I think what he was getting at is at this point, the pre-1988 customers have already paid by virtue of paying --

Q. And I understand that.

A. Okay. Okay.

Q. Let me perhaps rephrase what I'm trying to get at here.

If that money isn't coming from the customers -- we've got three groups here, as I understand it. We've got the municipal customers who have pre-'88 poles?

A. Right.

Q. We have municipal customers with post-'88 poles, and I recognize there may be some overlap between those two.

A. Right.

Q. And then we have the rest of the universe of AmerenUE's -- or of Ameren Missouri's customers; is that correct?

A. Correct.

Q. So if a charge isn't going to the pre-'88 pole customers and you say it shouldn't go to the post-'88 pole customers, where does that revenue stream go? Doesn't it necessarily go to the remaining universe of Ameren Missouri's customers?

A. Not necessarily. It's our belief that that charge and those previously received revenues for that particular purpose should stop. Now, that doesn't mean that we shouldn't pay whatever rate increase there is. What we're saying is that dedicated costs for items that had been paid over probably many times should stop.

Q. So -- I'll try to ask this a slightly different way.

Should Ameren's revenue requirement be reduced by the amount of those charges?

A. That would be one way of handling it.

Q. And do you have any testimony supporting that elimination?

A. No.

Q. Okay. I think that clarifies.

A. Okay.

Q. Thank you.

JUDGE WOODRUFF: All right. For Ameren?

MS. TATRO: Thank you.

CROSS-EXAMINATION

QUESTIONS BY MS. TATRO:

Q. Ms. Eastman, you have your direct rebuttal and surrebuttal with you?

A. I certainly do.

Q. Could you please turn to your direct on page 4?

A. Okay.

Q. On line 13, do you see where it says, "Without input from the municipal group, Ameren performed class cost of service study on lighting"?

A. Yes.

Q. Did the municipal group participate in meetings prior to the filing of the rate case which discussed the development of the class cost of service study?

A. Yes.

Q. And did you attend some of those meetings?

A. I attended one meeting.

Q. Okay. On page 13, please. Are you there?

A. Uh-huh.

Q. Lines 11 and 12 indicated that the municipal group still has clarifying questions pending. Do you see that?

A. Yes.

Q. Has the municipal group submitted any question which Ameren Missouri did not answer in this case?

A. No, and I indicated that in my testimony that followed this.

Q. Okay.

A. But we didn't have any further questions at this time for Ameren and that they had answered every question we had asked.

Q. At the time you submitted your direct, were there outstanding data requests that Ameren Missouri had not answered?

A. I don't recall.

Q. Do you have your deposition?

A. I certainly do.

Q. Page 75, please.

A. Okay.

Q. Starting at line 12, the question reads:

"This statement is not intended to say Ameren Missouri hasn't answered a question that you asked.

"ANSWER: No, no, it's not. No. And as far as I'm concerned, Ameren has answered all the questions that have been provided to them thus far.

"QUESTION: Okay.

"ANSWER: That was probably inartfully worded."

A. Yes.

Q. Do you agree that's how it reads?

A. That's what my testimony was, yes.

Q. Okay. Did you prepare a lighting class cost of service for this case?

A. No, I did not.

Q. Did the municipal group have anyone prepare a lighting class cost of service for this case?

A. No, it was cost prohibitive.

Q. Okay. In your direct on page 11 --

A. Let me go back to my direct.

Q. Yes, please.

A. Okay.

Q. On lines 19 through 20, you discuss how the municipalities are under great hardship?

A. Yes.

Q. Now, in the previous rate case, you were employed by one of the municipalities; is that correct?

A. Yes.

Q. University City?

A. Yes.

Q. And what was your position at University City?

A. Assistant city manager.

Q. And as assistant city manager, you were familiar with University City's operating budget?

A. At the time, yes.

Q. Okay. What was University City's -- excuse me -- average operating budget?

A. You know, I -- it's been a year, and I would say it was in the $28 million range, but I'm not even sure of that.

Q. Okay. We can take that as a fair estimation?

A. Fair.

Q. I don't hold you to specifics.

A. I don't know what it is today.

Q. What is University City's largest expense?

A. Personnel.

Q. And do you know what percentage of the budget that would have consumed?

A. Oh, upwards of 90 percent.

Q. Okay. What's the second largest expense?

A. Probably our park maintenance.

Q. And what percentage of the budget would that consume?

A. I don't know.

Q. All right. How much is University City's annual 5M bill?

A. It is approximately $642,000.

Q. And do you know what percentage of their annual operating budget that is?

A. Without knowing the specific operating budget, I couldn't tell you what the percentage is. I mean, I can do the calculation of 28 million, but if 28 million is not accurate, then it's meaningless.

Q. But you agree 28 million was probably a fair estimation?
A. It's close, yes.
Q. Can you do that calculation for me?
A. About 2.2 percent.
Q. Thank you. I'd like now to turn to your rebuttal. And your pages aren't numbered, but I'd like you to go to the last page of testimony.
A. Okay.
Q. Lines 55 and 56 you talk about the city's in dire straits due to the overall economy. Do you see that?
A. Yes.
Q. Do cities like University City charge a municipal tax to Ameren Missouri?
A. There's a gross receipts tax.
Q. Is that charged to other utilities besides Ameren Missouri?
A. Yes.
Q. Is that based upon some percentage of the revenues?
A. Yes.
Q. Do you know what that percentage is?
A. I did a quick calculation. I think it's around six percent, at least it was for -- if my calculation is correct based upon the 5M bill, it's about six percent,

six and a half percent, something like that.

Q. And do you know how much University City collects from Ameren Missouri on an annual basis?

A. I do not know.

Q. Okay. You didn't run across that as assistant city manager?

A. No, I did not.

Q. Okay. Now, your proposal is to remove the dollar amount associated with the pole and span charge, correct?

A. Yes.

Q. I'm going to hand you what's -- I need to mark an exhibit.

JUDGE WOODRUFF: Okay. Your next number is 159.

(Exhibit No. 159 was marked for identification by the Court Reporter.)

BY MS. TATRO:

Q. Do you recognize this document?

A. Yes, I do.

Q. And what is it?

A. It's a data request to the municipal group from, I believe, Ameren and our response.

Q. And did you provide this response?

A. Yes, I did.

Q. And is this, indeed, the response that you provided?

A. Yes, it is.

Q. Okay. Can you read the last sentence on the response for me, please?

A. Yes. "The municipal group does not believe that any "costs" remain, but that such amount are simply revenues received by Ameren."

Q. So it's the municipal group's contention that this charge is only a revenue stream?

A. Yes.

Q. And you don't believe there's any costs left associated with it?

A. That's right.

MS. TATRO: I'd like to move this exhibit into the record.

JUDGE WOODRUFF: 159 has been offered. Any objections to its receipt? Hearing none, it will be received.

(Exhibit No. 159 was received in evidence.)

BY MS. TATRO:

Q. And after removing this charge, you would accept an across-the-board system average increase, correct?

A. Yes.

Q. Should that be applied to each of the lighting groups equally, 6M gets the same percentage as 5M, gets the same percentage as 7M?

A. Yes.

Q. Do you agree that your methodology means that Ameren Missouri would collect less of its revenue requirement from the lighting class?

A. Yes.

Q. Let's look at your surrebuttal. Again, the pages aren't numbered, but it's the last page of testimony, line 76.

A. I'm sorry. It's the last page? I have my typed version. I don't have the version with the line numbers, so you'll have to give it to me by the question, I suppose. I'm not sure where we are. The last -- the last page? We're on the last page?

Q. Yes.

A. Okay. Thank you.

Q. The sentence that starts on line 76.

A. Yes.

Q. "It is fair and reasonable that other classes continue to share in the cost of this vital service." Do you see that sentence?

A. Yes.

Q. I'm not sure who you're referring to when you say other classes?

A. The other classes that make up, I guess, the Ameren unit of ratepayers.
Q. So residential customers?
A. Yes.
Q. Commercial customers?
A. Yes.
Q. Industrial customers?
A. Yes.
Q. So is it your testimony that the revenue requirement should be collected from other classes?
A. Yes.
Q. Okay. Now, you also proposed creating a separate class of lighting that would separate municipalities out from other 5M users, correct?
A. Yes.
Q. Do you know if private, residential, or commercial lighting facilities are the same as the city's lighting facilities?
A. I believe that they are customers within the 5M class as well for the most part.
Q. Are they different types of streetlights?
A. No, I don't believe so.
Q. Do you know if they're on at different hours than streetlights?
A. I don't know with regard to commercial. I

don't believe that they are for residential.

Q. Okay. You propose that the Commission increases the percentage discount given to cities who sign a franchise with Ameren Missouri, correct?

A. Right.

Q. Do you offer a specific recommendation on how much that discount should be increased?

A. I think that we were bantering around --

Q. Did you offer a specific one in your testimony --

A. I would have to look.

Q. -- is the question before you.

A. I would have to look at my testimony. I apologize.

Q. Thank you.

A. If you have a page that might --

Q. Why don't we start with your direct on page 12.

A. Okay. Five years, a minimum term.

Q. All right. That's the term for franchise agreements. Look at line 4, please --

A. I'm sorry.

Q. -- in your direct.

A. It doesn't talk about the discount.

Q. All right.

A. Oh, I'm sorry. It would increase -- no, there is not a specific number here, no.
Q. And did you do any type of study to determine what that discount level would be?
A. A study? No. Just a polling and discussion amongst the cities.
Q. All right. You're recommending the Commission increase the percentage, and I'm asking you if you have a study to provide the basis for that increase?
A. No.
Q. Okay.
A. Not a study.
Q. How much of an increase would be necessary to solve this budget shortfall you discuss earlier?
A. For -- it was collectively decided that if we could bump up our municipal discount to 20 percent from 10 percent, that would be very helpful.
Q. I'm not sure if you answered my question, and I would please ask that you respond to the question asked.
A. I thought I was.
Q. Does that solve the budget shortfall?
A. Of what?
Q. Of the cities.
A. Not all cities have a budget shortfall. And you'd have to define budget shortfall for me.

Q. All right. Earlier we determined you said cities were in dire straits?
A. Yes.
Q. Does increasing the percentage discount resolve the city's dire straits of which you testified?
A. It goes to help, yes.
Q. Does it resolve it?
A. No.
Q. Let me use a different word. Does it solve it?
A. No.
Q. What percentage does it resolve?
A. It would depend on the city, and it would depend on what type of dire straits each one is in. Every city is different.
Q. All right. You testified as to dire straits.
A. Yes.
Q. Can you -- can you explain for University City, which I presume you're the most familiar with --
A. Right.
Q. -- are they in dire straits?
A. Yes.
Q. All right. What does that mean?
A. That means that their expenses far exceed their revenues.

Q. And if the Commission were to increase that discount, would it solve -- would it make their expenses and revenues equal?

A. No.

Q. On page 2, line 7, you propose the Commission shortening the minimum term for franchise agreements. Do you see that?

A. Yes.

Q. And your testimony cites Missouri law at 71.250. Do you see that citation?

A. Yes.

Q. I'm going to hand you a document. I'm not going to make it an exhibit. It's just a statute.

Is that the statute you cited?

A. Well, it's numbered the same, yes.

Q. Can you tell me -- so it's 71.250, correct?

A. Yes.

Q. Does it reference a length of time that franchise -- either maximum or minimum that franchise agreements must be?

A. No.

Q. Does it reference franchise agreements at all?

A. Not per se.

Q. Do you think perhaps you have the wrong citation?

A. It's possible.

Q. Do you know what the correct citation is?

A. Not off the top of my head, I don't.

Q. Okay.

MS. TATRO: Thank you. I'm done.

JUDGE WOODRUFF: All right. Working off the questions from the bench. Commissioner Clayton, any questions?

COMMISSIONER CLAYTON: No questions.

JUDGE WOODRUFF: Commissioner Kenney?

COMMISSIONER KENNEY: No, thank you.

JUDGE WOODRUFF: I have no questions. So we'll move to redirect.

MR. CURTIS: No redirect. Thank you.

JUDGE WOODRUFF: All right. Ms. Eastman, you can step down.

THE WITNESS: Thank you.

MS. TATRO: Your Honor, given that Exhibits 755, 756, 757 and 754 were never admitted into evidence, do I need to make a motion to strike them back when it was discussed with Mr. Difani?

JUDGE WOODRUFF: They've never been offered, so they're not in evidence. They will remain in the record while they were -- as they were discussed, so I'll -- if you've made such a motion, I'll overrule it.

All right. Ms. Eastman, you can step down. And I believe that concludes the municipal lighting issue. We'll take a break before we go to cost of capital. We'll come back in 15 minutes, which would be 10:40.

(A break was held.)

JUDGE WOODRUFF: All right. Let's come to order, please. We're back from break, and we're ready to move on to the cost of capital issue, and we'll begin with opening statements on that, beginning with Ameren.

MR. WHITT: Your Honor, before I begin, I would like to enter my appearance on behalf of Ameren Missouri. My name is Mark Whitt from the firm of Carpenter, Lipps & Leland, 280 North High Street, Columbus, Ohio 43215.

JUDGE WOODRUFF: All right. Very good.

MR. WHITT: Your Honor, and may it please the Commission, I just introduced myself. I'm Mark Whitt, and I represent Ameren Missouri on the rate of return issue in this case. Rate of return is the biggest dollar issue in this case. Over a hundred million dollars is at stake based on the gap between the company and Staff.

Mr. Robert Hevert is the company's rate of return expert, and he recommends a return on equity of 10.7 percent. Mr. Hevert, I should add, has not testified in Missouri before, but I'm confident that you're going to be very impressed with his testimony today.

Now, the elephant in the room is the ten percent return on equity authorized for Kansas City Power & Light in recent weeks. And some may ask, well, what makes Ameren Missouri different? Why shouldn't we also award ten percent to Ameren Missouri? But this question really is based on a false premise. The authorized ROE in this case doesn't depend on what the Commission did in the last case. And the next case won't depend on what happens in this case. It's -- the law in Missouri is that each case has to be judged on its own facts, and the Commission made that very clear in the Kansas City Power & Light order.

Now, I won't pretend to be familiar with all the facts in the Kansas City Power & Light case, but I am familiar with the evidence in this case. And the evidence in this case shows that Ameren Missouri's cost of equity is at least 10.4 percent. And, in fact, Mr. Hevert shows an ROE of up to 11.25 percent would be reasonable. So his recommendation of 10.7 percent is actually toward the low end of his range, unlike other witnesses who have recommended mid-points.

By point of reference, I should add that the national average of authorized returns on equity in the last 12 months is 10.3 percent. Now, two of the three other ROE experts have performed analyses similar to Mr. Hevert's. Their results also show that the company's cost of equity is north of ten percent.

Ms. La Conte, for example, will testify that an ROE of up to 10.6 percent would be reasonable, and one of Mr. Gorman's DCF analyses produced a result of nearly 10.5 percent. So when Mr. Hevert says that 10.4 percent is the minimum required return on equity, you don't have to just take his word for it.

Now, there is an outlier recommendation on return on equity in this case, and that's from Staff witness Mr. David Murray. His recommendation is 8.75. This recommendation is outside the zone of reasonableness that the Commission usually looks at based on the recent authorized ROEs. Now, the fact that he's outside the zone of reasonableness doesn't mean that we ignored his results. As I said, each case is judged on its own facts. But that doesn't mean that his recommendation should be given any weight, and we will explain today why it should not.

Now, it's important for the Commission to know that the authorized ROE will not necessarily translate into an actual earned return that the company will realize. Last week, Mr. Baxter discussed monthly returns for the period June 2007 through June 2010. And the information that he provided showed that earning the authorized return on any given month generally was the exception rather than the rule.

Now, it's true that for three months in the summer of 2010, the company did actually earn a little bit above 10.1 due largely to weather. And some have insinuated that this somehow resulted in a windfall to the company. Well, there was no windfall because when we look at 2010 -- calendar year 2010, the company's earned return was eight percent. Now, that's more than 200 basis points below what the Commission actually authorized.

And, again, I won't claim familiarity with all the testimony in the last rate case, but I would venture to guess that if the Commission in the last case had authorized the highest recommendation of any witness in that case, then the company's earned return still would not have achieved what the Commission ended up authorizing.

Now, how is it that the company consistently earns less than its authorized return? It's not because the company's inefficient. It's because of regulatory lag. The test year in this case ends in March of 2010, but the company didn't stop investing in March of 2010. It continued investing in plant property and equipment since that time and, in fact, there are people out today making investments in the company. But none of this will be reflected in rates until a future proceeding.

So that really is the nub of the problem. We're developing a weighted average cost of capital and applying that to a rate base that is outdated. It's why the company is continually in front of the Commission seeking rate increases.

Now, we understand that the rate-making formula as prescribed by statute and there are limits to what the Commission can do to mitigate regulatory lag, but one of the things the Commission can do and what it should do in this case is to authorize an ROE that reflects the reality that whatever is authorized most likely is not going to be earned. The evidence in this case supports the 10.7 percent recommendation of Mr. Hevert and, again, 10.4 being the bare minimum.

Thank you.

JUDGE WOODRUFF: Thank you, sir. Opening for Staff.

MR. THOMPSON: Thank you, Judge. May it please the Commission.

We're here today to take up the issue of the rate of return. You will recall the rate of return. It's part of the rate-making formula that's familiar to all of us that's displayed on that chart. The rate of return is in red on the chart. It's a multiplier. It's a multiplier that is applied to the net value of the shareholder's investment, that is, net rate base to calculate an allowed return on that investment. A profit, if you will.

Today, you will decide how much profit to allow to Ameren Missouri's owners. Now, you know that the rate of return is a composite number. You do not set it directly. It is, in fact, the weighted average cost of capital.

Here's another chart. I apologize that the numbers are so small. The weighted average cost of capital is calculated by simply adding up the weighted value of each component of the capital structure. And the weighted value of each component is calculated, in turn, by multiplying the percentage representing its proportion in the total capital structure by its cost. That's how you get the weighted cost.

Cost is easy with respect to debt, and cost is easy with respect to preferred equity because it's a matter of record. But cost is very, very difficult with respect to common equity. That's the number you set. That's the number the Commission will set based on the evidence adduced today, and that number, then, will drive the weighted average cost of capital, which is the rate of return. So indirectly, by setting the return on equity or ROE, as we generally call it, you will set the rate of return for this company.

Every rate-making decision issued by this Commission over the past five or six years, at least, has acknowledged that the determination of the return on equity is a difficult matter.

There are four expert witnesses in this case that will present testimony to you on the number you should pick for the return on equity. Robert Hevert is the expert for Ameren Missouri. We welcome you, sir, to Missouri. David Murray is the expert witness for the Staff, and you have heard from Mr. Murray numerous times. He's already testified in this case on another issue. You've also seen our other two expert witnesses before on other cases. Mr. Gorman, who is testifying for the Missouri Industrial Energy Consumers, and Billie Jean La Conte, who is testifying for the Missouri Energy Group.

Each of these witness offers a different recommendation. They cover a range of 300 basis points from 8.25 at the bottom of Mr. Murray's recommended range to 11.25 at the top of Mr. Hevert's. The specific point recommendations are 10.7 by Mr. Hevert for Ameren Missouri; 10.2 for Ms. La Conte for the Missouri Energy Group; 9.9, Mr. Gorman for the Missouri Industrial Energy Consumers; and 8.75 by Mr. Murray for the Staff.

Staff's position is worth $107 million as a reduction of revenue requirement. The Missouri Energy Group's position is worth 36 and a half million dollars as a reduction of revenue requirement. The Missouri Industrial Energy Consumers position is worth $42 million as a reduction of revenue requirement. So this is an important issue. It is important to Ameren Missouri, and it is important to the ratepayers, the customers of Ameren Missouri.

Each of these four witnesses is a duly credentialed expert financial analyst. Each of them has applied variations of the same three analytical methods to a carefully defined group of proxy companies to produce their recommendations. Those analytical methods are the discounted cash flow model in two varieties, the constant growth version and the multistage version, the capital asset pricing model, and the risk premium method. How is it that these experts using the same methods solving for the same unknown have produced such a wide range of, frankly, dissimilar results? The answer lies in the inputs used by each expert.

The three analytical methods we mentioned are mathematical models. The results of any model depends on the inputs that are plugged into it. I urge you, in particular, to think carefully about growth rates. I suggest to you that you must scrutinize not only the recommendations offered by the experts, but also the assumptions and the inputs that they used in reaching their recommendations.

Now I want to discuss the zone of reasonableness. This Commission has used an analytical tool dubbed the zone of reasonableness in rate cases over the past several years, including the one we've already heard mentioned, the recent decision in the Kansas City Power & Light rate case in April. The Commission has used it to compare the experts' recommendations to the authorized ROEs awarded in other jurisdictions in a recent period preceding the decision in question.

This chart illustrates the zone of reasonableness as this Commission has applied it, extending a hundred basis points above and a hundred basis points below the average. But that is not the zone of reasonableness that I want to talk to you about today.

I want to talk to you about a different zone of reasonableness, the original zone of reasonableness. That phrase originates in the rate-making juris prudence of the United States Supreme Court. It is a measure of constitutional permissibility. Constitutional permissibility. It extends up from confiscation. The zone of reasonableness starts just above a rate that would be confiscatory.

The law says that Ameren Missouri's owners have a right to a return on their investment. In fact, that right is of constitutional dimension. If you deny them a return, you confiscate their property. You cannot confiscate their property. You must pay them for the use of their property. They must be allowed a return. Well, the obvious question is how much of a return? How much of a return must you give these owners?

The supreme court has equated a reasonable rate to one that is not confiscatory, thus, the zone of reasonableness. Any rate that is not confiscatory is reasonable by definition. It includes what the supreme court has called the lowest reasonable rate. To paraphrase the Court, the courts are without authority to set aside as too low any reasonable rate adopted by the Commission which is consistent with constitutional requirements. The Court has said there is a zone of reasonableness in which the Commission is free to set a rate that is higher than the confiscatory rate. The Commission may, as the frequently quoted language has it, make pragmatic adjustments which may be called for by particular circumstances. The Commission may set rates to achieve relevant regulatory purposes. You have discretion within the zone of reasonableness.

Well, the bottom of the zone of reasonableness then, the rate-making floor is the point of confiscation. What is that point in this case? All of the cost of equity experts tell us that equity is more risky than debt because debt gets paid first. And because equity is more risky than debt, it necessarily costs more than debt. So the floor of the zone of reasonableness, what the supreme court has called the lowest reasonable rate, is just above the cost of debt. Equity must cost more than debt, so the lowest reasonable rate is one notch above the cost of debt.

There is no dispute in this case about the capital structure. This 5.944 percent is the embedded cost of debt for Ameren Missouri. Is that the confiscation point? Is that the floor? That is certainly one measure of it.

Another measure might be found in Ameren Missouri's bond rate. This chart shows average triple B utility bond yields for the first quarter of 2011. We've just finished the first quarter of 2011. We're now in the second quarter. The average for that quarter was 6.04 percent. Is that the confiscation point? Is that the floor of the zone of reasonableness? It's somewhere close to that. Somewhere around 6.04 or the previous number we saw, 5.944. Those are both measures of debt.

So if that's the bottom of the zone of reasonableness, as that phrase is used by the United States Supreme Court, well, what's the top? Is there a top? The chart that I showed you outlining their zone of reasonableness was an arrow pointing up with no ceiling, but there is, of course, a ceiling. The supreme court gave us the answer to that one, too. It's in a decision that we all constantly refer to but maybe don't think about enough: Blue Field Waterworks.

The Court said a public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties, but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.

The Court is there talking about the ceiling. It's talking about the ceiling. The return you assign should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate under efficient and economical management to maintain and support its credit and enable it to raise the money necessary to the proper discharge of its public duties.

I have one final chart. This chart comes right out of the direct testimony of Warner Baxter, the chairman of Ameren. This is an important chart. Mr. Baxter provided this chart to graphically illustrate the fact that Ameren Missouri is chronically unable to earn its authorized return on equity. But the chart shows something else also. It shows that you cannot fix that problem just by giving it a higher return on equity. You cannot fix the problem by throwing numbers at the company.

And the evidence of that, if you look at that chart, the red line that goes across the top represents the authorized return on equity. Notice that there is a step or jog upward about halfway across. That was a rate increase. Look at the blue columns at the bottom of the chart. Those represent the company's actual earned ROE for each of the months in question. There is no corresponding jog upward in the blue columns immediately in response to that jog upward of the red column. A rate increase which resulted almost immediately in additional revenues flowing to the company did not improve its earned return on equity picture.

We do see a jog upward thereafter. That starts in the fall and starts to decline again after the peak of the winter of 2010. I suggest to you it's simply seasonal.

You cannot solve Ameren Missouri's problem of earnings simply by throwing numbers at it. Now, contrary to what you might suppose, Staff has no desire at all to see this company earn less than its authorized return. The company and its owners have a right to every penny that this Commission allows it. Not to any pennies more, but to every penny that's authorized and allowed.

Staff's expert witness, David Murray, has recommended a reasonably sufficient return on equity. To use the phrase that the Blue Field Court used, his cost of common equity recommendation is well above the floor of confiscation. It is within the zone of reasonableness described by the United States Supreme Court as a measure of constitutionality in rate-making. Indeed, it is well above the lowest reasonable rate. It will provide a reasonably sufficient return to Ameren Missouri shareholders because it results in a rate of return sufficient to meet Ameren's capital costs. It is not the sort of return such as is realized or anticipated in highly profitable enterprises or speculative ventures, to quote the standard announced by our own supreme court of Missouri, it is fair, fair to the shareholders and fair to the ratepayers.

Thank you.

JUDGE WOODRUFF: Opening for MIEC?

MS. ILES: May it please the Commission. Good morning. My name is Carol Iles, and I'm here on behalf of the Missouri Industrial Energy Consumers.

MIEC's witness in this -- for this issue is Michael Gorman, as the other attorneys have already pointed out. And his testimony supports a return on equity for Ameren Missouri in the range of 9.8 to ten percent. His specific recommendation in this case is the midpoint in those numbers of 9.9 percent.

His recommendation is essentially very similar to the testimony that was provided by Meg -- Missouri Energy Group's witness, Ms. La Conte.

Mr. Thompson's exhibit indicated that her -- she was recommending an ROE of 10.2. I think she revised those numbers in her surrebuttal and is now recommending a range of 9.7 to 10.0 percent, which is really pretty much right in there with Mr. Gorman's recommendation.

On the other hand, Ameren Missouri's witness, Mr. Hevert, recommends a range that is significantly higher than this. His range is 10.4 to 11.25 percent, and he is recommending a return on equity for Ameren Missouri of 10.7 percent. I would note that's come down a little bit since he filed his direct testimony where he recommended 10.9 percent.

In his direct testimony, Mr. Hevert notes -- he points out that Ameren's position in this case is higher. They're asking for a return on equity that is higher than the average return on equity that has been authorized for a utility -- integrated utilities for the last year. The number he cites in his testimony is 10.3 percent for that 12-month average.

In opening statements before the Commission in this case, Mr. Lowery pointed out that if you look at the neighboring states, the states that neighbor Missouri, that average drops down to about 10.2 -- 10.23 percent. So anyway, what they're saying is that Ameren Missouri's entitled to a return on equity that's significantly higher than the national average.

And as Mr. -- Mr. Hevert gave two reasons for that in his testimony why that's justified. Basically, he said Ameren Missouri is riskier than the national average utility company. He pointed to two risks, regulatory risks and risks associated with coal-fired generation. He made that statement in his testimony. He did cite, I think, one authority for the proposition that the regulatory risks for Ameren were higher than average, but we would submit that essentially those assertions are unsupported in the record. The idea that the regulatory risk and the risks associated with coal-fired generation somehow justify a return on equity in this case that's significantly higher than the national average or should somehow the numbers that have been arrived at by the witnesses in this case should be adjusted to reflect those risks is simply not supported by the record.

What we do know from looking at the record in this case is that the witnesses all used a proxy group of companies to determine what the appropriate return on equity should be. And all of the risks that are encountered, especially the ones that have been noted by Ameren, regulatory environment and risks associated with coal-fired generation, those risks are well-known. They're not unknown to the analyst who have compiled the numbers that are the basis for all the calculations that were done by the witnesses in this case.

So we would submit that those risks are already implicit in the data used by the witnesses. Ameren

Missouri's risk is reasonably comparable to the proxy group, otherwise, it wouldn't be a proxy group. So it is reasonable to rely on the ROE as measured by the proxy group and as calculated by the witnesses in this case.

Now, as pointed out by my opposing counsel, those numbers are not the same. The witnesses, both Hevert and Gorman, used exactly the same proxy group and the same general approach to determining return on equity, and yet, they arrived at different conclusions about what that return on equity should be.

The difference -- the most significant difference in their calculations has to do with the long-term growth rate that they relied on. Both of them agreed that the long-term growth rate for the DCF analysis should look at GDB growth out into the future. They didn't agree on what the source of that estimate should be.

Mr. Gorman relied on the consensus of economic analyst projections, and that gave him a long-term growth rate of 4.9 percent. Mr. Hevert relied on historical GDP data for the U.S. for an 80-year period from 1929 to 2009, and added to that an inflation factor and came up with a long-term growth rate significantly higher than the one Mr. Gorman used, which was 5.65 percent. So that's really one of the key differences in this case.

When you're evaluating which witness to --

to -- whose recommendation to accept, that's something that you need to take a good look at and ask whether or not it is reasonable to assume that the future of the U.S. economy can be predicted by what happened over the last 80 years, or have we moved into new territory? Now that we're in a global economy, maybe we're looking at a different kind of growth that may occur in the United States.

And I would submit that the economic analyst who Mr. Gorman is relying on were able to take those kind of factors into effect. If you just look straight strictly at the historic data, you're not going to take whatever changes may be coming and have already occurred in our economy into account when coming up with a long-term growth rate based on gross domestic products.

Another significant difference between Mr. Hevert's testimony and Mr. Gorman's testimony has to do with the data inputs that Mr. Hevert used in estimating risk premium. So there are some technical differences in the way -- the way these numbers were arrived at, the way these recommendations were arrived at by the experts that do warrant some detailed analysis.

But the way I look at this as kind of a non-numbers person is to kind of take a step back and say, really, what's the big picture question here? And to me, the easiest way to understand really what the Commission should do in this case is to ask this question, and that is, has the cost of capital, when we look out in the economy, in the financial markets, do we see that the cost of capital has significantly increased in the last year since this Commission heard testimony in the last rate case?

We were here last spring. The decision -- the Commission issued a decision in June. So while we were here in 2010, we were really looking at 2009 data to determine what the cost of capital should be. So can we look out at the capital markets and say, wow, capital costs have really increased and, therefore, the 10.1 percent return on equity that was authorized in the last rate case is no longer accurate, we need to bump it way up to 10.7 percent as Ameren Missouri is recommending.

The simplest way, when I asked my expert witness, how can I understand this, what's a number I can look at that will really show me what's going on with the capital market? My witness, Mr. Gorman, directed me to his Schedule MPG SR 12, which is a schedule that's at the back of his surrebuttal testimony. And one of the columns on that schedule shows you the average A-rated bond yield, the bond yield for utility bonds. How much interest do they have to pay on those bonds? Has there been a dramatic increase? Because bond yield is a key component of cost of capital when you're looking on a general basis.

In 2009, the average A-rated bond yield was 6.04 percent. In the first quarter of this year, it was 5.6 percent. Okay? 6.04 to 5.6. It has gone down. We have not seen a dramatic increase in the cost of capital.

And so I would submit and the MIEC would submit that there isn't a basis for a dramatic increase in the return on equity in this case, and we would ask the Commission to set Ameren's return on equity at the amount recommended by our expert witness, 9.9 percent.

Thank you.

