

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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5 TRANSCRIPT OF PROCEEDINGS

6 Evidentiary Hearing

7 May 4, 2011

8 Jefferson City, Missouri

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13 In The Matter Of Union)

 Electric Company d/b/a)

14 AmerenUE's Tariff To Increase) File No. ER-2011-0028

 Its Annual Revenue For)

15 Electric Service)

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18 MORRIS WOODRUFF, Presiding

 CHIEF REGULATORY LAW JUDGE

19 JEFF DAVIS,

 TERRY JARRETT,

20 ROBERT S. KENNEY

 COMMISSIONERS.

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1 JUDGE WOODRUFF: Good morning everyone
2 and welcome back to the AmerenUE -- or Ameren Missouri
3 rate case hearing. Today we're going to move onto a
4 new issue on the fuel adjustment clause issues and
5 we'll begin today with opening statements regarding
6 that sub-issue. Anything we need to take up before we
7 start with the opening statements?

8 MR. COFFMAN: Your Honor, with regard to
9 order of cross, would my -- my cross -- since my
10 clients are the most adverse on this particular issue,
11 would the order of cross-examination change?

12 JUDGE WOODRUFF: We've been doing that in
13 the past and we'll certainly do that in this case as
14 well.

15 MR. COFFMAN: Thank you.

16 COMMISSIONER DAVIS: Judge, before we --
17 before we start, can I -- can I inquire of Mr. Mills?

18 JUDGE WOODRUFF: Sure.

19 COMMISSIONER DAVIS: Mr. Mills, could
20 you -- could you come up?

21 MR. MILLS: Up?

22 COMMISSIONER DAVIS: Come up and approach
23 the bench. I've got a handout for you and you can
24 hand out copies. I'm not sure -- six, seven. Will
25 that get it?

1 Now, Mr. Mills, you weren't here
2 yesterday afternoon for the property tax issue or I
3 would have -- I would have asked you about this
4 yesterday, but what I've handed you is a document
5 entitled Stipulation and Agreement as to Off-system
6 Sales-related Issues in the matter of the Union
7 Electric Company, AmerenUE rate Case No. ER 2008-0318.
8 Do you recognize that document?

9 MR. MILLS: It looks vaguely familiar,
10 yes.

11 COMMISSIONER DAVIS: Okay. And could
12 you -- could you turn to page 9?

13 MR. MILLS: Yes.

14 COMMISSIONER DAVIS: Is -- is that a
15 representation of your signature on that document?

16 MR. MILLS: To -- to the best of my
17 recollection -- this was two cases ago and two years
18 ago, but to the best of my rec-- recollection, we were
19 a signatory to the stipulation and agreement, yes.

20 COMMISSIONER DAVIS: Okay. Now, if you
21 could, could you go to what's been designated on that
22 document as Attachment A? And I believe it would be
23 one, two, three -- basically it would be -- it would
24 be page 4. And the pages are not marked.

25 MR. MILLS: Yeah.

1 COMMISSIONER DAVIS: But it's --
2 basically it's a -- you would agree that this is
3 Staff's -- I guess you would call it modeling of -- of
4 off-system sales, et cetera from the 2008 rate case?

5 MR. MILLS: This appears to be outputs
6 from the real-time models.

7 COMMISSIONER DAVIS: Right.

8 MR. MILLS: So I would assume that's what
9 this is.

10 COMMISSIONER DAVIS: Okay. And for Taum
11 Sauk there is an amount as a -- as a minus 254,279; is
12 that -- is that correct?

13 MR. MILLS: I see that amount, yes.

14 COMMISSIONER DAVIS: Do you know is
15 that -- is that megawatt hours?

16 MR. MILLS: Commissioner, I honestly
17 don't know.

18 COMMISSIONER DAVIS: Mr. Kind, do you
19 know?

20 MR. KIND: I do not know with certainty
21 what it is, no.

22 COMMISSIONER DAVIS: Ms. Mantle, do you
23 know?

24 MS. MANTLE: Yes, that column is in
25 megawatt hours.

1 COMMISSIONER DAVIS: Okay. So -- so that
2 column is megawatt hours.

3 MS. MANTLE: The top of that page does
4 say Baseline, No Sales. I believe that means there
5 was no off-system sales in that run.

6 COMMISSIONER DAVIS: Right. So there is
7 no off-system sales in that run. Now, is there a --
8 is the -- is the succeeding pages there -- does that
9 include the -- the off-system sales?

10 MS. MANTLE: Yes. Except it's -- I
11 believe so, but it's labeled No Taum Sauk.

12 COMMISSIONER DAVIS: No -- No Taum Sauk.

13 MS. MANTLE: The person that ran these
14 was the developer of the model and he passed away a
15 couple weeks ago. So to get the person who actually
16 ran it to -- to help you identify those things, he's
17 no longer available, but there is some Staff people
18 that could probably look at it and give you a good
19 idea. I have a high-level understanding of this, but
20 not real detailed.

21 COMMISSIONER DAVIS: Okay. That's fine.
22 Well, let me -- let me go back -- let me go back to
23 Mr. Mills then. Okay. So Mr. Mills, do you have any
24 reason to dispute that those are -- are I guess
25 megawatt hours? Those aren't actual sales, but those

1 are megawatt hours of capacity?

2 MR. MILLS: I would have to dispute that
3 because capacity is not measured in megawatt hours.
4 But this may be a model that assumes a certain level
5 of production from Taum Sauk so that --

6 COMMISSIONER DAVIS: Okay. So --

7 MR. MILLS: -- that would be some amount
8 of energy, but I'm having -- I'm struggling with the
9 concept of negative megawatt hours.

10 COMMISSIONER DAVIS: Okay.

11 MR. MILLS: I suppose with a facility
12 like Taum Sauk that could be possible because it takes
13 energy to run it, but there are --

14 COMMISSIONER DAVIS: Right.

15 MR. MILLS: -- other negatives in that
16 same column on other pages so --

17 COMMISSIONER DAVIS: But I mean you
18 did -- you did sign this stip and Attachment A is a
19 part of this stip. Correct?

20 MR. MILLS: Yes. But as I said, this was
21 two years ago and two cases ago.

22 COMMISSIONER DAVIS: Okay. But Taum
23 Sauk's capacity didn't -- didn't change until it --
24 until it came back online, did it?

25 MR. MILLS: Well, in fact, it hasn't

1 changed even yet as far as we know.

2 COMMISSIONER DAVIS: Okay. But in terms
3 of megawatt hours of energy output, it has changed,
4 has it not?

5 MR. MILLS: It may turn out to be the
6 case. We don't have enough run time to know for sure
7 that that's going to be the case in the future. There
8 is testimony in this case that UE believes that it
9 will have additional energy output, but whether that
10 holds true in the long term, we don't know.

11 COMMISSIONER DAVIS: Well, Guy Gilbert
12 also testified to that fact, did he not?

13 MR. MILLS: I don't recall whether he did
14 or not. He may have.

15 COMMISSIONER DAVIS: I can't -- do you
16 remember the number?

17 MR. MILLS: He was certainly very
18 enthusiastic about the Taum Sauk rebuild, so he may
19 have.

20 COMMISSIONER DAVIS: Do you recall the --
21 the number in Mr. Gilbert's testimony, Mr. Kind?

22 MR. KIND: No. I know he had a number in
23 his testimony and I know he -- he -- you -- you went
24 through an exercise with him to try to calculate --

25 COMMISSIONER DAVIS: Right.

1 MR. KIND: -- do a sort of
2 back-of-the-envelope calculation of the -- of the
3 value of that over -- over 80 years. Of course, OPC
4 thinks it's highly speculative that this generation
5 would even be still subject to cost base regulation
6 and the ratepayers would continue to get the margin
7 for the next 80 years. We just -- that's just -- you
8 know, requires a huge number of assumptions about the
9 state of regulation.

10 COMMISSIONER DAVIS: All right. So I
11 guess what I'm trying to figure out on the whole
12 property tax issue, Mr. Mills, is it looks like
13 254,279 megawatt hours of energy is what -- what you
14 agreed to.

15 And so if Ameren generates more megawatt
16 hours of energy and a portion of that is, as we heard
17 in Mr. Weiss's testimony -- you know, I guess part of
18 their -- their property taxes are based on the -- on
19 the revenue that a unit generates, then wouldn't
20 Ameren at least be entitled to some portion of the
21 property taxes on Taum Sauk?

22 MR. MILLS: Commissioner, I'm not sure I
23 followed that question. I was -- I was trying to --
24 to -- to see if I could agree with your premise.
25 Because I think what -- what you're looking at in

1 Appendix A is three model runs that are used to
2 calculate a -- a modeled base fuel cost because you
3 don't -- you couldn't use an actual base fuel cost
4 because at that point Taum Sauk wasn't running, but we
5 were operating under an agreement that we would model
6 fuel as though it was running.

7 COMMISSIONER DAVIS: Right.

8 MR. MILLS: Okay.

9 COMMISSIONER DAVIS: And you were also
10 modeling off-system sales as if they were also being
11 made, were you not?

12 MR. MILLS: Some of the attachments to
13 the stipulation modeled off-system sales and some
14 modeled it without off-system sales to determine the
15 impact of Taum Sauk.

16 COMMISSIONER DAVIS: Well, I mean,
17 it's -- it's always been my understanding that we
18 modeled Taum Sauk like it was running and operational
19 and generating electricity because that was the best
20 deal for the ratepayers and would have, in fact, held
21 them harmless. Now, setting aside the issue that you
22 had in the 2007 case about the sale of capacity; is --
23 is that correct?

24 MR. MILLS: Largely. I -- I'm not sure
25 that I would agree that it's the best deal for

1 ratepayers. I think the best deal for ratepayers is
2 if they had run the plant properly and not destroyed
3 it. But in terms of using -- in terms of modeling the
4 plant as though it was running, yes, I think other
5 than in the first case, that's what we attempted to do
6 in the second two cases.

7 COMMISSIONER DAVIS: Okay. And it -- and
8 it looks to me that you were roughly modeling that
9 on -- on 254,000 megawatt hours of -- you seem to be
10 offended by a -- of potential energy. Is that a fair
11 statement?

12 MR. KIND: Commissioner, could I respond
13 to that?

14 COMMISSIONER DAVIS: Sure.

15 MR. KIND: Mr. Mills raised the point
16 that, you know, Taum Sauk is actually -- when you run
17 it, there is a net loss of energy on your system.

18 COMMISSIONER DAVIS: Yes. I -- I
19 understand that. It's -- you put 1.4 kilowatts in
20 approximately to generate 1 -- 1 kilowatt out.

21 MR. KIND: Right. Exactly.

22 COMMISSIONER DAVIS: And so you fill it
23 up at night when -- when energy is less expensive and
24 run it out during the peak times during the day. And
25 essentially it's -- it's like a battery or -- or I

1 guess you might even call it an arbitrage plant; is
2 that correct, Mr. Kind?

3 MR. KIND: Yes. That's correct. And my
4 point is I don't have -- run the real-time model
5 myself and I don't know how the unique circumstances
6 of how that particular -- you know, that net loss of
7 energy are modeled, but I suspect it has something to
8 do with the negative numbers in here that you're
9 pointing out.

10 And I'd also point out you're just
11 looking at the third run. There's three runs. And
12 this run is labeled Test. And I don't know what that
13 means.

14 COMMISSIONER DAVIS: Okay. So when
15 you -- when Office of Public Counsel agreed to this
16 stipulation, I mean what -- what number was Office of
17 Public Counsel using in terms of how much energy was
18 generated?

19 MR. KIND: We did not use a number. We
20 enter-- entered into the stipulation because it was --
21 we -- we have -- essentially, we don't have the
22 personnel and resources to get into production cost
23 modeling to a great extent ourselves. So we have to
24 look -- rely on representations from both Union
25 Electric and the Staff.

1 And when they work things out, that gives
2 us some confidence, because they both have expertise
3 in this area, that we've got some good numbers that
4 can be agreed upon. And there's things in the
5 stipulation, you know, maybe apart from that that we
6 want to be a part of reaching agreements and
7 negotiating but not so much this particular issue that
8 you're zeroing in on here.