JUDGE WOODRUFF: Commissioner?

COMMISSIONER DAVIS: Ms. Iles?

MS. ILES: Yes, sir.

COMMISSIONER DAVIS: Do you know what Ameren's credit rating is?

MS. ILES: Yes -- that is in the -- it's not A. It's BBB, I think, or BBB plus.

COMMISSIONER DAVIS: Okay.

MS. ILES: Am I even giving a responsive answer there? I'm sorry.

COMMISSIONER DAVIS: You were in the ballpark.

MS. ILES: You're talking about the bond ratings. Right.

COMMISSIONER DAVIS: You do recognize there is an appreciable difference between an A-rated bond and a triple B rated bond.

MS. ILES: Right. And I wasn't offering that to show what their actual bond yields were, but to just generally show what's out there, what's going on in the market as a whole. And that's, I think, what the experts relied on in this case as a part of their calculations.

No, I do understand that, and I think that that evidence actually is in -- there is a schedule that shows because there is a comparison between the proxy group's bond ratings and Ameren Missouri's. And the average for the proxy group is identical to Ameren's, as I recall.

COMMISSIONER DAVIS: Thank you.

JUDGE WOODRUFF: Opening for MEG.

MS. LANGENECKERT: Good morning. May it please the Commission, my name is Lisa Langeneckert, and I represent the Missouri Energy Group.

As has been stated by the other parties, the Commission has to make the tough decision in this case on what ROE to allow Ameren Missouri that balances the need for reasonable rates for its customers in these tough economic times and the need for the customer -- the company to earn a fair return on equity and to attract shareholders and capital.

As Mr. Thompson stated, the analysis to determine ROE is largely dependent on the inputs that are put into the various models that are employed. And intelligent minds differ on those inputs. While the Commission traditionally had given more weight to the DCF and the risk premium analysis models in the KCP&L case, they made it clear that other models would be used in various circumstances to determine what the best inputs would be.

MEG witness Billie Sue La Conte's surrebuttal reflects the inclusion of the CAPM and an E-CAPM providing a recommended ROE of 9.7 to 10.0. The Missouri Energy Group believes that this range provides a better balance between the customers' needs for low rates and the utility's needs for an adequate reasonable return on equity.

Thank you.

JUDGE WOODRUFF: Okay. I believe that's all the parties that wish to make openings on this issue. So we'll move to our first witness for Ameren.

(The witness was sworn.)

JUDGE WOODRUFF: You may inquire when you're ready.

MR. WHITT: May I approach, Your Honor?

JUDGE WOODRUFF: You may.

DIRECT EXAMINATION

QUESTIONS BY MR. WHITT:

Q. Good morning, Mr. Hevert. Could you please introduce yourself to the Commission.

A. My name is Robert Hevert. Last name is spelled H-e-v-e-r-t. I'm president of Concentric Energy Advisors of Marlboro, Massachusetts.

Q. And Mr. Hevert, do you have in front of you a document that has been premarked as Exhibit 121?

A. Yes, I do.

Q. Can you identify that document, please?

A. That is my direct testimony in this proceeding.

Q. And did you prepare your direct testimony?

A. Yes, I did.

Q. Do you have any corrections to your direct testimony?

A. No, I do not.

Q. If I were to ask you the same questions in your direct testimony today, would your answers be the same?

A. Yes, they would.

Q. Do you also have in front of you a document that has been premarked as Exhibit 122?

A. Yes, I do.

Q. What is this document?

A. That is my rebuttal testimony in this proceeding.

Q. And did you prepare your rebuttal testimony?

A. Yes, I did.

Q. Do you have any corrections to your rebuttal testimony?

A. I do have a couple of corrections, yes.

Q. Let's take them one at a time by page and line number, please.

A. Yes. The first is on page 8, Table 2. You'll see the far right-hand column is labeled median, and there's a row about two-thirds of the way down which refers to Ms. La Conte's adjusted results. The median corresponding to that, which is 10.44 percent should be 10.24 percent.

Q. Thank you. Are there other corrections?

A. Yes. The next is on page 64, And this is beginning on line 17, going into line 18. There's a phrase that says, "Set an upper bound on." And that phrase should be replaced with the word "constrain." So it would be, "On a national level, constrain the proxy company's earnings growth."

Q. Thank you. Any more corrections?

A. Page 73. This is line 1. The first number there says 0.9, should be 10.9. And I have no more in my rebuttal.

Q. Subject to the corrections you just identified, if I were to ask you the same questions in your rebuttal testimony today, would your answers be the same?

A. Yes, they would.

Q. You also have a document in front of you that's been premarked as Exhibit 123-HC?

A. Yes, I do.

Q. What is that document?

A. That is my surrebuttal testimony in this proceeding.

Q. And did you prepare your surrebuttal testimony?

A. I did.

Q. Do you have any corrections to your surrebuttal testimony?

A. Only three this time. The first is on page 8. This is really a clarification. Line 14, which reads, "Weight on that model." The word "that" should be substituted with "the multistage DCF." So it would read, "Weight on the multistage DCF model."

The next is on page 23, line 16. There should be the word "not" inserted at the very end. So it would read "are not."

And the last is on page 48, line 12, toward the left-hand margin. The word "inappropriate" should be "appropriate." And those are all of my corrections. I apologize for those.

Q. Subject to those corrections, if I were to ask you the same questions in your surrebuttal today, would your answers be the same?

A. Yes, they would.

Q. Do you also have in front of you a document that has been premarked as Exhibit 123-NP, the public version?

A. Actually, no, I do not.

Q. Well, I will give it to you.

MR. WHITT: May I approach?

JUDGE WOODRUFF: You may.

BY MR. WHITT:

Q. Can you identify Exhibit 123-NP?

A. Yes. This is my surrebuttal testimony with highly confidential information.

Q. And, Mr. Hevert, would the corrections that you identified in Exhibit 123-HC also apply to Exhibit 123-NP?

A. Yes, they would.

MR. WHITT: Your Honor, at this time, the company would move for the admission of Exhibits 121, 122, 123-HC, 123-NP.

JUDGE WOODRUFF: All right. 121, 122, and 123-HC and NP have been offered. Any objections to their receipt?

MR. THOMPSON: No objection.

JUDGE WOODRUFF: Hearing no objection, they will be received.

(Exhibit Nos. 121, 122, 123-HC and 123-NP were received in evidence.)

MR. WHITT: The witness is available for cross.

THE COURT: Thank you, sir. For cross-examination, we would begin with MEG.

MS. LANG: No questions.

JUDGE WOODRUFF: MIEC?

MS. ILES: Thank you, Your Honor. I think I'll try and do it from here.

JUDGE WOODRUFF: That's fine.

CROSS-EXAMINATION

QUESTIONS BY MS. ILES:

Q. Mr. Hevert, good morning.

A. Good morning.

Q. I just -- I just have a couple of areas of inquiry. This shouldn't take too long.

A. Okay.

Q. May not be too painful. Can't guarantee anything there.

First, I wanted to ask you about your discounted cash flow analysis.

A. Which one?

Q. Well, that's a good question. What are the two that you used?

A. Well, in general terms, I used two forms of the model. There was the constant growth model and the multistage formula model and, of course, throughout my direct rebuttal and surrebuttal testimony, there were various scenarios under each.

Q. Okay. And Mr. Gorman used a similar analysis in his testimony; isn't that correct?

A. I think it's fair to say that we generally used the similar constructs, yes.

Q. All right. Now, did you have the occasion to use a long-term growth rate in your DCF analysis, I believe you used that in your multistage growth DCF; is that correct?

A. It is a term of one of the versions of the multistage model, yes, that's correct.

Q. And what did you base that long-term growth rate on?

A. Well, I guess it's sort of the same question, which version are we talking about?

Q. I'm sorry?

A. There were -- in the direct and rebuttal testimonies, the sources and the inputs to that model were slightly different than in the rebuttal -- excuse me, in the surrebuttal testimony.

Q. Well, surrebuttal is your best and final answer, correct?

A. The surrebuttal is my final, yes, that's correct.

Q. All right. Well, let's go with that one.

A. Very good. In my surrebuttal testimony, I used -- well, in all three I looked at the long-term growth as the product of the long-term growth, the real growth rate in GDP, gross domestic product, combined with an estimate of inflation, escalation.

In my surrebuttal testimony, in order to estimate the escalation factor, I looked at three sources of data. The first two were from the energy information administration's annual energy outlook, and they were estimates of the increased -- the Consumer Price Index --

Q. Okay.

A. -- and the GDP price inflator. The third was a market-based measure of investor's expectations of inflation, which is the difference between the treasury inflation protected securities and the nominal treasury rate both for 30-year tenors, the idea being that that would be the markets forward looking view of inflation over 30 years.

Q. Okay. Thank you for that information. The thing that I'd really like to zero in on is on page 30 of your direct testimony where you state that the approach that you took in your direct, which I understand from what you just said, was slightly different from what you did in your surrebuttal?

A. Yes.

Q. But on page 30, you state that your approach was consistent with the methodology this Commission accepted in Case No. ER-2010-0036; is that correct?

A. Yes.

Q. And you cite page 19 of that decision in your footnote; is that correct?

A. Yes, that's correct.

Q. All right. Now, are you -- are you familiar with the decision -- the Commission's decision that you cited there?

A. I have read it, yes.

Q. And are you familiar with the fact that on page 19 on that decision, that is a part of the Commission's decision where they were discussing Mr. Murray's testimony on the issue of ROE?

A. I don't recall specifically, but may well be, yes.

Q. Would you like to see a copy of that decision? I happen to have one right here.

A. Do you really?

Q. Yes, I do. I have it right here.

A. That's a happy coincidence, isn't it?

Q. Yes.
A. Thank you. Yes, I see that.
MR. WHITT: May I approach, Your Honor?
JUDGE WOODRUFF: Certainly may, yes.
MS. ILES: I apologize for not bringing copies for counsel.
BY MS. ILES:
Q. Can you confirm what is the document that I handed you?
A. It is the report and order in file number ER-2010-0036.
Q. And that's what you cited in your direct testimony that we were just discussing, correct?
A. Yes, it is.
Q. And on page 19, would you confirm for us that at that part of the report and order, the Commission is discussing Mr. Murray's testimony, correct?
A. It says that if Mr. Murray had instead, had instead relied on historical growth in real GDP from 1929 through 2008 plus an inflation factor, he would have derived a long-term growth forecast of six percent.
Q. Okay. Thank you. Now, did the Commission accept Mr. Murray's recommended return on equity in that case? Are you aware of that?
A. I don't believe they did.

Q. They did not. Actually, isn't it true that they accepted the testimony of a different witness, Mr. Lawson, who recommended a return on equity of 10.1 percent?

A. That may be. I don't recall.

Q. Okay. And isn't it also true that, in connection with Mr. Lawson's testimony, there was no discussion of calculation of GDP?

A. Are you referring to Mr. Lawton, Daniel Lawton perhaps?

Q. I'm sorry, you're right. I have it written down wrong in my notes.

A. Daniel Lawton. That's fine. And your question again? I'm so sorry.

Q. Sorry. Well, the first question I had was whether they accepted Mr. Lawton's recommended ROE of 10.1 percent?

A. I don't recall the specific basis of the Commission's decision.

Q. Okay. And isn't it also true that they didn't discuss the calculation of GDP growth rate in connection with Mr. Lawton's testimony?

A. Again, I don't recall that section of the order.

Q. But had they, I assume you probably would have cited it in your direct since you did cite that provision in Mr. -- with respect to Mr. Murray's testimony?

A. I'm not sure what I would have done.

Q. Okay. I'm going to ask you about your capital asset pricing model calculation.

A. Okay.

Q. Again, I know you made adjustments from your direct to your surrebuttal on this as well, correct? And you don't need to explain them all, just generally.

A. Well, any adjustments with respect to the capital asset pricing model would have been with respect to updates and with respect to the calculation of the beta co-efficient.

Q. Okay. And my question for you, the reason I stopped you there is not because it's not important how you changed it, but because what I want to focus on is how you explained the model in your direct. And I think you did the most thorough explanation of your approach in your direct testimony. I better make sure I have that right. Yes, in your direct.

And I'm going to be asking you about something you said on page 36, the bottom of 36 on your direct and continues over to page 37 of your direct testimony.

A. Okay.

Q. But before I get to that, those specific questions -- all right. In this part of your testimony when you're explaining your capital asset pricing model, you state that you used two forward-looking methods to calculate risk premium, which is an element of that calculation; is that correct? You used two different forward-looking methods?

A. Yes, that's on page 35, correct.

Q. I'm sorry. And the second one is the one I want to ask you about. And I think you refer to it in your testimony as the Sharp, S-h-a-r-p-e, ratio approach?

A. Yes, that's correct.

Q. Now, you're the only witness -- you're the only expert witness in this case that used the Sharpe ratio approach; is that correct?

A. I think all witnesses used somewhat different approaches. I am the only one that used this particular approach, yes.

Q. Okay. Has this, to your knowledge, has this approach, the Sharpe ratio approach, been used by any witness in any other case before this Commission in expert testimony?

A. Oh, before this Commission?

Q. Yes.

A. I don't know that.

Q. All right. And do you know whether this Commission has adopted this approach in any other case?

A. I'm not aware of that.

Q. All right. How about regulatory Commissions in the states adjacent to Missouri?

A. I am not aware of that.

Q. Okay. Now, one of the elements of your Sharpe ratio CAPM approach includes a measure -- one of the things you include in that is a measure of market volatility; is that correct?

A. Yes, that's correct.

Q. And you describe the measure of market volatility that you used in this calculation on the top of page 37 of your direct testimony; is that correct?

A. Yes, it refers to the -- what we refer to as the VXV and the VIX, both of which are market-based traded measures of volatility.

Q. Could you just read for us the sentence where you start out, "For the purpose of have calculation, I used." Is that the correct sentence to point out what you used for market volatility?

A. Yes.

Q. Could you read that for us, please?

A. I'm sorry.

Q. Out loud.

A. You didn't know I was done? "I used the 30-day average of the Chicago Board Option Exchange's "(CBOE)" three-month volatility index, i.e., the VXV and the same 30-day average of settlement prices of futures on the CBOEs one-month volatility index, i.e., the VIX for December 2010 through February 2011."

Q. All right. So what you're telling us there, if I'm understanding you correctly, is that your volatility index was based on the activity of the Chicago Board Options Exchange, correct?

A. No. What I'm saying is that this measure of volatility is actually based on the assessment of investors that happened to trade on the Chicago Board Options Exchange. But the calculation of volatility and the expectation of the measure of volatility is a function of investors, not the Exchange.

Q. All right. The investors who are investing in the Exchange?

A. No. They're investing in the contract. The contract happens to be traded on the Exchange.

Q. Okay. Thank you. Now I'm clear. So it's activity that is occurring at the Exchange, but it is not the Exchange that's engaged in the activity. That's what you're saying, correct?

A. Correct. And, again, these contracts are contracts that are based on observable traded securities that actually represent investor's view of what market volatility is going to be.

Q. But they aren't actually trades of the underlying securities, correct?
A. Well, yes, they are. These contracts, the VXV, the VIX, are traded securities.
Q. The contracts are traded securities. Are they common equity?
A. Are they common equity? Oh, no.
Q. All right. That's where I'm going with this.
A. Okay.
Q Thank you. So they're a derivative of common equity or not?
A. They are -- well, to be clear, they are the volatility that's implied on the option on the S&P 500 index. So when you have an option, an option price is a function of several variables, one of which is expected volatility. What this contract does is it takes the implied volatility from the S&P 500 option index, and that's what it measures.
So the importance for the purpose of this calculation, there are really two important issues here -- three important issues. One, as I said, this is publicly traded. Secondly, it is based on the S&P 500 index. The S&P 500 index, of course, is essentially the same measures that's used by Morningstar when they calculate the long-term market risk premium.
And the third important issue is that when you

look historically, the volatility on the market as measured by Ibits and Morningstar (phonetic), which is the source used by many of the witnesses in this case, is almost exactly equal to the historical VIX. So that gives us comfort that it's a reasonable basis for looking at expected volatility.

Q. Okay. Now, you lost me a little bit there. You said you would look at it historically. So are you saying that you looked at these, the volatility from this data on a historical basis?

A. If you were to look at the historical average VIX, V-I-X, it is approximately equal to the historical average standard deviation or measure of volatility on the market as measured by Morningstar.

Q. But don't you say in your testimony that you're looking at a three-month period here?

A. Oh, three month looking forward, correct. But the -- again, sort of the nexus between the two is the fact that when you look back historically, when you look historically at market volatility as measured by Morningstar, that market volatility, again, on a historical basis is nearly identical to the historical average of the VIX.

So what that tells me is that looking forward, to the extent you have forward-looking views of the market, that is a reasonable basis to apply to -- to the market risk premium to understand what the expected risk premium is going to be.

Q. Okay. Thank you.

MS. ILES: I have no further questions.

JUDGE WOODRUFF: All right. Cross from Staff?

CROSS-EXAMINATION

QUESTIONS BY MR. THOMPSON:

Q. Good morning, Mr. Hevert.

A. Good morning.

Q. It's nice to see you again, sir.

A. It's always nice to be here. In Missouri, my first time here, of course.

Q. So it's at least nice this time?

A. I'm sure every time.

Q. Now, it's true that you have an MBA degree; is that correct?

A. I do.

Q. And you are also a chartered financial analyst, correct?

A. I am.

Q. And Mr. Murray also has an MBA, doesn't he?

A. He does.

Q. And he is also a chartered financial analyst; isn't that correct?

A. I have felt his pain. Yes, he does.

Q. Now, I know you do not agree with Mr. Murray's

recommendation, but you do not doubt his expertise, do you?
A. No, I do not.
Q. And Mr. Gorman also has an MBA, correct?
A. I've never checked into that, but I'll assume that's the case.
Q. If I told you that Mr. Gorman has an MBA, would you have any reason to disagree?
A. None whatsoever.
Q. If I told you that Mr. Gorman is also a chartered financial analyst, would you have any reason to disagree?
A. I was aware of that.
Q. And you also consider Mr. Gorman an expert in ROE; is that correct?
A. Mr. Gorman has been accepted, and yes, I do also.
Q. And if I told you that Ms. La Conte also has an MBA, would you have any reason to doubt that?
A. No, I would not.
Q. And as far as you're concerned, do you accept Ms. La Conte as an expert in this area?
A. Well, it's not my role to accept Ms. La Conte as an expert or not.
JUDGE WOODRUFF: Mr. Thompson, you need to use your Microphone.

MR. THOMPSON: I apologize, Judge.

BY MR. THOMPSON:

Q. I'm asking you, Mr. Hevert, whether you accept her as an expert in this area?

A. I believe Ms. La Conte has been qualified to submit the testimony she's submitted, yes.

Q. Okay. Now, you've been doing this work since about 1984; isn't that correct?

A. When you say this work, can you --

Q. Financial analysis.

A. Yes.

Q. Okay. And as part of that work, you've done quite a few asset valuation assignments; isn't that correct?

A. I have done some, yes.

Q. Okay. You wouldn't qualify it as quite a few, but only as some. But nonetheless, you've done some asset valuations, correct?

A. I think that's fair, yes.

Q. Okay. And you were unable to provide copies of any of those to Staff because of contractual restrictions; is that correct?

A. But for some of the testimony that I had sent over, yes, that's correct.

Q. Okay. Now, would you agree with me that the purpose of your testimony today is to solve for shareholders required return on equity?

A. No.

Q. It's not. How would you characterize the purpose of your testimony?

A. I would say it's to -- to estimate the market's required return on equity. As -- as people have discussed this morning, it is an unobservable parameter that must be estimated. And so I suppose my only difference is solve for versus estimate.

Q. Okay. That's fine. You understand I am a stranger to this topic, and if I stumble over the terminology and concepts, be gentle.

Now, when you say market's required return on equity, isn't it true that what you mean is the level at which an investor will buy?

A. The -- well, the -- in any view, the market required on equity is the return required by an investor to commit capital to, in this case, a security, equity security.

Q. Is that not the same as what I, in more clumsy words, expressed?

A. I'm not sure what you may have meant, but that's what I meant.

Q. Okay. Now, in your testimony, you indicated that you were familiar with the guiding supreme court decisions in this area, Hope and Blue Field?

A. Yes.

Q. Okay. And you discuss those on pages 4 and 5 of your direct testimony; is that correct?

A. Yes, in summary fashion.

Q. Okay. And I think on page 5, you summarized the guiding principles as follows:

Number 1, consistency with other businesses having similar or comparable risks. Number 2, adequacy of the return to support credit quality and access to capital. And Number 3, the principle that the specific means of arriving at a fair return are not important, only that the end result leads to just and reasonable rates; is that correct?

A. Yes.

Q. Now, would you agree with me that one of the principles that derives from the Hope and Blue Field cases have been referred to as the principle of commensurate risk?

A. That the return required must be for investments of commensurate risk, yes.

Q. Okay. Now, there is a type of risk recognized in the financial, analytical world referred to as business risk; isn't that correct?

A. Yes.

Q. And would you agree with me that business risk is the risk that a company will not have adequate cash flow to meet its operating expenses?

A. Well, I think business risk is derivative of many, many variables, and it's manifested many ways. As to whether or not there is adequate capital and as to whether or not variables such as leverage factor into the adequacy of capital, not to be picky, but I'm not sure whether you consider that business or financial risk. But I think business risk is quite broad. And if one of the manifestations of that downside risk is the inability to generate sufficient cash flows, then I suppose that's a risk.

Q. Okay. So -- so you might agree with me that insufficient cash flows might be a symptom of a business risk that has been encountered?

A. The -- I really don't mean to be picky.

Q. That's okay.

A. When we talk about insufficient cash flows, it's sufficiency for what purpose. And when we talk about risk, we talk about, you know, the level of uncertainty and perhaps even the extent of downside risk as opposed to upside risk.

And so I don't want to appear evasive. I just want to be sure I answer your question precisely.

Q. I understand. Let's say I'm an entity that is considering loaning money to a business. Okay?

Would you agree that I might well be concerned with whether there would be sufficient cash flow to pay me back as agreed?

A. Yes, agreed.

Q. Okay. Now, there's also a type of risk recognized called financial risk; isn't that correct?

A. Yes.

Q. And would you agree with me that financial risk is greater depending on the amount of debt in the capital structure?

A. Yes. As leverage goes up, generally speaking, financial risk increases.

Q. Okay. Would you agree with me that public utilities typically have high fixed costs?

Q. Relative to what?

A. Relative to companies that are not public utilities.

A. I think it's fair to say the public utilities are capital intensive business, and as a result, there are fixed costs associated with that. But, again, aside from some reference point, I think what I can tell you is, yes, I would agree they are capital intensive businesses and they require the ability to finance that capital.

Q. Okay. Well, let's go along comparing public utilities to competitive unregulated companies.

Would you agree with me that a regulated monopoly public utility such as Ameren Missouri has less business risk than an unregulated competitive company?

A. Again, it's a broad statement. I would agree with you. I would say -- I would say -- and I think all of the witnesses in this case have agreed, for example, that the beta co-efficients for utilities are below one, they're below the market. So in that regard, I think we would all agree that generally defined by the market, they're less risky.

Q. Okay. Do you agree that a regulated monopoly public utility such as Ameren Missouri has less business risk than an unregulated competitive merchant generation company, for example?

A. Yes, I agree with that.

Q. Now, you are aware, I happen to know from reading your testimony, that a firm called Duff & Phelps performed a goodwill impairment testing for Ameren at the end of August 2010; isn't that correct?

A. I am aware of that, yes.

Q. Okay. And the report produced by Duff & Phelps recognized the comparatively greater risk of Ameren's unregulated competitive merchant generation operation; isn't that correct?

A. I recall that, yes.

MR. THOMPSON: I'm not going to say any numbers. I'm being warned, Judge, that the numbers in that report are HC, and I'm doing my best to stay away from those. But if -- if I stumble, Tom, throw something. Thank you.

BY MR. THOMPSON:

Q. And would you agree that Duff & Phelps in that impairment testing estimated a significantly higher cost of common equity for Ameren's merchant generation operation than for Ameren Missouri?

A. I'm sorry, would you repeat the question?

Q. Isn't it true that in Duff & Phelps impairment testing report that we've been talking about, that Duff & Phelps estimated a significantly higher cost of common equity for Ameren's merchant generation operation than for Ameren Missouri?

A. That is my recollection, yes.

Q. Okay. I believe you testified in your direct testimony on page 6, line 5, that the Commission should say return on common equity that is adequate to attract capital at reasonable terms.

A. Yes.

Q. If you know, does the phrase attract capital at reasonable terms actually appear anywhere in the Hope decision or the Blue Field decision?

A. That precise phrase?

Q. That precise phrase.

A. I don't recall. For my purposes, I typically would refer to it as the capital attraction standard.

Q. Okay. Now, it's true that you and Mr. Gorman and Mr. Murray and Ms. La Conte all used versions of the same three methods; isn't that correct?

A. Can you -- we used slightly -- we used slightly different methods so if you could tell me which three you're talking about, I would appreciate that.

Q. For example, you used discounted cash flow models of two different types?

A. That is correct.

Q. And Mr. Murray used discounted cash flow models?

A. Correct.

Q. And so did Mr. Gorman?

A. Correct.

Q. And so did Ms. La Conte?

A. Correct.

Q. Okay. So I would be accurate in saying you used the same method in that respect; different inputs, same method?

A. We all used the discounted cash flow method, yes.

Q. And did you all use a capital asset pricing model?

A. Yes, we did.

Q. And a risk premium method?

A. Yes, we did.

Q. Now, you did not rely on the results of your capital asset pricing model, did you, in formulating your recommendation?

A. That's correct. Well, let me take that back. I took it into consideration. I did not give it specific weight, but that's correct.

Q. Did you use it as a test of reasonableness?

A. I often do, yes.

Q. Is that how you used it in this case?

A. Yes.

Q. Okay. And you would agree with me, would you not that, all things being equal, the differences in the results of those methods employed by the various experts were driven by the differences in the inputs?

A. I think the construction of the models was reasonably consistent so differences as I've stated in my testimony largely arose from differences in assumptions and inputs.

Q. Okay. So, for example, let's take the constant growth discount of cash flow model. Would you agree with me that the higher the growth rate, the higher the result?

A. Not always. The higher growth rate often can be offset by a lower dividend yield. I'm not sure there's a --

Q. Let's say that the dividend yield is constant, that the same dividend yield is used. Would you agree, with that change, that the higher the growth rate, the higher the result?

A. If we were to hold that constant and ignore some of the assumptions underlying the model in that regard, then yes, that would be the case.

Q. Okay. Thank you. Now, it's your view, is it not, that electric utilities dividends per share can grow in perpetuity at the same rate as the economy?

A. Well, let's sort of back up a little bit on that one. The -- the fundamental assumptions underlying the constant growth model are that earnings, dividend, book value all grow at the same constant rate; the obvious reason for the name of the model.

Under those assumptions in which the payout ratio is constant, the PE ratio is constant, all of those things are constant, and the long-term growth rate approximates the GDP growth rate, then yes, that would be the case.

Q. Okay. Isn't it true that your GDP growth rate of 5.75 percent is inconsistent with publicly available long-term economic growth projections?

A. No. Well, two things. One is my updated number is 5.65 percent, and secondly, no.

Q. Okay. Wrong in two ways there. It's true that Mr. Murray criticized your estimated terminal value stock price as inflated, correct?

A. Can you -- can you point me to -- to where in Mr. Murray's testimony.

Q. We'll come back to that.

A. Okay.

Q. Now, I think you've indicated that you are familiar with this Commission's recent decision in the matter of Kansas City Power & Light; isn't that correct?

A. I'm familiar with it.

Q. Are you aware that in that decision, the Commission found that analyst's growth rates are currently troublesome in that they are based on an unsustainably high dividend yield and median growth rate?

A. I don't recall those exact words, but --

Q. Okay. But you have no reason to doubt that?

A. No.

Q. All right. And are you aware that the Commission made the same finding in Ameren UE's last rate case?

A. I'm not aware of that.

Q. Okay. That would be at page 21 of that report and order, in case you want to check.

Do you believe that historical growth rates are relevant for testing long-term growth rate projections?

A. Again, are we talking about analyst's growth rates? I'm sorry, I take that back. Are we talking about analyst consensus growth rate projections? What are we talking about here?

Q. That's what we're talking about.

A. Okay. So your question is historical earnings growth a reasonable measure of analyst's forward-looking growth?

Q. Right.

A. I don't think that's an important issue. In my view, analysts already take historical growth into consideration in developing their projections, and so I have no reason to go back and check to see whether or not the projected growth rates are consistent with the past growth rates in that regard.

And as I mentioned also, I think, in my rebuttal testimony, the fact is that the proxy company valuation multiples are, in fact, specifically and significantly related to earnings growth projections. And so in my view, the question as to whether or not historical growth should be considered is -- it's really taken into account by the fact that analysts, to the extent they do look at historical growth, already embody that information in their estimates.

Q. Okay. Now, you corrected me a few questions ago with respect to your GDP growth rate and pointed out that it was -- you corrected it to 5.65 percent. Do you recall that?

A. I had updated it and changed one of the methodologies, yes.

Q. Okay. And where did you get that 5.65 percent figure?

A. The 5.65 percent, again, is the combination of the long-term historical real GDP growth rate and the average of the energy information administration's long-term projections of Consumer Price Index, the GDP price deflator, and the difference between the TIPS, the Treasury Inflation Protected Securities and nominal treasury securities, both for 30-year tenors.

Q. Okay. Now, in that recent KCP&L decision that I referred to issued by this Commission on April 12, 2011, are you aware that the Commission criticized Dr. Hadaway, the company's expert witness in that case, for rejecting all recognized measures of GDP growth, and instead providing his own estimate of GDP growth?

A. I was generally aware of that, yes.

Q. Okay. In that same decision, isn't it true that the Commission found that the estimate used by Mr. Gorman taken from the Blue Chip economic indicators was preferable to that used by Dr. Hadaway?

A. I don't recall that, but I have no reason to doubt it.

Q. Okay. And if I told you that that figure was 4.75 percent, would you have any reason to doubt that?

A. No.

Q. Okay. Now, with respect to Mr. Murray's recommendation, isn't it true that in your rebuttal, you testified, and I quote from page 7, "ROE estimates as low as 7.04 percent have no analytical meaning and, in fact, highlight the inherent risk of not questioning the applicability of models and assumptions in the current market environment." Isn't that correct?

A. I'm sorry. You were on page 7?

Q. I believe I am on page 7, but let me check, of your rebuttal.

A. What line numbers?

Q. I'm sorry. Page 15 starting on line 18. lines 18 through 20.

A. Yes, I see that now.

Q. Okay. So you did so testify?

A. Yes, sir.

Q. Okay. Now, would you agree with me that another way to state your objective in this case is to estimate a market-driven cost of equity appropriate for the risk of the cash flows associated with the company?

A. Yes.

Q. And isn't that the same objective of cost of capital estimates used in goodwill and impairment testing?

A. Yes and no.

Q. I'll take the yes. Why don't you explain the no.

A. Here comes the no.

Q. I'll be fair and let you explain the no.

A. I appreciate that. When we look at the cost of equity for a company such as Ameren, what we're trying to do is estimate the return required by all equity investors. People buying a minority interest, a small piece of the company, a company over which they will have no control, so they're assuming the risks associated with that company knowing that they cannot exercise control over the operations of the company.

For the purposes of an impairment test, you're looking at a single buyer of a given asset, maybe a reportable segment, maybe the entire company depending on the scope and purpose of the analysis, but the difference in my view is significant. One is we're trying to infer from market data what the required return on equity is for numerous individual investors, whereas, for the purposes of an impairment study, we're looking at what a single buyer exercising control, perhaps being able to exercise synergies may be willing to buy for.