9 And of course, if we hadn't joined in the
10 stipulation, after ten days, it would have been
11 treated as if we had. So that's another thing we take
12 into account.

13 COMMISSIONER DAVIS: Okay. So --

14 MR. MILLS: And the -- and the -- and the
15 bottom line is what we were agreeing to is on page 3
16 of the stipulation itself which is the net fuel costs.
17 The real-time runs are essentially the work papers
18 that end up as part of the derivation of the actual
19 numbers that we agreed to.

20 COMMISSIONER DAVIS: Okay. But you did
21 agree to the fuel costs, the net fuel costs. Correct?

22 MR. MILLS: Yes.

23 COMMISSIONER DAVIS: And did you contest
24 the -- the off-system sales margins related to Taum
25 Sauk in the 2008 case?

1 MR. MILLS: No. And in fact, in the 2008
2 case, I -- if my memory serves me correctly, we also
3 used the services of Michael Rahrer, who -- who ran
4 the real-time model. But as I said, after two years
5 and two cases, I'm not really all that familiar with
6 these particular model runs.

7 MR. KIND: And just to clarify, Michael
8 Rahrer ran the model for OPC, I believe it was in that
9 case, but not for purposes of determining net fuel
10 cost but as part of our class cost of service study
11 and for purposes of calculating a production cost
12 allocator to -- to allocate generation to the various
13 customer classes.

14 COMMISSIONER DAVIS: Okay. So I can't
15 remember, Mr. Kind, I don't have Mr. Gilbert's
16 testimony here in front of me. Was the -- the actual
17 capacity number that Mr. Gilbert had in his testimony
18 was it 45,400? Was it 54,500? Was it -- it was
19 something like that.

20 MR. KIND: We may have his testimony
21 here. I -- like Mr. Mills, I would respectfully
22 disagree that this does not reflect capacity, but it
23 is energy output.

24 COMMISSIONER DAVIS: Right. Well, let's
25 just assume that the -- that the number is -- is

1 50,000. So Mr. Gilbert has put in sworn testimony,
2 he's been cross-examined that there would be 50,000
3 more megawatt hours of energy output. And so if we
4 were going to add 50 to 250, that would be roughly
5 300,000. Correct? 250,000 -- well, the number here
6 is 254.

7 MR. KIND: That would be -- the math
8 would be correct, but I'm not sure whether we're
9 adding -- if we may be adding apples and oranges as
10 part of that math.

11 COMMISSIONER DAVIS: Okay. Well, if so
12 if we were going to divide that 50,000 by 300 --
13 approximately 300,000, it would be approximately 15 or
14 16 percent, would it not?

15 MR. KIND: I think it would be 20
16 percent -- or no it's more than one-fifth. You're
17 right, yes.

18 MR. MILLS: I'm going to have to get in
19 here too because I don't even think the math is
20 correct. If you add 50,000 to negative 250,000, you
21 end up with negative 200,000.

22 COMMISSIONER DAVIS: Right. It's
23 negative 200,000 that's -- that's not being modeled,
24 but I would -- I would assume that the corollary is
25 that if Taum Sauk were up and running, then that

1 would -- that would equally be the number, would it
2 not?

3 MR. KIND: Well, you know, one thing to
4 keep in mind is that Mr. Gilbert's calculation, as I
5 recall, it assumed that Taum Sauk was going to run
6 every single day; that doesn't happen. And when the
7 Company did their calculations, as I understand it,
8 they made a -- an assumption that Taum Sauk would be
9 running three out of four days.

10 And that's why the Company had a much --
11 a smaller number for their calculation, I believe,
12 than Mr. Gilbert came with -- up with, which I don't
13 think is -- that correlation is realistic.

14 COMMISSIONER DAVIS: Right.

15 MR. KIND: He acknowledged it was very
16 simplistic.

17 COMMISSIONER DAVIS: But in the '07 case,
18 OPC argued that you could sell all the capacity.
19 Correct?

20 MR. MILLS: We argued that there was a
21 value for the capacity that's in addition to the value
22 for the energy that we're talking about here.

23 COMMISSIONER DAVIS: Right.

24 MR. MILLS: And there was no recognition
25 in that case for the value of the capacity.

1 COMMISSIONER DAVIS: Right.

2 MR. LOWERY: Commissioner Davis, may I
3 interject just a moment --

4 COMMISSIONER DAVIS: Sure.

5 MR. LOWERY: -- on that point because
6 Mr. Mills had mentioned that before. It's true
7 Mr. Kind made the argument in the 0002 case. The
8 Company did not agree with that argument, there was
9 evidence to the contrary. No one else agreed to that
10 argument. So I'm not willing to stipulate that there
11 was, in fact, a ability to sell more capacity out of
12 that plant at that time.

13 We did model Taum Sauk in all of the rate
14 cases prior to it coming back online as if it was
15 operating. There was a dispute in the first case
16 about whether a piece of that value, which Mr. Kind
17 said was additional capacity value was or was not an
18 accounted we said there was no value, he said there
19 was. It was a disputed issue.

20 MR. MILLS: And that's an accurate
21 characterization.

22 COMMISSIONER DAVIS: Okay. So you've got
23 actual energy sales that are going to be higher than
24 the, quote, capacity value. And then, you know, if we
25 assume -- if we go back to Mr. Birk's numbers, you

1 know, I think Mr. Birk testified on the stand that in
2 the last year they've run the plant approximately
3 200 days so that would be roughly four-sevenths. Does
4 that sound right?

5 MR. MILLS: It's slightly over
6 50 percent, so yeah.

7 COMMISSIONER DAVIS: Slightly over --
8 slightly over 50 percent. And so Mr. Mills, did you
9 have an opportunity to -- to see any of Mr. Weiss's
10 testimony yesterday?

11 MR. MILLS: I did not.

12 COMMISSIONER DAVIS: You did not. So you
13 really can't comment, then, on his testimony that a --
14 that at least a portion of their -- of their property
15 taxes are based on the -- the revenue that the -- the
16 individual plants generate?

17 MR. MILLS: I can't comment on that.

18 COMMISSIONER DAVIS: Okay. So I guess
19 let me ask -- ask this question this way: If you
20 prevail in this case on the -- on the issue of Taum
21 Sauk and we do not allow the -- the additional \$89
22 million into rate-base and there is additional energy
23 output, and let's just say that the -- that the -- the
24 base is 254,279 megawatt hours, so it would be
25 anything over that base -- would you be willing to

1 stipulate that AmerenUE could -- could sell that
2 electricity to Ameren energy marketing for a dollar?

3 MR. MILLS: No, I don't think so. I
4 would certainly be willing to stipulate that we get
5 rid of the fuel adjustment clause and Ameren can do
6 whatever it wants with the energy and take all those
7 profits, but under the fuel adjustment clause model
8 that AmerenUE has chosen, 95 percent of those margins
9 flow back to ratepayers. And it's the same for all
10 the plants.

11 COMMISSIONER DAVIS: So -- okay. So then
12 shouldn't -- shouldn't the additional costs of adding
13 that capacity that you would not have but for the
14 rebuild go into rates?

15 MR. KIND: Commissioner, I think it's
16 important to remember that the reason there was a
17 rebuild is because the Company destroyed the upper
18 reservoir. And the reason that -- another reason
19 there was a rebuild is that as a consequence of doing
20 that, they voluntarily entered into a settlement with
21 the State of Missouri to rebuild the upper reservoir.
22 They -- they didn't commit to rebuild it, you know,
23 bigger or the same. I think essentially the same.

24 And if there are -- were some design
25 considerations that caused there to be greater energy

1 output in the rebuilt reservoir, that's just one of
2 the things that went along with them complying with
3 their commitment to the State of Missouri to remedy
4 this mess that they created.

5 COMMISSIONER DAVIS: They could have --
6 they could have just built it back at 400 million,
7 approximately, and not added any new capacity.
8 Correct?

9 MR. KIND: There's no evidence in the
10 record to that effect. There is no new capacity.
11 There's additional output.

12 COMMISSIONER DAVIS: Additional output,
13 yes.

14 MR. KIND: The capacity comes from the
15 size of the turbines, they're 440 megawatts.

16 COMMISSIONER DAVIS: Right. Right. I --
17 I understand. So we're going to constantly probably
18 have that struggle because I keep intermingling the
19 terms. I apologize. But there's no evidence to
20 the -- to the contrary either?

21 MR. MILLS: I don't think that there's
22 any evidence in this case by which you can say that
23 a -- a certain number of dollars allows the Company to
24 generate a certain number of additional megawatt hours
25 from that plant.

1 COMMISSIONER DAVIS: Okay. But we do --
2 we do have -- apparently have additional megawatt
3 hours of energy that are going to be available.
4 Correct?

5 MR. MILLS: It appears that way so far
6 compared to the old plant, yes, I mean the old upper
7 reservoir.

8 COMMISSIONER DAVIS: All right, Judge.
9 Thank you. No further questions.

10 COMMISSIONER JARRETT: And I just wanted
11 to add, I think Mr. Gilbert was pretty adamant on that
12 during his testimony, wasn't he? I mean you may
13 disagree with it, but he wasn't speculating, but he
14 was pretty sure. But -- I mean he was --

15 MR. MILLS: Mr. Gilbert is very, very
16 enthusiastic about the new upper reservoir.

17 COMMISSIONER JARRETT: Well, he was up
18 there again looking at it too.

19 MR. MILLS: Yes. Absolutely.

20 COMMISSIONER JARRETT: He's an
21 experienced geologist and engineer. I mean --

22 COMMISSIONER DAVIS: Mr. Mills, you would
23 stipulate that engineers tend to like to build things
24 bigger and better and stronger, would you not?

25 MR. MILLS: I think that's generally the

1 case, yes.

2 COMMISSIONER DAVIS: I get that
3 impression too. All right. Thank you, Judge. No
4 further questions.

5 JUDGE WOODRUFF: All right. Well, then
6 let's go onto opening statements with the fuel
7 adjustment clause.

8 MR. LOWERY: Judge Woodruff, if I could
9 beg your pardon, I would ask that you designate or
10 make a statement on the record that none of what just
11 took place is competent and substantial evidence and
12 as part of the evidentiary record in this case given
13 that Mr. Kind was not sworn, wasn't testifying.

14 It was perfectly fine for Commissioner
15 Davis to ask questions and get answers to those
16 questions, but it's not competent and substantial
17 evidence upon which the Commission can rely on in this
18 case.

19 JUDGE WOODRUFF: I will make that
20 statement, yes. It was question and answer from the
21 Commission. In fact, it was opening statement I think
22 is the way it would be treated.

23 MR. LOWERY: Thank you.

24 JUDGE WOODRUFF: All right. Back to fuel
25 adjustment clause issues. Opening statement from

1 Company?

2 MR. BYRNE: May it please the Commission.

3 We are here today to discuss Ameren Missouri's fuel
4 adjustment clause. There are only two issues with
5 respect to the fuel adjustment clause that are for
6 hearing today.

7 First, Company witness Lynn Barnes has
8 proposed tariff language that would codify the
9 Commission's ability to use the FAC true-up proceeding
10 to correct any error that's may have occurred in
11 calculating the periodic FAC adjustments.

12 Staff witness David Roos opposes this
13 change, arguing that this would open the true-up
14 filings to quote, fix all type of errors, unquote.
15 And it might create a delay in returning or billing
16 the difference between what was supposed to be
17 collected and what was actually billed under the FAC.

18 The Company thinks that correcting errors
19 which it could go either in the Company's or the
20 customer's favor and which could be small or which
21 could be very large is well worth the administrative
22 inconvenience that might result. Moreover, that part
23 of the true-up adjustment unrelated to the error could
24 be incorporated into the FAC adjustment immediately at
25 issue without delay. And once the mistake is

1 resolved, it could then be incorporated into a future
2 adjustment with interest, keeping both the Company and
3 customers whole.

4 Getting the fuel costs right under the
5 FAC is an important principle for the Company and its
6 customers and we support that principle.

7 The other issue is that Staff witness
8 Lena Mantle, supported only by office of Public
9 Counsel Ryan Kind, has recommended that the sharing
10 percentage under the fuel adjustment clause be changed
11 from 95 percent/5 percent to 85 percent/15 percent.
12 Changing the sharing percentage as Ms. Mantle and
13 Mr. Kind propose is a very bad idea for at least three
14 reasons.