So in my view, they are fundamentally different exercises.

Q. Okay. Let me show you something, sir.

MR. THOMPSON: May I approach, Your Honor?

JUDGE WOODRUFF: You may.

BY MR. THOMPSON:

Q. I'm going to hand you a book and ask you if you can identify it, please?

A. This is a large book, cost of capital applications and examples, 4th Edition Pratt and Grabowski, with a website.

Q. And are you familiar with that book?

A. Yes.

Q. And do you cite it in your own testimony?

A. I do.

Q. Do you recognize it as authoritative?

A. I do.

Q. Okay.

MR. THOMPSON: If I may approach, Judge.

BY MR. THOMPSON:

Q. I'd like to have you read a passage. I'd like you to read this paragraph starting here and ending with the word "true." Read it out loud, if you would.

A. I always like to read it to myself first so I don't mess up reading it out loud if that's okay.

"Regardless of which of the major approaches is used to estimate the cost of capital, e.g., buildup method, capital asset pricing model, discounted cash flow method or arbitrage pricing model, Fama-French three-factor model, the information is derived from publicly traded stocks. Because these public market transactions represent minority ownerships, some analysts believe that the cost of capital should be adjusted upward in valuing and controlling ownership interest. This generally is not true!"

Q. Thank you for getting the exclamation point in there.

A. Oh, it's my pleasure.

Q. I have another paragraph I'd like you to look at and then read, if you would.

A. This is a somewhat long one. So I'll read it slowly. "The cost of capital for an entity is not, by default, based on the market participant's cost of capital as market participants may have a different mix of assets with different inherent risks. Rather, the cost of capital for an entity is based on the market participants's perspective and assessments of the subject entity's inherent risks and attributes which may be reflected by any appropriately selected guideline companies.

Notwithstanding these factors, in some cases it may be appropriate to consider the market participant's cost of capital in the analysis. It may be the case where it is reasonable to assume that the benefits of a lower cost of capital of the buyer could be realized by the seller through a competitive bidding process. Such a benefit would be considered a market participant's synergy and appropriately reflected in the value of the assets through the application of a lower cost of capital."

Q. Thank you, sir. I'll take that back from you now.

MR. WHITT: Are you done?

MR. THOMPSON: I am. You want to take a look at that?

BY MR. THOMPSON:

Q. Now, in your surrebuttal testimony, page 19, lines 8 to 13 --

A. I'm sorry, page 19?

Q. Page 19, lines 8 to 13.

A. Yes.

Q. You testify, do you not, that the cost of equity assumed by D&P -- and that's Duff & Phelps, correct?

A. Yes, correct.

Q. For the purpose of discounting the Ameren Missouri projected cash flows is not indicative of the expectations of investors currently holding Ameren common stock and cannot, therefore, be used as a reasonable measure of the ROE for the purpose of developing Ameren Missouri's annual requirement. Is that how you testified?

A. That's what it says.

Q. Okay. Isn't it true, though, that this proceeding is concerned with the required return rather than the expected return?

A. Well, yes, I think that's correct. Generally speaking, again, going back to the fact that what we are looking at is the return acquired by multiple equity investors, typically the presumption is that the required return is the same as the expected return, but that's not necessarily always the case.

Q. If you would take a look at page 16, line 21 of your surrebuttal testimony. There, you describe the objective of your testimony in this way. To infer the market required return on equity for Ameren Missouri based on market data reflecting the investment decisions of multiple investors valuing in minority interest in the company's equity; isn't that correct?

A. I'm sorry, can you recite me again --

Q. Yeah, page 16, line 21 to page 17, line 3.

A. Of my rebuttal?
Q. Of your surrebuttal.
A. Oh, I'm sorry, yes.
Q. Correct?
A. Yes.
MR. THOMPSON: May I approach, Judge.
BY MR. THOMPSON:
Q. I'm going to show you a document I've marked as Staff's Exhibit 241. I wonder if you can take a look at that and tell me what you think that is, if you recognize it.
A. Yes. This is the Bank of America Merrill Lynch monthly incites report from July 2010.
Q. Okay. Give me a moment to finish handing these out.
A. There's another document attached to it.
Q. We'll just remove that.
JUDGE WOODRUFF: Mr. Thompson, the extra document that you removed from the witness, was that also attached to these?
MR. THOMPSON: That was a mistaken page. I don't know if it's attached to those or not. I can hand him another one that's not --
JUDGE WOODRUFF: I'm just concerned about what should be in my exhibit.
MR. THOMPSON: I think you've got everything

you're supposed to have.

BY MR. THOMPSON:

Q. Now, you stated that you recognized this, sir, right?

A. Yes, I do.

Q. And is this the sort of thing that you rely upon as an expert financial analyst?

A. I'm sorry, in what respect?

Q. In developing recommendations, such as the recommendation that you've presented here to this Commission.

A. My recommendations typically are based on the types of methodologies that I have throughout my report.

Q. As far as you know, do some financial analysts rely on documents of this kind?

A. I couldn't answer that question.

Q. Take a look at pages 28 and 29 of your surrebuttal. Do you see footnote 69? I'm sorry, 68.

A. Yes, I do.

Q. And, in fact, that's referring to a report of just this sort, if not this very one. Is that not true?

A. Yes. This is in response to -- this is in response to Mr. Murray's reliance on a similar -- on another Bank of America report.

Q. Okay. If you would take a look at the chart on page 56 of the exhibit I've handed you. Are you there?

A. Yes.

Q. And down towards the bottom, there is a line labeled in the left-hand column "Electric Utilities." Do you see that?

A. I do.

Q. Okay. And if you read over, the third column to the right, which is labeled IMPL return, which I believe is implied return, and then the column one to the right of that is labeled REQD return, which I believe is required return; would you agree that that's what those headings mean?

A. Yes.

Q. Okay. And would you agree with me that the numbers shown in the implied return column for electric utilities is 10.8?

A. Let me just -- the implied return column is for electric utilities is 10.8, yes.

Q. And would you agree with me that the numbers shown in the required return column for electric utilities is 8.8?

A. That's correct. And then the column to the right, alpha, is 2.0, which is the difference between the two.

Q. Okay. Thank you. And would you agree with me that the implied return is more or less the same as the expected return we were talking about a few moments ago?

A. I will be honest, I don't know how B of A developed this methodology or what underlies it, so I couldn't speak for them.

Q. Okay. And I don't want you to speculate, sir.

MR. THOMPSON: Nonetheless, I move for the admission of Staff's Exhibit 241.

JUDGE WOODRUFF: 241 has been offered. Any objections to its receipt? Hearing no objections --

MR. WHITT: I wanted to confer with Mr. Burn.

JUDGE WOODRUFF: Go ahead.

MR. WHITT: Your Honor, the company will object to the admission of this document. There's been no foundation laid for it. It's not been relied on, as far as I know, in any witness's testimony and it's also hearsay.

MR. THOMPSON: It's the very document that he cites in Footnote 68 to his surrebuttal testimony. It is a document that he, an expert, has relied upon, and documents that experts rely upon are not subject to a hearsay objection. They come in as showing what the expert relied upon, not for the truth of the matter.

MR. WHITT: I thought I heard the witness say that the document he cited in his testimony was like this exhibit. Maybe we just need to clarify whether -- this is the material? Okay. We will withdraw the objection.

JUDGE WOODRUFF: Okay. Hearing no objection, then, it will be received.

MR. THOMPSON: Thank you.

(Staff's Exhibit No. 241 was received in evidence.)

BY MR. THOMPSON:

Q. Now, there was some to-do on obtaining from the company, as I recall, a report given to the board of directors in December of 2009. Are you familiar with that?

A. Again, I guess there were one or two dust-ups over documents, so I'm not sure what you're talking about.

Q. Okay. I believe it's attached to Mr. Murray's surrebuttal testimony as Schedule 1, and it is a report based on an estimate or a valuation by Lazard.

A. I don't have that here in front of me.

Q. Okay. But you read Mr. Murray's surrebuttal testimony, isn't that correct?

A. I did.

Q. And you examined the schedules attached to it; isn't that correct?

A. I reviewed them, yes.

Q. All right. And you noticed that he had the Schedule 1 that I'm referring to, did you not?

A. The one that I don't have with me, yes.

Q. Let me see if I can find a copy of it for you.

MR. THOMPSON: May I approach, Your Honor?

JUDGE WOODRUFF: Yes.

BY MR. THOMPSON:

Q. Let me hand you Mr. Murray's HC surrebuttal testimony. I wonder if you could page through that to Schedule 1 at the back.

A. Yes, I have that.

Q. Do you recognize that document?

A. I do, indeed.

Q. What do you recognize it as?

A. I recognize this to be -- I'm sorry. I was starting at the end, which is not always a good thing to do. This is a presentation to the Ameren Finance Committee of the Board dated December 11, 2009.

Q. Okay. And Mr. Murray used that in much the same way as he used the Duff & Phelps report; isn't that correct?

A. Oh, I won't testify for Mr. Murray.

Q. Well, would you agree with me that Mr. Murray examined that and developed from that an implied cost of equity?

A. I -- again, I know Mr. Murray relied on this report.

Q. You're not going to give me much, are you?

Would you agree with me that Mr. Murray testified that in that report --

MR. BYRNE: Excuse me, Your Honor, I'm concerned about highly confidential information. Perhaps we should go in-camera if we're going to talk about this report.

JUDGE WOODRUFF: Is it the fact that this report is confidential or --

MR. THOMPSON: The report is indeed highly confidential.

JUDGE WOODRUFF: We need to go in-camera?

MR. THOMPSON: If I'm going to use the number, then yes. So let's go ahead and go in-camera.

JUDGE WOODRUFF: Okay.

(The following proceedings were held in-camera:)

(The following proceedings were held in open session:)

BY MR. THOMPSON:

Q. Do you recognize what I just handed you, sir?

A. Well, yes. This is the regulatory research report, regulatory focus. I'm not sure I've looked at this specific one, but I'm familiar with this general report.

Q. Okay. And would you agree it's headed major rate case decisions January through March 2011?

A. Yes, I would.

Q. And would you agree with me that this document reports awarded ROEs around the country in the various jurisdictions around the country in electric and gas utility cases?

A. Yes, among other things.

Q. Among other things. Okay. Now, you testified, did you not, as to the national average over the past 12 months?

A. Ended March 31st, yes.

Q. Okay. And you also testified as to the average in the states neighboring Missouri?

A. Yes, that's correct.

Q. Did you derive your data from Regulatory Research Associate's report?

A. Not this report, but from Regulatory Research

Associates.

Q. So this is similar to what you relied on, but not identical?

A. No.

Q. Okay.

A. The -- and let me be clear. This report is a compilation of data that Regulatory Research reports for rate cases throughout the country. This is a rolled up average by quarter. We -- our firm, because we have a subscription to Regulatory Research Associates, we can go in and look at each of the individual cases, and so that's what we did. We didn't rely on this report, but the data that we rely on is the same data, as I understand it, that underlies this report.

Q. I see. And let me hand you another exhibit. This has been marked as Exhibit 239.

Would you agree with me that 239 is headed major rate case decisions, calendar 2010?

A. Yes, I would.

Q. And you would agree with me this is another Regulatory Research Associate's report?

A. Yes, I would.

Q. Okay. And you didn't rely on this one either, did you?

A. Not on this report, correct.

Q. But on the data underlying this report?

A. Correct.

Q. Do you have any reason to doubt the accuracy of the information in these two reports?

A. No.

MR. THOMPSON: I would offer Exhibits 238 and 239.

JUDGE WOODRUFF: All right. 238 and 239 have been offered. Any objection to their receipt? Hearing none, they will be received.

(Exhibit Nos. 238 and 239 were received in evidence.)

BY MR. THOMPSON:

Q. I have one other question with respect to the Lazard information, but I'm not going to do any numbers, Judge. I think we can do it in open session, which is have you seen the work papers?

A. Have I seen the work papers underlying this?

Q. Underlying Lazard's.

A. No, this is all I've seen.

Q. Okay. Now, you would agree with me, wouldn't you, that Ameren Missouri competes for capital with utilities in other jurisdictions?

A. I would, yes.

Q. Are you aware that a week ago today the chairman of Ameren Missouri, Warner Baxter, testified that Ameren Missouri competes globally for capital?

A. I wasn't specifically aware of that, but --

Q. Do you have any reason to doubt it?

A. No, I don't.

Q. And, in fact, do you agree that Ameren Missouri competes globally for capital?

A. I agree it's an increasingly global world we live in, yes.

Q. Okay. And it's true, isn't it, that Ameren Missouri competes for capital against all other possible investment opportunities, isn't it?

A. In a very, very broad sense.

Q. Well, in that broadest sense.

A. In the absolute broadest sense, yes. But, of course, they typically compete for capital more with companies that are more similar to them.

Q. Okay. Now, are you aware that this Commission has found that the average of allowed return on equity awards from other jurisdictions provides a reasonableness test for the recommendations offered by return on equity experts?

A. Yes, I am.

Q. Are you aware that in a previous case, the Commission found that Ameren was an average utility with average risk?

A. I'm not sure which case you're referring to.

Q. If I told you that that was the case, would you have any reason to doubt it?

A. I'll take that subject to check.

Q. Okay. But you don't agree with it, do you?

A. I didn't say that one way or another.

Q. Okay.

A. I don't know which case you're talking about, I don't know the facts and circumstances of that case.

Q. All I have in my notes is that it was a decision issued in May of 2007.

A. Can't help you there.

Q. Can't help me there. Okay. Now, you're being paid for your work for Ameren Missouri; isn't that correct?

A. Yes, I am.

Q. And would you agree with me that Concentric has been paid over $150,000 to date?

A. I'm not sure what the number is.

Q. Would you have any reason to doubt that number?

A. No.

Q. Okay. Let me give you an exhibit that's been marked as 240.

MR. THOMPSON: And this is highly confidential, so I guess we'll have to go in-camera if we talk about the specific numbers.

JUDGE WOODRUFF: Let me know before we go into specific numbers and then we'll go in-camera.

MR. THOMPSON: Why don't we go ahead and go in-camera, Judge, and I'll just wrap this up as quickly as I can.

(The following proceedings were held in-camera:)

JUDGE WOODRUFF: That concludes the cross-examination of Mr. Hevert. Before we go to the questions from the bench, we'll go ahead and take a lunch break. We'll come back at 1:45.

(A lunch recess was taken until 1:45 p.m.)

(Exhibit No. 414 was marked for identification by the Court Reporter.)

JUDGE WOODRUFF: All right. Let's come to order, please. Welcome back from lunch. And just before lunch we finished with cross-examination on Mr. Hevert, and this time we'll come up with questions from the bench.

Commissioner Kenney, do you have any questions?

COMMISSIONER KENNEY: I do not. Thank you.

JUDGE WOODRUFF: All right. I don't have any questions either. I've not talked with any of the other Commissioners to know if they do have questions. We may need to bring you back later if a Commissioner shows up in a few minutes and wants to ask you questions. But otherwise, we'll go on to redirect.

MR. WHITT: Your Honor, we will have redirect. I will have some questions about some highly confidential materials. I would suggest we go in-camera and take care of that first.

JUDGE WOODRUFF: Just a moment, before we do that -- okay. I just got an e-mail from Commissioner Davis who just came out of his office, and he'll be down at about 2:00. So we can go ahead and start with the redirect. We'll need to break, go back into questions from Commissioner Davis when he comes back down here.

MR. WHITT: Very well. May I approach, Your Honor?

JUDGE WOODRUFF: You may. Do we need to be in-camera at this point?

MR. WHITT: Yes, yes.

(The following proceedings were held in-camera:)

(The following proceedings were back in open session:)

JUDGE WOODRUFF: And we are back in regular session.

BY MR. WHITT:

Q. Mr. Hevert, you were also asked questions about Exhibits 238 and 239, the Regulatory Research Associates reports. Do you have those in front of you?

A. Yes, I do.

Q. Why didn't you use these specific reports in your testimony?

A. Well, these reports report all rate cases in which an ROE -- or all rate cases decided during a period. For our purposes, what we were interested in was the authorized returns for integrated electric utilities, which really meant two things for the purpose of this data.

The first is that we did not include distribution utilities. But the second is, on the other side of that, we did not include return authorizations that were associated with generation-only investments. So, for example, Virginia Electric Power had authorized returns of 12.3 percent. Those were not included in our calculation of the average. I didn't think it was right to do so because, again, our focus was on integrated electric companies.

So the number that I looked at was based on the same data, but it simply was analyzed a bit more finely than what is reported here.

Q. And what is the effect of excluding non-integrated electric utilities in terms of the final average?

A. It brought our average down a little bit.

Q. I'd now like to direct your attention to Staff Exhibit 240, which was an Excel chart with some rate case expense information on it. Do you recall those questions?

A. Yes, I do.

Q. And I note that there is a statement at the bottom of the spreadsheet that says, "Note: Not all of Concentric Energy Advisors charges are for Mr. Hevert."

The question is, what else is Concentric doing in this rate case?

A. The firm is also working on a lead lag study for the company. So while the note here is correct, these do not relate just to -- to my testimony. There is another element of testimony that the company is -- that our firm, Concentric, is producing for the company.

Q. So Exhibit 240 would reflects all of the work that anyone, Concentric -- anyone from Concentric has done on any issue in this case?

A. That is my understanding, yes.

Q. You were also asked some questions about your citation to a statement on Page 19 of the Commission's order in the last rate case. And I guess I would just ask you, why did you reference that page for the proposition cited in your testimony?

A. The -- the point I simply wanted to make was that the construct that I've used, which is to use long-term historical real GDP growth in combination with long-term expectations for inflation, is an approach that the Commission has recognized in the past. And that really was the point that I was trying to make.

Q. Was it your understanding that what the Commission was pointing out was that it was rejecting Mr. Murray's approach, at least in part, because he did not do the things that the Commission indicated perhaps should have been done?

A. Yes.

Q. You were also asked some questions by counsel for MIEC as well as Staff about the analytical models you used and the similarity between your models and models used by other witnesses. Do you recall those questions?

A. I do.

Q. And you're aware Mr. Gorman has used, among other models, a sustainable growth approach -- sustainable -- sustainable growth DCF. Thank you.

A. Yes.

Q. Did you use that approach?
A. No, I did not.
Q. Why not?
A. The -- in my view, the -- the sustainable growth model really is premised on the fundamental assumptions of the constant growth model, all of which have to remain in place. And to the extent that they don't, the model itself is not reliable or applicable in this case.

And as I noted in my testimony, when you look at the -- the underlying assumptions and the reasons companies may increase or decrease payout ratios, they are varied. And as a result, the premise of the model does not always hold. And in this case, I don't believe it does hold. And to that point, what we did was look at historically whether the retention ratio was positively related to historical subsequent growth, and we found it was actually inversely related. So that the premise of the model, based on historical data for utilities, did not bear out.

And so for that reason, I don't think, in this case, it's applicable or a model that I would rely on or should be relied on. The other issue, of course, is that it relies on a sole source of data, which is ValueLine, whereas, the other estimates Mr. Gorman and I used and others, consensus growth estimates, are based on the views of many analysts.

Q. And just so there's clarity in the record, you talked about the premise of a sustainable growth DCF. Briefly describe for us what that is. What is that premise?

A. Well, it would be that earnings, dividends, book value all grow at the same rate, that the payout ratio remains constant over time, that the return on equity is constant over time, that the price earnings multiple is constant over time. All of those things have to hold.

And, of course, the reasons a company may increase or decrease its payout ratio, as I said, are varied. It could be they want to signal to investors future prospects, it could be they want to change based on expectations of capital market conditions. It goes well beyond the fundamental assumptions of the model.

Q. Are you aware of -- well, has any other witness in this proceeding used the sustainable growth DCF?

A. Not in this proceeding, no.

MR. WHITT: Thank you.

JUDGE WOODRUFF: All right. Well, it's nearly 2:00, and I don't see Commissioner Davis yet, so if you'll stick around, and when he comes down, we'll call you back up to the stand.

THE WITNESS: Yes, sir.

JUDGE WOODRUFF: And you did testify last week so you are still under oath.

THE WITNESS: Yes.

JUDGE WOODRUFF: Counsel, you may inquire.

DIRECT EXAMINATION

QUESTIONS BY MR. THOMPSON:

Q. State your name, please.

A. My name is David Murray.

Q. And how are you employed, sir?

A. I am acting utility regulatory manager of the financial analysis department.

Q. Is that the financial analysis department of Missouri Public Service Commission?

A. Yes, it is.

Q. Okay. And are you the same David Murray that contributed to the Staff revenue requirement cost of service report?

A. Yes, I am.

Q. And the same David Murray who prepared or caused to be prepared rebuttal and surrebuttal testimony in this matter?

A. Yes, I did.

Q. And do you have any corrections, first of all, to the cost of service report?

A. Yes, I do.

Q. Okay. And what are those corrections?

A. On Page 9, Line 11, it says some examples of the low cost of low-term debt. That should indicate some examples of low cost of long-term debt.

Q. Okay. Do you have any other corrections to the cost of service report?

A. Yes. Page 16, Line 19. Item 10 of the criteria. It should indicate no significant merger or acquisition announced. So the insertion of "no" in front of "significant."

Q. Any other corrections to the cost of service report?

A. Yes. On Page 23, Footnote 21, that's an incorrect cite. The citation should indicate "Michael Lapides, Zac Hurst, Jadieep Malik and Neil Mehta (United States: Utilities: Power-Electric Utilities,)" specific -- the specific title of the actual body of the report is "Powering On: Tilting to Commodity-Oriented Utilities and IPPs, September 29th, 2009, page 21."

Q. Okay. Other corrections?

A. That's it to the cost of service report.

Q. Okay. And what about your rebuttal testimony?

A. I don't have any corrections, but I would like to add, as per practice in the last few cases of attaching reports that I cite within my testimony, two of the reports that I was provided by Mr. Hevert with his work papers are two of the reports that I cited in my testimony, and now I have copies of those, and I would like to have those also attached as appendices.

Q. Okay. Would those be the items I've marked as Exhibits 236 and 237?

A. Yes. The UBS report is on Page 14 of my rebuttal. That's cited on Page 14. So whichever exhibit that is, I'm sorry, I didn't catch which exhibit number that was.

Q. That's 236.

A. 236. And then 237 would be cited on Page 21 of my rebuttal.

Q. Okay. I've handed out what's been marked as 236 and 237. And just to clarify for the record, these are sources that you relied on which you did not have copies of at the time you prepared and filed your rebuttal testimony; is that correct?

A. Yes, that's correct.

Q. And if you had had them at that time, you would have attached them to your testimony?

A. Yes, I would.

Q. And since they have been provided to you by Mr. Hevert as part of his work papers, you now want to take the opportunity to attach them to your rebuttal testimony as described?

A. That's correct.

Q. Okay. Do you have any corrections to your surrebuttal testimony?

A. No, I do not.

MR. THOMPSON: Okay. So I will not offer the Staff revenue requirement cost of service report, Judge. We've had Mr. Murray acknowledge that he prepared part of that. And as to his surrebuttal testimony, part of that was struck by the Commission, and I do not offer the struck part.

JUDGE WOODRUFF: That was actually admitted last week also, part of his testimony that was not.

MR. THOMPSON: The Sioux Scrubber part was admitted.

JUDGE WOODRUFF: Therefore, I will now offer Exhibit 219 HC and NP, the rebuttal testimony of David Murray, and Exhibit 220 HC and NP, the surrebuttal testimony of David Murray other than the part that has already been admitted on the Sioux scrubbers and the part that was struck.

JUDGE WOODRUFF: 219 and 220 -- for the most part, 220 has been offered. Any objections to their receipt? Hearing none, they will be received.

(Exhibit Nos. 219 and 220 were received in evidence.)

MR. THOMPSON: And then I will offer Exhibit 236, which is a supplement to the rebuttal testimony as previously described.

JUDGE WOODRUFF: 236 has been offered. Any objection to its receipt?

MR. WHITT: Your Honor, the company does object. I admit I can't speak to what the past practice has been, but I did read the Commission's rules before I got here, and they specifically say that you're not allowed to supplement testimony at hearing.

I understand that apparently the witness didn't have the documents. I'm not sure why that's the company's fault. I'm not aware of any data request that hadn't been responded to where the information could have been provided, and it's just improper at this late stage to attempt to supplement the record in this fashion.

JUDGE WOODRUFF: Your response, Mr. Thompson.

MR. THOMPSON: My response is this. We have the practice of providing all the material that Mr. Murray relies upon because the Commission requested that. If the company doesn't want the Commission to have it, that's fine with us.

JUDGE WOODRUFF: Okay. And you indicated that your witness got this information from?

MR. THOMPSON: From Mr. Hevert in his work papers, that's correct.

JUDGE WOODRUFF: And when did he get those?

MR. THOMPSON: That, I don't know.

Mr. Murray?

THE WITNESS: It would have been on the day surrebuttal was filed.

JUDGE WOODRUFF: Okay. Which would have been after your surrebuttal --

THE WITNESS: After my rebuttal was filed, yes.

JUDGE WOODRUFF: Okay. All right. I'm going to go ahead and admit the document. The objection is overruled.

(Exhibit No. 236 was received in evidence.)

MR. THOMPSON: And we offer 237 in the same way.

JUDGE WOODRUFF: Any objection to the admission of 237? Same objection?

MR. WHITT: Yes, Your Honor, same objection.

JUDGE WOODRUFF: Same result. It will be admitted.

(Exhibit No. 237 was received in evidence.)

MR. THOMPSON: Thank you, Your Honor. I tender Mr. Murray for cross-examination.

JUDGE WOODRUFF: Okay. And for cross-examination, we'll begin with MEG.

MS. LANGENECKERT: No questions.

JUDGE WOODRUFF: MIEC?

MS. ILES: No questions.
JUDGE WOODRUFF: For the company?
MR. WHITT: I have a few.

CROSS-EXAMINATION

QUESTIONS BY MR. WHITT:
Q. Good afternoon, Mr. Murray.
A. Good afternoon.
Q. Now, Mr. Murray, you're recommending to the Commission that it authorize an ROE of 8.75 percent for the company, correct?
A. That's correct.
Q. And in giving this recommendation, you give primary weight to the results of your DCF methods, correct?
A. Say specifically the multistage DCF, that's correct.
Q. And the basic theory behind the DCF approach, if I understand it, is that the market price and investor will pay for a share of stock represents the future cash flow of dividends as well as appreciation in stock price, correct?
A. That's correct.
Q. And we can make judgments about future growth rates and discount these cash flows to present value, correct?
A. That's correct.
Q. And your multistage DCF uses three stages with

three different growth rate assumptions for each stage, correct?

A. I'd say the first stage has a very specific constant growth rate assumption. The middle stage, the growth rates vary.

Q. The point being, different growth rates for each stage; is that right?

A. Yes.

Q. And is it the case that the primary reason for the difference between your multistage DCF results and Mr. Hevert's multistage DCF results is due to the perpetual growth rate that's used in stage three?

A. I agree, that's correct.

Q. In fact, if we plugged Mr. Hevert's growth rates into your models, the two of you would have very similar results, correct?

A. Within 20 or 30 basis points maybe, that's correct.

Q. Okay. Can we agree then, that the multistage DCF is highly dependent on assumptions made about final stage growth rates?

A. Yes.

Q. Okay. I want to talk a little more specifically about the final stage growth rate you use in your multistage DCF.

Now, you assume -- and when I say final stage growth rate and perpetual growth rate, I mean the same thing by that, okay?

A. Okay.

Q. Your final stage growth rate, you estimate to be between 3 and 4 percent, correct?

A. Yes.

Q. And for purposes of your calculation, you used the midpoint of 3.5, correct?

A. For purposes of one of the variations. I did three calculations. One with a three, one with 3.5 and one with a four.

Q. Very well. And you developed your growth rate based on data from both Mergent and ValueLine; is that correct?

A. Yes.

Q. Let's talk about the Mergent data that you looked at. The Mergent data is a 2003 publication that contained utility growth rates from 1947 through 1999; is that correct?

A. I'm sorry, repeat that question.

Q. When we talk about the Mergent data, we're talking about a 2003 publication that had information about historical growth rates for utilities from 1947 to 1999, and perhaps it was a broader period, but that's the period you looked at?

A. That's the period of time I looked at, that's correct.

Q. Okay. And this is the same publication and data set you used to develop your final stage growth rate in Ameren's last rate case, isn't it?

A. No, I don't agree.

Q. You don't agree with that? Well, is it the same publication and data set that you used in Kansas City Power & Light's most recent rate case?

A. Yes, it is.

Q. And in the Kansas City Power & Light case, it was brought to your attention that the Mergent data could not be replicated with other publicly available information; is that right?

A. I believe there was a -- Dr. Hadaway pointed out from two data points that there was a -- that he had a concern about the latter years. I actually, independently, along with other individuals in the financial analysis department, did a more comprehensive review of that data.

Q. And in the course of your comprehensive review, you were not be able to confirm the accuracy of certain data that Mergent had presented, correct?

A. I would say the percentages of the growth rates, not the underlying data. Once again, I was unable to review the underlying data.

Q. You aren't able to say that the Mergent numbers are exactly correct; is that right?

A. That's correct. I did not see the work papers.

Q. Well, not only did you not see their work papers, you saw that Mergent was reporting one set of data and you couldn't identify what they were reporting with other publicly available information?

A. Specifically for the later years, that's correct.

Q. When you say specifically for the later years, you're talking about, and perhaps the mid-'90s or so and more recent, that was the data that caused you the most concern?

A. Yes.

Q. Okay. So for purposes of the Kansas City Power & Light case, as well as this case, you did this additional review that you mentioned a moment ago using data from ValueLine, correct?

A. That's correct.

Q. Okay. Let's talk about the ValueLine study. As I understand that study, you looked at earnings per share, dividends per share, and book value per share for an approximate group of ten companies during the period of 1968 through 1999, correct?

A. That's correct.

Q. You chose that period because you believe it represents the last utility construction cycle, correct?

A. Yes.

Q. And you also had a concern about looking at data after 1999 because of what you describe as noise in the industry caused by restructuring?

A. Between restructuring and the mergers and acquisitions and the Enron bankruptcy, there was quite a bit of disruption in the electric utility markets, specifically post-2000, 2001. I believe Enron declared bankruptcy in December, and that did cause, you know, some -- you know, some rather -- a wide variance of growth rates.

Q. So based on everything that was going on, you just cut it off at '99, correct?

A. Yes.

Q. And the proxy group in your ValueLine study consists of different companies and proxy groups you used for purposes of your cost of equity estimation in this case, correct?

A. Yes.

Q. You did not apply a rigid selection criteria for the companies in your ValueLine study?

A. No.

Q. And you assumed that the historical data you relied on, which ended in 1999, would still be valid for periods after 1999, including up until today?

A. Well, I don't believe I indicated that that would be growth rate set that I would have applied from 1999 through 2009, 2010. I indicated that that -- that long-term data set could be used to estimate a perpetual growth rate for purposes of a multistage DCF.

Q. And that's what you did in this case, based on data that ended in 1999, you're developing a perpetual growth rate that won't start, I guess, until 2021 because it's the third stage, right?

A. That's correct.

Q. And you've never performed a study measuring earnings per share, dividends per share or book value per share for any period after 1999, correct?

A. I would not say that's correct.

Q. Let me refer you to -- do you have your deposition with you?

A. Yes.

Q. Turn to Page 36, please.

A. Yes.

Q. On Page 36 of your deposition, beginning at Line 6, I asked the following question:

"Have you ever done a study like that that measured earnings per share, dividends per share, book value per share for a period after 1999?"

"ANSWER: For that period specifically?"

"QUESTION: Yes."

"Answer: No."

Did I read that correctly?