15 First, there has been no evidence
16 whatsoever that Ameren Missouri has engaged in any
17 imprudent transactions under the fuel adjustment
18 clause that have cost the customers a penny. The
19 Company has continued to diligently and proactively
20 manage its fuel costs under the FAC. We have
21 continued our sophisticated fuel cost hedging programs
22 and we have taken steps to maintain our generating
23 unit availability.

24 We have also continued to aggressively
25 market excess capacity and energy to ensure that

1 customers get the maximum benefit from off-system
2 sales. In its recent FAC prudence review, the Staff
3 comprehensively examined all aspects of the Company's
4 fuel adjustment clause, including coal purchases, coal
5 transportation, natural gas purchases, fuel oil,
6 nuclear fuel, purchased power, off-system sales, SO₂
7 and NO_x allowances, interest costs and plant outages.
8 In that comprehensive examination, the Staff found
9 exactly zero imprudent transactions.

10 As the Commission knows, the Staff and
11 the Company fought about the proper classification of
12 the AEP and Wabash contracts in the recent FAC
13 prudence docket, but nobody alleged that the Company
14 was in any way imprudent for entering into those
15 transactions. In fact, opposing parties affirmatively
16 testified that entering into those transactions was
17 the right thing for the Company to do.

18 In the absence of any evidence or even
19 really any allegation of imprudent behavior and
20 imprudently entered into transactions on the part of
21 the Company, there is simply no justification to
22 increase the sharing percentage.

23 Second, the Company continues to have
24 significant incentives to minimize its fuel costs
25 under the FAC for the benefit of its customers. For

1 one thing, the Company itself benefits from having low
2 rates. We are proud that our rates overall continue
3 to be the lowest in the state and among the lowest in
4 the Company. Low rates enhance customer satisfaction
5 which ultimately benefits the Company and its
6 shareholders.

7 From an economic standpoint, the
8 5 percent sharing provides a significant financial
9 incentive to pursue fuel cost reduction measures. The
10 evidence will show that we have already absorbed
11 approximately \$11 million in fuel costs which are
12 presumed to be prudent as a result of the 5 percent
13 sharing, which provides a strong financial incentive
14 for the Company to minimize costs. Prudence reviews
15 and the very real risk of cost disallowances provides
16 yet another incentive for the Company to act
17 prudently.

18 And finally, most significantly, is the
19 risk that the Commission might eliminate the FAC if
20 there was any evidence that Ameren Missouri was
21 misusing it or acting imprudently. Together these
22 provide powerful incentives for the Company to work
23 hard to minimize its net fuel costs.

24 Third, the Company is already absorbing
25 significant prudent fuel costs with the 5 percent

1 sharing and this absorption would become confiscatory
2 with 15 percent sharing. As I mentioned through the
3 first six accumulation periods, the 5 percent sharing
4 has already required the Company to absorb \$11 million
5 of net fuel costs that are presumed to be prudently
6 incurred. If the 15 percent sharing mechanism had
7 been in place since the beginning of the FAC, that
8 absorption would have been a whopping \$33 million.

9 Unfortunately, although the sharing
10 mechanism appears on its face to be symmetrical, in
11 fact the chances that fuel costs will be set too low
12 and the Company will have to pay under the sharing
13 mechanism are much greater than the chances that the
14 Company will benefit through sharing.

15 That is because the Company's fuel costs,
16 as dictated by the Commission's practices, are set
17 based on historic costs and we have numerous fuel
18 contracts with built-in escalators. And as the
19 locked-in fuel costs go up over time, the Company has
20 to share in the increase.

21 In addition, the off-system sales
22 revenues built into base rates are also likely to be
23 set too high compared to what can actually be
24 achieved. Because they are based on a three-year
25 average of power prices and because power prices have

1 been declining and significantly declining over the
2 past three years, the off-system sales revenues
3 modeled and set in base rates are likely to be higher
4 than those that can be achieved at least in the
5 foreseeable future.

6 As a consequence, increasing the sharing
7 percentage is tantamount to increasing the
8 disallowance of prudently incurred fuel costs. It is
9 effectively a reduction to the Company's already
10 subpar earnings.

11 The evidence will show that Ms. Mantle,
12 the proponent of this adjustment, has absolutely no
13 idea what the right sharing percentage should be or
14 whether the existing 5 percent sharing is appropriate.
15 In her deposition she herself acknowledged that her
16 proposal, if adopted, could properly be characterized
17 as an experiment and she herself noted that it would
18 be an expensive experiment indeed.

19 The Commission should decline
20 Ms. Mantle's invitation to experiment with tens of
21 millions of dollars of Ameren Missouri's shareholders'
22 money based on no evidence whatsoever that any change
23 to the FAC is warranted.

24 As Ameren Missouri witness Gary Rygh will
25 testify, the regulatory instability occasioned by such

1 an experiment undertaken just two years after the FAC
2 was first permitted would be viewed very negatively by
3 investors and creditors and would significantly
4 diminish the value of the FAC for all parties.

5 For these reasons, the Commission should
6 decline Ms. Mantle's and Mr. Kind's offer to under--
7 undertake this poorly conceived, unsupported and
8 significantly detrimental experiment. Thank you.

9 COMMISSIONER KENNEY: Can I ask a
10 question?

11 JUDGE WOODRUFF: Go ahead.

12 COMMISSIONER KENNEY: Mr. Byrne, thanks.
13 You used the phrase "confiscatory." Would anything
14 other than 5 percent be confiscatory or is it
15 somewhere between 5 and 15? And how did you quantify
16 or how did you get to --

17 MR. BYRNE: I mean, I'm not --

18 COMMISSIONER KENNEY: -- confiscatory?

19 MR. BYRNE: The truth is what we found
20 under this FAC is we're basically having to pay part
21 of the cost -- part of the prudently incurred cost of
22 fuel costs. And -- and we've agreed to 5 percent, but
23 I'm not sure -- I'm not sure requiring the Company to
24 absorb prudently incurred fuel costs in any amount is
25 not confiscatory.

1 We've agreed to 5 percent but --
2 because -- and so that's -- because we've agreed to
3 it, it's not -- it's not confiscatory but, you know,
4 we're entitled to recover our costs.

5 COMMISSIONER KENNEY: So you're using
6 confiscatory in the legal significant fashion?

7 MR. BYRNE: Right. If you -- I believe
8 if you set rates where we don't -- where we can't
9 recover our costs, I believe that's legally
10 confiscatory.

11 COMMISSIONER KENNEY: So but for the fact
12 that Ameren agreed to it, the only legally permissible
13 FAC under your theory would be 100 percent
14 pass-through?

15 MR. BYRNE: And you know, Commissioner,
16 it might be different if it was -- if there was an
17 equal chance that we could benefit or lose on the
18 sharing. You know, if it was equally likely we were
19 going to make \$11 million or lose \$11 million, then I
20 might have a different answer for you, but it's not
21 the way it's set up.

22 It's a situation where the playing field
23 is slanted where we're much more likely to lose than
24 win. So that's part of why I believe it's
25 confiscatory or would be confiscatory if you increase

1 the percentage.

2 COMMISSIONER KENNEY: Okay. Thank you.

3 JUDGE WOODRUFF: Opening for Staff.

4 MS. OTT: Okay. Does anyone know how
5 to --

6 MR. MILLS: Are you trying to go full
7 screen?

8 MS. OTT: Yes.

9 MR. MILLS: Go to view and then --

10 MS. OTT: Am I missing it?

11 MR. MILLS: Down, zoom. Try 100 percent.

12 MS. OTT: It used to be shift something.

13 Good morning. May it please the
14 Commission. We have just heard Ameren Missouri
15 classify Staff's position in this case as an
16 experiment. I'd like to think with the rate-making
17 process it could all be viewed as an experiment. You
18 are using historical costs and practices for Ameren
19 Missouri to set rates going forward. Well, that could
20 be viewed as an experiment to see if you're getting
21 the rates just and reasonable going forward in the
22 next case. That is what Staff has done here today.

23 We have used Ameren Missouri's past
24 practice in relationship to the fuel adjustment clause
25 in setting what Staff believes is a more appropriate

1 sharing mechanism and incentive for the Company to
2 have better practices with its cost -- to be more cost
3 effective and efficient with its fuel adjustment
4 clause.

5 In this case, Staff has proposed the
6 following adjustment to its current fuel adjustment
7 clause; many of them in which all the parties have
8 agreed to or the Company and Staff have agreed to.
9 The first one was to change the phrase on the customer
10 bills from FAC rider to fuel and purchased power
11 adjustment. This was in order to be more consistent
12 with the tariff sheets and to reduce customer
13 confusion.

14 Also in efforts to reduce regulatory lag,
15 the Staff proposed to change the recovery periods from
16 12 months to 8 months. The Company supported the
17 Staff in this change.

18 The main reason the issue is before you
19 here today is that the fuel -- the Staff has
20 changed -- proposed a change the sharing mechanism
21 from 85 to 15 -- to 85/15 from 95/5. In a moment I'll
22 go in more detail on that issue.

23 The other issue that is here before you
24 today is Staff and Ameren have proposed a modification
25 to the tariff sheets. For the most part, we both

1 agree, but there are slight variations between Staff
2 and Ameren's additions on tariff sheet 98.6. For a
3 point of reference to compare, it would be Ameren's
4 witness Lynn Barnes' exemplar tariff sheets in her
5 rebuttal testimony and Staff witness David Roos'
6 exemplar tariff sheets in his surrebuttal.

7 The Staff asks this Commission to not an
8 include Ameren's proposed language under the
9 subheading True-up of FAC. The objective of a true-up
10 is to compare the amount bills by the utility to the
11 amount the utility was authorized to bill. Staff only
12 has 30 days to review a true-up. This is not
13 sufficient time to review the accuracy of the data and
14 the accuracy of any error that the utility may bring
15 up.

16 The other tariff sheet language at issue
17 is -- is under the general rate case prudence review
18 on that tariff sheet 98.6. Staff and Ameren agree
19 with all the language except one word. Staff
20 recommends using the word "rider" instead of Ameren's
21 proposed "tariff" to avoid confusion.

22 Using the term "tariff" could be referred
23 to or somebody interpreting the language could mean
24 the entire group of tariff sheets that are -- that
25 Ameren operates under and not just limited to the

1 specific FAC rider.

2 Lastly, Staff proposed and Ameren has
3 agreed to provide certain parties with additional
4 filing requirements in relationship to the fuel
5 adjustment clause. I think it's important to
6 understand the FAC history and to recognize that
7 Ameren's fuel adjustment clause is still in its
8 infancy.

9 It was in 2005 when Missouri legislators
10 first authorized this Commission with the ability to
11 grant fuel adjustment clause. In 2007, Ameren
12 unsuccessfully attempted to have this Commission
13 authorize it with a fuel adjustment clause. Ameren
14 attempted again to get a fuel adjustment clause in its
15 2008 rate case. This time the Commission allowed
16 Ameren a fuel adjustment clause and the mechanism was
17 implemented in March of 2009.

18 When authorizing Ameren's fuel adjustment
19 clause, the Commission included a 95/5 incentive
20 mechanism. In 2010, the Commission reauthorized
21 Ameren's fuel adjustment clause with modification to
22 the language, but it retained that 95/5 sharing
23 mechanism. Since the implementation, Ameren has only
24 been through one prudence review and is still in the
25 middle of its first and second true-up cases. And

1 that's what led -- leads us here today.

2 The biggest difference between Staff and
3 the Company's position is what the appropriate sharing
4 mechanism should be. Staff witness Lena Mantle will
5 testify that we do not know with 100 percent certainty
6 what the most appropriate sharing mechanism should be
7 because we only have one data point regarding Ameren's
8 fuel adjustment clause and that data point is at that
9 95/5 percent sharing mechanism.

10 We all know a proper analysis cannot be
11 done with only one data point. But what Staff does
12 know is that this Commission requested in that 2010
13 rate case that Staff specifically look into what the
14 appropriate sharing mechanism should be. At that
15 point Staff did not have enough data on Ameren's fuel
16 adjustment clause to make a different recommendation.
17 However, during that 2010 rate case, Staff had not
18 even completed a prudence review or completed its
19 true-up proceedings.

20 The Commission recently found in the
21 prudence case that was here at evidentiary hearing in
22 early January that Ameren acted imprudently,
23 improperly and unlawfully when it excluded revenues
24 derived from power sales agreement with AEP and Wabash
25 from off-system sales revenue when calculating the

1 rates under its fuel adjustment clause.

2 While Staff does not know if Ameren would
3 have behaved differently if the sharing mechanism was
4 9-- or 85/15, it does know that the Commission did
5 determine that Ameren acted imprudent.

6 Staff also believes that the true-up case
7 is an indication that the sharing mechanism might not
8 provide Ameren with a great enough incentive. Since
9 that is a live case, Staff is not here to argue the
10 merits of the case or present any evidence that may
11 persuade you in your decision in that pending matter.
12 However, Staff does believe that Ameren might be more
13 careful if there is a greater incentive tied to its
14 fuel and purchased power costs.

15 In determining what the appropriate
16 sharing mechanism could be Staff also took into
17 consideration Ameren's request to rebase its NBFC
18 rates, information contained within Ameren's monthly
19 filings and the impact on Ameren's net income.

20 Keep in mind Staff's proposal also
21 affords Ameren with a greater percentage of off-system
22 sales. Under Staff's proposal, Ameren would retain
23 15 percent rather than 5 percent of the revenues
24 associated with those off-system sales. Staff
25 believes that Ameren is trying to paint a picture that

1 we are punishing them by changing its sharing
2 mechanism. That is not the case.

3 Staff's recommendation is consistent with
4 the language contained in 386.266(1) which provides
5 the Commission with the ability to design a fuel
6 adjustment clause with incentives to improve the
7 efficiency and cost effectiveness of its fuel and
8 purchased power procurement activities. The sharing
9 mechanism is this incentive. It is the incentive to
10 improve the efficiency and cost effectiveness of its
11 fuel and purchased power procurement activities.

12 Staff believes even with a 85/15 percent
13 sharing mechanism Ameren would still be afforded a
14 sufficient opportunity to earn its authorized return
15 on equity as required by the statute. And even more,
16 it would provide Ameren with a greater financial
17 incentive to be prudent in and take reasonable efforts
18 to minimize its fuel and purchased power costs.

19 While Staff cannot guarantee that its
20 proposal will change Ameren's behavior regarding fuel
21 and purchased power procurement activities, it can
22 guarantee it will provide this Commission with another
23 data point to assess the effectiveness and cost
24 efficiencies of Ameren's fuel adjustment clause.
25 While the fuel adjustment clause is still in its

1 infancy, Staff is continually learning and working
2 towards creating the best fuel adjustment clause
3 mechanism for the utility and ratepayers.

4 Staff expert Lena Mantle has been
5 actively involved in the fuel adjustment clause since
6 prior to the inception of the Commission rules. And
7 she is here today to ask [sic] any of your questions
8 regarding the history and Staff's current proposal
9 regarding Ameren's fuel adjustment clause. Staff also
10 has witness David Roos who has provided testimony in
11 Staff's exemplar tariff sheets in which Staff request
12 that you adopt.

13 Staff believes there is competent and
14 substantial evidence to warrant a modification to
15 Ameren's fuel adjustment clause mechanism. And Staff
16 requests that this Commission adopt Staff's proposed
17 tariff language in David Roos's exemplar tariff
18 sheets.

19 JUDGE WOODRUFF: Thank you. Opening for
20 Public Counsel.

21 MR. MILLS: Good morning. May it please
22 the Commission. I'm going to talk this morning and I
23 think you're going to hear mostly today about the
24 issue of whether or not the sharing percentage, the
25 flow-through percentage, should be changed from

1 5 percent to 15 percent.

2 Now, the -- the Commission sought
3 information in AmerenUE's last case about whether
4 the -- the case ER-2010-0036 about whether the sharing
5 flow-through percentage should be changed from the --
6 the 5 percent established in Case No. ER-2008-0316.

7 In that case, the Commission found that
8 there were -- that nothing had changed significantly
9 with respect to the -- the operation of the fuel
10 adjustment clause or UE's operations to warrant a
11 change in -- in the -- in the flow-through percentage.

12 The evidence in this case is going to be
13 different. The evidence in this case is going to show
14 that there has been a significant change in the
15 factors that led the Commission to adopt a fuel
16 adjustment clause for AmerenUE in Case No.
17 ER-2008-0316 and that factor has changed since --
18 since the Commission last authorized a 5 percent
19 flow-through in Case No. ER-2010-0036.

20 And really there are two things. And one
21 of them I think was just -- was just highlighted by --
22 by Mr. Byrne today. One of the factors that UE has
23 repeatedly said leads them to behave prudently in --
24 in the procurement of fuel is the fact that the
25 Commission could, in a future case, take away the fuel

1 adjustment clause from AmerenUE. In Mr. Byrne's
2 opening statement today Mr. Byrne made the
3 constitutional argument that if the Commission fails
4 to allow the Commission [sic] to flow through a fuel
5 adjustment clause, at least 95 percent of the changes
6 in fuel costs in between rate cases, that that would
7 be a -- an unconstitutional takings. By that logic --

8 COMMISSIONER JARRETT: Mr. Mills, I think
9 you mischaracterized what he said. He said that since
10 they agreed to that, it wasn't confiscatory, but if
11 they had not agreed to it, it would be.

12 MR. MILLS: Right. What I'm saying is
13 that if they -- if you had -- well, at the least if
14 you -- if you -- if you -- if you decline to allow at
15 least 90 percent through, that it would be an
16 unconstitutional takings. And so by that logic, it
17 would be unconstitutional for you to take away the
18 fuel adjustment clause in a future case from AmerenUE.
19 So that removes one of the -- the -- the -- the facets
20 that Ameren has suggested causes them to be prudent in
21 operating under their fuel adjustment clause.

22 But the more significant one that I think
23 the evidence will demonstrate today is that one of the
24 factors that Ameren has in the last two cases touted
25 as a strong incentive to be very prudent and vigilant

1 in its fuel procurement practices is the operation of
2 the coal pool. And the coal pool was a mechanism by
3 which Ameren Missouri, then AmerenUE, bought coal
4 jointly through Ameren Fuels and Services, I believe
5 is -- is the name of the other affiliate -- jointly
6 with the unregulated affiliates in Illinois.

7 And because the unregula-- unregulated
8 affiliates in Illinois have a pure profit motive in
9 terms of achieving a low coal price, then that pure
10 profit motive also applies to AmerenUE through coal
11 pool. The coal pool has gone away, so one of those
12 incentives has been removed. And that is a
13 significant change from the circumstances under which
14 the Commission originally approved a -- a fuel
15 adjustment clause for AmerenUE and renewed that --
16 that approval in the last case.

17 And in closing, I'd like to -- to just
18 briefly talk about the testimony that we heard at the
19 local public hearings. Of the issue that came up over
20 and over again at the local public hearings, one of
21 them that came up fairly frequently was the question
22 of the fuel adjustment clause and the fact that
23 consumers are not only watching their overall bills
24 but they're looking at the changes driven by the fuel
25 adjustment clause.

1 Consumers are aware of what this is and
2 what it does and they're not happy with it. And
3 because of that, I think it's -- it's incumbent on the
4 Commission to ensure that any fuel adjustment clause
5 that the Commission adopts gives the utility a very
6 strong incentive to be as -- really to be the best
7 that they can be in terms of fuel procurement.

8 The fuel adjustment clause as it operates
9 through the prudence review essentially allows a
10 utility to get by with getting a D as a grade in
11 procuring fuel. Anything above -- anything above an
12 F -- anything above imprudence -- demonstrated
13 imprudence allows the utility to recover those
14 costs. The Commission should strive to structure its
15 fuel adjustment clause so that the utilities it
16 regulates have a strong incentive to get an A and not
17 just a D. Thank you.

18 COMMISSIONER DAVIS: Can I inquire of
19 Mr. Mills?

20 Mr. Mills, you said -- let me just go
21 back to your -- your comments about -- that the
22 unconstitutionality of taking away FAC. Would you
23 agree that under the present financial circumstances,
24 what we -- considering everything we know about the
25 totality of the market, Ameren, et cetera, that it

1 would be unconstitutional to take away Ameren's fuel
2 adjustment clause right now without replacing it in
3 some way, shape or form with some other way that would
4 at least give them a -- a fair opportunity to actually
5 earn their allowed return on equity?

6 MR. MILLS: No, I don't agree with that
7 at all. By that logic for the period between the UCCM
8 case in 200-- in 1979 until the legislature passed
9 Senate Bill 179, the Commission was unconstitutionally
10 taking the property of utilities for -- for 35 years.
11 And no utility made that argument as far as I'm aware.
12 Certainly no court found that that was an
13 unconstitutional taking. It's simply a different
14 mechanism of regulation.

15 There are a lot of costs of a utility
16 that are not recovered dollar for dollar and that's
17 not an unconstitutional taking. Certainly fuel is the
18 largest expense, but I don't think there's anything in
19 the Constitution that mandates that they be -- that
20 they be allowed a regulatory mechanism that allows the
21 recovery of every single dollar of that change in real
22 time, so to speak.

23 COMMISSIONER DAVIS: Okay. And I think
24 that's -- that's a fair characterization. But if --
25 if fuel makes up approximately a third of their

1 expenses such that they are constantly in arrears and
2 don't have a 50 percent chance of being able to
3 actually earn their -- whatever ROE the Commission
4 awards them, then at some point aren't we
5 confiscating?

6 MR. MILLS: No. I don't believe so. I
7 think regulation has operated for -- for a century
8 under the premise that you can look at a historical
9 test year, set rates on a going-forward basis based on
10 that test year. If things change, the utility comes
11 in for a rate case. And that's not been held to be an
12 unconstitutional practice.

13 COMMISSIONER DAVIS: Okay. Mr. Mills,
14 Senate Bill 179 was passed in 2005. Correct?

15 MR. MILLS: Yes.

16 COMMISSIONER DAVIS: UCCM was in 1979.
17 Correct?

18 MR. MILLS: I believe that's correct.

19 COMMISSIONER DAVIS: So the difference
20 between 2005 and 1979 would be 26 years. Correct?

21 MR. MILLS: Thank you. You're correct.
22 I said 35.

23 COMMISSIONER DAVIS: Right. And
24 throughout a good portion of that period you would
25 agree that Ameren was depreciating out Callaway and --

1 and some other major capital investments that were
2 made --

3 MR. MILLS: Yes.

4 COMMISSIONER DAVIS: -- during the '70s,
5 predominantly when they had not only fuel adjustment
6 but also could -- could put some plant in rate-base
7 before it was operational. Correct?

8 MR. MILLS: Well, I'm not that familiar
9 with -- with the -- with UE's capital budgets or
10 regulation in the '70s, but I think even in the 1970's
11 it was not common practice to allow CWIP in Missouri.
12 After the passage of 393.135, it was unlawful, but
13 even before then, I don't think it was common
14 practice.

15 COMMISSIONER DAVIS: Okay. You were
16 talking about testimony at the local public hearings.
17 I didn't -- I didn't take a head count, but did you
18 count up the number of people who said that they
19 wanted to be deregulated?

20 MR. MILLS: There were some people that
21 said that, yes. It was not -- I don't believe it was
22 a great number, but there were certainly more -- more
23 than one or two.

24 COMMISSIONER DAVIS: I mean as I recall,
25 there were -- there were more people that said they

1 wanted to be deregulated than were complaining about
2 the fuel adjustment charge on their bills. Should we
3 listen to that testimony as well?

4 MR. MILLS: You're certainly -- you
5 should listen to all the testimony.

6 COMMISSIONER DAVIS: Well --

7 MR. MILLS: But in terms --

8 COMMISSIONER DAVIS: Do you think that's
9 a good idea?

10 MR. MILLS: I think it's a bad idea, but
11 I think in terms of the relative numbers of people who
12 testify about one versus the other, you might inquire
13 of Ms. Mantle on that question. I know she has
14 reviewed the comments and I know she's probably
15 reviewed most of the transcripts, if not all of the
16 transcripts of the local public hearings she wasn't
17 at, so --

18 COMMISSIONER DAVIS: All right. So --
19 and then when Mr. Coffman's two board members came and
20 said no rate increase at all, I mean how -- how
21 should -- how should we treat that?