A. You read that correctly.

Q. Thank you. Now I'd like to talk to you about your reliance or citation to some material from Goldman Sachs. And as I understand it, you believe your growth forecast of three to four percent is conservative because Goldman Sachs has published some literature suggesting a growth rate of two and a half percent, correct?

A. Yes.

Q. And, in fact, there's -- you attach a report as Appendix 2, Attachment E. It's actually included in the Staff report, correct?

A. Yes.

Q. And this morning before we started, Staff introduced Exhibits 236 and 237. It's my understanding, Mr. Murray, that both of these exhibits were provided to you as work papers by the company's rate of return expert, Mr. Hevert, correct?

A. Yes.

Q. And you came across the Goldman Sachs report under similar circumstances, did you not?

A. Yes. I believe I came across this report in the last rate case.

Q. Dr. Warren provided it to you as part of his work papers, correct?

A. Yes, after I cited it in rebuttal, I believe.

Q. You don't know whether the Goldman Sachs two and a half percent growth rate is based on a consensus. Is that true?

A. That's true.

Q. And you've not talked to anyone at Goldman Sachs about their report that you cite?

A. No.

Q. And you've reviewed a more recent Goldman report and found that they have started to veer away from a dividend discount model and are now looking at a price to earnings ratios; is that correct?

A. They quit discussing the dividend discount model. It's not specifically discussed in their equity research reports, that's correct.

Q. Okay. Would it be accurate that the more recent Goldman approach is very similar to what Mr. Hevert did in this case?

A. Absent extending it out 15 years, I believe their price-to-earnings ratio is looking at a much closer time period of two to three years for a terminal value. So with that qualification, I would indicate that there is -- there's some similarities, that's correct.

Q. And the two and a half percent figure that Goldman used to rely on represented a real growth rate, correct?

A. That's my understanding, yes.

Q. And when we're doing cost of equity estimation, we look at nominal growth rates because that includes inflation, correct?

A. In regular -- in the regulatory cost of equity estimation process, I would say that's generally what is done. I don't believe that Goldman Sachs used something other than 2.5 percent, though.

Q. Well, that's what we're doing here today. We're in the regulatory context, correct?

A. Trying to emulate investors, that's correct.

Q. And you don't know any mainstream ROE witnesses that use a two and a half percent perpetual growth rate in a DCF analysis; is that fair?

A. Can you please define mainstream ROE witness?

Q. Well, let me turn you to -- refer you to Page 88 of your deposition. Are you there, sir?

A. Not yet. I'm there.

Q. Okay. Page 88 of your deposition, beginning at Line 9, I asked the following question: "Do you know any mainstream ROE witness that use a two and a half percent perpetual growth rate for the DCF analysis?"

Your answer: "I don't recall anybody offhand."

Did I read that correctly?

A. Yes, you did.

Q. And you believe that the Goldman Sachs report that you relied on or that you cite in your testimony or Staff report, I should say, that it can be relied on as accurate and complete, correct?

A. Yes.

Q. And that Goldman salespeople and traders give investment advice consistent with their reports?

A. Yes.

Q. And although you can't necessarily verify, you would say assume that Goldman's proprietary trading desk makes investment decisions consistent with the firm's research reports. That's your understanding; is that fair?

A. I believe my response was that I don't know what they do for proprietary trading because I just don't have access to that. If you can refer me to specifically in the deposition where I discuss that, I'd appreciate it.

Q. Well, understanding you can't -- you're not in a position to verify what Goldman does or doesn't do, you would assume that their trading desk makes investment decisions that's consistent with what the firm is telling its clients? I mean, that would be -- you would assume that?

A. I would hope so, yes.

Q. Do you have the schedules to your Staff report handy?

A. Yes, I do.

Q. Can you refer to Attachment E, Page 35. And I believe this is in Schedule 2. I'm sorry.

A. Attachment E, Page 35?

Q. Yes. Is that in the Goldman?

A. General disclosures?

Q. Yes.

A. Yes.

Q. And Page E-35 under general disclosures, the first two sentences say, "This research is for our clients only. Other than disclosures relating to Goldman Sachs, this research is based on current public information that we consider reliable, but we do not represent it as accurate or complete, and it should not be relied on as such."

Did I read that correctly?

A. Yes, you did.

Q. Now, if we go down to th -- I guess, the third paragraph beginning with "Our salespeople"; do you see that?

A. Yes.

Q. It says, does it not, "Our salespeople, traders and other professionals may provide oral or written market commentary or trading strategies to our clients in our proprietary trading desks that reflect opinions that are contrary to the opinions expressed in this research. Our asset management area, our proprietary trading desks, and investment businesses may make investment decisions that are inconsistent with the recommendations or views expressed in this research."

Did I read that correctly?

A. Yes, you did.

Q. Now, Exhibit 236 is a UBS investment research report, correct?

A. That's correct.

Q. And is it your belief that this report bolsters Goldman's two and a half percent growth rate?

A. It uses the same two and a half percent perpetual growth rate, that's correct.

Q. And the UBS report is an investment analysis of Ameren Corp.?

A. That's correct.

Q. It doesn't provide a cost of equity analysis or recommendation for Ameren Missouri, correct?

A. No, it does not.

Q. And you did not consider the UBS report, Exhibit 236, in making your cost of equity recommendation in this case, correct?

A. Correct.

Q. The UBS report also uses a CAPM method to value Ameren Corp, doesn't it?

A. For the cost of equity, yes.

Q. And in estimating Ameren Missouri's cost of equity, you used the CAPM as a check on your results, but it was not your primary method, correct?

A. Correct.

Q. Now, Mr. Murray, is it your understanding that ASC 350 is a goodwill impairment accounting standard?

A. Yes, it is.

Q. Okay. And you've never performed a goodwill impairment test, correct?

A. Correct.

Q. And you don't consider yourself qualified to do so; is that right?

A. That's correct.

Q. And you've never had an occasion in your professional career to apply ASC 350 in any assignment?

A. That's correct.

Q. There is another accounting standard called ASC 820, and that provides guidelines for estimating fair value, correct?

A. Correct.

Q. You've never specifically applied ASC 820 in your professional work, correct?

A. Correct.

Q. And you don't consider yourself an expert in ASC 820?

A. Correct.

Q. You've never performed a valuation of a physical asset such as a power plant or other utility property or equipment, correct?

A. That's correct.

Q. You've never drafted a fairness opinion?

A. That's correct.

Q. You've never rendered a professional opinion about the value of a public company?

A. I'm sorry, repeat that question.

Q. You've never rendered a professional opinion about the value of a public company?

A. Correct.

Q. And you've never, on a professional basis, rendered advice for somebody to buy or sell stock?

A. Correct.

Q. Mr. Murray, it's the case, is it not, that you have received calls from people in the investment community trying to understand the regulatory process in Missouri, correct?

A. Yes.
Q. And every once in awhile, someone from the investment community will call you to debate the cost of capital with you?
A. Rarely, but every so often, yes.
Q. And one of those occasions was a couple of years ago when you got a call from someone in the financial community who wanted to talk about your recommended ROE for Great Plains?
A. Well, specifically for Kansas City Power & Light and KCP&L and GMO, not for Great Plains Energy.
Q. Okay. I stand corrected. And in that particular case, your midpoint recommendation was 9.75?
A. That's correct.
Q. And the person from the financial community called and told you they thought the ROE should be closer to 11, correct?
A. I think they were talking about the cost of equity of Great Plains Energy. They didn't understand that we were using a proxy group, and they were debating the issues with Great Plains Energy, not specifically looking at the regulated subsidiaries, Kansas City Power & Light and Kansas City Power & Light, Greater Missouri Operations.
Q. To my point, though, you occasionally get calls or someone from the investment community will call you

to try to understand the Missouri process and what it is you're recommending to the Commission?

A. Yes.

Q. And in your opinion, the investment community is very interested in what goes on at state Commissions that decide rate cases?

A. Yes.

Q. In fact, the authorized ROE could be described as a headline number to the investment community, could it not?

A. Yes.

Q. Now, Mr. Murray, I'd like to draw your attention to Page 13 of your rebuttal testimony.

A. Yes, I'm there.

Q. Specifically beginning at Line 6, and I'm going to paraphrase here, but based on the testimony in your rebuttal, again, Page 13, Line 6, it's your view that experts in the field of asset valuation consistently apply a lower cost of equity to regulated utility operations as compared to estimates provided by rate case rate of return witnesses, correct?

A. Yes.

Q. And your theory, I suppose, is that the assumptions and inputs used by rate of return witnesses aren't used in the real world?

A. In investment practice, that's correct. But I'd just like to define the real world, when it comes to asset valuation in determining fair values and estimated stock prices, I believe that -- that to be true.

Q. Okay. And, in fact, it's your opinion that most mainstream rate of return witnesses are approaching the estimation of the cost of equity all wrong?

A. I think the principles are followed. The assumptions seem to be a little bit off compared to what I understand asset valuation and equity valuation to be based on.

Q. Let me refer to you Page 84 of your deposition.

A. Yes, I'm there.

Q. Line 16, I ask the following question: "Is it your opinion, based on your testimony at Lines 6 through 9 of Page 13 that most mainstream rate of return witnesses are approaching the estimation of the cost of equity all wrong?

ANSWER: Yes."

Did I read that correctly?

A. Yes.

Q. And you would agree with me that an authorized ROE of nine percent would not be considered within the mainstream, correct?

A. For asset valuation and equity valuation purposes, nine percent is getting close to the zone of reasonableness. For the most part it's, you know, nine percent or below.

Q. Close but not quite there, correct?

A. Correct. I think Duff & Phelps and if I had been able to review Ameren's cost of equity estimate with the Lazard joint study, I believe it would have been similar.

Q. Well, in terms of what state Commissions authorize for utility ROEs, an award of nine percent or less would be outside the mainstream and, in fact, is outside the Commission's zone of reasonableness, correct?

A. Based on the Commission's hundred base points above and below, nine percent is below the approximately 9.25, that's correct.

Q. And if the commission adopted your recommended ROE, you would expect Ameren Corp's stock to decrease, correct?

A. Yes.

MR. WHITT: I have no further questions.

JUDGE WOODRUFF: Okay. Questions from the bench? Commissioner Kenney?

COMMISSIONER KENNEY: No questions. Thank you, Mr. Murray.

JUDGE WOODRUFF: Okay. I have no questions. So no recross. Redirect?

MR. THOMPSON: Thank you, Judge.

REDIRECT EXAMINATION

QUESTIONS BY MR. THOMPSON:

Q. Now, you were asked some questions about a data set, a Mergent data set where you used some of the information for the latter years are perhaps not replicable?

A. Yes.

Q. And when you used that data set, did you use it with those defects in mind?

A. Yes. That's exactly the reason why we've supplemented that. I think it's important to learn from rounds of testimony to -- to evaluate other witness's points of view, to look at their rebuttal testimony, if they raise a valid point, to investigate that further, to try to get to what I consider to be the right answer as far as a reasonable cost of equity estimate.

And to the extent another rate of return witness raises an issue, I believe it's my duty to investigate that further. And we actually had ValueLine data that we could independently review that went back to 1968, and I believe that that was the right thing to do. And interestingly enough, the growth rates in the '60s were maybe around GDP growth. But after that, they declined generally and continue to decline through the 1990s, which was during the last large construction cycle.

Q. Okay. Take a look, if you would, Mr. Murray, at your deposition, Page 36, Lines 6 through 10. Do you see that?

A. Yes.

Q. Were you asked a question about that?

A. Yes.

Q. And I -- do you have an explanation you want to give?

A. Well, I wanted to specify that I think before we got to that final Q and A that Mr. Whitt discussed is we had some problems getting to that point because he asked me if I had ever reviewed earnings per share, dividends per share, book value per share for periods subsequent to 1999.

And my answer was yes, because that's typically, you know, what we do in looking at historical data, at least ten years back for all testimonies. And so at the time I started it with the Commission, which would have been 2000, 2001 time frame, I consistently looked at historical earnings per share, dividends per share, and book value per share information from ValueLine.

But he was specifically wanting to know if I had done anything similar to this 30-year period. And he's correct, this case was the first time that we -- and Empire is the first time we really looked at that extended period of time.

Q. Okay. And take a look in your deposition, if you would, at Page 88, Lines 9 through 12. Do you have that?
A. Yes.
Q. And you were asked a question about that, too, weren't you?
A. Yes.
Q. And do you have an explanation you'd like to give?
A. Yes. As far as mainstream ROE witnesses using two and a half perpetual growth rates, when I indicated I don't recall anybody offhand, you know, I had -- I think we had talked more about mainstream investment analysts and what have you.
At this point, even though that was my answer at the time of my deposition, I'm not even sure what I would define as a mainstream ROE witness. I guess anybody that's consistently involved in testifying on rate of return and -- but I just don't know if any other ROE witnesses in general have used two and a half percent perpetual growth rate.
Q. Okay. Take a look at Page 84 of your deposition, Lines 16 through 20. Do you see that?
A. Yes.
Q. And you were asked a question about that, weren't you?
A. Yes.

Q. What did you mean by that?

A. Well, obviously, the -- my answer at the time was -- was very to the point, that I believe that the -- the level, the cost of equity estimate is different from what I consistently see in asset valuation and equity research. And these are the very individuals that are putting money on the line or advising people to put money on the line. They're doing the investing, they influence the asset values.

To the extent that they rely on these opinions of these investment professionals and to the extent that these companies buy the entire company and believe it's worth X amount of dollars, it's the assumptions used for purposes of determining that asset value that is embodied in not only the physical asset values but also the stock prices. And that's exactly what we're trying to do, and I think it's just natural to want to understand how it's actually done in practice because rate of return is -- involves a lot of theory, and we discuss whether or not to use GDP and what have you.

You know, it just makes sense to want to understand what they -- what utilities portray to their investors on their financial statements as far as the value of the regulated utility, as far as the value of the non-regulated utility, what's the best way to maximize shareholder value.

These are everyday decisions, and these are decisions with money on the line. We're just providing our opinion as to how we think these individuals go about doing their decision-making process, capital budgeting and what have you. And so it's just natural to want to understand this to be able to know -- you know, get into the mind of investors because that's what we're trying to do. We're trying to report on what we believe the investors required return on equity is.

Q. Thank you.

MR. THOMPSON: No further questions.

JUDGE WOODRUFF: All right. Mr. Murray, you may step down.

COMMISSIONER DAVIS: Judge, can I just go back and inquire of Mr. Murray really quick about just one thing?

EXAMINATION

QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Murray, do you recall my questions to Mr. Thompson here about Exhibit No. 241?

A. I do recall, yes.

Q. Okay. And going back -- going back to that exhibit, Page 56, I think that was where we had the utilities sector?

A. Yes.

Q. The column that says required return, now, is that -- is that short for required rate of return?

A. Not -- this is an equity valuation, equity research report, so I would have no reason -- I can't, obviously, verify this unless I talk to them, but I have no reason to think that they are looking at something other than equity -- return on equity -- excuse me, the return on common equity. I apologize.

Q. So you don't -- you just disregard that whole word required?

A. No. Actually, I think the required is very pertinent because that's -- required, to me, means that's the required return on equity, which is the cost of equity, which is the very same thing we're trying to estimate in all of these processes that we go through.

Q. Okay. So can we agree that that is the -- that what we're talking about here is the rate of return needed to induce investors or companies to invest in something?

A. The required return, I believe that that's the cost of equity, and that's -- yes.

Q. Okay. So it's the rate of return needed to induce investors or companies to invest in something?

A. In equity.

Q. In equity?

A. In equity. And can I explain?

Q. Sure.

A. As far as the -- the index at the bottom, you know, the S&P 500, I would have no reason to believe that that's a weighted average cost of capital for the S&P 500. There's no reason to report that. They're comparing the S&P 500 required return and implied return to all these specific sectors.

So it's only natural that this would be evaluating the equity of all these different industries and sectors, and so that's -- I believe it's safe to conclude that whenever the required return for electric, gas, and water, and actually the numbers seem to make sense that electric would be just a bit higher, gas would be a little bit lower, water would be even just a little bit lower. This is a required return on equity, this is the cost of equity as Bank of America and Merrill Lynch reports it.

Q. Okay. And then let me just go back and -- do you recall the -- the graph that's in Mr. Baxter's testimony that Mr. Thompson flashed up in his opening statement?

A. I saw that on the overhead. I had not reviewed it before then.

Q. Okay. But you did see it?

A. Yes, I did.

COMMISSIONER DAVIS: Mr. Thompson, do you have a copy of it?

MR. THOMPSON: I'm looking for it now, sir. I think I do. Yes, sir. Would you like it on the ELMO?

COMMISSIONER DAVIS: Yes, sir, let's put it on the ELMO.

BY COMMISSIONER DAVIS:

Q. Mr. Murray, were you able to watch any of Mr. Baxter's testimony?

A. I'm sorry, no, I was not.

Q. Okay. Mr. Baxter testified that Ameren Missouri had earned approximately a ten percent ROE in three months during 2010. Does that -- that chart only goes up through, I think, certain months in 2010. But when I asked him about it, he said that there were approximately three months where they earned a ten percent ROE in calendar year 2010.

Do you have any reason to dispute that testimony for Mr. Baxter?

A. It's very blurry, but I have no reason to dispute.

Q. Okay. Can you look at that chart and tell me how many months in the last two years Ameren Missouri has actually earned 8.7 percent, roughly?

A. I believe this is eight percent right here, this is nine percent. So one, two, three, four --

Q. I'm asking for the last two years.

A. Last two years? Is this May 2011? Can I look at the --

Q. We'll let Mr. Thompson bring it up there to you. We're not trying to give you a vision test.

A. This isn't even a matter of my eyesight. It's a matter of the projection.

MR. THOMPSON: May I approach?

JUDGE WOODRUFF: Yes.

THE WITNESS: From May 2008?

BY MY COMMISSIONER DAVIS:

Q. Yeah, let's just look from May 2008 through May 2010.

A. Okay.

Q. How many months did it look like in those, out of the last -- the last 24 months on that chart, can you approximate how many -- how many months they actually made at least roughly 8.7 percent?

A. Approximately eight months.

Q. And how many of those were in the last -- in the year preceding?

A. In 2010?

Q. Yeah. How many of those months were in 2010?

A. Three.

Q. And how many were in 2009?

A. Zero in 2009.

Q. And what about the last, say, six or seven months of 2008?

A. Three to four.

Q. Okay. Okay. Hold on, Mr. Murray. I think I've got -- I think I've just got one more question for you here. Give me just a second here.

COMMISSIONER DAVIS: No further questions. Thank you, Mr. Murray.

JUDGE WOODRUFF: Anyone wish to recross based on those questions from the bench?

MR. WHITT: Yes, Your Honor.

JUDGE WOODRUFF: Go ahead.

RECROSS-EXAMINATION

QUESTIONS BY MR. WHITT:

Q. Mr. Murray, regarding Exhibit 241, the fact of the matter is that everyone in this room has to guess about what Bank of America means with these headings of implied return and required return, correct?

MR. THOMPSON: Objection. Calls for speculation.

JUDGE WOODRUFF: Overruled.

THE WITNESS: I believe mine's an educated guess.

BY MR. WHITT:

Q. And that the Commission ought to decide a $107 million issue based on your educated guess?

A. Yes. I'm qualified to provide information on equity analyst research. I mean, I review this consistently.

Q. Right. And you haven't talked to anyone at Bank of America?

A. That's correct.

Q. So the fact of the matter is you don't know what they mean by implied return or required return?

A. I'll bring up that Mr. Hevert introduced this, and I just replied to what Mr. Hevert brought up. But implied and required is a generally understood term in finance.

MR. WHITT: No further questions.

JUDGE WOODRUFF: All right. Any redirect based on those questions?

MR. THOMPSON: No, thank you, Judge.

JUDGE WOODRUFF: All right. Mr. Murray, you can step down.

THE WITNESS: Thank you.

JUDGE WOODRUFF: At this time, we'll recall Mr. Hevert. All right. Welcome back. It was a short vacation, I guess.

THE WITNESS: Nice to be back. Thank you.

JUDGE WOODRUFF: Commissioner Clayton, since you just came in, would you like to ask any questions?

COMMISSIONER CLAYTON: Thanks for the warning, Judge.

JUDGE WOODRUFF: We have others,

COMMISSIONER CLAYTON: That's all right, Judge. No questions.

JUDGE WOODRUFF: Commissioner Davis?

COMMISSIONER DAVIS: All right.

EXAMINATION

QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Hevert, I'll go back and I'll ask you the same questions that I asked Mr. Murray. Going back to Exhibit Number 241, what's marked as Page 56, you've got the line for utilities and you've got the line for electric utilities. And it's got a -- a column denoted required return.

Now, I mean, would -- would you infer that as the actual return that investors are expecting to -- that they have to earn to invest in the stock?

A. For the utilities in particular?

Q. Yes. I mean, I realize it's just for the sector.

A. Right. And to be clear, that's why I used this report because my purpose of using this report was to look at the entire market. And when you look at the implied and required returns for the S&P 500, they're quite close.

And so the issue as to the difference between the two for the purpose in which I introduced the report really wasn't all that significant.

And in that regard, I really do not know how Bank of America, Merrill Lynch defines implied versus required returns or methodologically how they arrive at one versus the other. It's clear that the alpha or the -- is the difference between the two. But as to which Bank of America may consider to be the best representation of investor required returns, I just don't know how they did it. And so I really couldn't give you an answer for any given sector.

Q. Okay. And when you analyzed Ameren Missouri, and you're obviously aware that the Commission employs the consolidated capital structure?

A. Uh-huh.

Q. And -- and it's a little bit -- it's a little bit difficult to look at Ameren Missouri as a standalone company apart from Ameren Corporation, but looking at -- let's just look at Ameren Corporation in general.

Do you think it's fair to say that Ameren's stock is really not priced based on market expectations but more as a multiple of the dividend?

A. I just want to be sure I understand your question. So you're talking about the valuation on a consolidated basis?

Q. Yeah. I'm just talking about the -- I'm just talking about the valuation on a consolidated basis.

A. The -- on the consolidated basis -- well, let me step back a little bit. The way I structured the analysis was to really try to look at Ameren Missouri on a standalone basis --

Q. Right.

A. -- as opposed to a consolidated basis. So we tried to abstract as much as we possibly could the issues associated with non-Missouri operations.

Q. Right.

A. And so methodologically, that's how I approached the -- that's how I approached the assessment.

Q. Okay. Let me ask you this, then. Do you think basically dividends are an important part of shareholder value for these stocks, like Ameren Missouri, are they not?

A. Yes, I agree.

Q. And as someone who watches investors, do you get the impression that people would invest in Ameren Missouri because, you know, you think they would look at it more for a multiple of the dividend, or do you think they -- you know, are they -- are they realistically looking at growth and investment and everything else?

A. Well, that's a very important question. In my view, when -- let me just preface all this by saying the purpose of my analysis is not to attach a value to Ameren. The purpose is to understand what return investors require based upon the data that we see out there.

That said, the two components of the return typically would be considered in the construct of the DCF model, the yield and growth. And the growth, I think, as most of the witnesses in this proceeding here have looked at, is growth and earnings. And so the return, then, would be the dividend that you're getting and the eventual growth in the share price that you wind up selling it for. So really both of those two components come into play.

COMMISSIONER DAVIS: All right. No further questions, Mr. Hevert.

THE WITNESS: All right.

JUDGE WOODRUFF: I have some questions that were sent down by Commissioner Jarrett.

THE WITNESS: Yes, sir.

EXAMINATION

QUESTIONS BY JUDGE WOODRUFF:

Q. In Mr. Hevert's prepared testimony as referenced in this hearing, he discussed comparisons of ROE in other states, including states located near Missouri.

What distinctions are made in those ROE comparisons for such issues as allowance for quip? That's the first question.

A. I did not specifically look into the rate structures and place any considerations with respect of what went into the -- what went into those returns. You know, as to -- as to the issue of states in which quip may be in rate base, either regionally or nationally, it's not something that we looked at. When we look at the national average, in particular, the idea is that in many ways, some of the particular circumstances tend to average each other out. So looking at many is -- is the reason for that.

Q. Same question for fuel adjustment clause and non-fuel adjustment clause states?

A. Well, I think on -- on that matter, fuel adjustment clauses are fairly common, and so I'm not sure that that would necessarily be a great -- would distinguish among cases.

Q. And same question with vertically integrated versus deregulated states?

A. We specifically limited our review to vertically integrated utilities.

Q. Okay. Also, in the presence of a nuclear power plant, in light of the events in Japan, is that an item that makes a utility more risky or less risky than it was before?

A. Well, that is a very, very interesting question right now. And it's something we've given some thought to and, quite frankly, for the purposes of this testimony, I just felt like we didn't have enough evidence one way or another to make an addition there. I think the things that we can say is that the financial community is looking at, in all likelihood, utilities having higher degrees of oversight, perhaps higher investment for backup systems, perhaps more investment for the storage of spent fuel.

There's going to be the question of who ultimately will take the liability for any type of event that happens. I think what has happened in the investment community now is that there has been an increased focus on what people will refer to as tail risk, which is the low-probability but very high-impact event such as we saw in Japan.

And so when you look at all the things that could happen, the increased oversight, the increased investment, the uncertainty as to who eventually will absorb any liability that may arise from what is clearly an uncertain event, these are all things that I believe the investment community now is thinking about. But, quite frankly, given the recentcy of the data, I just felt like there was just not enough objective data out there for me to include it. But I would have to say that on balance, it is something that the financial community is considering.

Q. Okay. So there's no adjustment at this point?

A. No, sir, there is not.

Q. Okay. Another question from Commissioner Jarrett is about, I guess, general economic conditions, rising inflation, higher gasoline and fuel prices.

Is that a factor that you take into account when you're looking at ROE?

A. The general economic conditions certainly are something that we look at, that I look at. And there are certain metrics that I tend to find particularly helpful, things like credit spreads, things like volatility that we talked about a little bit earlier today, metrics that I mentioned in my testimony, which is the relationship between dividend yields and interest rates.

All of those things, I think, are metrics that are very helpful to look at, and you need to look at them in both a broad and an integrated perspective. So yes, those are certainly things that I look at.

As to inflation in particular, yes, that's an item that I looked at, and we talked a little bit this morning about the manner in which I calculated the long-term growth rate, and one of the methods that I used was specifically to look at how the investment community currently is assessing inflation over the coming 30 years.

So that was one measure that I was specifically able to enter into the equation.

The other metrics I look at and take into consideration, we also talked a little bit this morning about how I use forward views of volatility in estimating the cost of equity, so that comes in. But things like credit spreads, things like yield inversion, to me, are issues that, when you see a deviation from normal historical relationships and it's a sustained deviation, then it is evidence, in my view, of a certain level of market instability that continues to exist.

Q. Okay. And would you make any recalculations based on those kind of factors?

A. Well, the factors that could be entered into, my analyses have been, so volatility and inflation have been included. The other two, yield inversions, credit spreads are really things that I take into consideration and look at but are not specifically entered into the calculations.

Q. Okay. I have one more question which is from me rather than from the Commissioner.

Aside from what Bank of America means by those terms, in general, what's the difference between implied and required return?

A. Again, that's what I don't know based on their nomenclature. Implied return could be what it's implied based on a certain methodology. Required could be what's required based on a certain methodology.

The one thing that I found is that when you look at the entire market, they're relatively close. But when you look at individual sectors, they can vary quite a bit.

Q. Is there just a general textbook term of what implied and required are?

A. I think there's a textbook term in terms of expected and required, but implied and required is something that I think may be particular to this analysis.

JUDGE WOODRUFF: Okay. That's all I have, then. Commissioner Davis, anything else?

COMMISSIONER DAVIS: Let me follow-up on Commissioner Jarrett's questions.

CONTINUED EXAMINATION

QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Hevert, you didn't look at states that had restructured, correct? You crossed those out of your proxy group, more or less, correct?

A. Well, for the purpose of looking -- well, I guess, two issues. One is in terms of developing the proxy companies, they had to be vertically integrated utilities.

Q. Right.

A. In terms of looking at authorized returns, they were returns authorized for vertically integrated utilities.

Q. Okay. Can you name one state where vertically integrated utilities operate that doesn't have a fuel adjustment?

A. That does not?

Q. That does not.

A. The -- the only one that I knew of a few years ago was -- was Vermont, actually, and that subsequently had changed. So other than that, I'm not aware.

Q. Okay. And if I were to say that Oklahoma has a hundred percent fuel pass-through, you wouldn't have any reason to dispute that, would you?

A. No. And I understand that the structure and the terms and the frequency with which fuel costs are chewed up and passed through can change. But no, I have no reason to doubt that that's correct.

Q. All right. And you've looked at a map. Oklahoma's one of those states that's adjacent to Missouri, correct?

A. Yes.

Q. And if I were to say that Kansas had a hundred percent fuel adjustment pass-through, you'd have no reason to dispute that?

A. I would have no reason to dispute that.

Q. And if I were to say that Arkansas had a hundred percent fuel adjustment pass-through, you would have no reason to dispute that, would you?

A. No, I would not.

Q. And if I were to say that Kentucky had a hundred percent fuel adjustment pass-through, would you have any reason to dispute that?

A. No, I don't.

Q. And if I were to say that Iowa had a hundred percent fuel adjustment pass-through, would you have any reason to dispute that?

A. No, I wouldn't.

Q. And of the states that I just named, all of those states are adjacent to Missouri in some form geographically, correct?

A. Yes, sir.

Q. And Illinois is also adjacent to Missouri, correct?

A. Yes, it is.

Q. And Illinois has "restructured," haven't they?

A. Illinois has restructured, yes, sir.

Q. Okay. And states that are restructured traditionally don't have fuel adjustment clauses, do they?

A. In general, no. I mean, to the extent that there's a provider of less resort or required perhaps or something there, but as a general construct, I would agree with you.

Q. Right. Because, in essence, what they do is they price the electricity, you know, on a forward-looking basis so the customer's paying for a fixed rate for the electricity for a given period of time, and then it starts to fluctuate, then the company can charge more -- I mean, that's my impression of how it works; is that correct?

A. Again, it depends on the state. Different states have different mechanisms. New Jersey has essentially an auction mechanism which is fairly complicated, but generally speaking, yes.

Q. Okay. You've done some work at FERC, have you not?

A. Yes, I have.

Q. Have you done any transmission work at FERC?

A. Yes, I have.

Q. Okay.

A. I'm sorry, gas or electric transmission? I should ask.

Q. Electric.

A. Yes.

Q. Electric. Can you think of an instance in the last two or three years since the financial crisis started where FERC has given a transmission company an ROE of less than 11?

A. No -- well, I have to say, I'm not -- I'm not highly familiar with what FERC has authorized, but of the -- the transmission returns that I'm familiar with, no, I don't think there's any I can think of below 11 percent.

Q. Have you heard of FERC candy?

A. FERC candy?

Q. FERC candy.

A. No, I have not.

Q. Okay. That's fine if you haven't heard of FERC candy.

A. Now I'm extremely curious though.

Q. FERC candy is bonus ROE paid to transmission companies to incent the construction of transmission, thus some people have given it the name FERC candy.

A. I'm aware of the -- of the incentives.

Q. Okay. And so -- okay. So you are aware of those incentives?

A. Yes, sir.

Q. And if this Commission were to adopt a fuel adjustment of, say, 85 percent instead of 100 percent, do you think that would increase the company's risk?

A. Well, the -- the short answer is yes. I mean, fuel is a volatile, volatile commodity, and the increased volatility would add a level of risk.

Q. All right. And if the company had fixed contracts for -- to purchase coal and for the delivery of coal and those contracts had escalator clauses in them, that would mean that they would essentially be eating more of the costs, would they not?