22 MR. MILLS: Well --

23 COMMISSIONER DAVIS: I mean because
24 obviously Mr. Coffman has agreed that at least, you
25 know, the Company is entitled to at least 75 million

1 in additional --

2 MR. MILLS: At the --

3 COMMISSIONER DAVIS: -- rate --

4 MR. MILLS: -- time of the local public
5 hearings the only sworn testimony you had, the only
6 evidence you had in the record was the testimony of
7 the people who appeared at the local public hearings.
8 There was some pre-filed testimony, but that's just
9 sort of a placeholder. It's not evidence, it's not in
10 the record, it's just there.

11 And so to the extent that people were --
12 were relying on evidence in the record, I think there
13 was more evidence in the record than not that the
14 Commission should not allow a rate increase.

15 If you're asking whether or not the
16 UCC -- I mean the CCM witnesses should have taken into
17 account the pre-filed testimony that had not been
18 admitted into the record to try to come up with a
19 conclusion as to what sort of a rate increase should
20 be allowed, maybe yes, maybe no, but there certainly
21 was no evidence at that point that a rate increase was
22 justified.

23 COMMISSIONER DAVIS: Well, but they
24 were -- my impression was that they were relying on --
25 on testimony that had been given in previous cases.

1 MR. MILLS: I -- you could be right. I
2 don't -- I don't recall specifically that.

3 COMMISSIONER DAVIS: So, I mean, you
4 would agree that if they were relying on testimony
5 that had been given in previous cases and that that
6 testimony was closed?

7 MR. MILLS: Well, that was evidence in
8 the record, sworn testimony submitted into the record.

9 COMMISSIONER DAVIS: Right.

10 MR. MILLS: So I think that's different
11 than pre-filed testimony in this case that has no
12 evidentiary value.

13 COMMISSIONER DAVIS: Well, I mean I guess
14 it's just gets back to, I mean what -- I mean, you're
15 saying that we should give weight to all of this lay
16 testimony at these local public hearings and I'm just
17 curious as to -- as to, you know, how much -- how much
18 weight we -- you think we should give that -- that
19 testimony?

20 MR. MILLS: Well, to the extent that
21 individual Commissioners are there and can view the
22 witnesses or have viewed the videotapes or read the
23 transcripts and can make a judgment as to the
24 witness's sincerity and veracity and knowledge from
25 that, then the Commission can give whatever weight

1 it -- it thinks it deserves.

2 I mean if the Commission has an expert
3 here that you -- you don't believe, then you should
4 give them little weight. If there's a -- a person
5 testifying at a local public hearing that you don't
6 believe, then you should give them little weight.

7 COMMISSIONER DAVIS: Well, you seemed --
8 earlier you seemed to be insinuating that, you know,
9 if a thousand people show up at local public hearings
10 and say, you know, I -- I object to a rate increase,
11 then -- then they should -- their class of customer
12 should get no rate increase. I mean is --

13 MR. MILLS: First of all, Mis--
14 Commissioner, I pride myself on being direct, so I
15 don't frequently try to insinuate things. And no, I
16 don't -- I don't believe I directly said that and I
17 don't believe that the sheer weight of numbers should
18 sway the Commission's decision.

19 COMMISSIONER DAVIS: Okay. Thank you,
20 Mr. Mills.

21 MR. MILLS: You're welcome.

22 JUDGE WOODRUFF: AARP?

23 MR. COFFMAN: Yes. Thank you. May it
24 please the Commission. The AARP as well as the
25 Consumers Council of Missouri believe that the

1 Commission should reject Ameren's request to have its
2 current fuel adjustment clause continued in this case.

3 Like Mr. Mills, I find it kind of amazing
4 that we're hearing arguments such as confiscatory
5 because obviously under Missouri law there is no right
6 to a fuel adjustment clause. There's no
7 constitutional right, there's not even a statutory
8 right to a fuel adjustment clause.

9 The new law that was passed in 19-- in
10 2005 sets forth this issue to the Commission in every
11 case. We believe it's an essential statutory issue
12 the Commission needs to address if the utility
13 requests a fuel adjustment clause.

14 Subsection 4 of the law says that the
15 Commission has the power to approve, modify or reject
16 any current fuel adjustment clause and those are all
17 appropriate mechanisms if the Commission has evidence
18 to support -- support it.

19 It is the utility that bears the burden
20 of proof with regard to continuing it and only if the
21 evidence shows that it is necessary to allow the
22 utility an opportunity to earn a fair return and only
23 if such fuel adjustment clause is designed in such a
24 manner that it has incentives that mitigate the harm
25 to consumers.

1 My clients believe very strongly that the
2 fuel adjustment clause is -- is a harm to consumers.
3 I won't call it a penalty or a punishment, but to the
4 degree that it's used consumers are harmed. And the
5 harm is probably best described as far as risk and
6 return, so the -- and who bears that risk. It is a
7 mechanism that is fundamentally at odds with rate of
8 return regulation.

9 Rate of return regulation worked for many
10 decades very well. And I think in its -- in its
11 purest form as -- as -- as used in the past century,
12 it benefited consumers because it allowed for a
13 healthy amount of regulatory lag to which the utility
14 was left to its own devices with a certain amount of
15 money and that worked in some measure to create
16 incentives.

17 To the degree that we take mechanisms out
18 into these surcharges, these trackers, we are
19 undermining those incentives that are built into the
20 system and we're creating a new type of system. The
21 rate of return regulation, as I have been taught it
22 and as I understand it, is a system by -- where the
23 utility bears the risk of doing business. And the --
24 and in return, consumers have -- have built into their
25 rates a certain rate of return.

1 The closer we get to requiring ratepayers
2 to be sort of an insurance Company for the utility or
3 a guarantor of its dollar per dollar cost, the less
4 that authorized return on equity should be. We
5 believe that it is fundamentally unfair and
6 unreasonable to impose a fuel adjustment clause,
7 especially one that transfers 95 percent of the
8 utility's risk of variation in its fuel and purchased
9 power costs and force that upon the consumers.

10 We believe that the evidence in this case
11 will show that the utility has a great deal of control
12 over its fuel and purchased power cost and that
13 ratepayers have zero control. This juxtaposition
14 seems on its face unfair to us that the utility has
15 some control, ratepayers have none and yet it is the
16 ratepayers that are being asked to suffer 95 percent
17 of the risk.

18 We would ask that you do in this case
19 what you did the first time Ameren requested a fuel
20 adjustment clause and say it is not necessary and
21 place into the cost of service revenue requirement a
22 sufficient amount that you believe would cover its --
23 its ongoing fuel and purchased power cost at a set
24 amount and remove the FAC from the bill. Thank you.

25 JUDGE WOODRUFF: Any other party wish to

1 make an opening?

2 MS. VUYLSTEKE: I'd like to make a very
3 brief one.

4 JUDGE WOODRUFF: MIEC?

5 MS. VUYLSTEKE: Good morning. May it
6 please the Commission. The only FAC issue that the
7 MIEC plans to address today is a proposal in Staff's
8 testimony, and that would reduce the FAC recovery
9 period from 12 to 8 months. And the reason that Staff
10 gives for doing this is to reduce regulatory lag, but
11 we don't believe the Staff has provided good support
12 for this change.

13 The current 12-month recovery and refund
14 period was jointly recommended by the parties in the
15 first case that established an FAC for Ameren. And
16 this 12-month period is a mutual and fair period. It
17 avoids concentrating the reconciliation into a very
18 short period and by -- it therefore moderates the
19 adjustment in a period where some classes can have a
20 disproportionate share of usage.

21 The FAC, by its very nature, creates a
22 burden of rate volatility on customers. And if you
23 take the recovery period and you shorten it even more,
24 that will exacerbate the problem. And so we urge the
25 Commission to reject this proposal. Thank you.

1 JUDGE WOODRUFF: Thank you. Anyone else
2 wish to make an opening? I don't see anyone else out
3 there.

4 All right. We'll move for our witness
5 which will be Ms. Barnes.

6 Good morning, Ms. Barnes.

7 THE WITNESS: Good morning.

8 JUDGE WOODRUFF: And you were here last
9 week and testified so you're already under oath.

10 You may inquire, Mr. Byrne.

11 DIRECT EXAMINATION BY MR. BYRNE:

12 Q. Can you please state your name for the
13 record.

14 A. Lynn Barnes.

15 Q. And Ms. Barnes, are you the same Lynn
16 Barnes who filed direct rebuttal and surrebuttal
17 testimony that's already been entered into the record
18 here?

19 A. Yes, I am.

20 Q. Okay.

21 MR. BYRNE: Your Honor, I have no other
22 questions and tender the witness for
23 cross-examination.

24 JUDGE WOODRUFF: All right. For cross,
25 we'll begin with MIEC. Do you wish to cross?

1 MS. VUYLSTEKE: No, thank you.

2 JUDGE WOODRUFF: All right. Staff?

3 CROSS-EXAMINATION BY MS. OTT:

4 Q. Good morning, Ms. Barnes.

5 A. Good morning.

6 Q. The first time you filed testimony on
7 Ameren's FAC was in the ER-2010-0036 case. Correct?

8 A. Yes, that's correct.

9 Q. And I just want to be clear because in
10 your testimony you say in your rebuttal that you agree
11 with most of Staff's additional language. And I just
12 want to make sure on what language that we're not
13 clear on between --

14 A. Okay.

15 Q. -- your exemplar tariff sheets and David
16 Roos's. Do you have a copy of Mr. Roos's tariff sheet
17 in front of you?

18 A. No, I do not.

19 MS. OTT: May I approach?

20 JUDGE WOODRUFF: You may.

21 THE WITNESS: Thank you.

22 BY MS. OTT:

23 Q. Now, other than the sharing mechanism,
24 the only other differences are on page 98.6, I
25 believe.

1 MR. LOWERY: Ms. Ott, you're pointing to
2 Mr. Roos's surrebuttal. Right? Correct?

3 MS. OTT: Yes.

4 MR. LOWERY: Thank you.

5 BY MS. OTT:

6 Q. Are you comparing your rebuttal tariff
7 sheet 98.6 with Mr. Roos's?

8 A. Yes.

9 Q. Do you have them both in front of you?

10 A. I do.

11 Q. So under your proposed tariff sheets,
12 under the true-up of the FAC in the second paragraph,
13 you add after the word "recovery period," plus amounts
14 necessary to correct over- or under-collections due to
15 errors made in calculating adjustments to the FPAC
16 rate that impact the recovery period. Correct?

17 A. Yes.

18 Q. And he does not include that language?

19 A. That's correct.

20 Q. And then under the subheading General
21 Rate Case Prudence Review it is the -- starts on I
22 guess the fourth to the last line. It's added "or
23 incurred in violation of the terms of this tariff"?

24 A. Uh-huh.

25 Q. And then Mr. Roos said "or incurred in

1 violation of this rider"?

2 A. Yes. Those are different, uh-huh.

3 Q. Are you aware of any other differences
4 between your exemplar tariff sheets and Mr. Roos's?

5 A. I don't believe so at this point.

6 Q. Okay.

7 A. There's been a lot of discussion around
8 that lately.

9 Q. Now, the title of this page actually says
10 Rider FAC. Correct?

11 A. Yes.

12 Q. I'm going to hand you a copy of the
13 Chapter 13 Commission rules.

14 MS. OTT: May I approach?

15 JUDGE WOODRUFF: You may.

16 BY MS. OTT:

17 Q. And under Rule 4 CSR 240-13.015 the
18 definitions -- and I direct you towards letter X.

19 A. Okay.

20 Q. And it says "Tariff means schedule of
21 rates, service and rules approved by this Commission"?

22 A. Yes.

23 Q. So the word "tariff" refers to the entire
24 group of tariffs in which the Company rate is
25 regulated under?

1 A. If you say so. I'm not an expert
2 necessarily in that area, so --

3 Q. So when you're using the word "tariff"
4 under the general rate case prudence review,
5 additional language, are you trying to broaden this
6 beyond the true prudence reviews to the entire tariff?