A. To the extent those costs were not covered in the fuel adjustment clause, correct.

Q. Well, if they were -- so if they are out of the -- so let's say they go up hypothetically $50 million under currently -- you know, based on a fuel adjustment right now, and let's say it's at 85/15 split, then basically the company would have to eat seven and a half million dollars?

A. Yes, sir.

Q. Do you know how many basis points of ROE that would be?

A. Seven and a half million dollars?

Q. Uh-huh.

A. Let's see. This will be an approximation. No, that can't be right. 22 basis points.

Q. So 22 basis points of ROE?

A. Yes, sir.

COMMISSIONER DAVIS: No further questions, Judge.

JUDGE WOODRUFF: Recross based on questions from the bench? Anybody? All right. Any additional redirect?

MR. WHITT: No.

JUDGE WOODRUFF: All right. Then Mr. Hevert, you can step down and you are excused.

THE WITNESS: Thank you very much.

JUDGE WOODRUFF: We're due for a break. We'll come back at 3:30 with Ms. La Conte.

(A break was held.)

JUDGE WOODRUFF: All right. Let's come to order, please. All right. Welcome back from break. Before we get started with Ms. La Conte, I do have a question for the parties. It's now 3:30. We've got two more witnesses left on ROE and then we've also got the property tax issue later for today. What's the intention of the parties? Do we want to try to finish property tax today?

MR. ROAM: Brent Roam for MIEC. We would -- we would strongly prefer to do property tax today, if possible. We have conflicted hearings in other cases this week.

JUDGE WOODRUFF: Well, then it's my intention to soldier forward and we'll get it done today.

All right. Ms. La Conte, if you'll raise your right hand.

(The witness was sworn.)

THE WITNESS: I do.

JUDGE WOODRUFF: Thank you. You may inquire.

DIRECT EXAMINATION

QUESTIONS BY MS. LANGENECKERT:

Q. Good afternoon, Ms. La Conte.

A. Good afternoon.

Q. Would you state your name and occupation for the record?

A. Billie Sue La Conte. I'm a consultant for Drazen Consulting Group.

Q. And you are representing the Missouri Energy Group in your testimony here today; is that correct?

A. That's correct.

Q. Did you cause to be filed Exhibits 450, 451 and 452, which are respectively your direct, rebuttal and surrebuttal testimony in this case?

A. Yes.

Q. Do you have any changes to this testimony?

A. I did have some changes to my direct, but I addressed those in my surrebuttal.

Q. If you were asked those same questions today, would your answers be the same?

A. Yes.

MS. LANGENECKERT: I'd like to submit Ms. La Conte's testimony, 450, 451, and 452 and tender her for cross-examination.

JUDGE WOODRUFF: Okay. 450, 451 and 452 have been offered. Any objection to their receipt? Hearing none, they will be received. For cross, let's begin with MIEC.

MS. ILES: No questions, your Honor.

JUDGE WOODRUFF: Staff?

CROSS-EXAMINATION

QUESTIONS BY MR. THOMPSON:

Q. Good afternoon, Ms. La Conte.

A. Good afternoon.

Q. Let me apologize on the record for calling you Billie Jean this morning.

A. That's quite all right.

Q. I understand that's not your name. What did you say that your adjusted range is?

A. Well, the range that I calculated is the same. My recommended range is now 9.7 to 10.0.

Q. I'm sorry, can you repeat that?

A. My range that I calculated is the same, but the recommended range is now 9.7 to 10.0.

Q. Okay. And is it true that it's your opinion that a result anywhere within that range would be reasonable?

A. Yes.

MR. THOMPSON: No further questions.

JUDGE WOODRUFF: All right. For Ameren?

MR. WHITT: Thank you, Your Honor.

CROSS-EXAMINATION

QUESTIONS BY MR. WHITT:

Q. Ms. La Conte, I understand that in the late 1990s, you did some asset valuation work for generation assets that were coming up for auction; is that correct?

A. Yes, in Alberta, Canada.

Q. And the principles and methods that you applied in that valuation assignment were different than the principles and methods you used to estimate the cost of equity in rate cases, correct?

A. Well, we had to calculate it -- a discount rate but we also took into consideration the assets that we were valuing to and that went into the calculation of the final value.

Q. Well, that didn't really answer my question. Let me try it a different way. It's true, is it not, that the principles and methods involved in valuing physical assets like power plants are different than the principles and methods involved in estimating a utility's cost of equity, correct?

A. Yes, I'd agree with that.

Q. Okay. And I believe you just confirmed that any return authorized by the Commission that's within your range would be reasonable, correct?

A. Reasonable, but not preferable.

Q. But reasonable?

A. Yes.

Q. And that would include the high end of your range, 10.6?

A. Yes.

Q. 10.6 would be reasonable?

A. Yes.

Q. And in your direct and rebuttal testimony, your recommendation was 10.2, which was the midpoint between 9.7 and 10.6, correct?

A. Yes.

Q. And in developing that range, your multistage DCF used a 5.75 percent third-stage growth rate, correct? I stand corrected. I believe yours was a two-stage -- your multistage was two stages, correct?

A. Yes.

Q. And your final stage growth was calculated at 5.75 percent, correct?

A. Let me just double check that, if you don't mind.

Q. Sure. That was one of my two-stage methods.

Q. Okay. And the 5.75 percent was developed by Mr. Hevert, correct?

A. That's correct.

Q. And you independently verified his figure by reviewing his work papers and checking his calculations, correct?

A. That's correct.

Q. And in your professional opinion, 5.75 percent is a reasonable estimation of long-term GDP growth, correct?

A. Yes, I used that to come up with a conservative estimate on the return on equity.

Q. A conservative estimate, correct?

A. Yes.

Q. And you would not have used that 5.75 percent number in your analysis if it wasn't supported in your professional judgment, correct?

A. That's correct.

Q. Now, although your growth rate in your multistage DCF is higher than the forecast that Mr. Gorman relied on in his multistage model, you don't believe that precludes your higher growth rate from reflecting investor expectations, correct?

A. I'm sorry, could you repeat the question?

Q. Although your growth rate is higher than the forecast that Mr. Gorman relied on in his model, you don't believe that the fact your growth rate is higher or even higher than GDP precludes the use of that higher rate in multistage DCF?

A. That's correct. I also don't think that it precludes me from using the same forecast GDP that Mr. Gorman used either.

Q. Now, based on the order in this case, investors will look at whether the authorized ROE is comparable to other jurisdictions, correct?

A. Did you say investors?

Q. Yes.

A. Yes, but I would assume they would.

Q. And in fact, analysts would look at an authorized return in making buy-sell recommendations of Ameren stock; is that correct?

A. That's correct.

Q. Now, I want to make sure I understand your range and recommendation. At page 6, line 17 of your surrebuttal -- are you there?

A. Yes.

Q. Line 17, page six, you say my recommended range is 9.7 to 10.6, correct?

A. Yes.

Q. And if I'm reading this correctly, that's still your range?

A. It's the range I used, yes.

Q. Okay. So the midpoint of your existing range remains at 10.2?

A. That is the midpoint, that's correct.

Q. Okay. And you point out that if you considered your CAPM and E-CAPM results, that would effectively change your range -- it would drop the low end of your range down to 9 percent, correct? So the range would now be 9 to 10.6?

A. Yes.

Q. Now if we were to consider -- if the Commission were to consider your CAPM results as part of your range, would you feel it appropriate to also consider Mr. Gorman's constant growth DCF as the high end of his range?

A. Well, I think that depends on Mr. Gorman's analysis and opinion of his DCF analysis.

Q. Okay. Now you presented your CAPM and E-CAPM results in your direct testimony, correct?

A. Yes.

Q. And you did not use those results as the basis for the low end of your range, correct?

A. No, not in my direct testimony.

Q. And you didn't use the CAPM results as the low end of your range in rebuttal testimony either, correct?

A. That's correct.

Q. The first time you suggested the CAPM results should be considered as a low end of your range was surrebuttal, correct?

A. That's correct.

Q. Your CAPM results supported your direct and rebuttal midpoint recommendation of 10.2, correct?

A. Yes.

MR. WHITT: Thank you. No further questions.

JUDGE WOODRUFF: Okay. Questions from the bench then? Commissioner Davis, do you have any questions?

COMMISSIONER DAVIS: No questions.

JUDGE WOODRUFF: Commissioner Kenney?

COMMISSIONER KENNEY: No questions. Thank you very much, ma'am.

THE WITNESS: You're welcome.

THE COURT: And I have no questions, so no need for recross. Any redirect?

MS. LANGENECKERT: No.

JUDGE WOODRUFF: Okay. Ms. La Conte, you can step down. And we'll move on to Mr. Gorman.

(The witness was sworn.)

JUDGE WOODRUFF: All right. You may inquire.

DIRECT EXAMINATION

QUESTIONS BY MS. ILES:

Q. Will you please state your name for the record?

A. My name is Michael Gorman.

Q. And by whom are you employed and what is your address?

A. I'm employed by {Brubaker & Associates. {Fern ridge parkway, Chesterfield, Missouri.

Q. Are you the Michael Gorman who caused -- who prepared or caused to be prepared Exhibits 407, 408 and 409, which are direct, rebuttal and surrebuttal testimony?

A. Yes. Although I do have one correction where it's {fern ridge road, not fern ridge parkway.

Q. Do you have any corrections to your testimony?

A. I have corrections to my surrebuttal.

Q. Okay. What are they?

A. On page 19, some corrections to the sentence that starts on line 11, between the word "assessment" and "utility," insert the word "of."

On line 12, the word "be" should be struck and the word "are" should be inserted. Also on line 12, the word "our," o-u-r, should be struck and the word "a" should be inserted.

And the sentence on line -- starting on line 11 and ending on line 13 should read as follows: "This is a very low spread indicating market's current assessment of utility securities are quite favorable as supporting a reduced common equity premium.

I also have an adjustment to Schedule MPG-SR-17, page one. These corrections are reflected on a revised Schedule MPG-SR-17. The corrections are as follows:

On line ten, funds from operation under column one of 950972 should be struck and the number 914297 should be inserted.

And under column five, the reference should read some of lines five through seven -- I'm sorry. Some of lines four, six, seven, and nine less line eight. On line 12, E-D-I-D-T-B-A, the number under column one, 1213999 should be struck and the number 1195662 should be inserted. And under column five, the reference should be some of lines five through seven and line 11.

And on line 14, that EDITBA -- I'm sorry, under line 15, FFO to total debt, under column 1, the 28 percent should be struck, the number 27 percent should be inserted.

Q.   And did you state that you have prepared a revised schedule that reflects those changes for the convenience of counsel and the Commission?

A.   Yes.

Q.   I'm handing you now what's been marked as Exhibit 414.

(Exhibit No. 414 was marked for identification by the court reporter.)

THE WITNESS: Thank you.

BY MS. ILES:

Q.   Does this revised schedule reflect those changes?

A. Yes.

Q. I would call your attention to the number on line 10. I don't think that's exactly what you said. Is the last number supposed to be an eight or a seven on that?

A. Line 10, the number should be 914298.

Q. Did you have any other corrections to your prepared written testimony?

A. I do not.

Q. Then with those corrections, would your answers be the same today if I asked the questions that are in that -- those written testimony?

A. Yes.

MS. ILES: I'd like now to offer into evidence Exhibits 407, 408, 409 and 414 and tender the witness for cross.

JUDGE WOODRUFF: 407, 408, 409 and 414 have been offered. Any objections to their receipt? Hearing none, they will be received.

For cross-examination, we'll begin with MEG.

MS. LANGENECKERT: No questions for Mr. Gorman.

JUDGE WOODRUFF: For Staff?

CROSS-EXAMINATION

QUESTIONS BY MR. THOMPSON:

Q. Good afternoon, Mr. Gorman.

A. Good afternoon.
Q. Now, you can use the methodologies that you use in estimating an ROE for a company like Ameren Missouri. You can use those methodologies to value an asset; isn't that correct?
A. Yeah, generally, they are originally derived for security valuation. So yes, you can.
Q. And if you were given a project of valuing an asset, would you use the same methods or would you use different methods?
A. Well, it depends on what I am valuing, but the discounted cash flow methodology is a commonly used valuation methodology. Other types of methodologies that require an input for the required return on the investment would require something like the capital asset pricing model or risk premium methodology be used as a part of that valuation process.
Q. Okay. Now, you've been here all day, right?
A. Yes.
Q. And you heard the testimony of Mr. Hevert?
A. Yes.
Q. And was I correct in understanding that Mr. Hevert was attempting to draw a distinction between valuing an asset in order for a buyer or valuing a security for someone who's just going to be one of many, many, many

thousands of security holders?

A. Well, I think there was a discussion about whether or not there would be a different valuation if you had controlling interests --

Q. I see?

A. -- in a security or an asset.

Q. And what is your opinion of that? Would you use a different method?

A. I wouldn't use a different method but the discount rate might be different depending on whether or not you would accept a different rate of return if you had controlling interests in a company or an asset.

Q. Okay. Now, there was also a lot of talk about Staff's Exhibit 241.

MR. THOMPSON: May I approach?

JUDGE WOODRUFF: You may.

BY MR. THOMPSON:

Q. Let hand you what's been marked as 241 and ask you if you recognize this.

A. I recognize it from this morning as a Bank of America, Merrill Lynch report.

Q. I wonder if you can look at page 56.

A. I'm there.

Q. Okay. And towards the bottom of page 56, there's a line that says "electric utilities." Do you see that?

A. Yes.

Q. And if you go in, there are then several columns of numbers opposite that, and the third from the left and the fourth from the left are headed respectively IMPL return and REQD return. Do you see that?

A. Yes.

Q. What do you understand IMPL return to mean?

A. Implied return.

Q. And what do you understand REQD return to mean?

A. Required return.

Q. And as an expert financial analyst, does the heading implied return have any meaning to you?

A. It does. These columns are all under the heading valuation analysis. And as part of an evaluation analysis, the implied return would suggest what return you might earn if you acquired the security at the observable valuation, observable market price.

The required return, on the other hand, is your assessment of what would be an appropriate return for assuming the risk of that asset.

Then the alpha would be the difference between the implied return based on current valuation and what the analysts may perceive to be a return that would induce them to make an investment of the asset.

And all this comes down to -- I think that's generally consistent with how Mr. Hevert used this because down at the S&P 500 under required return of 11.9 percent, it's my understanding that this is one of the sources of information he used to estimate what a required return on the S&P 500 would be.

Q. Okay. Let me show you another one of Staff's exhibits.

MR. THOMPSON: May I approach, Your Honor?

JUDGE WOODRUFF: You may.

BY MR. THOMPSON:

Q. This is a document that's been marked as Staff's Exhibit 238. Do you recognize that?

A. I do.

Q. What do you recognize that to be?

A. This is a report by Regulatory Research Associates for the first quarter ending 2011.

Q. Now, there was testimony today, wasn't there, as to what the national average of awarded ROEs for vertically integrated utilities is for the past 12 month?

A. Yes.

Q. And if you know, are the first quarter 2011 awarded ROEs set out in this report consistent with that testimony?

A. Well, yes. They do support that testimony, although the details underlying what that first quarter ROE authorized return is inconsistent with some of the representations of what the industry-authorized returns have been on a national basis.

On page 4 of this exhibit, there is a break-out of the individual cases which make up the average of the first quarter return on equity for electric utility companies. As shown down in the box for 2011 for first quartile averages total, the second line is medi -- on average, it is 10.35 percent, the median is 10.07 percent.

It's -- I think it's important to distinguish whether or not there are observations within the first quarter which distort the average return on equity. And I think there are. The data includes two returns Virginia Electric Power Company in Virginia.

In Virginia, authorized returns on equity are now prescribed by legislation, by law that set the ROE no lower than a prescribed return on equity floor. That return on equity floor is based on comparability to three-year average earned returns on equity for a subset of investor-owned, publicly traded companies. Not necessarily regulated utility companies.

Frequently, the Staff and I -- I testify in Virginia -- find that the current market required return on equity for Virginia Electric Power, in particular in some other Virginia utilities, is lower than what the prescribed floor return on equity is.

So I believe that the Commission should not accept the 12.3 percent return on equity of what the Virginia Commission found to be the current mark of cost of equity for Virginia Electric Power Company because they have to operate under very strict legislative rules in establishing a return on equity in that jurisdiction.

Q. If you exclude the two awards at 12.3 percent, do you have an opinion or do you know what the first quartile 2011 average would be?

A. I do. It's ten percent.

Q. Ten percent. And is that vertically integrated or is that all awards?

A. That's all awards.

MR. THOMPSON: Okay. Thank you, sir. No further questions.

JUDGE WOODRUFF: All right. For Ameren?

CROSS-EXAMINATION

QUESTIONS BY MR. WHITT:

Q. Good afternoon, Mr. Gorman.

A. Good afternoon.

Q. Just to follow-up quickly with Staff Exhibit 241, page 56. There was a discussion about implied returns versus required returns.

A. Yes.

Q. Which are we doing in this case?

A. A required return.

Q. And Staff Exhibit 241, this is not a piece of information you relied on for your testimony, correct?

A. Correct.

Q. And Mr. Gorman, as I understand your position essentially is that any authorized return on equity in excess of 10 percent would be too much; and conversely, an authorized return below 9.8 percent would be too little. Is that fair?

A. At this point in time in this marketplace, yes.

Q. Now you regularly provide testimony in 25 to 30 states, correct?

A. Yes.

Q. And in comparing Ameren Missouri's rates to the rates in other jurisdictions where you typically testify, Ameren Missouri's rates are reasonably competitive, are they not?

A. Yes.

Q. They're in the middle, or possibly even below the average of what you deal with in some of these other jurisdictions, correct?

A. Yes.
Q. Okay. Now, in terms of sort of basic principles, I guess, of estimating cost of equity, can we agree that the analytical models used to estimate return on equity are very sensitive to inputs and assumptions?
A. Yes.
Q. All other things being equal, would you also agree that publicly available data, when it exists, should be used for inputs into the analytical models?
A. Generally what you're trying to do is capture best information that reflects investor's expectations, so there are certain types of publicly available information that are a better reflection of consensus outlooks. But generally speaking, while there are some types of information better than other types, publicly available information is a superior data for capturing what current investor requirements are.
Q. Okay. And would you also agree that to the extent there is a consensus about certain assumptions, that it's appropriate to rely on consensus data rather than data from a single individual or analyst?
A. Generally, yes.
Q. For example, if you were going to attempt to estimate investor consensus about what dividend or earnings growth would be, we should look at -- or it's better to look

at consensus estimates as opposed to some individual analyst recommendation?

A. I think research has shown that consensus data is more reflective of investor expectations and valuation decisions than is other types of data.

Q. Right. And that's why relying on one firm, like Goldman Sachs or UBS, would not provide as broad a perspective of what the investment community is advising people about, correct?

A. Or what investors generally have taken from that investment advice and have reflected in their buy-and-sell decisions in the marketplace.

Q. Okay. Now, to get a little more specific and talk momentarily about the multistage DCF, in terms of -- well, we won't even talk about the different stages yet. But in terms of the final stage growth rates, is it the case that rate of return analysts will generally first look at three-to-five year consensus forecasts and then make a judgment about whether those forecasts are a reasonable proxy for long-term growth? Is that typically what a witness will do?

A. Well, that is what I do. I would say that some company, some utility witnesses in particular will stop there. I look at whether or not that growth rate is a rational assessment of long-term sustainable growth can be.

And therefore, it is appropriate for use in a constant growth DCF model.

And the reason I do that is because an analyst's growth rate is designed to reflect the next three to five years. But a constant growth DCF model, it requires a growth rate that can be sustained indefinitely. So there's a disconnect between what I need for the model and what's available on a consensus basis from a security analyst.

Q. Okay. But again, the three-to-five year forecast being the starting point, if you will, and then you would look at other data and apply your judgment in determining whether the three-to-five year forecast is reasonable long-term?

A. I make assessments of that growth rate. I describe the analysis I go through in making an assessment of it and explain why I conclude that it either is a reasonable estimate of long-term sustainable growth or why it is not.

Q. Okay. And another data point we can look at for the final stage growth would be GDP growth, correct?

A. Yes.

Q. And in your opinion, GDP growth is the most rational expectation of long-term growth; isn't it?

A. It's the most rational estimate of sustainable -- the highest level of sustainable long-term growth for a company operating in the U.S.

Q. Okay. And the sustainable growth rate that you use in your multistage DCF is based on consensus analyst expectations of nominal GDP growth Out to ten years, correct?

A. Right. By "nominal," they reflect -- they project both GDP inflation and GDP real growth out over the next ten years. And the combination of those two factors are used to produce a nominal GDP growth rate.

Q. Right. And in this estimate of growth for the next ten years is used in your model as a proxy for growth in year eleven and beyond, correct?

A. Yes.

Q. Now, in your direct testimony, you relied on the high end of your CAPM estimate of 9.5 because you were concerned about the low estimates that the CAPM method was producing, correct?

A. Yes.

Q. And the reason the CAP Mis producing low results is because the market risk premium has decreased since the market crashed in 2008?

A. Well, that's my rationale for it because normally -- I've been doing rate of return studies for a long time, and I normally see market risk premiums of six percent to six and a half percent. That's what I've historically used. After the market crashed in 2008, the market risk premium dropped down to the low fives. That seemed to be an anomaly to me, so in order to stabilize or produce CAPM return estimate I felt was more reasonable, I used a market risk premium available in a published document that is relied on by investors to form market risk premium estimate for use of my CAPM. And that market risk premium was in the mid-six area.

Q. Now I'd like to talk about your sustainable growth DCF. And the sustainable growth model is a methodology you started using three or four, five years ago; is that correct?

A. It's probably been at least five years now, but yeah. Generally.

Q. Okay.

A. I mean, I started -- it may be longer than that now, quite honestly, because I first started using it when I first started seeing three-to-five year growth rate projections from analysts. Consensus analysts begin to reflect very high levels of growth, which based on my review of available financial information represented from utility executives to their investors correlated with very large capital programs and rate base growth for utility companies.

And I may have said three to five years in my deposition, but it's been going on for quite some time now and I'd really need to verify whether or not -- it may be longer than five years.

Q. Yeah, I wasn't pinning you to three to five years specifically, but you haven't always relied on it?

A. Well, there was a period starting in the late 1990s up through the turn of the century where consensus St. Louis growth rate projections were pretty reasonably consistent with what long-term sustainable growth could be. When they're not, like in the early 90s, when consensus St. Louis growth rate projections are very low because we just came out of a large capital program and rate base growth was actually flat, in some case cases declining. Large base at that time was very low, unsustainably low.

So I looked for other growth data to get a sense of what growth rates might be when the industry returned to more normal growth conditions.

I ran into the same issue after the turn of this industry, after the -- the movement to deregulation stalled and the movement back to basics in regulation began to pickup steam. And again, utility companies started investing in the rate base again. That caused three-to-five year growth rate outlooks to be very high. Unsustainably high. So at that time, I looked for other DCF methodologies including the multi growth stage model, to help supplement the constant grown the constant grown DCF model to give more information on what a DCF return on equity is.

Q. And as I understand the sustainable growth

DCF, it's basically a constant growth that uses calculated growth rates as opposed to analyst growth rates. Would that be fair as a general description?

A. It's general, but it's not completely accurate because it does rely on analyst projected growth components to derive what sustainable growth rate could be produced from those analysts projected growth drivers.

Q. Well let's talk about the calculation. The data that you use to calculate a sustainable growth rate is publicly available through valueline, correct?

A. Yes.

Q. And then you look at this ValueLine data and calculate a sustainable growth rate based on the percentage of earnings retained by the utility and reinvest it, correct?

A. Well, that's one component of the growth. The second component is if the utility's expected to sell shares at the market above book value, which would create an external growth component.

Q. Right. But this calculation that you end up with although based on inputs from ValueLine is not some sort of sustainable growth rate that ValueLine or anybody else publishes, correct?

A. It's a growth rate that's based on growth parameters forecasted by ValueLineline. It's not a growth rate that is pulled from a ValueLine publication, that's correct.

Q. So the sustainable growth rate is essentially your growth rate forecast, not ValueLineline's?

A. It is a sustainable growth rate -- sustainable growth methodology is a textbook method of estimating growth. That's not my methodology. It's a generally accepted method. The ValueLine data is available to investors. Investors are familiar with academic methods for using that data to derive forecasted future growth.

So the sustainable growth rate method is based on publicly available growth rate, items which will drive growth for utility in the future using an academically supported methodology for using that data to derive sustainable growth.

Q. And I understand that, but my question simply is this: That in recognizing the calculation comes from publicly available data, ultimately with a sustainable growth DCF, it's the analyst that's calculating the growth rates based on this information.

A. No, the main drivers of the sustainable growth rate are ValueLine's projections of earnings three to five years out, dividends three to five years out, current book value, current market to price ratio. So those are the primary drivers, which determine what those sustainable growth rate will be.

So it's in part driven by current valuation of the security in terms of the price-to-earnings ratio. The current book value of the Company in terms of what can be discerned from reviewing the Company's books and records as published in the ValueLine publication and the ValueLine analyst projections of what future earnings will be three to five years out and dividends three to five years out.

So it is information offered to the investment community to help them better judge what the earnings and dividend outlooks are for that company and based on those outlooks and that available -- publicly available analyst's data while growth rate could be sustained based on those analyst's projections.

Q. But at the end of the day, ValueLine doesn't have a sustainable growth rate and that's why you had to go through the exercise you did in your testimony to calculate one, correct?

A. I did the calculation, but the methodology was a well-accepted, academic methodology. And the data used in the calculation were forecasts made by ValueLine analysts or were based on current observable valuation principles for utility stocks.

Q. Now the sustainable growth rate that you calculated in direct was 4.76 percent according to Schedule MPG-7 in your direct testimony.

A. I'm sorry, could you repeat that, please?

Q. Schedule MPG-7 in your direct?

A. I believe it's MPG-8 for the sustainable growth in direct, and the median was 9.67 percent. And that was reflected on page 24, Table 2 in my direct testimony.

Q. Can you look at schedule MPG-9 for a moment?

A. I'm there.

Q. Okay. Now you can disregard it. That's the wrong one. I tell you what, let's skip that and go to your surrebuttal. Page 18, table 1.

A. I'm there.

Q. Now, as these things happen, I know your recommendation in the range changed between direct and surrebuttal, but at the time I took your deposition, your range was nine and a half to ten percent, correct?

A. Yes.

Q. And you said that any ROE below 9.5 would not be reasonable, correct?

A. If it was below my recommended range, yes, that would be my recommendation.

Q. And so -- and now the low end of your range is 9.8, right?

A. Yes.

Q. So a recommendation below that would be unreasonable because it's outside your range, in your opinion?

A. Yes.

Q. Okay. Now, the -- the sustainable growth DCF that you prepared for surrebuttal produced a return of 9.38, correct?

A. Yes.

Q. And you included this return and average in your revised results, correct?

A. For the DCF study, correct.

Q. Now, you also updated your constant growth DCF, correct?

A. Yes.

Q. And that increased approximately 30 basis points from the results that you had provided in direct, correct?

A. Yes.

Q. Likewise, your multistage DCF also increased 30 basis points, did they not?

A. Yes.

Q. And the reason the multistage results increased was because the analyst projected growth rate that you relied on increased from 4.7 to 4.9?

A. Well, that's one factor that changed the result, yes.

Q. Would you say it's the biggest factor?

A. Probably, yes.

Q. So it's fair to say that between the time you prepared your direct testimony and your surrebuttal testimony, that the analyst upon whom you rely for the growth projections have revised -- or their most recent guidance was that growth rates have increased by 20 basis points from 4.7 to 4.9?

A. Well, that 4.9 reflected about a one-tenth of a percentage point increase in the real GDP growth from 2.5 to 2.6 percent and approximately one -- almost one basis point per increase in the projected inflation component of GDP. So there was approximately ten basis points increase in real GDP growth which was a major contributor to that increase in the -- the projected GDP growth.

Q. Now, your CAPM and risk premium results also increased from direct to surrebuttal, correct?

A. Yes.

Q. In fact, the only results that show a decrease are the results from the sustainable growth DCF; is that right?

A. Yes.

Q. And although with the exception of the sustainable growth DCF results, notwithstanding that -- your other models produced results that increased up to 30 basis points, you have not raised your range above ten percent, correct?

A. I've raised my point estimate, but yeah, that top end of my range remained at ten percent.

Q. And your specific recommendation is 9.9, correct?

A. Yes.

Q. And 9.9 is actually lower than the mid-points of all of your DCF results, correct?

A. Well, the midpoint is 9.93, but it's generally comparable to it. It's slightly lower, but yes.

Q. Now, is it safe to assume that the bottom end of your range is represented by the CAPM results?

A. Yes. It's a fair statement.

Q. And so effectively in looking at your range, you've given 50 percent weight to your CAPM results, haven't you?

A. Well, it's a pretty tight fit with all the results. I mean, the DCF is roughly 9.93 percent. The risk premium is now 9.9 to 10.1 with midpoint of 10, and the CAPM is roughly 9.8. So I'm really giving equal weight to all of them and the range, if you do give equal weight to all of them and the range, if you do give equal weight to all of them, is a range of 9.8 to about 10.

Q. Well, if you wanted to give equal weight to all of your results, one way to look at your range would be to consider your CAPM of 9.8 and your -- up to your constant growth of approximately 10.5, correct?

A. Well, if you wanted to disregard all the problems of the reliability of the accuracy of that constant growth DCF model result, you could reach that conclusion. I wouldn't agree with it.

Q. No, sir, you said we should give equal weight. I'm not talking about disregarding problems. I'm just talking about giving equal weight to all the results. And one way to do that would be to consider the range of 9.8 to 10.5, correct?

A. Let me describe what I meant when I say "give equal weight to it. "

(Simultaneous talking.)

JUDGE WOODRUFF: Everyone speak once at a time because the court reporter can't follow it.

COMMISSIONER DAVIS: Judge, can you ask the witness to answer the question that is asked and remind him that his counsel can ask him anything he wants on redirect about these questions that he's being asked?

JUDGE WOODRUFF: Certainly. You can proceed.

MR. WHITT: Can the court reporter please read back the last question to the extent you've got everything down?

(The requested portion was read by the court reporter.)

BY MR. WHITT:

Q. Let me try to get past this and just humor me for just a moment on some mathematics here and assume that we look at your range as being from 9.8 to 10.5. Recognizing that's not your range, that's my range based on Table 1. The midpoint of that range would be 10.15, correct?

A. Yes.

Q. We could round that up to 10.2?

A. Or down to 10.1. But yeah, you could round it up to 10.2.

Q. And 10.5 actually lands right on your multistage DCF result of 10.16?

A. I'm sorry, say that again.

Q. The midpoint of 9.8 and 10.5 is 10.15. Would you agree with that?

A. Yes. Yes.

Q. And that midpoint lands almost exactly on your multistage DCF resulted of 10.16, correct?

A. 10.15 lands almost on my multigross stage DCF, yes.

MR. WHITT: Thank you. I have no further questions.

JUDGE WOODRUFF: Questions from the bench, then? Commissioner Davis?

EXAMINATION

QUESTIONS BY COMMISSIONER DAVIS:

Q. Good afternoon, Mr. Gorman.

A. Good afternoon.

Q. Mr. Gorman, how many separate DCF calculations did you make?

A. Well, there's three -- three different models. Three of them.

Q. Well, I mean, when you're taking a constant growth, the two-stage, and the multistage, I mean, isn't that -- I mean, -- I mean, after a while, doesn't it all sort of, I mean, isn't that just averaging it down to get to a specific number? I mean, that's what I'm taking it to be.

A. Well, I mean, I think based on the testimony I've offered, I could have rejected the constant growth DCF model because I think the three-to-five year analyst growth rates are clearly inappropriate. So by not rejecting those, including them with a sustainable growth and the multigrowth model, that had the effect of increasing my findings for DCF studies.

So the bottom line is I did a constant growth DCF analysis using consensus analyst growth rate projections. I believe those growth rate projections are too high to be sustainable indefinitely as required by this model. So by itself, the constant growth DCF study does not produce a reliable estimate of what the current investor required return is.

So since I am charged with providing what I believe to be at least a reasonable estimate of what the current investor required return is, I looked for other DCF methodologies to help give more information on what that required return is. It all centered around the growth rate of the DCF model and then there were two alternatives to consensus analyst projected growth rates to help give more information on where investor's current requirements are. So that was the logic behind using more than one DCF study.

Q. Right. And you used -- and you take several -- take several variations in each of those studies. I mean, I guess, doesn't the use of the other two -- I mean, I understand why you use one DCF study or I guess I would understand why you used the multistage study to balance out the -- the current high expectations regarding capital investment in the utility market that would currently exist, but I'm just questioning the fact of why you would need a second one on top of that.

A. Well, in the multigross DCF model, the long-term sustainable growth rate, it relies on the GDP growth outlook to be a reasonable reflection of what investors expect utility growth will be indefinitely. If you look at history, utilities, dividends and earnings growth have always trailed GDP growth rates.

So it's a very high, very optimistic outlook of what their growth could be. So it's the best information available right now of what the maximum sustainable growth rate could be. But that is shy of accurately reflecting what investors would expect that growth to be and that's what's really required.

Consequently, I felt it appropriate in providing meaningful information to also estimate what growth could be sustained by utilities by retaining earnings, reinvesting them in plant to support growth and rate base, looking at the issuance of sales above book value to increase the book value per share of the utility, which would also be an earnings growth engine for utility companies and derive what a sustainable growth rate would be for utilities based on ValueLine's projections of utilities, earnings and dividends three to five years out. Not current earnings and dividends, but projections three to five years out along with current observable valuation parameters for these utilities to get a sense what have investors may believe sustainable long-term earnings growth and dividends grown could be based on all of this information.

And again, it's not insignificant to note that utilities earn historical earnings and dividend growth have always trailed GDP growth because they pay a large percentage of their earnings out as dividends. Consequently, they don't have the same growth engine that non-regulated companies would have that retain a much larger percentage in our earnings for reinvesting in plant and equipment or other widget-producing business units to help fuel future growth. So I really think all three of these methodologies provide meaningful information in a very distinct manner to help gauge what current investor return requirements are.

Q. Okay. Mr. Gorman, do you have a calculator?

A. Yes.

Q. All right. Let's go back and look at Exhibit No. 238. That's the Research Regulatory Associates, Regulatory Focus from April 5th, 2011?

A. Okay.

Q. Major rate case decisions. Let's go look at page 4.

A. All right.

Q. Okay. Now, you said that Virginia Electric & Power should be taken out of that mix, correct?

A. Yes.

Q. Okay. Now, Virginia is one of those states that started restructuring but then kind of was suspended and so I'm not really sure where restructuring is in Virginia right now. Are you?

A. There are some very large customers which have the option to shop, but generally speaking, it is -- continues to be a regulated state.

Q. Okay. And do you know what maybe six, seven states that basically had started down its restructuring path and basically suspended it along the lines? Does that sound correct?

A. In one level or another, yes.

Q. And then there's, what, approximately 17 states that have restructured, correct?

A. Approximately.

Q. And of those states that are -- that have restructured, basically those Commission decisions are -- involved companies that are predominantly your wires-only distribution companies, correct?

A. Well, yes, but for smaller customers, many of those jurisdictions required utilities to provide full bundled service to many of their customers where they don't own the generating assets but nevertheless procure power and resell it to their retail customers.

Q. Right.

A. So it's -- it's more than -- far more complicated than just saying the utility only owns wires.

Q. Right, but -- but the utility, when they come in and file a rate case, they're not getting a return on equity on their generation assets anymore.

A. Well, they're getting -- that's true. They're getting a return on equity reflecting their operating financial risk and that return is on the capital invested in utility-planned equipment.

Q. All right. So looking at page 4, let's just go down the list here. Public Service Company of Oklahoma, that's a vertically integrated state, correct? They never restructured?

A. Yes.

Q. Okay. You've got two decisions from Wisconsin. Now, Wisconsin is another state that has not restructured, correct?

A. Correct.

Q. Okay. Now Delmarva Power & Light, that's in Delaware. Delaware has restructured, haven't they?

A. They have, but that's one utility in particular that still does do an auction and have a basic generation service for residential and small commercial customers.

Q. Right, but that's not -- but the fact that they own generation doesn't -- that's not factored into their ROE decision, is it?

A. Well, their ability to recover the power they procure on behalf of their bundled service customers is a business risk they undertake.

Q. Right. But aren't they able to -- aren't they able to set those rates in advance for the price they charge for the -- for just the -- I guess the -- what would you call it, the bundled rate for their shopping customers?
A. They are able to set their prices in a way where anticipated power costs would be fully recovered. But there are always costs that can be at risk either due to uncertain volume requirements, other factors such as customers who don't pay their bills --
Q. But let's just say for argument's sake that Delmarva operates in Delaware and Delaware is a restructured state, correct?
A. Yes.
Q. So let's just throw out all the restructured states here. So we're going to throw out Delaware?
A. All right.
Q. We're going to throw out Niagara. Niagara Mohawk Power in New York. That's a 9.3. So we're going to throw them out.
A. All right.
Q. Texas-New Mexico Power. That's 10.13. We're going to throw them out because Texas is restructured. Depending on who you talk to from Texas, they'll tell you it's great or it's not. Do you have an opinion on that, whether restructuring is working in Texas or not?

A. It depends on what power market you're looking at. Right now, it's looking great.
Q. It didn't look so great three years ago, though, did it?
A. It did not.
Q. Western Massachusetts Electric, that's restructured? Massachusetts, correct?
A. Yes.
Q. Okay. CenterPoint Texas, they've restructured?
A. Yes.
Q. Duquesne Light, that's in Pennsylvania, but there's no ROE, but Pennsylvania's restructured in some form.
Okay. Hawaii Electric. Hawaii Electric has not restructured?
A. Correct.
Q. Okay. Then you've got Virginia Electric, which they suspended restructuring, but we'll throw them out.
Otter Tail, they're in Minnesota. They have not restructured, correct?
A. Correct.
Q. PacifiCorp, they're in Washington. Washington has not restructured?
A. Correct.
Q. Correct.

Q. Then Appalachian, Wheeling Power, that's Virginia, they have not restructured, correct?

A. Correct.

Q. So I believe I've got seven utilities here in this list that have an ROE that haven't restructured. Is that what you have?

A. Yes.

Q. Okay. So let's add those up. Let's add the ROEs up. 10.1, plus 10.3, plus 10.3, plus 10 -- no, yeah, that's right, plus 10, plus 10.74, plus 9.8, plus 10. And we need to divide that number by seven to get an average ROE, wouldn't we?

A. Yes.

Q. So Mr. Gorman, what's that number?

A. Let me double check myself here. 10.18.

Q. Okay. That's 10.18. Now, Public Service Company of Oklahoma. Oklahoma has a hundred percent fuel pass-through, don't they?

A. I would have to check that.

Q. Okay. But to the best of your knowledge, they don't have anything else, correct?

A. They don't have anything else?

Q. They don't have any -- they don't have anything but a hundred percent fuel sharing mechanism, do they?

A. I'd have to review their regulatory mechanisms. It's been many years since I've worked down in Oklahoma.

Q. Okay. Are you aware that in a previous proceeding here at this Commission that we actually received, I believe -- I'm not sure if it was testimony, but written communication that we should -- we should not adopt a fuel adjustment mechanism like Oklahoma has because it's too generous? Were you aware of that?

A. I'm not aware of that.

Q. Okay. All right. Wisconsin. Do you know anything about Wisconsin?

A. Yes.

Q. Okay. What kind of fuel pass-through does Wisconsin have?

A. Well, they don't have a fuel adjustment mechanism. Wisconsin does have a biannual rate review, which allows them to reopen their rate filing every year to adjust for changes in fuel cost. But there is no reconciliation of historical fuel cost by Wisconsin.

Q. What kind of test year does Wisconsin have?

A. It is typically during the two-year biannual period, the rates will be in effect. It's generally --

Q. Contemporaneous?

A. First one is and the second one, if there's any substantial changes in cost of service for the second year, they can leave that as a reopener for rate adjustments, either up or down.

Q. Okay. So we're operating on historic test year here, are we not?

A. Trued up to actuals, yes.

Q. Right. But you'd agree with me that that's not quite as good as Wisconsin, correct?

A. Well, can be. It depends on where your costs are going. When you're in a cost decreasing environment, it's better. When you're in a cost increasing environment, Wisconsin is probably better for the utility investor.

Q. And we are in a cost decreasing environment, are we not?

A. Yes.

Q. Now, let it's go down and look at Hawaii Electric. Now, your firm does some work in Hawaii, do they not?

A. Mr. Brubaker does.

Q. He doesn't let you go on those trips?

A. He doesn't let me go. It's a real sore spot. I can tell you.

Q. I am shocked. Okay. Now, Hawaii Electric got an interim rate increase, didn't they, when they filed their rate case?

A. I loosely follow what goes on in Hawaii, but I couldn't recite the details as I sit here.

Q. Okay. But you would have no reason to dispute them, that Hawaii Electric got approximately a 70 million dollar interim rate increase last year, would you?

A. Well, they got some rate award on February 25th of this year.

Q. Right?

A. Well, the amount is listed on this sheet as 66 million dollars.

Q. Right. Okay. Now, you're familiar with what happens at this Commission, correct?

A. Yes.

Q. Well, this Commission has a history of denying interim rate increase applications, do they not?

A. It's my understanding, yes. With the exception of extraordinary financial need.

Q. Okay. Do you do any work in Minnesota?

A. I've never testified in Minnesota. I have done some work for some customers, some industrial facilities in Minnesota.

Q. Okay. Do you know what kind of fuel adjustment Minnesota has?

A. I would have to check. No, I do not, as I sit here.

Q. Okay. What about Washington where PacifiCorp is headquartered?

A. Yeah, I represent the industrial group in Washington and I am familiar with that jurisdiction.

Q. And what kind of fuel adjustment do they have?

A. They do not have one in Washington.

Q. They do not have one at all?

A. They have a bandwidth methodology in Washington where they're allowed -- there's a sharing mechanism and a deferral mechanism for adjusting fuel cost. Now certain jurisdictions for PacifiCorp does have fuel adjustment mechanisms but Washington does not.

Q. Okay. And how would you -- so was -- does the banding allow the Company to -- to change rates on its own? Is that how that works?

A. No, it's a deferred accounting-type mechanism. If costs are either above or below certain parameters, they can defer the unrecovered costs or bank a credit they owe to customers and next time rates are adjusted, it's all trued up.

Q. Okay. So does -- does the utility get to recover all or most of their fuel cost there?

A. No, there is a sharing band as part of the fuel mechanism, and I can't tell you the specifics of it right now.

Q. Okay.

A. But even in the jurisdictions for PacifiCorp where they do have a fuel adjustment clause, typically there is a sharing band.

Q. Okay. What about West Virginia?

A. It's been many years since I've worked in West Virginia. I'd have to look at that regulatory mechanism.

Q. West Virginia is a coal state, is it not?

A. It is.

Q. Do you think they would have anything less than a hundred percent fuel adjustment mechanism?

A. Well, they like their coal industry out there, I will agree with that, but they also like their industrial companies and they want to have a prospering economy in West Virginia. So all of that is considered in developing the regulatory mechanisms.

Q. Would you agree with me that the vast majority of the states that have not restructured all have fuel adjustment clauses and that the vast majority of those is at or near 100 percent?

A. Well, I really don't know the answer to that. The jurisdictions I am familiar with, fuel is accounted for in a way that where efforts are made to address prices to reflect fuel costs and offer recover prudently and reasonable fuel expense. But you know, PacifiCorp as an example. They have an accounting for over/undercollections.

In Indiana, they have accounting mechanisms and tracking mechanisms, but adjustments to fuel expenses is limited by earnings tests.

Wisconsin has reopeners for fuel expense but it's not a clause-type mechanism. So that's a broad statement. I just don't know the answer to it.

Q. Do we need to apply an earnings test for Ameren here?

A. I haven't looked at the details underlying Mr. Baxter's representation what the earnings have been, but if they're accurate, I would say right now that might not be an issue.

Q. Well, let me -- you obviously -- I mean, you can calculate a company's specific DCF, can't you?

A. Without publicly traded information, it's very difficult. If a company has publicly traded stock, it's readily capable --

Q. So your company's specific DCF would be from Ameren Corporation itself and not AmerenUE or not Ameren Missouri?

A. Actually, it's for a proxy group of company that's a reasonable representative of Ameren Missouri's investment risk.

Q. Right. Got it.

COMMISSIONER DAVIS: No further questions, Judge.

JUDGE WOODRUFF: Okay. Commissioner Kenney?

COMMISSIONER KENNEY: Mr. Gorman, I don't have any questions. I think they've all been asked.

THE WITNESS: Thank you, Commissioner.

JUDGE WOODRUFF: All right. Recross based on questions from the bench?

MR. THOMPSON: I have some, Judge.

JUDGE WOODRUFF: Go ahead, Staff.

RECROSS-EXAMINATION

QUESTIONS BY MR. THOMPSON:

Q. Mr. Gorman, you were talking about -- you were asked a series of questions by Commissioner Davis about fuel adjustment clauses. Do you recall those questions?

A. Yes.

Q. And you mentioned that you were aware that Washington has a sharing mechanism?

A. Yes.

Q. Do you happen to know what the percentage is?

A. No. I would really -- these fuel mechanisms, accounting treatments, fuel adjustment clause, reopeners, all of them are very specific and I'm recalling to the best of my ability from my memory.

Q. I understand.

A. But I could not quote details as I sit here.

Q. I understand. I was just wondering if you happen to know. Do you know of any other states with sharing mechanisms?

A. Well, again, Wisconsin has reopener rights, but they don't have reconciliation of historical costs. Now to the extent that a historical period of Wisconsin utility underrecovers or overrecovers fuel expense, they keep it or they eat it. Prospectively, rates are adjusted to reflect recovery of and prudent fuel costs. So that's a form of sharing and that once the rate is set, you have to manage your cost and live by that rate until the rate is adjusted.

In Indiana, they have earnings tests which are part of their fuel adjustment protocols and that can limit whether or not price increases can be -- are allowed even if they can show on a line item basis fuel expense had not been fully recovered.

And Wisconsin -- or excuse me, in PacifiCorp and all of its jurisdictions, I believe there is some form of sharing mechanism in their energy cost adjustments or fuel cost adjustments or in the bandwidths that some of the Commissions in the Northwest approved for providing some financial protection to the utility in the event of a substantial change in fuel cost during the period rates are in effect.

It's kind of a financial safety net for them. So there is cost exposure for fuel expense for utilities operating in those jurisdictions.

Q. Okay. What about Wyoming? Are you familiar with Wyoming?

A. Wyoming is a jurisdiction where PacifiCorp operates and there is a bandwidth in their energy cost adjustment.

Q. If you know, is -- is this a 70/30 FAC sharing mechanism?

A. I'd have to look at the details.

Q. What about Utah, do you know about Utah?

A. PacifiCorp operates in Utah. It's my understanding there currently isn't a fuel adjustment mechanism, but there may be some financial protection for PacifiCorp in that jurisdiction for significant variations in fuel cost.

Q. If you know, are there any companies in Utah with a 70/30 FAC sharing mechanism?

A. I could not state what the details are.

Q. And with respect to these various sharing mechanisms that you've discussed, that you are aware of, are you aware of any adverse reaction to any of them by the financial community?

A. Well, the financial community is very concerned about whether or not utilities are given a reasonable opportunity to recover reasonable prudent fuel costs, so it is something that the credit analysts take attention to.

It's also the potential rate volatility are considerations by companies moving into the jurisdictions about whether or not they will deploy capital and become customers of utility. So managing fuel costs is an issue that -- that all stakeholders are keenly aware of and keenly watch.

So, yes. Investors understand it. Customers of the utility understand it. It's an important stakeholder balance in each regulatory jurisdiction that I work in that is -- it's considered by all stakeholders.

Q. Do you know if there were any fuel adjustment clauses in the 1980s?

A. There was in Illinois. I worked for the Illinois Commerce Commission at that time and we had a fuel adjustment mechanism.

Q. If you know, what was the average credit rating for electric utilities in the 1980s?

A. Stronger than it is now. Industry average basis, there's some utilities that were building nuclear stations that had credit ratings that are much weaker than they are now, but many other utilities that were not building nuclear stations and did not have financial problems, as an industry, their credit rating was stronger than it is now.

MR. THOMPSON: Thank you, no further questions.

JUDGE WOODRUFF: AmerenUE wish to recross?

MR. WHITT: No, Your Honor.

JUDGE WOODRUFF: Redirect?

MS. ILES: Yes, Your Honor.

REDIRECT EXAMINATION

QUESTIONS BY MS. ILES:

Q. Mr. Gorman, Commissioner Davis asked you a series of questions about analyst consensus on dividends and earnings growth. Do you recall that line of questions?

A. Yes.

Q. And generally, I think he got you to agree that consensus data is more reliable than the opinion of a single analyst on those issues; is that correct?

A. Well, consensus data is more likely reflective of consensus investor expectations than is a single analyst projection.

Q. Okay.

A. And that's what we're striving to achieve is measure what the consensus investors likely expect.

Q. Then you were -- you were also asked some questions about your sustainable growth DCF model.

A. Yes.

Q. And your calculation of the growth rate that you used in connection with that model.

A. Yes.

Q. Is the growth rate that you used in your sustainable growth DCF model based on a single analyst opinion about dividends or earnings?

A. Well, the data underlying the projected earnings and dividends was a single analyst. The projection of growth and shares above book value was based on a single analyst. The price-to-earnings ratio and the market-to-book ratio was based on actual market evidence, which is a consensus of investors' pricing and securities relative to the book -- the observable real book value of the utility and observable real earnings of the utility.

So it's kind of a combination. Part of the -- the data of that model is reflect on consensus market and valuation of the Company, which is not an individual but it is a consensus of investors buy-and-sell decisions, and also a single analyst projection for dividend growth and earnings growth.

Q. So you're saying it was a combination, it wasn't based solely on a single analyst?

A. Correct.

Q. I think the other question I wanted to ask you about was on Table 1 on page 18 of your surrebuttal testimony, which has your revised return on equity results. And I think you were trying to answer a question and you didn't get to fully answer. Were you wanting to explain what you mean by "giving equal weight to the various results of your analyses?" Could you explain to us what that means to you?

A. The equal weight was an effort to develop what I believe to be a reasonable DCF return estimate. So I discussed each of my models and tried to identify the strengths and weaknesses of each one of those and found results from those models and found, based on the three models, what a reasonable DCF return estimate is based on my assessment.

I did the same thing for risk premium study, looked at current utility bond yields, projected treasury bond yields. I looked at history of equity risk premiums and current spreads between treasuries and utilities to gauge what an appropriate equity risk premium is now and use that to develop a range of expected return on equities from a risk premium model. That was another point estimate.

Finally, I did a CAPM study where I performed three separate CAPM return estimates, rejected the two lower ones and went with the highest CAPM return estimate because in the 25 years I've been doing rate of return testimony, I thought a market risk premium lower than six percent, I was just uncomfortable with it.

If it stays that low for a period of time, I might start using it. But from what I've seen historically, a market risk premium in the six to six and a half percent area is -- has been sustainable over many, many years.

After I did each of those three studies individually, I then developed point estimates for each of the methodologies and gave equal weight to each of those three methodologies. And that's how I formed my recommended range in my surrebuttal testimony.

MS. ILES: Thank you. No further questions.

JUDGE WOODRUFF: Then Mr. Gorman, you may step down. And we'll take a 15-minute break and we'll come back and start on the property tax issue. We'll come back at 5:10.

(A break was held.)

JUDGE WOODRUFF: Let's come to order, please. All right. We're back from break and we're ready to move on to another issue and that will be the property tax issue. I assume we'll want to do mini openings on this again, so we'll begin with Ameren.

MR. MITTEN: If it please the Commission. There are two issues regarding property taxes that the Commission is being asked to decide in this case. First, what is the appropriate amount of property taxes that should be included in the revenue requirement used for rate-making purposes. And second, how should the Commission deal with Ameren Missouri's pending appeal of its property tax payments for 2010. I will briefly address each of those issues separately.

With respect to the amount of property taxes that should be included in the revenue requirement, the evidence in this case will show that the Company and Staff are in agreement as to the methodology that should be employed to determine property tax expense and the specific amount of that expense that should be included in the cost of service.

There are a number of reasons why both Staff and the Company have proposeed to include in the cost of service the property taxes that relate to the Taum Sauk enhancements and the Sioux Scrubbers. First, because both the Taum Sauk and the Sioux Scrubbers were in service as of January 1st of this year, the cost of both of those units will be used to determine the assessed value of the Company's property upon which Ameren's 2011 property tax liability will be based. That assessment information was submitted to the taxing authorities as of January 1st of this year.

Second, Ameren Missouri already is accruing, as required by FERC accounting rules, amounts necessary to pay the additional property taxes associated with the Taum Sauk enhancements and the Sioux Scrubbers.

And finally, both Staff and the Company have proposed that significant portions of Ameren Missouri's investments in the Taum Sauk rate based used to set rates in this case and also have proposed that costs associated with those two units, for example operating and maintenance costs and depreciation costs, be included in the cost of service.

Therefore, it is appropriate and consistent with the matching principle that property taxes associated with these investments also be included in the cost of service used for rate-making. For all these reasons, the Commission should calculate property tax expense in the manner proposed by both Ameren and the Staff, and we believe that methodology is consistent with past Commission practices.

The only party that filed testimony opposing the methodology proposed by the Company and the Staff is MIEC, which proposes that the Commission determine the property tax amount based upon an assessed value that does not include any of the investment in either the Taum Sauk enhancements or the Sioux Scrubbers.

And if the Commission accepts MIEC's proposal, the difference between the Company's actual tax expense and the amount included in rates will be more than 10 million dollars per year. That means Ameren Missouri will undercollect property taxes by that amount. MIEC's rationale for this proposal is that the Company should have waited to file this rate case until it received an actual tax bill that reflected the investments in Taum Sauk and the Sioux Scrubbers in the assessed valuation.

Now, never mind that these plant additions will have been in service throughout 2011; and never mind that they will continue to serve customers throughout the period rates set in this case will be in effect. Never mind that these investments -- the value of these investments will be part of the assessed value used to determine property taxes for 2011 and throughout the period rates set in this case will be in effect. And never mind that the investment associated with one or both of these units will be included in rate base used to set rates in this case and that certain costs associated with these plants will be included in the cost of service.

As far as MIEC is concerned, the only fact the Commission should consider in determining property tax expense in this case is whether the Company actually has paid a tax bill that includes Taum Sauk and the Sioux Scrubbers.

MIEC's argument elevates form over substance. The Commission knows there will be property taxes -- a property tax increase because of Taum Sauk and the Scrubbers, and can with reasonable degree of certainty determine what that increase will be. But MIEC argues that the Commission should ignore all this simply because Ameren will not make an actual property tax payment until a few months after the operation of law date in this case.

Now, you've heard several witnesses in this case talk about the detrimental effects of regulatory lag and you've heard these same witnesses urge the Commission to take reasonable steps to reduce both regulatory lag and its negative effect on Ameren Missouri. Adopting the methodology for determining property tax that's being proposed by both Staff and the Company will allow the Commission to achieve both of these objectives. In star contract, the methodology proposed by MIEC will enhance regulatory lag and will exacerbate its adverse effects on the Company.

Turning to the second issue: As I noted earlier, that issue pertains to how the Commission should deal with a pending appeal of property taxes that Ameren paid in 2010. Staff argues that if Ameren's appeal is successful, any reduction in property taxes paid during 2010 should be tracked and automatically flowed through to customers in the Company's next rate case.

The Company does not oppose tracking any savings that it receives as a result of its appeal. But it believes it is prudent for the Commission to, one, wait until that appeal is finished. And two, allow the parties to the next rate case to present evidence as to whether or not all or any part of any savings the Company receives should be flowed back to ratepayers, how it should be flowed back, and over what period of time. That's the difference between the Staff and the Company's position in this case.

Thank you very much.

JUDGE WOODRUFF: Thank you.

COMMISSIONER DAVIS: Can I?

JUDGE WOODRUFF: Go ahead.

COMMISSIONER DAVIS: Maybe this is a better question for Mr. Weiss, but do you know when we're going to actually know the exact numbers for the Sioux Scrubbers and for the -- for Taum Sauk?

MR. MITTEN: I don't know that; Mr. Weiss may know the answer to that question.

COMMISSIONER DAVIS: Because at this point, they're still estimated, correct?

MR. MITTEN: Right. It's an estimate based upon the 2010 tax rate.

COMMISSIONER DAVIS: Okay. Thank you.

JUDGE WOODRUFF: Opening for Staff?

MR. THOMPSON: Thank you, Judge. I'll be very brief. Mr. Mitten accurately represented the position of Staff with respect to the first property tax issue. Staff agree with the Company that the property tax relating to the Sioux Scrubbers and to Tom Salk should be included in revenue requirement in this case.

Staff also agree with Ameren's suggestion that a tracker be established to track the value, if any, resulting from their appeal of the property tax for 2010. Staff believes that that amount ultimately should be returned to ratepayers if, in fact, it is received back. But Staff also agree that that should be tracked as a result of this case and actual disposition made in a future case.

Thank you.

JUDGE WOODRUFF: For MIEC?

MR. ROAM: May it please the Commission. Ameren Missouri's request that millions of dollars in property tax be added to its cost of service over and above the amount to which the parties have already stipulated in this case should be wholly and summarily denied.

You are about to hear evidence that the Company is disputing 28 million dollars, or nearly one-fourth of its 2010 tax bill. You're about to hear evidence that the Company anticipates prevailing on its appeal and receiving a 28 million dollars reimbursement from its 2010 taxes. You're about to hear evidence that the Company does not know the amount in which the taxing authorities have assessed Ameren's real and personal property for 2011.

You'll also learn that Ameren does not know the tax rates that will be applied to the assessed value of its real and personal property for 2011 and you are about to learn that Ameren Missouri does not know the amount it will owe in taxes for 2011. In fact, Ameren Missouri will not even know what its tax bill will be when rates go into effect in this case in August.

And whatever amount Ameren will owe in taxes in 2011 will not be due until five months after rates go into effect in this case and ten months after the true-up period in this case. In short, Ameren is asking for million of dollars in cost of service based on an estimate of an expense that is, by any standard, unknown and immeasurable. In fact, the purported expense at issue cannot even be rightly called an expense because depending on the outcome of Ameren's tax appeal, Ameren's property taxes in 2011 may be less than the amount Ameren was billed in 2010.

In other words, if Ameren wins its appeal, which it anticipates doing, its tax bill for 2011 will likely be less than the 119 million dollars to which the parties have already stipulated in this case and the amount that it was billed in 2010.

The Company's position is flawed and self-contradictory. On the one hand, the Company anticipates a 28 million dollar reimbursement from last year's taxes, meaning that it believes that nearly a quarter of its property tax from last year will not be assessed against it this year causing a significant decrease in its 2011 property taxes. On the other hand, it is arguing before this Commission that it will likely incur a ten million dollar tax increase this year.

The Company's position simply doesn't add up. On this issue, the Company is overreaching. It is asking this Commission to include in its cost of service an unknown and immeasurable estimated amount that may -- estimated expense that may, in fact, turn out to be no expense at all. As such, MIEC respectfully requests that the Commission summarily deny the Company's request for any amount over and above the 119 million dollars to which the parties have already stipulated in this case.

Thank you.

JUDGE WOODRUFF: Thank you.

COMMISSIONER DAVIS: Mr. Roam, can I inquire of you for just a second?

MR. ROAM: Sure.

COMMISSIONER DAVIS: What is your impression of where Ameren's tax appeal is at right now in terms of litigation process?

MR. ROAM: It's my understanding there's going to be a hearing, perhaps before the tax --

COMMISSIONER DAVIS: State Tax Commission?

MR. ROAM: State Tax Commission. And I don't believe that's happened yet. So I don't know the status of the appeal. I do know that Ameren anticipates prevailing on that appeal based on communications.

COMMISSIONER DAVIS: Now, from the -- is the State Tax Commission, are they the final authority or can the counties appeal that, too? Do you have any idea?

MR. ROAM: I don't know. Sorry.

COMMISSIONER DAVIS: Okay. Should I inquire of Mr. Byrne about that?

MR. ROAM: Sure.

COMMISSIONER DAVIS: Mr. Byrne

MR. BYRNE: Yes, sir.

COMMISSIONER DAVIS: What's the legal status of this appeal? Can you give us a procedural kind of breakdown of where it's at and what we can look forward to.

MR. BYRNE: I believe there's a hearing scheduled before the Tax Commission, and I believe it's later on this summer?

MR. WEISS: It's not scheduled yet.

MR. BYRNE: It's not scheduled yet. We anticipate it will be later in the summer, but it's not scheduled yet.

COMMISSIONER DAVIS: Okay. And so after that, the State Tax Commission will make a decision after this hearing that's not even scheduled yet?

MR. BYRNE: That's correct.

COMMISSIONER DAVIS: Okay. Now, from there, you -- I mean, are they the final arbiter or are their decisions like ours, they get appealed up the food chain?

MR. BYRNE: As a matter of fact, their decisions are like yours and they can be appealed. And I don't know. I believe there's just as much likelihood that it will be appealed as not with the amount of money that's involved. So they're appealable and very well may be appealed.

COMMISSIONER DAVIS: Okay. Thank you very much.

JUDGE WOODRUFF: Thank you, Mr. Roam. Mr. Schwarz, for the Missouri Retailers Association.

MR. SCHWARZ: May it please the Commission. The Missouri Retailers Association, of course, has an interest in this issue as much as the other parties. The key element, I think, to the case is the 28.8 million dollars that the Company has paid under protest based on the central assessment that it received from the State Tax Commission last year, based on its distributable property.

In Missouri, electric utility property is assessed in part by the State Tax Commission on an original basis and, in part, by the local county assessors where the county has certain of its property. The local property and -- which is assessed locally and is defined in Chapter 153 as is the distributable property, which the State Tax Commission assesses on an original basis.

It is my understanding from reading the Pleadings before the State Tax Commission and discussions with the State Tax Commission that the Company is appealing only the distributable property assessment imposed by the State Tax Commission and that it has no appeals of local property.

The distinction between distributable and local is interesting in this case because the statutes specifies that dams are local property. So Taum Sauk, which is situated in Reynolds County, will be assessed by the local Reynolds County assessor. The assessed value will remain entirely in Reynolds County and that will be the only county that raises property tax revenue from the Taum Sauk dam and reservoir.

The Sioux Scrubbers present the other kind of property, distributable property. They have, during the construction process, they are assessed locally, so they have been -- Sioux Scrubbers has been assessed each year on which construction has been done, but it has been done by the St. Charles County assessor. When the property actually begins to be used for service, it then becomes part of the distributable property and will be assessed by the State Tax Commission.

The distributable property of electric utilities is distributed to the counties in which the utility has conductors. It's distributed based on the ratio of the miles of wire in a particular county based on the miles of wire that the Company has in the entire state. That's by statute as well. So the -- there will be some kind of -- well, let me back up.

While the property is under construction, it is typically given a fair market value by local assessors of half of the then current cost, that is the cost of -- as of January 1, say 2010, which is the last one for which numbers are known. The local assessor will take the original cost that the Company has on its books for the construction work, divide that by two, and then apply the ratios.