7 A. No. I don't think so.

8 MS. OTT: I have no further questions.

9 JUDGE WOODRUFF: All right. Public
10 Counsel?

11 MR. MILLS: Yes. Thank you.

12 CROSS-EXAMINATION BY MR. MILLS:

13 Q. Ms. Barnes, as -- as Ms. Ott noted, you
14 filed what's -- what's denominated as additional
15 direct testimony regarding AmerenUE's fuel adjustment
16 clause in Case No. ER-2010-0036; is that correct?

17 A. Yes, that's correct.

18 Q. And in preparing your testimony for this
19 case, did you review that testimony?

20 A. Yes.

21 Q. Okay. And in preparing your testimony
22 for Case No. ER-2010-0036, did you review the
23 testimony of UE witnesses on fuel adjustment clause in
24 the prior case, ER-2008-0316?

25 A. Yes, I probably would have done that.

1 Q. Do you have a copy of your testimony from
2 Case No. ER-2010-0036 with you?

3 A. No, not with me.

4 MR. MILLS: May I approach?

5 JUDGE WOODRUFF: You may.

6 THE WITNESS: Thank you.

7 BY MR. MILLS:

8 Q. Ms. Barnes, I've handed you a copy of
9 that testimony from Case No. ER-2010-0036. Can you
10 take a look at that and confirm that is indeed the
11 testimony that you filed in that case?

12 A. It looks like it is.

13 Q. Okay. Can I get you to turn to page 8?

14 A. Uh-huh.

15 Q. There's a portion there of your answer
16 that is -- that is highlighted. Can I have you read
17 that, please?

18 A. All of it?

19 Q. Just the highlighted portion. You can
20 read as much as you want, but I'm specifically
21 interested in the highlighted portion on that page and
22 the following page.

23 A. Okay. Provide AmerenUE with sufficient
24 financial incentive. The Company has not changed --

25 Q. And that was -- and I'm sorry to

1 interrupt, but that was part of the -- that was a
2 highlighted portion of the question?

3 A. The question. That's correct. And the
4 answer to that question: The Company has not changed
5 its practices or risk management policies regarding
6 hedging fuel and purchased power costs since the
7 Commission approved its FAC.

8 Q. Okay. Then could you turn to the
9 following page and look at -- this is part of the same
10 answer. Correct?

11 A. Yes, it is. Specifically the Company
12 continues to prudently negotiate and hedge long-term
13 fuel contracts where appropriate.

14 Q. Okay. Thank you. Now, do you have a
15 copy of your direct testimony in this case?

16 A. I do.

17 Q. In front of you?

18 A. Uh-huh.

19 Q. Can you turn to page 12, please?

20 A. Okay.

21 Q. Is the -- the question beginning on
22 line 4 of page 12 of your direct testimony in this
23 case the same as the questions that preceded the
24 portion of the answer that I had you read into the
25 record in the prior case?

1 A. Yes.

2 Q. Okay. And -- and -- in this case what
3 is -- what is the -- can I have you read the first
4 portion of your answer to that question? Just the yes
5 and then the first sentence.

6 A. Uh-huh. Yes. The Company has not
7 changed its practice or risk management policy
8 regarding hedging fuel and purchased power costs since
9 the Commission first approved its FAC.

10 Q. And that's either exactly the same or
11 substantially the same as the answer you gave in the
12 prior case. Correct?

13 A. That's correct.

14 Q. And then could I have you turn to page 13
15 of your testimony -- direct testimony in this case
16 beginning at line 5?

17 A. Uh-huh. Specifically the Company
18 continues to prudently negotiate and hedge long-term
19 fuel contracts where appropriate.

20 Q. Okay. And that again is -- is either
21 exactly the same or substantially the same as the part
22 of the answer that you -- that you gave in the prior
23 case; is that correct?

24 A. That's correct. Uh-huh.

25 Q. Okay. Now, I believe -- well, let me --

1 let me just back up.

2 MR. MILLS: Judge, may I approach again?

3 And I've got, I believe, four or five different
4 documents that I'm going to have the witness look at
5 so can I just keep approach without asking?

6 JUDGE WOODRUFF: You certainly can.

7 MR. MILLS: Thank you.

8 BY MR. MILLS:

9 Q. Ms. Barnes, I've handed you a copy of the
10 rebuttal testimony of AmerenUE witness Marty Lyons
11 from Case No. ER-2008-0316. Does that appear to be
12 what I've handed you?

13 A. It's 0318, but yes.

14 Q. Okay. I'm sorry. I think I probably
15 said that incorrectly a number of times, but that's
16 why I can never find it in EFIS. And does that
17 testimony address the issue -- at least in part, the
18 issue of the fuel adjustment clause?

19 A. I believe it does.

20 Q. And have you reviewed this testimony
21 before?

22 A. Years ago, yeah.

23 Q. Okay.

24 A. Probably not lately.

25 Q. Okay. Well, I believe you said that in

1 preparing your testimony for Case No. ER-2010-0036 you
2 reviewed the testimony from the prior case; is that
3 correct?

4 A. That's correct. And we're in case 2011
5 now, so --

6 Q. But to the extent that you looked at that
7 testimony to formulate the question and answer in
8 2010-0036 that's identical --

9 A. Uh-huh.

10 Q. -- or substantially identical to the one
11 in this case --

12 A. Uh-huh.

13 Q. -- then your reliance on that testimony
14 in that case would carry over to this case, would it
15 not?

16 A. Yes.

17 Q. Okay. So as part of Mr. Lyons' testimony
18 in Case ER-2008-00-- I'm sorry, let me start over --
19 ER-2008-0318, at -- specifically at page 3, line 19
20 and 20, does not Mr. Lyons suggest that the -- the
21 Powder River Basin coal pool provides an incentive for
22 AmerenUE?

23 And most of this testimony we'll refer to
24 the Company that's now going under Ameren Missouri as
25 now AmerenUE, so I will use those terms

1 interchangeably if you'll -- if you'll --

2 A. That's fine.

3 Q. -- follow along with me. That the -- the
4 coal pool itself provides an incentive for UE to
5 minimize its coal prices; is that correct?

6 A. Yes.

7 Q. Okay. And -- and then if I can get you
8 to turn to page 21, Mr. Lyons again mentions the coal
9 pool as one of the factors that drives AmerenUE to --
10 to prudently manage its -- its fuel costs; is that
11 correct?

12 A. Yes.

13 Q. Okay. Ms. Barnes, I've handed you the
14 direct and rebuttal testimony of UE witness Robert K.
15 Neff in Case No. ER-2008-0318. Does that appear to be
16 what I've handed you?

17 A. Yes.

18 Q. And can I get you to look at -- and --
19 and as part of his direct testimony, does not Mr. Neff
20 address the -- the -- UE's coal purchasing practices?

21 A. Yes.

22 Q. Okay. And, in fact, at page -- pages 8
23 and 9 does he describe the operation of the coal pool
24 as it then existed?

25 A. Yes.

1 Q. And then in his rebuttal testimony, which
2 I have also handed you, specifically at page 16, with
3 the question beginning on line 19. The question is:
4 Are there other incentives for AmerenUE to keep its
5 fuel costs low if FAC were to be granted?

6 And his answer is: Yes. As explained in
7 my direct testimony on pages 8 to 10, PRB coal
8 purchases are pooled for all of Ameren's generating
9 fa-- affiliates that burn PRB, including AmerenUE and
10 merchant generating companies operating in Illinois;
11 is that correct?

12 A. Yes.

13 Q. Okay. And then if you continue on and
14 I'm -- in the interest of time I'm going to skip over
15 a little bit, but not a lot. If you continue on to
16 page 17 at lines 2 through 4, Mr. Neff concludes that
17 the -- the coal pool purchasing practices are thereby
18 providing -- and I quote -- thereby providing AFS with
19 a significant financial incentive to minimize coal
20 costs for both regulated unregulated generation; is
21 that correct?

22 A. Yes.

23 Q. Okay. Ms. Barnes, I've handed you the
24 surrebuttal testimony of UE witness Ken Gordon in Case
25 No. ER-2008-0318. Is that -- can you confirm that

1 that is indeed what I handed you?

2 A. Yes. It looks to be.

3 Q. Okay. And specifically, if I can get you
4 to turn to page 12 of that testimony, beginning at
5 line 10 does Dr. Gordon pose the question: Would the
6 coal pool provide an additional efficiency incentive
7 in terms of coal procurement?

8 And then answer that's beginning at
9 line 12 by saying: Yes. The Company will have direct
10 economic incentives pursuing its own self-interest to
11 acquire coal efficiently through the operation of a
12 coal pool that serves its unregulated as well as
13 regulated generation?

14 A. Yes.

15 Q. Okay. And then at page 14, lines 11 and
16 12 does Dr. Gordon again mention Ameren's coal pool as
17 an incentive that will incent AmerenUE to operate
18 prudently under the FAC?

19 A. Yes.

20 Q. Okay. And finally at page 16 of
21 Dr. Gordon's surrebuttal testimony, does he again
22 mention the coal pool as an incentive at line 15?

23 A. Yes.

24 Q. You'll be pleased to know that I'm
25 getting to the last one. Ms. Barnes, can you confirm

1 that what I've -- what I've just handed you is the
2 rebuttal testimony of UE witness Tom Voss in Case No.
3 ER-2008-0318?

4 A. Yes.

5 Q. Okay. And among his other issues,
6 Mr. Voss addresses the -- the fuel adjustment clause
7 and incentives; is that correct?

8 A. It looks like, yes.

9 Q. Okay.

10 A. Uh-huh.

11 Q. And in fact, in a question beginning on
12 line 16 of page 7, Mr. Voss is -- is specifically
13 talking about incentives; is that correct?

14 A. Yes.

15 Q. And on the following page at page 8, does
16 not Mr. Voss recognize and -- and recommend to the
17 Commission the operation of the coal pool as an
18 incentive for UE to keep its coal prices low?

19 A. One of several incentives, but yes.

20 Q. Yes?

21 A. Uh-huh.

22 Q. Okay. And then in the bottom of page 8
23 and continuing on page 9, and specifically on lines 1
24 and 2 of page 9, does Mr. Voss say that the operation
25 of the Company's coal pool and the other -- the other

1 mention is to the -- I'll just read it -- the
2 operations of the Company's coal pool for financial
3 incentives provided to Company employees and of course
4 the prudence reviews that the Commission -- of the
5 Commission should leave no doubt in anyone's mind that
6 AmerenUE will have adequate incentives to continue
7 managing -- managing its fuel costs properly; is that
8 correct?

9 A. Yes.

10 Q. Okay.

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

13 JUDGE WOODRUFF: Okay. Public Counsel's
14 next number is 309.

15 (OPC Exhibit No. 309 was marked for
16 identification.)

17 (Hearing interrupted.)

18 JUDGE WOODRUFF: Wake up everyone.

19 MR. MILLS: Judge, what we've marked as
20 Exhibit 309 is the cover page and a section of the
21 Commission's Report and Order in Case No. ER-2008-3--
22 2008-0318. And I request that the Commission take
23 administrative notice of the portion of the
24 Commission's discussion in that Report and Order and
25 as reflected in Exhibit 309, in which the Commission

1 cites the coal pool as one of the incentives.

2 JUDGE WOODRUFF: All right. You've asked
3 me to take administrative notice, but we've got the
4 document here. Is there any reason not to just take
5 the document into evidence?

6 MR. MILLS: I would like to take the
7 document into evidence and I can do so by having you
8 take administrative notice of it.

9 MR. BYRNE: Your Honor, I guess I'd
10 rather have you take administrative notice just so the
11 whole order gets in rather than the portions that
12 Mr. Mills has copied. There could be -- I don't know.
13 You need to see it in the context of the whole order,
14 I think.

15 MR. MILLS: I don't object to that. I
16 would prefer not to have to provide a dozen copies of
17 a 150-page order, but I think all -- I think the
18 Commission as well as all the parties have access to
19 the entire order. If the Commission wants to take
20 administrative notice of the whole thing, that's fine.