So there will be a change -- an increase likely -- in the property tax bills when property goes from construction work in progress assessed at partial values in only one county to going on to the distributable property and being distributed throughout the counties where the utility operates.

We think -- actually, I think Mr. Mitten's opening statement was longer than the entire testimony on this issue in the case. The testimony has been very summary and certainly Missouri Retailers hopes to explore those numbers a little bit with the witnesses and provide some information for the Commission. Thank you.

JUDGE WOODRUFF: I believe that will be all the openings, so we'll begin with --

COMMISSIONER DAVIS: Judge, can we just make a record here that there are at least two more parties who are opposing the property taxes on Taum Sauk, that would be Office of Public Counsel and Consumers Counsel of Missouri and neither of those parties are present for this discussion. In fact, Office of Public Counsel was also not here the entire afternoon for the discussion regarding return on equity.

JUDGE WOODRUFF: All right. Call your witness.

MR. BYRNE: I would call Gary S. Weiss to the witness stand.

(The witness was sworn.)

DIRECT EXAMINATION

QUESTIONS BY MR. BYRNE:

Q. Good evening, Mr. Weiss.

A. Good evening.

Q. Could you please state your name and business address for the record?

A. My name is Gary S. Weiss, W-e-i-s-s. My business address is 1901 Chouteau, St. Louis, Missouri 63166.

Q. And by whom are you employed, Mr. Weiss?

A. I am employed by Ameren Missouri.

Q. And in what capacity?

A. I am manager of regulatory accounting.

Q. And Mr. Weiss, are you the same Gary S. Weiss that caused to be filed in this case direct testimony that's been marked as Exhibit 130, rebuttal testimony that's been marked as 131, and surrebuttal testimony that's been marked as Exhibit 132?

A. I am.

Q. Do you have any corrections to any of that pre-filed testimony?

A. I do not.

Q. Is the information contained in all three of those pieces of testimony true and correct to the best of your knowledge and believe?

A. Yes, it is.

Q. And if I were to ask you those questions contained in those three pieces of testimony today here, under oath, would your answers be the same?

A. Yes, they would.

MR. BYRNE: Your Honor, I'd offer Exhibits 130, 131, and 132 and tender Mr. Weiss for cross-examination.

THE COURT: Okay. 130, 131 and 132 have been offered. Any objection to their receipt?

MR. THOMPSON: No objection.

JUDGE WOODRUFF: Hearing none, they will be received.

(Exhibit Nos. 130, 131 and 132 were received in evidence.)

JUDGE WOODRUFF: For cross-examination, we'll take them a little bit out of order, I guess. We'll start with Staff.

MR. THOMPSON: Thank you, Judge. I have no questions for Mr. Weiss.

JUDGE WOODRUFF: Okay. For the Missouri Retailers Association?

MR. SCHWARZ: Thank you, Judge. I have some exhibits I'd like to mark, if I might. The first one I think my exhibit is Number 500.

JUDGE WOODRUFF: That is correct.

MR. SCHWARZ: And this is a certified copy of the Company's petition for rehearing of its tax assessment for 2010.

JUDGE WOODRUFF: Okay.

(Exhibit Nos. 500 and 501 were marked for identification by the Court Reporter.)

MR. SCHWARZ: 501, which is certified copies of Tax Commission records involving or reciting the local assessments of AmerenUE in St. Charles and Reynolds County for a number of years.

(Exhibit No. 502 was marked for identification by the Court Reporter.)

MR. SCHWARZ: This exhibit is taken from the Public Service Commission's (sic) web site. It is a recompilation of AmerenUE's simple assessments -- distributable property assessments for 2009 and 2010.

It is an excerpt from the annual reports as published by the State Tax Commission on its web site. Those documents are certified on the web site.

JUDGE WOODRUFF: Okay.

COMMISSIONER DAVIS: So this isn't your certified copy, it's certified on the web site?

MR. SCHWARZ: It's certified on the web site, that's correct. If need be, I can get certifications by the Tax Commission probably by tomorrow or Thursday, if needed. The next item is the -- again, from the Tax Commission web site annual reports. The 2009 and 2010 recompilation of St. Charles assessments.

(Exhibit Nos. 503 and 504 were marked for identification by the Court Reporter.)

MR. SCHWARZ: The next exhibit is, again, from the same source, annual reports of the State Tax Commission from their web site. The recompilation of the Reynolds County assessments from the year 2005 through 2010.

JUDGE WOODRUFF: Okay. This will be 504.

MR. BYRNE: Judge, I'm having some trouble keeping up with what's been marked as what. Do you think you can start at the beginning and tell me what's what?

JUDGE WOODRUFF: I will do that. 500 is the Tax Commission Petition; 501 is the tax on local assessments; 502 is the distributed assessments in 2010.

MR. BYRNE: Does that one say at the top State Tax Commission Annual Report 2010?

JUDGE WOODRUFF: No. 502 is this long list of county-by-county assessments.

MR. BYRNE: Okay. Got it.

JUDGE WOODRUFF: 503 is the St. Charles County assessments and 504 is the Reynolds County assessments.

MR. BYRNE: Thank you, Your Honor.

JUDGE WOODRUFF: Mr. Schwarz.

CROSS-EXAMINATION

QUESTIONS BY MR. SCHWARZ:

Q. Good afternoon, sir.

A. I think good evening by now.

Q. Ameren Missouri pays property taxes in Missouri, Iowa and Illinois; is that correct?

A. That's correct, along with other states for our railcars.

Q. Right. The railcars are assessed for property tax purposes under the private car tax mechanism?

A. That's correct.

Q. Okay. So I want to focus just on the Missouri property tax assessments, okay?

A. That's fine with me.

Q. Are you familiar with the term "distributable property?"

A. Yes, I am.

Q. And what's your understanding of "distributable property?"

A. That is what we call the state-assessed property. It refers to the generation transmission distribution electricity. It is assessed by the State Tax Commission and it's allocated out to the various counties that have our properties and then they apply their local taxes to it.

Q. Okay. And it's distributed to the counties on the basis of water miles?

A. Water miles or pool miles, whichever term you want to use.

Q. And do you know what the term "local property" means?

A. Yes, that's property that is non --

non-generation distribution or transmission property. More like general property that is located in the various counties and areas and is locally assessed and locally taxed.

Q. And so those assessments are done by the local county assessor?

A. That is correct.

Q. Are you aware that the definitions of "local" and "distributable property" are found in the statutes in Chapter 153?

A. I am not.

Q. Okay. Are you aware of the appeal of its central assessment that Ameren has filed with the State Tax Commission for the year 2010?

A. I'm aware we have a -- filed for an appeal, yes.

Q. Okay. And has Ameren filed any appeals of the local assessments it got for 2010?

A. Not that I'm aware of.

Q. It's been stated that Ameren has paid -- that Ameren paid 28.8 million dollars of its 2010 property tax bill -- Missouri property tax bills under protest; is that correct?

A. That's correct.

Q. And so those protests are based solely on the dispute that Ameren has with the State Tax Commission over

its centrally assessed property; is that correct?
A. Yes. I've never heard the term centrally assessed, but state-assessed is how we refer to it.
Q. Centrally assessed, state-assessed. Okay. Ameren's not basing any of its protested taxes on levee rate calculation, is it? Do you know?
A. I really don't know that question -- or answer.
Q. Can you tell me how Ameren -- strike that.
Ameren operates in about 89 counties. Is that fair to say?
A. Well, I think the distributable tax goes through 69 counties and that includes the City of St. Louis.
Q. They'd all be listed on the Tax Commission lists there?
A. That's correct.
Q. Okay. And Ameren has protested taxes in each of those counties?
A. Well, the protest is with the State Tax Commission, which developed the assessment for the state tax property, which is distributable out to each of those counties. So I guess you would say the taxes for each of those counties is going to be appealed.
Q. Well, when the Company pays its tax under protest, it -- that's something that's noted to the county

collector when the taxpayer pays its property taxes. Is that your understanding? Do you know?

A. There is a letter sent to each of the county assessors explaining that situation to them.

Q. Right. So Ameren hasn't just cherry-picked one or two counties. They've treated them all the same. Is that fair to say?

A. That's correct.

Q. The -- a protest or application for rehearing that -- that Ameren filed at the State Tax Commission asks for relief from the Commission's 6.2 billion dollar unit value, that is the value of all Ameren taxable property and ask that it be reduced to 5.8 million dollars or less. Can you tell me how Ameren calculated the 28.8 million dollars to pay under protest given that request for assessment relief?

A. I cannot.

Q. So you're not -- you're not aware of -- of the calculation of the 28.8 million dollars?

A. No, I'm not. I've seen the number, but I've not seen how it was calculated.

Q. Do you know what the average levee rate is that Ameren pays on state-assessed property?

A. No, I do not.

Q. Are you you aware that the Sioux Scrubbers had been assessed since construction began as local property by the St. Charles County assessor?

A. Yes, I am.

Q. And that the Taum Sauk property -- the Taum Sauk reservoir has been assessed by the Reynolds County assessor since construction began?

A. Yes, and they're assessed as construction work in progress and for revenue requirement purposes, construction work in progress property taxes are not included.

Q. But they are capitalized, are they not?

A. Yes, they are capitalized.

Q. They're not part of the expense, but they are part of the tax bill that Ameren receives?

A. It would be part of the total tax bill we receive, yes.

Q. Okay. And can you -- the information I have indicates that Ameren's -- Missouri tax bill from all jurisdiction tax bill for property taxes was 119 million dollars. Is that accurate from your --

A. That is correct.

Q. Okay. So you have tax bills for 119 million, correct? From last year?

A. Well, actually we had tax bills for more than that; 119 is only the part that applies to the electric operations.

Q. Correct, correct. We're talking about the electric operations.

A. Yes.

Q. Last year, they were 119 million dollars?

A. That is correct.

Q. And you have paid 28.8 million dollars under protest?

A. That is correct.

Q. And if you subtract 28.8 from 119, you come up with 90.2 million dollars; is that correct?

A. I'll take your word for it, it's got to be close.

Q. Oh, if you'll take my word for it, we can have a wonderful discussion on many issues.

So it's Ameren's position, then, that based on the property -- the taxable property it had in the State of Missouri for the tax year 2010, that an appropriate tax bill would be 90.2 million dollars; is that correct?

A. You lost me on your question. Can you please repeat it?

Q. Sure. The Ameren's -- Ameren's property tax appeal is based only on the -- the state-assessed property, correct?

A. Correct.

Q. Its total tax bill for 2010 was 119 million dollars, correct?

A. Correct.

Q. Ameren's protested 28.8 million dollars of that, and if my calculator was correct, it comes out that that leaves 90.2 million dollars that Ameren contends it should pay for 2010, correct?

A. Well, Ameren paid the full 119 million.

Q. But it's contending that it's -- once the dust settles and the -- it prevails on its appeals, that its tax bill should be 90.2 million dollars; is that correct?

A. We have appealed the assessment and we hope we do get a refund, but there's no guarantee. And you're very optimistic that we are going to get a refund.

Q. I'm a cart-carrying optimist. But the Company's position is that if properly calculated, its tax bill would be 90.2 million dollars for all its taxable property in Missouri for the year 2010?

A. If you assume we win the appeal, then that would be correct.

Q. That is what Ameren has told each county collector where it paid tax under protest, correct?

A. I don't know what we told each county assessor. I just know we sent them a letter saying X number of dollars from their tax bill was being appealed.

Q. How many angels are dancing on the head of that pin.

Is it the -- is it the Company's position that when the Sioux Scrubbers go from locally assessed construction work in progress to state-assessed distributable property, that it will see an increase in its tax bill?

A. Most definitely.

Q. And is it the Company's -- let me ask you this: Has the Company seen its assessment on the Taum Sauk reservoir from 2011 from the Reynolds County assessor?

A. We have provided them the information, we have not received back their official assessment yet.

Q. Okay. Okay. Are you aware that there are both statutory and constitutional levee rollback provisions in Missouri law?

A. There are, but they do not apply to new construction or rehabilitation.

Q. They are -- it was certainly Section 137.073, which is the levee rollback provision is extensive. Are you familiar with it?

A. No, but I've been informed by my tax department that it does not apply to Taum Sauk.

MR. SCHWARZ: I think that's all the questions I have. Thank you.

JUDGE WOODRUFF: Do you wish to offer the exhibits?

MR. SCHWARZ: Oh, yes, I would offer the Exhibits 500 through 504.

JUDGE WOODRUFF: All right. 500 through 504 have been offered. Any objection to their receipt?

MR. BYRNE: Yes, I have a couple of objections. One objection I have is that they're all irrelevant. And with respect to 502, 503 and 504, there's been no foundation for them. Insufficient foundation. I think 500 and 501 are self-authenticating documents, so if they were relevant, they are authenticated.

502, 503 and 504, and I -- like I, for example, I notice that they don't even look like they're right. 503, for example, has a mixture of pages for Adair County and St. Charles County. So anyway, no one's identified them, no one's authenticated them. I object to 502, 503, 504 on those grounds.

JUDGE WOODRUFF: Your response?

MR. SCHWARZ: I will -- although Ameren has an assessment in Adair County, so I suppose it's relevant in that regard.

First of all, I think that the issue before the Commission is the appropriate level of property taxes for Ameren Missouri. I think that certainly the documents that reflect the assessed values that have been assessed in the past and which -- at least a portion of which are currently subject to appeal at the State Tax Commission are both relevant and material to the Commission's determination.

And while we're at it, I'll ask the Commission to take judicial notice of the Staff's true-up audit reports from Case ER-2010-0036, which -- which specify an amount of property tax in the range of 109 million. I can't remember it offhand. That issue was not contested in that case, so I think that from the perspective of providing a basis for comparison at some stage, that the amount of property taxes that are in rates may be something the Commission wants to consider and that particular item would be worthwhile.

I think further that the Commission can take official notice of things that the courts take judicial notice of and the courts can take judicial notice of the official records of government agencies. The -- as I -- the State Tax Commission is required to print an annual report by statute, Section 138, either 330 or 440. It does so on line.

The annual reports that are on line do have the certification, but in any event if authenticity is in question, I would ask the Commission for leave to provide the certification for these documents from the State Tax Commission, and I think I can do that by Thursday at the latest.

JUDGE WOODRUFF: All right.

MR. BYRNE: Your Honor, I would also note the

Missouri Retailers Association filed no testimony on this topic. And now, although I appreciate Mr. Schwarz's effort to put in a flurry of documents in the hearing, I -- well, I don't think he's laid a proper foundation for them.

MR. SCHWARZ: I want to point out that I'm entitled to cross-examine the Company on the issue of property taxes, whether I filed testimony, whether I provide a witness or not. And I certainly think that I'm entitled to review use public documents, many of which were provided by AmerenUE itself, but all of which is in EFIS and the State Tax Commission.

MR. BYRNE: Mr. Schwarz is entitled to cross-examine the witness, but he didn't ask him any questions about any of these documents. So it's not a case of limiting Mr. Schwarz's ability to cross-examine. If he had asked the witness about these documents, the witness would have said, for most of them, that he's never seen them before, so.

JUDGE WOODRUFF: Well, he certainly did question him about the topics that are in the subject of these documents.

MR. SCHWARZ: Well, if the Company puts up a witness for an issue in a Commission rate case that doesn't know the fundamental position that the Company has taken and the actions that state agencies have taken with respect to the Company, then I think the fault, I think, lies not with the cross-examiner but rather with the component.

MR. BYRNE: The fact that Mr. Weiss maybe --

JUDGE WOODRUFF: It's getting late and I'm ready to make a ruling.

MR. BYRNE: Okay.

JUDGE WOODRUFF: For 500 and 501, I will admit them at this point because they are self-authenticating. For 502, 503, 504, you indicated they're authenticated on a web site. It's not attached here, I don't believe. And you also indicated that you can obtain authentication, so I will ask you to do that. I will defer ruling on those. I would think that by Thursday --

MR. SCHWARZ: I would think by Thursday. This is Tuesday, right?

JUDGE WOODRUFF: It is still Tuesday. I'll defer ruling on that until Friday. I'll take it up and deal with it then if you can get me the authentication by then.

MR. SCHWARZ: Okay.

JUDGE WOODRUFF: All right. And then I'll move to MIEC for cross.

CROSS-EXAMINATION

QUESTIONS BY MR. ROAM:

Q. Good afternoon, Mr. Weiss.

A. Good afternoon.

Q. I just want to follow-up on one question. I did not understand your question to when you were being questioned by Mr. Schwarz. How much in property taxes should Ameren have paid in 2010?

A. We have bills for 119 million so we paid 119 million.

Q. That's not my question. How much should it have paid in 2010? Not how much did it pay. How much should it have paid?

A. The same question. We have to pay what we're billed and we paid what we were billed, 119 million. The appeal had nothing to do with how much we had to pay.

Q. You're appealing 28.8 million. You're saying that you should have only had to pay 90.2 million. Isn't that the Company's position? You should have only had to pay 90.2 million? Either that or you filed a frivolous appeal; isn't that right?

A. Okay. We have appealed 28 million dollars, so you can take that for what it's worth.

Q. I need an answer because you're not answering the question.

MR. BYRNE: Your Honor, I'm going to object because he's asking for a legal conclusion. Mr. Weiss is an accountant, not a lawyer. He knows what's been paid. He doesn't know what the legal ramifications are.

MR. ROAM: Judge, he represents the Company. The Company filed an appeal for 28.8 million dollars. I'm asking him if it's the Company's position that it should not have paid that 28.8 million dollars. That is the position that he should be allowed to -- that is the position that he should know and he should take. He's avoiding the question because -- he's avoiding the question. They have appealed this tax bill and now he won't answer whether or not their appeal has any merit because they don't --

MR. BYRNE: Whether the appeal has merit is a legal conclusion. He's stipulated to the fact that the appeal's been filed.

JUDGE WOODRUFF: I'm going to sustain the objection.

BY MR. ROAM:

Q. I'm not going to ask a legal question. Do you have a position whether or not your legal claim -- do you have a position about whether or not you should have filed the appeal?

A. I do not.

MR. BYRNE: I'm going to object. Same objection.

JUDGE WOODRUFF: Same result. You're asking him for a legal conclusion as to the merits of AmerenUE's position -- or Ameren Missouri's position. I don't think he's entitled to make that sort of statement as a legal conclusion.

MR. ROAM: Then I would ask, Judge, if -- what we need to discover here, what's at issue here is that -- is that Ameren is claiming that not only should they pay the -- should they have 119 million dollars in cost of service and that's been stipulated to, but they're also asking for an additional 10 million dollars in their cost of service. At the same time, they have a pending appeal where the Company's stated position, publicly stated position is that they shouldn't have even had to pay the 119 million dollars. They should have only paid 92 million.

JUDGE WOODRUFF: And I believe he's said that.

MR. ROAM: He has not said that. That's the problem is that he will not answer that question. That's not a legal question.

MR. BYRNE: Your Honor, Ameren Missouri's legal position is set forth in their petition, which he just admitted into evidence. That's evidence that Mr. Roam can cite in his brief or wherever he wants. But trying to get an accountant to try and explain our legal position is not a legitimate line of questioning.

MR. ROAM: Then I will ask Mr. Byrne, will you stipulate that it's the Company's position that it should have only paid 90.2 million dollars in 2010 for property taxes?

MR. BYRNE: I'll stipulate that our position is set forth in our petition, which has been admitted into evidence and you can cite that for whatever purpose you want.

MR. ROAM: You can't answer that a yes or no.

MR. BYRNE: I choose not to. I choose to rely on the legal documents that we filed.

MR. ROAM: I think the evasiveness speaks for itself in this matter. All right. We'll move on.

BY MR. ROAM:

Q. The additional amount that the Company is seeking in this matter is based on an estimate the Company anticipates owing due to the increased value of the Taum Sauk reservoir and the Sioux Scrubbers, correct?

A. Correct, it's based on the -- the increased assessment that was effective January 1st, 2011.

Q. And that's an estimate -- that's an estimate. It's based on an estimate of what you believe you're going to owe in 2011?

A. Right, it's an estimate, that's correct.

Q. It's just a very simple question. About 75 percent of the increase the Company is seeking relates to the estimate of what you'll have to pay in property tax for the value added to the Sioux plant by the Scrubbers, right?

A. Do you want to repeat the question? You lost me.

Q. Sure. About 75 percent of the increase you're asking for is based on the estimate of what the Company believes it's going to have to pay due to the increased value related to the Sioux Scrubbers, correct?

A. It's probably closer to 80 percent.

Q. Okay. Okay. Now, the Company cannot determine with accuracy the anticipated 2011 property taxes pertaining to the Sioux Scrubbers, correct?

A. I disagree with that. I think we can give an accurate estimate on what we think the property taxes will be on the Sioux Scrubbers based on their assessed valuation of January 1 and the 2010 average tax rates for the distributeable property.

Q. I'm going to show you --

MR. ROAM: May I approach?

JUDGE WOODRUFF: You certainly may.

BY MR. ROAM:

Q. I'm going to show you a document titled 2010 Property Tax Estimate of Sioux Scrubber. Do you recognize that document, Mr. Weiss?

A. Yes, I do.

Q. Is that your work paper?

A. It's got my name on it, so it's my work paper, yes.

Q. Are you responsible for the content of that document?

A. I did not prepare the document.

Q. I'm sorry?

A. I did not prepare this document.

Q. Are you responsible for the content of this document? It has your name on it. Is it your work paper?

MR. THOMPSON: Objection, asked and answered.

JUDGE WOODRUFF: Overruled, he can answer.

BY MR. ROAM:

Q. Are you responsible for the content of this document?

A. I don't know what being "responsible for the content" is. I sponsored the work paper. I did not prepare the work paper.

Q. You sponsored the work paper?

A. Yes, I did.

Q. Do you recall me asking whether or not you can determine with accuracy the 2010 property taxes pertaining to the Sioux Scrubbers. Do you recall me asking you --

A. Yes. My answer would be the same.

Q. And your answer was no?

A. My answer was yes.

Q. Can you please read the statement by the asterisk in this document?

A. Yes. The tax department also puts a disclaimer on anything they give me. It says, "We cannot determine the accuracy of the anticipated 2011 Sioux Scrubbers since the accounts involved are state-assessed property."
Q. Okay. So according to this document, Ameren Missouri cannot determine the property taxes. Isn't that what this document says?
A. That's what that disclaimer is, yes. And I do not agree with it, but.
Q. You do not agree with it?
A. No, I agree with my work paper. I sponsored the number and I think it is a fair estimate of the amount of property taxes we will be paying.
Q. I'm asking you if you -- you disagree with this statement that is on your work paper.
MR. BYRNE: I'm going to object, asked and answered.
JUDGE WOODRUFF: Overruled.
THE WITNESS: Yes. I'm saying it's a disclaimer, we cannot -- we cannot calculate to the exact penny, but we can calculate a fair estimate of what the property taxes are going to be.
MR. ROAM: Okay. I'd move to have this work paper admitted into evidence.

JUDGE WOODRUFF: All right. Your next number is 415.

COMMISSIONER DAVIS: And Judge, while we're in momentary lapse here, can we just ask the witness to answer Mr. Roam's questions?

(Exhibit No. 415 was marked for identification by the Court Reporter.)

BY MR. ROAM:

Q. Mr. Weiss, Ameren Missouri will owe taxes at the end of this year based on the value of all of Ameren Missouri's real and personal properties as of January 1st of this year, correct?

A. That is correct.

Q. And at some point in this year, the taxing authority will send to Ameren Missouri an assessment of value of all of Ameren's real and personal property; is that right?

A. That's correct.

Q. Ameren has not received that assessed value from the taxing authority; is that right?

A. That's correct.

Q. Sometime this year, the taxing authority will inform Ameren Missouri the tax rates to be applied to the assessed value of the property, correct?

A. I'm not sure exactly what we get back from the taxing authorities, but we do get back a bill showing the taxes that we do owe.

Q. Okay. You're not sure whether or not you get a tax rate in September, if you're advised of the tax rates that will be applied to the assessed value in September?

A. I'm not aware of that. I know we get tax bills starting in late September, October, November from the various counties.

Q. And you haven't received that tax bill, correct?

A. That's correct.

Q. So as you sit here today, you do not know how much Ameren Missouri will owe in taxes at the end of this year, correct?

A. The exact amount to the penny, I do not know.

Q. To the penny, you don't know. Do you know to the dollar?

A. No. I'm saying we have a very good estimate, but not the exact amount.

Q. Mr. Weiss, rates go into effect in this case around August 1 of this year, correct?

A. Correct.

Q. The properties -- the Company's property tax won't be due until the end of December, which is five months later -- which is five months after rates go into effect in this case, correct?

A. The actual payment will take place December 31st, when we have to accrue those expenses on our books starting in January.

Q. Okay. I'm going to ask the question again. The Company's property tax won't be due until the end of December, correct?

A. That's correct.

Q. In fact, you won't even know how much you owe until sometime after September, until after you get the bill, correct?

A. As I've said before, the exact amount will not be known until we get the bills.

Q. In fact, the true-up period for this case ended September 28th, 2011; right?

A. That's correct.

Q. And so Ameren Missouri's property taxes will not be due until around ten months after the true-up period in this case, correct?

A. The actual payment will be due on December 31st.

Q. And that's about five months after the true-up period in this case; isn't that right?

A. That's correct.

Q. Mr. Weiss, Ameren Missouri received a tax bill last year for 119 million dollars, correct?

A. That was the electric portion of the bill.

Q. Electric portion. And Ameren Missouri appealed a portion of that bill and we discussed that, and Ameren appealed about 28.8 million dollars. So -- so the Company is appealing nearly a quarter of the tax bill it received last year; is that right?

A. That is correct.

Q. And that 28 million dollars is now being held in escrow pending the outcome of that appeal; is that correct?

A. That's correct.

Q. When you developed your direct testimony in this case, did you include the impact of the possibility of a 28 million dollar reimbursement to the Company if the Company prevails on this appeal?

A. I'm trying to think of -- the time I filed my direct testimony, I wasn't even aware of the appeal.

Q. You were not aware of the appeal?

A. At the time I filed my direct testimony. It was not included in our test year numbers, so.

Q. Let me ask you this: If you had been aware of the appeal, would you have included the impact of the possibility of a 28 million dollar reimbursement?

A. No, because we had to pay 119 million dollars, so that was what the Company had experienced as expense during the test year.

Q. Right. And you didn't know -- you wouldn't have known the outcome of that appeal at the time you filed your direct testimony. In other words, the reason you wouldn't include the possibility of a 28 million dollar reimbursement is because you wouldn't know whether or not you were going to receive that reimbursement, correct?

A. That is correct. We still do not know if we're going to get any reimbursement or not.

Q. Exactly. So that is an event that is not known or measurable?

A. Yeah, the refund is. The actual payment is known and measurable, but the refund is not.

Q. The reimbursement is not a known and measurable amount?

A. Right.

Q. And if the Company prevails on the appeal, the amount that it will owe in 2010 taxes will turn out to be 28 million dollar less than what the Company actually paid?

A. And we've offered to track that and create the refund later on.

Q. And that's not my question. It was a yes or no question. If the Company prevails, the amount of taxes it will owe for 2010 will turn out to be 28.8 million dollars less than the amount it paid. Is that a true statement or a false statement?

A. Assuming we win the whole appeal.

Q. Right.

A. It could be somewhere between that or it could be zero. But if we win the whole appeal, you are correct.

Q. Okay. And to the extent you win your appeal, let's say the Company wins its appeal in its entirety, 28.8 million dollars, wouldn't you reasonably anticipate that your 2011 taxes would reflect an approximate 28 million dollar reduction or thereabouts in the amount it otherwise would have been?

A. I'm not qualified to make that determination. I do not deal with the calculation of property taxes. But I'm sure if -- if we prevail in this appeal, then if the reduced market value is used to set next year's market value, then it would be less. I'm not going to guarantee it'll be 28 million.

Q. Sure?

A. But it will be less.

Q. It will probably be a corresponding number. If it turned out to be 28 -- if you won on all 28 million dollars in 2010, then that same 28 million dollars that was not allowed for 2010 would likely be not allowed for 2011 because it would be based on the same property, correct?

A. That's the misnomer I think most people have.

The distributable property tax is not based on plant, it's based on revenues and other items. So if our revenues were up for 2010, which they were because of the weather, the assessment could be higher just because of that fact by itself. But you assume if we prevailed in the current litigation, that there would be some reduction in the assessment.

Q. And that assess -- that adjustment would be -- would have some direct relationship with the -- the reasoning or the analysis that allowed for the 28 million dollar or 28.8 million dollar reimbursement in 2010, right?

A. That would be correct.

Q. Okay. Do you recall in Mr. Mitten's opening, he stated that the Commission knows there will be an increase in property taxes for 2011? Do you recall hearing that statement?

A. Yes, I do.

Q. Isn't it possible, however, that if you prevail on this appeal, this 2010 appeal, that your property taxes in 2011, even with Taum Sauk and even with the Sioux Scrubbers, could be less than the 119 million dollars that you were billed in 2010? Isn't that possible?

A. It's possible, yes.

Q. Okay. But we don't know. We just don't know?

A. Not probable, but possible.

Q. Okay.

MR. ROAM: I have no further questions.

JUDGE WOODRUFF: Did you wish to offer 415?

MR. ROAM: Yes. Is that 415?

JUDGE WOODRUFF: Yes, that's the Weiss work paper.

MR. ROAM: We'd like to offer that into evidence, please.

JUDGE WOODRUFF: 415 has been offered, any objections to its receipt? Hearing none, it will be received.

(Exhibit No. 415 was received in evidence.)

JUDGE WOODRUFF: I believe that completes cross-examination, so we'll come up with questions from the bench.

EXAMINATION

QUESTIONS BY COMMISSIONER DAVIS:

Q. Good evening, Mr. Weiss. Mr. Weiss, I could not help but when I was -- when I was observing Mr. Schwarz's opening statement, I happened to look at the crowd and I looked at your face and I saw you shaking your head no during part of Mr. Schwarz's opening statement -- or I mean -- is that a mis -- did I misinterpret something there or was there -- was there something -- is there something you want to say in response to Mr. Schwarz's opening statement that you haven't had a chance to say?

A. Yeah, he said two or three times that when we get our refund of 28 million dollars, that is not guaranteed that we're going to get one time, so we can't agree that we're going to get a 28.8 million dollar refund.

Q. Okay. And --

A. And we're not -- he also indicated that we were very confident that we were going to get a refund and we are not very confident that we are going to get the refund.

Q. And by law, you're required to pay that full amount in until -- until you receive some other official notification to pay something less than that amount; is that correct.

MR. SCHWARZ: Objection, calls for a legal conclusion.

COMMISSIONER DAVIS: Okay. You're required -- I'll restate -- I'll restate my question, Mr. Schwarz. I'm not offended by that in the least.

BY COMMISSIONER DAVIS:

Q. You're required -- last year, AmerenUE was required to pay approximately 119 million dollar on their electrical plant.

A. That is correct.

Q. And you are contesting approximately 28.8 million of that amount, correct?

A. That is correct also.

Q. And so theoretically, then, if you prevailed on all of those issues, then that amount -- that 28.8 million is being held in escrow and then your bill for 2010 electrical property would have been, in effect, 98.2 million, correct?

A. Correct.

Q. And you have no idea when the appeal for the 2010 property tax assessment, when that's going to need to be timely addudicated?

A. The last order we have will be last summer, before it gets heard.

Q. Right. And you're -- you're an accountant, not a lawyer?

A. That is correct.

Q. But -- and I guess is it fair to say that the -- do you have an -- I mean, is it your understanding that the -- the decision by the State Tax Commission is final or can it be appealed?