21 JUDGE WOODRUFF: We'll just take
22 administrative notice of the entire order.

23 MR. MILLS: That's fine.

24 COMMISSIONER DAVIS: Can I inquire? Can
25 we also take administrative notice of the stip and

1 agreement as to off-system sales-related issues in
2 that same case?

3 JUDGE WOODRUFF: Anybody have any
4 objection to that?

5 MR. MILLS: I have no objection to that.

6 JUDGE WOODRUFF: All right. We'll take
7 administrative notice of the stip and agreement
8 related to off-system sales in ER-2008-0318. Okay.

9 BY MR. MILLS:

10 Q. Ms. Barnes, on Exhibit 309 can I get you
11 to turn to page 73?

12 A. Uh-huh.

13 Q. And this didn't copy quite as well as I
14 would have hoped, but there is a paragraph there that
15 has some highlighting in it. Can you see the slightly
16 darker gray areas?

17 A. Uh-huh.

18 Q. Can you read that paragraph into the
19 record, please?

20 A. The Company already has several
21 incentives in place that encourage it to minimize net
22 fuel costs.

23 Q. Are you on page 73?

24 A. Uh-huh. Did I miss a highlighted
25 portion?

1 Q. Oh, okay. Could you read the entire
2 paragraph in which the highlighted appears?

3 A. A 95 percent pass-through provides
4 AmerenUE sufficient incentive to operate at optimal
5 efficiency because the Company already has several
6 incentives in place that encourage it to minimize net
7 fuel costs.

8 First, AmerenUE's largest fuel cost is
9 for the purchase of Powder River Basin coal to fire
10 its power plants. The coal AmerenUE uses is purchased
11 by an affiliated Company, Ameren Energy Fuels and
12 Services Company, which also purchases coal for the
13 unregulated Ameren merchant generating companies
14 operating in Illinois.

15 As a result, AmerenUE pays the same price
16 for coal as the unregulated affiliates. Presumably
17 Ameren has a strong incentive to minimize costs for
18 its unregulated operations so AmerenUE would benefit
19 from those same incentives.

20 Q. Okay. And Ms. Barnes, the Commission
21 doesn't actually use the phrase "coal pool" in that
22 paragraph, but is it your understanding what they're
23 describing there is what we refer to as the coal pool?

24 A. Yes.

25 Q. Okay. And Ms. Barnes, under the

1 operation of the coal pool, do you know in terms of
2 the -- the -- the amount of coal bought out of the
3 Powder River Basin, do you know where Ameren as a
4 family of companies ranked?

5 A. No. I'm not involved in that at all.

6 Q. Do you know where Ameren Missouri ranks
7 now?

8 A. No.

9 Q. Okay.

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

12 JUDGE WOODRUFF: Cross for AARP?

13 MR. COFFMAN: Yes.

14 CROSS-EXAMINATION BY MR. COFFMAN:

15 Q. Good morning, Ms. Barnes. Sorry. I'll
16 let you clean that up.

17 A. Good morning.

18 Q. Good morning. Would you agree with me,
19 Ms. Barnes, that regulatory lag is a component of rate
20 of return regulation?

21 A. Yes, it is.

22 Q. And regulatory lag can work to the
23 benefit of the ratepayers or the shareholders
24 depending on which direction costs are going.
25 Correct?

1 A. Yes.

2 Q. Would you agree with me that ratepayers
3 have no control over Ameren Missouri's risk management
4 policies and practices with regard to fuel and
5 purchased power?

6 A. They don't have any control over any of
7 our costs.

8 Q. Right. Thank you. And would you agree
9 with me that Ameren Missouri does have some control
10 over its fuel and purchased power policies and
11 practices?

12 A. Yes. That's our job.

13 Q. I assume that you would state that you
14 don't have the 100 percent control over the cost?

15 A. Well, there obviously are external
16 factors that affect the price of coal and other fuels
17 that make it difficult for us to have complete
18 control, yes.

19 Q. In your rebuttal testimony you state
20 that, The Company does not recover or refund 5 percent
21 of its costs under the fuel adjustment clause?

22 A. That's correct.

23 Q. And you -- you further state that moving
24 the sharing mechanism to an 85 percent/15 percent
25 basis would result in the Company having to absorb

1 15 percent of the cost increases or retaining
2 15 percent of the cost decreases?

3 A. That's how it works, yes.

4 Q. And, you know, if in fact, these volatile
5 costs do go down, the -- it is possible under that
6 mechanism that the utility would retain 15 percent of
7 a cost decrease and benefit from that during a
8 regulatory lag period?

9 A. It is possible.

10 Q. Possible. But if I understand your
11 testimony, you don't think that's likely in the coming
12 months?

13 A. That's correct.

14 Q. Would Ameren Missouri prefer to replace
15 the current regulatory system with one that allowed
16 all of its costs to flow through a tracker or
17 surcharge of some type but reduced its return on
18 equity down to a very low level or eliminate its
19 return on equity component in rates?

20 A. I can't really speak for AmerenUE as a
21 whole. I'm not the CEO. You should have asked
22 Mr. Baxter that question I guess. But what I can say
23 is that we're looking for any regulatory framework
24 that gives us a sufficient opportunity to earn that
25 return. We understand there's no guarantee, but we

1 certainly would like the opportunity to, to the best
2 of our ability earn that return and not have
3 regulatory lag be so egregious that it becomes nearly
4 impossible to do that.

5 Q. And you would agree with me that the fuel
6 adjustment clause is not a right or entitlement that
7 AmerenUE has?

8 A. It's a mechanism.

9 Q. I believe your testimony said it was a
10 privilege?

11 A. It is a privilege. We appreciate having
12 it. Very strong incentive.

13 Q. And the -- and by "incentive" I assume
14 you're referring to the 5 percent that --

15 A. Well --

16 Q. -- that still retains an incentive?

17 A. My possession -- my position would be
18 that we don't need a 5 percent, that the -- having the
19 FAC at all and knowing that the Commission at every
20 rate case has the opportunity to take it away from us
21 is plenty of incentive.

22 MR. COFFMAN: That's all that I have.
23 Thank you.

24 JUDGE WOODRUFF: We'll come up for
25 questions from the bench. Commissioner Davis?

1 COMMISSIONER DAVIS: Judge, can we go
2 in-camera for --

3 JUDGE WOODRUFF: We certainly can. All
4 right. We are in-camera.

5 (REPORTER'S NOTE: At this time, an
6 in-camera session was held, which is contained in
7 Volume 25, pages 1430 through 1436 of the transcript.)

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1 JUDGE WOODRUFF: And we are back in
2 regular session.

3 MR. MILLS: Judge can I -- and this
4 doesn't -- this isn't highly confidential. It
5 pertains to the discussion we just had. There may be
6 a different evidentiary basis and basis to object to
7 part of that as to others. Can we designate the
8 portion that has to do with the January 1, 2011 as one
9 number and the portion that pertains to January 1,
10 2012 as a different number?

11 JUDGE WOODRUFF: That would be fine with
12 me.

13 MR. MILLS: So 160-HC and 161-HC?

14 JUDGE WOODRUFF: That's correct.

15 MR. MILLS: Thank you.

16 JUDGE WOODRUFF: Everybody get that?

17 MR. LOWERY: Yes. Thank you.

18 JUDGE WOODRUFF: Commissioner, do you
19 have further questions outside --

20 COMMISSIONER DAVIS: No.

21 JUDGE WOODRUFF: -- in-camera?

22 Commissioner Jarrett?

23 QUESTIONS BY COMMISSIONER JARRETT:

24 Q. Yes. Good morning, Ms. Barnes.

25 A. Good morning.

1 Q. How are you doing?

2 A. Good.

3 Q. I just have a couple of questions. And I
4 think you were talking a little bit with Commissioner
5 Davis and may have sort of discussed a little bit
6 about this. But I wonder if you could give as much
7 detail as possible about the different -- regarding
8 fuel costs --

9 A. Uh-huh.

10 Q. -- the different aspects of fuel costs
11 that Ameren cannot control?

12 A. Okay. Well, first of all, as I mentioned
13 and I don't think this is highly confidential, but I
14 mean our contracts all have escalators built in.
15 We've stated that before. That's traditionally how
16 the negotiations work with coal companies.

17 In addition, rail companies tend to have
18 that same type of escalation built in but also add
19 surcharges for diesel fuel, which we know -- all know
20 has been, rising fuel costs. And they passed that
21 through to us as part of those, so those -- tend to be
22 somewhat unpredictable although right now I would
23 predict they're going up.

24 On the nuclear side it's a commodity and
25 it's the similar type of negotiation that we're buying

1 nuclear fuel to fill the reactor and it's the same
2 type of negotiation in that we try and avoid cost
3 increases, but commodity prices -- you know, supply
4 and demand and the economy is going to drive, you
5 know, whether or not those prices go up or down. And
6 it's difficult for us to control that based on the
7 quantities that we'd be purchasing of that type of
8 fuel.

9 Q. All right. Would weather be one? I mean
10 would weather affect fuel purchase if you have an
11 extremely cold winter and have to buy more coal?

12 A. Quantities are all -- I mean, quantities
13 of fuel obviously are going to vary based on
14 generation levels. If we generate more, we're going
15 to need more coal. But we're trying to run the plants
16 as efficiently as possible and so it's a variable. I
17 don't know that weather has as big of a impact in the
18 price of coal. Obviously it has in the amount we
19 burn.

20 Q. Anything else?

21 A. I don't think so. Not that would be a
22 material difference.

23 COMMISSIONER JARRETT: Okay. That's all
24 the questions I have. I thank you.

25 JUDGE WOODRUFF: Commissioner Kenney?

1 QUESTIONS BY COMMISSIONER KENNEY:

2 Q. Good morning. How are you?

3 A. I'm fine. Thank you.

4 Q. All right. I just have a few questions.

5 And in your direct testimony it says the purpose of
6 your testimony is to sponsor continuation of the
7 Company's FAC. Right?

8 A. That's correct. Uh-huh.

9 Q. Do you have a general opinion or
10 understanding of the underlying philosophy behind the
11 fuel adjustment clauses generally? What's the purpose
12 of a fuel adjustment clause as you -- as you recognize
13 it?

14 A. As I understand it and as we think about
15 it in the Company, the purpose of the fuel adjustment
16 clause is a -- a regulatory mechanism that allows us
17 a -- a tool to recover costs that otherwise we
18 wouldn't recover, particularly in a rising cost
19 environment, or to refund back to customers for a cost
20 that's so significant and volatile any reductions in
21 costs between rate cases, with the sole purpose of
22 being an opportunity or another mechanism for us to be
23 able to have the opportunity to earn the return that
24 you all give us.

25 Q. So you say in a rising cost environment

1 it allows the opportunity to recover costs that you
2 otherwise wouldn't recover?

3 A. That's correct.

4 Q. And is that -- why is it that you
5 otherwise wouldn't recover those costs?

6 A. Because of the way the base rates are set
7 using a historical test year and not comprehending
8 anticipated cost increases that we've been talking
9 about, the differential between what's recovered in
10 rates and what those actual costs really are never get
11 recovered so the shareholders tend up with that
12 burden.

13 Q. Is that another way of describing
14 regulatory lag?

15 A. It is regulatory lag on steroids because
16 of the size of fuel costs.

17 Q. Okay. So then you would agree with me
18 that the implementation of a fuel adjustment clause
19 helps to reduce the Company's risk?

20 A. It offers us the opportunity to recover
21 our costs. I don't know that it mitigates a risk. We
22 still have the same risk that we always had. It's
23 whether or not the costs to provide service to our
24 customers is recovered in rates or not.

25 Q. So you disagree with me that it --

1 A. Yeah. I don't think it's about risk.

2 Q. -- doesn't reduce risk at all?

3 A. I don't think it's about risk. It's just
4 about recovering costs that are prudently incurred by
5 our customers for the service that they are asking us
6 to provide.

7 Q. Well, but you recover the costs under the
8 traditional cost of service regulation. The FAC helps
9 you recover it more quickly, wouldn't --

10 A. No. That's not true. There are some
11 costs that we would never recover if we didn't have an
12 FAC. Between rate cases if our costs go up in excess
13 of what's built into base rates, we don't ever recover
14 those. So the customer doesn't pay for those cost
15 increases.