A. I think it can be appealed.

Q. And could be appealed multiple times, couldn't it?

A. It's possible.

Q. And so -- and you said that your -- your 2011 rates are based partially on your plant that's in service and partially on your -- on your income, correct?

A. Yes. I think there was also a third component, which I'm not -- I think there's also a third component dealing with the value of the stock or something else that goes into that state tax formula but I'm not an expert on that.

Q. Okay.

A. There are at least three components that they look at when they arrive at your market value of your property.

Q. All right. And so today is May 3rd, correct?

A. Correct.

Q. And you don't even have a hearing date for your appeal to the State Tax Commission, correct?

A. That is correct.

Q. And so in all likelihood, when you pay taxes this year, you're going to have to be paying rates based on your 2010 numbers, correct? Well, there would be adjustments to those 2010 numbers. So if your income increased, then you would be potentially be paying more than you did in 2011, correct?

A. Correct, and also we have the addition of the Sioux Scrubbers and the Taum Sauk enhancements that happened January 1 assessment, so that will also lead to the increase in the 2011 property taxes.

Q. Okay. Going back to your surrebuttal testimony. You referenced Financial Accounting Standards for Interpretation Number 48. That deals with accounting for uncertainty in taxes. I mean, what am I supposed to glean from that reference?

A. Do you have the page number? I may be in the wrong testimony. I probably am.

Q. Surrebuttal, page 1.

A. Okay. I was in the wrong testimony. Sorry.

Q. It talks about -- line 14, line 17, line 19.

A. Yes.

Q. 21.

A. The -- what we call FIN 48 is dealing with what we call uncertain tax positions. That's when the Company takes a position on its income taxes when it files its tax return and it's uncertain whether it's going to win that or not. So you're required by FIN 48 to record a liability for the amount you might lose of that tax deduction. And so you have a part that you think you might win, a part that you think you might lose, and you have outside experts help you develop that breakdown of the -- of the amount between what you might win or might lose. And this issue we had here was how much should be included in rate base. And it was our position that the only -- the part that you thought you would win would be included in rate base.

Q. Okay. And you've offered a tracking mechanism in this case, correct?

A. That is correct.

Q. And that's summarized on page 2 of your surrebuttal testimony. So I guess could you characterize the differences between your position and the Staff's position with regard to the tracking mechanism? "Your" being Ameren's position.

A. I do not believe the Staff had proposed a tracking mechanism. The Staff's original testimony just supported the Company's original filing, including the portion we might lose out of rate base and only including in rate base the portion we thought we might win.

MR. ROAM: Commissioner Davis, if I can interrupt, I think that the tracker that Mr. Weiss referred to during his cross-examination is a different issue than what's been discussed on this. Just for clarification. It sounded like we were getting our wires crossed on these two different issues.

COMMISSIONER DAVIS: And Mr. Roam, I will agree with you. I completely have my wires crossed here.

BY COMMISSIONER DAVIS:

Q. All right. So Staff's position is just add 10 million in to the 119. And if it's over that, you eat it.

If it's under that, you're good?

A. That is correct.

Q. Now, your -- let me just go back and ask you one more question. You had a rate -- Ameren had a rate increase in 2010. Do you recall when that rate increase occurred and --

A. I believe it was July 21st, 2010.

Q. Okay. And so that was after the assessments, was it not? I mean, or did -- do you know was that -- was that figured into your -- the calculation of the 119 that you were assessed?

A. No. The assessment takes place --

Q. January 1.

A. Well, yeah, that's when we have to apply the property information, et cetera, to the State Tax Commission. And usually by the end of June, they provide us with their official market value that we will pay taxes on.

Q. Okay. So that rate increase has not been factored?

A. That is correct.

Q. Okay. And have you done any calculations as to what that will do to your 2011 assessment?

A. Well, we have factored into this rate case as part of the true-up process the actual payments for 2010. And so we have -- we have picked up through 2010 now as part of the true-up process that assessment that we received in June of 2010.

Q. Okay.

A. We're also projecting that our 2011 taxes will be higher than the 2010 due to the addition of the Sioux Scrubbers and Taum Sauk enhancements plus some normal increases in the various tax rates of all the counties.

Q. Okay. Okay. So you're saying that additional 10 million, then, includes all of that?

A. No, we did not ask for the increase in the taxes on the other property. We just asked for the increase on the property tax for the Sioux Scrubbers and the Taum Sauk enhancements.

Q. Okay. And is it Generally-Accepted Accounting Principles that say that you start, you know, collecting an equal portion of those property taxes every month?

A. We are required to accrue those expenses on the books of our company so that when we reach December, we will have expensed the full amount that we have to pay.

Q. Okay. And where does that requirement come from?

A. That's the Generally-Accepted Accounting Principles and the FERC classification of accounts on how regulated utilities are supposed to record the expenses. If you have a known increase in your liability, you have to record it on your books so your investors, et cetera, know that what you -- really your earnings are and those higher level of expenses you are expecting to pay.

Q. Okay. So you've read Mr. Meyer's testimony?

A. Yes, I have.

Q. And he's saying that because it's outside the test year and outside the -- the update, that the amount of the additional amount should not be included, correct?

A. That is correct.

Q. But you started booking it in January pursuant to Generally-Accepted Accounting Principles?

A. That is correct.

Q. And if you did not do so, you would be violating Generally-Accepted Accounting Principles?

A. That is correct.

COMMISSIONER DAVIS: No further questions, Judge.

JUDGE WOODRUFF: All right. Recross based on questions from the bench, beginning with Staff?

MR. THOMPSON: No questions. Thank you, Judge.

JUDGE WOODRUFF: Missouri Retailers.

MR. Schwarz: No questions, Judge.

JUDGE WOODRUFF: MIEC?

MR. ROAM: No questions.

JUDGE WOODRUFF: Okay. Redirect?

REDIRECT EXAMINATION

QUESTIONS BY MR. BYRNE:

Q. Mr. Weiss, at the very beginning, Mr. Schwarz was asking you some questions about how property taxes were booked during the period that these plants were under construction, the Taum Sauk, upper reservoir and Sioux Scrubbers. Do you recall those questions?

A. Yes, I do.

Q. Can you explain for me, I couldn't exactly get it, but could you explain for me exactly how that works before the plants are in service?

A. Right. If you look at the revenue requirement that we filed with this rate case, under property taxes you'll see the full amount of the property taxes that we pay, then down below there's a reduction or a negative number for the taxes that were in construction work in progress. And those are removed from expenses and added to the capital balances of that plant. And we collect it through depreciation over the life of the plant.

Q. Okay. And then what happens when the plant goes into service with the property taxes? What's the difference?

A. Those property taxes that were in construction work in progress are now property taxes that are included in the revenue requirement as O & M expenses.

Q. Okay. Just so we get a perspective on what we're talking about here, when did these plants go into service? When did Taum Sauk go into service and when did the Sioux Scrubbers go into service? About, if you know.

A. I think Taum Sauk was in April of 2010 and the Sioux Scrubbers were at the mid-to-late November, 2010.

Q. And I think based on some questions from other parties, you said property is assessed on January 1st; is that correct?

A. That is correct.

Q. And so when were these plants assessed by the taxing authorities?

A. January 1, 2011.

Q. And what happens on January 1, 2011, with respect to these plants and the taxing authorities?

A. We have to provide to the taxing authorities our plant investment by account, which would include the -- all the plant in service on January 1, 2011. And that will then be what the basis is for our 2011 tax payments. We start accruing those tax payments on our books.

Q. And I think just now in response to Commissioner Davis, you said you accrue the taxes pursuant to Generally-Accepted Accounting Principles and FERC. What was the other thing, FERC?

A. Well, the FERC classification accounts has its own directions, too, on how you have to record your expenses if you're a regulated utility.

Q. And how do you figure out how much to accrue under those rules? How do you know how much you accrue? How do you do it?

A. Well, you can look at your plant investment on January 1 and then you look at your average tax rates from 2010 and then you estimate an increase in the rates for 2011. If you think there will be an increase, then you apply that to your plant and service on January 1 and come up with an estimated total tax for 2011.

Q. And how accurate do you think that estimate is?

A. It's usually fairly accurate. The tax department will, once they start getting tax bills in, they will review that and, if necessary, make adjustments, but generally it's not that far off.

Q. Well, then, let me ask you this: How can you -- Mr. Roam marked an exhibit. And if you're saying the tax estimate is quite accurate, how can you -- how can you -- how does that statement that you just made and you made a couple of times reconcile with the footnote on this -- on this work paper? I guess the footnote says on Exhibit 415 says, "We cannot determine with accuracy the anticipated 2011 property taxes pertaining to the Sioux Scrubbers since the accounts involved are state-assessed property." First of all, did I hear you right to say that you did not write this footnote?

A. That is correct.

Q. Who wrote that footnote?

A. That came from our property tax department.

Q. Well, how can that be reconciled with your testimony that the estimate is a fairly accurate estimate?

A. Well, this estimate was done back in early 2010. So at that point in time, they didn't even have the 2010 assessment and tax rates. That's why they were a little bit more reluctant to say this was a complete accurate calculation. We now have the exact, you know, assessment of January 1, we have the actual taxes paid in 2010, so we do have a current average rate that we can apply to that investment.

Q. But even, is it true, I think you testified to this, I think you don't even know it down to the penny. Is that accurate to say?

A. That is correct. We can come up with a very supportable estimate, but we can not come up to the actual dollars.

Q. Okay. Let me ask you this: In response to-- I believe it was one of Mr. Roam's questions, I think you said you get tax bills on all your assessed property for the year, like, in September; is that correct?

A. Well, it's late September through November, they trickle in. Like I said, we get 69 different tax bills, so it takes awhile for them all to arrive.

Q. Do you know with a hundred percent accuracy down to the penny what the tax bill will be for any of your -- of Ameren Missouri's property until you get those bills?

A. No, we do not.

Q. So -- so following some of the same logic, I mean, someone could say no property tax is known with a hundred percent accuracy until you get those bills; is that correct?

A. Exact amount would have to pay is not known until we get the bills.

Q. Okay. What happens if the Commission adopts MIEC's position and throws out all of the property taxes for the Taum Sauk and Sioux Scrubber?

A. Based upon the reconciliation that was filed on day one of the hearing, the Ameren rate increase was down to 200 million dollasr, so the property taxes of 10.8 million are over five percent of our rate increase request. So five months after the new rates go into effect, we will be paying additional 10.8 million dollars worth of expenses, so there's no way the Company will have an opportunity to earn its authorized return from this case.

Q. If the Commission sees its job as to do the best job it can to figure out what the Company's expenses are after rates are set, would it include these taxes or not include them, in your opinion?

A. It should include these taxes. The revenue requirement includes an investment of the plant, includes the depreciation expense on the plant, includes the operating expense of the plant, {so it should also include the property tax for that related plant.

Q. Why do you -- what's the point of mentioning all those other things related to the plant?

A. I think it's the matching principle which should include all the expenses required with the new investment that's required.

Q. What's the matching principle?

A. That the expenses allowed in your rates should equal the expenses that you're having to pay at the time the rates are effective.

Q. Okay. Commissioner Davis asked you some questions about the amount that was paid. And I guess I think you testified that we know the 119 million dollars that was paid last year; is that correct?

A. That's correct.

Q. Do we know how much, if any, we're going to get back based on the appeals that have been taken?

A. No, we do not.
Q. Do we know when we're going to know the outcome of that case?
A. No, because we don't -- we have at this point in time not even been given a date for the original hearing with the State Tax Commission. And I think after that hearing, there's also a chance of appeals.
Q. Do you know how long those appeals might last?
A. They normally last months to years.
Q. Okay. Okay. And I believe in response to some cross-examination, you talked about tracking the -- any recoveries we might get from this appeal; is that correct?
MR. ROAM: Judge, I'm going to object to this line of questioning. The issue of tracking this appeal has not been brought up in any of the testimony. This is a brand new issue that was raised just now during cross-examination; and moreover, it pertains to -- it's a factor that pertains to a stipulated issue in this case and therefore it shouldn't be --
MR. BYRNE: Mr. Roam, we're getting our wires crossed again. I'm not talking about the FIN 48 tracking.
MR. ROAM: That's right. You're talking about a tracking mechanism that would reimburse the 28 million dollars if Ameren receives that back on its appeal and that's exactly the -- that's exactly what I'm talking about.

MR. BYRNE: Okay.

MR. ROAM: That's not an issue that has been discussed in any of the testimony in this case. That's a brand new issue that the Company attempted to bring up in cross-examination and appears to be following up on now. And it also pertains to a stipulated matter that has already been stipulated by all the parties, which is the 119 million dollar stipulation.

MR. BYRNE: Mr. Weiss was asked about it in cross-examination. I believe I'm entitled to ask about it in redirect.

MR. BYRNE: Mr. Weiss was not asked about it.

JUDGE WOODRUFF: Excuse me, I'm confused about this also because there was mention of a tracker mechanism during your opening statement for Ameren, was there not?

MR. BYRNE: Yes.

MR. ROAM: Judge, if I can clarify.

JUDGE WOODRUFF: Please do clarify this.

MR. ROAM: The tracker that was referenced in opening statement referred to this FIN 48 issue, and that's a separate issue.

MR. THOMPSON: That's incorrect, Judge.

MR. BYRNE: Let me try to explain. This doesn't have -- in my mind, this doesn't have anything to do with the FIN 48 tracker. What we said in our opening statement is we agreed to keep track of, which is different than the FIN 48 tracker. We agreed to keep track of any amounts that we get back from this appeal so that if and when we succeed on the appeal, in part or in whole, the appropriate regulatory outcome can be taken into account in later cases. So we agreed at the Staff's request to keep track of the dollars that we received from that litigation, which is different from the FIN 48 tracker, which is a tracking mechanism. Does that help?

MR. ROAM: It does. I will still object in the sense that a statement made -- a phrase made in the Company's opening statement indicating that it will keep track of the amount that's reimbursed in this appeal, that presents a new issue that was not raised in any of the testimony by the Company or any other party in this case.

JUDGE WOODRUFF: And how is that different than what was described as a FIN 48 tracker?

MR. ROAM: That's a totally and, frankly, the FIN 48 issue is the subject of a settlement issue and should be filed pretty soon.

MR. BYRNE: But this is unrelated.

MR. ROAM: Yeah, this is unrelated to the FIN 48 issue.

JUDGE WOODRUFF: All right. Well, I'm going to overrule the objection because this was discussed during cross-examination. The Company should have an opportunity to further explore it.

MR. ROAM: If I may just add, Judge, this was never -- this was never -- this was not an issue that was asked in cross-examination. This is a statement that was made by the -- by the witness during cross-examination.

JUDGE WOODRUFF: Those were the FIN 48 asked in Commissioner Davis's questions?

MR. ROAM: That was the FIN 48 tracker. Mr. Weiss made a statement during cross-examination that was not responsive to any question that was asked. It was -- he made a statement about adding a tracker and -- and now -- and now the Company is attempting to bring up this issue based on its -- a line that was raised in its opening statement. That's not appropriate.

MR. BYRNE: Your Honor, if I might say, on the list of issues, and I believe -- it's one of the questions on the -- under property tax on the list of issues for this case that the parties agreed to is: Should Missouri to return to its customers any reduction that the Company receives in its 2010 property taxes? That puts that issue squarely as part of this case.

We -- we volunteered to keep track of those so that they can be addressed in a future rate case. I think Commissioner Davis asked about the tracker. He was confused about the relationship between the FIN 48 tracker and this tracker, maybe understandably and I guess my questions to Mr. Weiss are to try to clarify what we're talking about.

JUDGE WOODRUFF: I'll overrule the objection. You can go ahead and ask your question.

MR. BYRNE: Thank you.

BY MR. BYRNE:

Q. Okay. Mr. Weiss, perhaps could you clarify what we're talking about in terms of tracking the amounts that we get back, if we prevail, on this litigation?

A. Yes. The Company has agreed to keep track a record of any refunds we do get from this appeal of the State Tax Commissions assessment, and the taxes we paid in protest. And at a later rate case, that information will be provided and the parties -- the parties and Commission will decide the appropriate treatment of those refunds, if there are any.

MR. BYRNE: Thank you very much, Mr. Weiss. I don't have any other questions.

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

THE WITNESS: Thank you.

JUDGE WOODRUFF: You're lucky your dated night is over.

THE WITNESS: It was longer than I had hoped for.

JUDGE WOODRUFF: Let's go to the next witness. Would it be Ms. Ferguson for the Staff?

MR. THOMPSON: Staff calls Lisa Ferguson.

(The witness was sworn.)

JUDGE WOODRUFF: Thank you very much, you may inquire.

DIRECT EXAMINATION

QUESTIONS BY MR. THOMPSON:

Q. Thank you very much. Please state your name.

A. Lisa N. Ferguson.

Q. And how are you employed?

A. I work for the Missouri Public Service Commission.

Q. Are you the same Lisa Ferguson that prepared or caused to be prepared a portion of Staff's revenue requirement cost of service report dealing with the two property tax issues before the Commission?

A. Yes, I am.

Q. And that is the only testimony that you have prepared relating to the property tax issues; isn't that correct?

A. Yes, it is.

Q. And with respect to the portion of that report that you prepared, was it true and correct to the best of your knowledge and belief at the time you prepared it?

A. Yes, it was.

Q. As far as you know, has there been any change with respect to the information in that report?

A. No, there has not.

MR. THOMPSON: Thank you. I'll tender the witness for cross-examination, Judge.

JUDGE WOODRUFF: And her section of the revenue requirement report is the only testimony she has?

MR. THOMPSON: That's correct.

JUDGE WOODRUFF: All right. For cross-examination, let's begin with Missouri Retailers.

CROSS-EXAMINATION

QUESTIONS BY MR. SCHWARZ:

Q. Ms. Ferguson, you recommend an increase over test year property taxes for the impact of the Sioux Scrubbers and Taum Sauk; is that correct?

A. Yes.

Q. Did you separately calculate, assess values, and apply levee rates to obtain those adjustments?

A. No, I did not.

Q. Did you rely on the Company's calculations to arrive at those recommendations?

A. Yes. They seemed reasonable.

Q. Thank you.

MR. SCHWARZ: No further questions.

JUDGE WOODRUFF: For MIEC?

MR. ROAM: Judge, if we may go last on this issue.

JUDGE WOODRUFF: For Ameren?

CROSS-EXAMINATION

QUESTIONS BY MR. MITTEN:

Q. Good evening, Ms. Ferguson.

A. Good evening.

Q. Do you agree that both the Taum Sauk enhancements and the Sioux Scrubbers have been in service since sometime in 2010 and that the investments associated with both of those units will be included in the assessed valuation that will be used for Ameren Missouri's 2011 property taxes?

A. Yes, I agree with that.

Q. Do you agree that throughout the period rates set in this case will be in effect, the Company's property tax assessment will include the value of the investment in the Taum Sauk enhancements and the Sioux Scrubbers?

A. Yes, I agree with that as well.

Q. Do you agree that both Staff and the Company are proposing to include in rate base in this case hundreds of millions of dollars of Ameren Missouri's investment in the Sioux Scrubbers and the Taum Sauk enhancements?

A. Yes, we are.
Q. During his -- were you present during Mr. Weiss's testimony?
A. Yes.
Q. Now during his testimony, he referred to property taxes as an O & M expense. Do you agree with that calculation?
A. Yes.
Q. Are there other O & M expenses associated with either the Taum Sauk enhancements Or the Sioux Scrubbers that Staff has proposed to include in the cost of service that will be used for rate-making in this case?
A. I believe there is.
Q. Now do you know whether or not the Taum Sauk enhancements and the Sioux Scrubbers were in service during the entirety of the test year that was used in this case?
A. The test year ended March 31st of '10, so yes, I believe they would have been.
Q. Would they have been in service throughout the entire true-up period in this case?
A. Yes. I'm sorry. I misspoke before. It wouldn't have been through the test year, but it would have been through the true-up.
Q. Do you know if Staff has proposed to normalize or annualize any of the O & M expenses that are associated

with either Taum Sauk or the Sioux Scrubbers?
A. I'm sorry, can you repeat that?
Q. Do you know if Staff has proposed to annualize or normalize any of the O & M expenses that are associated with either the Taum Sauk or the Sioux Scrubbers?
A. I don't know that.
Q. Would you agree that there will be depreciation expense associated with Taum Sauk and the Sioux Scrubbers included in the cost of service that's used for rate-making in this case?
A. Yes.
Q. Do you agree with Mr. Weiss that Ameren Missouri is currently accruing property taxes associated with the Taum Sauk enhancements and the Sioux Scrubbers?
A. Yes, they are.
Q. And would you also agree with Mr. Weiss that if the Company is not allowed to include in the cost of service additional property taxes associated with the Taum Sauk enhancements and the Sioux Scrubbers, that the Company will have to pay those taxes out of earnings?
A. If not included in rates, I believe that would be the case.
Q. And that would reduce the Company's overall rate of return, wouldn't it?
A. I believe so, yes.

MR. MITTEN: I don't have any further questions. Thank you.

JUDGE WOODRUFF: For MIEC?

CROSS-EXAMINATION

QUESTIONS BY MR. ROAM:

Q. Now you were the Staff witness for property taxes in the last rate case, ER-2010-0036, correct?

A. Yes.

Q. In that case, did the Staff include property taxes as of December -- sorry, actual property taxes as of December 31, 2009, that were actually paid Ameren Missouri in its cost of service analysis?

A. Yes, they did.

Q. And are you aware that the Company is appealing nearly one-fourth of its 2010 tax bill?

A. Yes, I am.

Q. I want to show you just briefly a portion of Staff's cost of service report, page 91, lines 11 through 14. Sorry. Lines 10 through 14. If you could just briefly review that.

Q. That's the section of the cost of service report that you sponsored, correct?

A. Yes.

Q. Has the Company expressed an opinion to the Staff on the likelihood that it will prevail on its appeal?

A. During discussions with the Company during our audit, the Company had expressed that they believed that they would prevail. Of course, nothing was finalized because it hasn't been heard.

Q. Right. But they expressed the opinion that they would prevail on that?

A. Yes.

MR. ROAM: Thank you. No further questions.

JUDGE WOODRUFF: All right. Questions from the bench, Commissioner Davis?

COMMISSIONER DAVIS: No questions. Thank you, ma'am.

JUDGE WOODRUFF: I have no questions, so no need for recross. Any redirect?

MR. THOMPSON: No, thank you, Judge.

JUDGE WOODRUFF: Okay. You may step down.

I believe you testified last week, so you're still under oath.

THE WITNESS: Yes.

JUDGE WOODRUFF: You may inquire.

MR. ROAM: I have no questions for the witness. Tender him for cross-examination.

JUDGE WOODRUFF: Okay. For cross-examination?

MR. SCHWARZ: I have no questions, Judge.

JUDGE WOODRUFF: For Staff?

MR. THOMPSON: No questions, thank you, Judge.

JUDGE WOODRUFF: For Ameren Missouri?

MR. BYRNE: No questions, thank you, Judge.

JUDGE WOODRUFF: Commissioner Davis, do you have any questions?

COMMISSIONER DAVIS: You know, I do have a question.

EXAMINATION

QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Meyers, you gave some testimony earlier in this proceeding about storm expenses, did you not?

A. Yes.

Q. Are you aware that the National Oceanic & Atmospheric Administration just issued a release that said that in the period from April 25th through April 28th, that they had an estimated 300 tornadoes touch down somewhere in the United States?

A. I wasn't aware of that report, no.

Q. And that that is more than double the previous record set in April 3rd, April 4th, 1974 with 148 tornadoes. That doesn't change your opinion on the storm cost, does it?

A. No. In fact, it probably -- probably supports it saying that -- that that type of storm is not a normal -- a normal recurring event and that you should do exactly as you've done in the past. And that is if these storm costs actually become material, an expense, they should look it through an AAO and do a separate amortization. But you shouldn't a base level that would have that type of devastation or magnitude of storms that you've reported.

Q. Have you watched any TV in the last 48 hours?

A. Not much.

Q. Not much. Have you read any Missouri newspapers?

A. No. I only get the USA Today.

Q. Okay. Well, have you heard anything about the Birds Point levee in Mississippi County, Missouri?

A. I am familiar with some discussions on that. Very limited.

Q. Right. But you are aware that the Army Corps of Engineers blew the levee last night?

A. I was aware that the Army Corps of Engineers authorized the levee to be blown.

Q. Right. And you would agree that -- well, I mean, do you know that that's the first time that that levee has been blown since approximately 1937?

A. No, I do not know that. I know that other levees -- I know of other levees that were actually blown during the floods of '93, but I did not know about that specific hearing.

Q. And do you recall back a few years ago that

Ameren, I believe maybe in the span of one year or maybe a year and a half or so made the claim that they had approximately two or three storms of the century in one year.

A. Do I recall that? I do recall those claims that were made, yes.

Q. And I guess it's just -- I mean, you say that we should not normalize for all of these extraordinary weather events, but it just appears to me that we have a number of extreme and extraordinary weather events. I mean, maybe they've always happened and maybe we're just not as cognizant of them. How do you respond to that?

A. Well, first thing I would respond to is as I testified last week, that my analysis would show that -- that this Commission has done correct and done it very well in addressing storm costs in that every dollar of storm costs that have been incurred or that this company has incurred since April of 2000 has been recovered in rates. So I think you've done a great job.

I think that what you have to caution yourself against is setting a level of base storm expenses which are too high because then there's going to be this continuing argument between the parties that they were going to overcollect because you're going to have these, as you -- as you said, these major storms. I think all storms are extraordinary. But these other storms, these outliers, if you set base rates on those, you're going to incur or set customer rates too high.

Q. Okay. Mr. Meyer, getting back to this issue.

A. The property tax one?

Q. Yes, back to the property tax issue. Mr. Weiss said that pursuant to Generally-Accepted Accounting Principles, he's got to -- to estimate his property tax bill and collect accordingly. How do you respond to that?

A. I don't disagree with Mr. Weiss's statements about accruing for property taxes. It levels out the amount of expense that's reported on the Company's books and records and it doesn't show a large entry in December. But what -- that doesn't equate to how you should treat this for rate-making purposes.

If this was a significant event that the Company thought needed to be included in rates, then it should have been upon them to file a timely case to get them. In my testimony, as you've seen and reviewed, I made the statements that there was plenty of regulatory protections for this company to file their case in a timely manner if they believed that the property taxes were a significant item that needed to be recovered in customer rates. I don't believe, as we sit here today, that that was a significant item for them. I think they just reached out beyond the operational law date and attempted to -- to include these property taxes.

Q. Mr. Meyer, are you familiar with the true-up reconciliation that Staff has filed in this case?

A. I've reviewed it several days ago.

Q. Okay. Okay. And you would agree that if you -- if your client, MIEC and Noranda -- I'm not sure, is it MIEC or MIEC and Noranda?

A. MIEC.

Q. Your client prevailed on every issue in this case, Ameren would still be entitled to approximately 145 million dollars worth of revenue, would you not?

A. I think that's correct. I don't have it in front of me, Commissioner, to verify. But I think you're in the range, yes.

Q. Okay. And there are 12 months in a year, correct?

A. I'll agree with that.

Q. So if we were going to divide that up, it would be approximately 12 million dollars a month, by your own numbers, that they are at least underearning as of today.

A. Well, it's 12 million on a simple basis. On a simple monthly basis, that's correct.

Q. On a simply monthly basis?

A. Correct.

Q. Now, obviously, we know that their revenues don't all come in at the same time, that they make more money apparently in the summer months than they do in some of the shoulder months, et cetera?

A. That's correct.

Q. But by and large, I mean, if we were going to normalize those out, it would be roughly 12 million dollar a month?

A. On just a straight average basis, correct.

Q. And the value of the property tax issue is ten million dollars, correct?

A. That's correct.

Q. So you would have them delay at a cost of 12 million dollars a month to earn ten down the road. Is that what I'm hearing you say?

A. I think you're going to have to repeat that one.

Q. So you would say wait and every month they wait, they would not be recovering 12 million dollars until I guess it would be September when they would know their -- know their tax bills. So they could recover that approximate -- that estimated 10 million. Correct? Is that what you're saying?

A. I don't think so. I think what I'm saying is that by them requesting the 10 million, that they violated a test year principle, they violateded a true-up principle, they violated an immeasurable principle. They even went beyond the operational law date. So to the extent that there's any -- I don't want to say blame -- but any course or any recourse, it's because the Company went out to include a an element of cost of service that shouldn't have been -- that shouldn't have been contemplated.

If they believed that that was a significant piece of their operations and a significant cost of their operations, then they should file their cases timely. They didn't do that here. They're reaching beyond even when the rates are supposed to go into effect in this case and I think that's a clear violation of all the known and measurable principles and test year principles and everything that the parties strive to maintain to provide a fair presentation to this Commission.

Q. And you don't think the calculations that were in Mr. Weiss's work papers that your counsel admitted into evidence for the Sioux Scrubbers, you don't think that's a good faith estimate of what their additional property tax is going to be?

A. It's an estimate. It's not known and measurable.

Q. Okay. Well, I mean, would you agree with me that there are lots of things that aren't known and measureable down to the last penny? There are lots of things in rate cases that aren't known and measurable.

A. I really struggle to figure out. If you can give me an example, I'd be happy to address it. But at least in the cases that I try to put together, I try to make sure that every cost that we address is known and measurable.

Q. Well, and, for instance, Noranda has an appeal from their 2008 rate case. Do we know, I mean, is the effect of that appeal known and measurable?

A. Its event's known. I don't know that we can measure when the -- when the appeal will actually be acted upon, no.

Q. Can we measure the effect of the -- of the appeal in the 2010 rate case?

A. I would say same answer. But we're not setting rates for Noranda. We're setting rates for Ameren.

Q. Well, we're setting the rates that Ameren charges?

A. Absolutely.

Q. And those rates get charged to MIEC customers and everyone else?

A. And those rates have historically been based off of historical data which is known and measurable.

Q. Now, I believe it was -- you remember the issue of plant maintenance in the 2010 rate case?

A. Sure do.

Q. Do you remember what methodology the Commission ultimately adopted?
A. You adopted 110.2 million dollars per year for steam production maintenance based off cross-examination of Mr. Burke.
Q. Right. But wasn't that Mr. Roam's cross-examination of Mr. Burke?
A. Mr. Roam took Mr. Burke through a series of calculations to calculate when an annualized level would be for each year.
Q. And do you remember what annualized year we chose?
A. 2010.
Q. 2010 was not complete at the time we adjudicated that case, was it?
A. The rates went into effect June 21st, 2010.
Q. Was it a calendar or fiscal year?
A. The test year.
Q. No, I'm talking about the year for purposes of the --
A. Those were based off calendar years, I believe.
Q. Those were based off calendar years.
A. Right, but those were known and measurable events. You knew when the plants were going to go down.

Q. Well, no, we actually -- wasn't there some testimony that we didn't know that they were going to -- whether or not they were actually going to perform that maintenance?

A. I never realize -- I don't recall that we had a disagreement about which plants were going to be taken down for scheduled maintenance.

Q. Okay.

COMMISSIONER DAVIS: No further questions, Judge.

JUDGE WOODRUFF: All right. Any recross based on questions from the bench?

MR. THOMPSON: None from Staff, thank you.

JUDGE WOODRUFF: All right. Any redirect?

MR. BYRNE: Wait, I'm still thinking if I have any cross based on questions from the bench. No questions.

JUDGE WOODRUFF: All right. Redirect?

MR. ROAM: No questions.

JUDGE WOODRUFF: All right. You can step down. And with that, we have reached the end of a long day. We will resume tomorrow morning with the fuel adjustment clause issues at 8:30 a.m. We are adjourned.

CERTIFICATE OF REPORTER

STATE OF MISSOURI)
) ss:
COUNTY OF GASCONADE)

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1780, 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.

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Court Reporter

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