16 Q. Until you come in for another rate case?

17 A. Well, when we come in for another rate
18 case those higher costs are used to set rates in the
19 future, but that does not -- excuse me -- that does
20 not allow us the recovery of the costs that we've
21 incurred in that interim period.

22 Q. Would you agree with me then that in the
23 absence of an FAC, that regulatory lag is -- and I
24 think Mr. Mills may have already asked you this
25 question -- is an aid in incentivizing the prudent

1 management of fuel costs or acts as an incentive to
2 keep fuel costs as low as possible?

3 A. We're operating the same way with an FAC
4 as far as keeping our fuel costs low as we did before
5 we had one.

6 Q. Okay. But does regulatory lag, in
7 general, act as a means by which you're incentivized
8 to keep fuel costs low?

9 A. In moderation, yes. It's a good tool.

10 Q. As a general proposition?

11 A. Uh-huh. And generally if it works both
12 ways, then it offsets each other. We generally have
13 experienced more of the negative kind of regulatory
14 lag than the positive kind.

15 Q. So if regulatory lag is a component of
16 risk and the FAC helps to reduce regulatory lag,
17 doesn't the FAC also help to reduce risk?

18 A. I'm not sure I understand the premise
19 that regulatory lag is a component of risk.

20 Q. Well, the possibility that between rate
21 cases you're not going to recover certain fuel costs
22 above a certain amount. Right?

23 A. Uh-huh.

24 Q. And that is because of regulatory lag.
25 Correct?

1 A. Yes.

2 Q. So that regulatory lag creates a risk?

3 A. Creates a risk.

4 Q. Of not recovering all of your fuel costs
5 between rate cases?

6 A. Yeah, it's more of a certainty, not a
7 risk, but yeah, I guess from that standpoint.

8 Q. Okay. So then if the FAC helps to reduce
9 the incidences or the effects of regulatory lag,
10 doesn't the FAC help to reduce risk?

11 A. It gives us an opp-- a better opportunity
12 or more of an opportunity to earn our allowed return.
13 Without it, it would -- and, frankly, we're not
14 earning our return right now with it, but the premise
15 would be that without it, we certainly wouldn't be
16 able to earn our return.

17 Q. All right. I'm not going to get you to
18 agree with me on that, am I?

19 A. Probably not.

20 Q. All right. I guess I'll stop. Would you
21 agree with me that the authorized return on equity is
22 correlated to the level of the Company's risk?

23 A. There's an element of that, yes.

24 Q. Okay. And don't the rating agencies take
25 into account the presence or the absence of FAC in

1 determining like the -- the regulatory environment?

2 A. Yes. That's a component because we're
3 being compared to other utilities that have one. And
4 they're also using -- looking at it as a mechanism to
5 perhaps give us a more -- better opportunity to earn
6 the allowed return.

7 Q. Don't they look at it -- don't the rating
8 agencies look at the FAC, the presence of it as a --
9 as a mechanism that reduces the Company's risk?

10 A. They look at it as a mechanism -- and
11 Mr. Rygh can probably address this better than I can,
12 but they look at it as a tool, as a mechanism that
13 would give them an indicator of whether or not we will
14 be able to earn our allowed return or not. I don't
15 know that they look at it in terms of a risk
16 component.

17 Q. Do you believe or do you have an opinion
18 about whether the ratepayers should receive some
19 benefit as a result of Ameren's having what you
20 described as the privilege of an FAC?

21 A. I think they do have the benefit because
22 if we're able to recover our costs, then our overall
23 borrowing costs will be reduced and that is beneficial
24 to customers.

25 Q. Why are your overall borrowing costs

1 reduced?

2 A. Because --

3 Q. You're viewed as less risky?

4 A. No. Because we're -- we have the ability
5 to earn our return. And if we're earning our return,
6 then we have more resources available that negate the
7 need to have to borrow or go into the capital markets
8 at all.

9 Q. And that benefit that inures to the
10 ratepayer in your estimation is a sufficient enough
11 benefit for the privilege of having an FAC?

12 A. Well, I think in the overall structure of
13 trying to keep rates low, yes.

14 Q. All right. Thanks.

15 COMMISSIONER KENNEY: I don't have any
16 other questions.

17 JUDGE WOODRUFF: Recross based on
18 questions from the bench, MIEC?

19 COMMISSIONER DAVIS: Whoa. Can I go back
20 and ask Ms. Barnes -- Ms. Barnes one more question?

21 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

22 Q. Okay. can you give me an example in
23 terms of dollars as to why you are opposed to Lena
24 Mantle's 85/15 sharing proposal?

25 A. The way the net base fuel cost

1 calculation is done that sets the amount that goes
2 into base rates, at least in the current environment
3 it is biased to be low compared to what the actual
4 costs we will incur will be when these rates go into
5 effect.

6 And so because of that, the impact is not
7 an equal opportunity for there to be a refund to
8 customers or an additional charge to customers. It's
9 biased to there being an additional charge to
10 customers. And if that's the case, then just
11 increasing that sharing percentage just suggests that
12 the costs that we've incurred, more of them we will
13 have to absorb.

14 And if they were prudently incurred
15 costs, then I am absorbing more of those prudently
16 incurred costs under a 15 percent sharing than I would
17 be under a 5 percent sharing. And I believe
18 Ms. Mantle's calculated that if we had done that over
19 the course of the time we've had an FAC, it's an
20 additional \$22 million of costs that we would have
21 absorbed.

22 Q. And just to restate for the record, that
23 would have been under the coal contract that's been in
24 place for approximately five years. Correct?

25 A. Yes. Under the --

1 Q. That was --

2 A. -- historical --

3 Q. -- that was signed before you had a fuel
4 adjustment. Correct?

5 A. That's correct, uh-huh.

6 COMMISSIONER DAVIS: Okay. Thank you.

7 JUDGE WOODRUFF: Recross based on
8 questions from the begin-- from the bench beginning
9 with MIEC?

10 MS. VUYLSTEKE: No questions.

11 JUDGE WOODRUFF: Staff.

12 RECROSS-EXAMINATION BY MS. OTT:

13 Q. Ms. Barnes, when you were talking with
14 Commissioner Davis about the increase in fuel costs
15 or potential increase in fuel costs going forward --

16 A. Uh-huh.

17 Q. -- do you have an estimate of the annual
18 depreciation amount that is going to be going forward?

19 A. The depreciation in this case?

20 Q. Well, for 2012 do you have an estimate of
21 the depreciation amount?

22 A. Not off the top of my head. I mean,
23 we're working on that right now.

24 Q. But depreciation goes down every -- the
25 amount for depreciation would go down every year.

1 Correct?

2 A. No. Not necessarily. Depreciation goes
3 up because we increased the amount of assets that we
4 have on the books. We're constantly investing in our
5 business.

6 Q. Okay. Well, if the increase in the --
7 with the depreciation, wouldn't that reduce rate-base
8 every year as well?

9 A. It offsets the increases. It only
10 reduces rate-base if the amount of depreciation is in
11 excess of the asset additions that we put into service
12 during that same time period.

13 Q. But between rate cases the change in
14 depreciation would reduce rate-base?

15 A. Actually, if depreciation costs increase
16 in excess of rates -- what's been built into rates,
17 that's another example of regulatory lag where we
18 don't recover that depreciation expense.

19 Q. Okay. In talking with Commissioner
20 Jarrett, you were discussing fuel -- fuel contracts.
21 Whether it's you or someone at Ameren, somebody at
22 Ameren is negotiating those contracting for fuel
23 price. Correct?

24 A. Yes.

25 Q. And you're not just accepting what the --

1 who you're buying from?

2 A. Oh, absolutely not.

3 Q. Do you know how many coal contracts you
4 have?

5 A. No.

6 Q. With Commissioner Kenney you were
7 discussing regulatory lag. Isn't it true that Ameren
8 benefited from regulatory lag from 1985 to 2006?

9 A. We probably did during some of that time.
10 I don't know that we did all the way through 2006. I
11 think we had several rate decreases during that
12 timeframe. And I don't believe we were over-earning
13 so --

14 MS. OTT: I have no further questions.

15 JUDGE WOODRUFF: Public Counsel?

16 MR. MILLS: Thank you.

17 RECROSS-EXAMINATION BY MR. MILLS:

18 Q. Can you clarify what you said in the very
19 last statement you said in response to Ms. Ott, you
20 don't believe you were over-earning? At what period
21 of time do you not believe you were over-earning?

22 A. During the timeframe that she just
23 mentioned, we had several complaint cases. And so in
24 each of those complaint cases we would have reduced
25 earn-- we would have reduced rates. So I think at

1 that point regulatory lag was not in play or, you
2 know, it was being mitigated by the reduced rates.

3 Q. So let me see if I -- if I can paraphrase
4 this and you tell me if I've got it right. During
5 that period of time there were period in which you
6 were over-earning and then rates were reduced?

7 MR. BYRNE: Your Honor, I'm going to
8 object. Mr. Mills is not, I don't believe, entitled
9 to ask additional questions following up on Ms. Ott's
10 questions. He's entitled to ask additional questions
11 based on questions from the bench.

12 MR. MILLS: Well, Ms. Ott's questions
13 were based on questions from the bench. This all has
14 to do with the question of regulatory lag and whether
15 or not earnings keep pace with -- with expenses and
16 that whole thing. This was all opened up by the
17 bench.

18 JUDGE WOODRUFF: I'm going to overrule
19 the objection.

20 THE WITNESS: Ask your question again.

21 BY MR. MILLS:

22 Q. Well, let me just ask it a little more
23 simply. To the extent that UE agreed to reduce rates
24 voluntarily during that period of time, wouldn't that
25 indicate that UE thought there was at least a good

1 case to be made that they were over-earning at the
2 time those rates were reduced?

3 A. First of all, I think during part of that
4 timeframe we had an alternate regulation plan where we
5 were actually refunding back to customers any amounts
6 that I guess were deemed to be over-earning what the
7 allowed return was during that timeframe.

8 After that ex-- after that plan expired,
9 there may have been periods of time, I don't recall
10 frankly, how -- what would have been the indicators
11 that would have led to the complaint case, but I do
12 know that we had rate decreases in -- during that
13 timeframe.

14 Q. And to the extent that UE voluntarily
15 agreed to rate decreases, would that indicate that UE
16 was earning above what it could justify as an -- as a
17 return on equity at the time?

18 A. Well, my recollection is we didn't
19 voluntarily agree to the decreases. I think we
20 litigated those cases quite vigorously. But we
21 accepted what the Commission awarded in those cases as
22 a result.

23 Q. If your recollection is wrong and UE did
24 agree to decreases at some points during that period
25 of time, would that indicate that you would believe

1 that it was over-earning?

2 A. It would believe that it was earning in
3 excess of what the allowed return was at that time.

4 Q. Okay. Or what an allowed return would
5 have been had the Commission looked at it at that
6 period of time?

7 A. Perhaps.

8 Q. Okay. Now, in response to a question
9 from Commissioner Jarrett, you mentioned that
10 escalators and coal contracts are -- you mentioned
11 those in response to a question about things that are
12 outside of your control. Do you recall that?

13 A. Yes.

14 Q. Do you -- and when I say "you," I mean
15 the Company not you personally -- negotiate over both
16 the base price and escalators in coal con-- coal
17 contracts?

18 A. I'm not close to it, but I believe so.
19 We have a pretty vigorous process around coal
20 procurement.

21 Q. Okay. Now, to the extent that your
22 incentives to keep coal prices low are strong, then
23 your motivation to -- to negotiate is strong; is that
24 correct?

25 A. Yes.

1 Q. And to the extent that that incentive
2 becomes less, does your motivation to negotiate coal
3 prices become less?

4 A. Our incentive hasn't become less, so I
5 don't believe that we are any less vigorous in how we
6 procure coal today than we did before we had an FAC.

7 Q. But perhaps you misunderstood. My
8 question was a hypothetical.

9 A. Okay.

10 Q. If the incentive becomes less, would your
11 motivation to negotiate become less?

12 A. I suppose. Human nature.

13 Q. Okay. Now, you were asked some questions
14 by Commissioner Davis about, you know -- well,
15 actually this may have been Commissioner Kenney. In
16 any event, it was about the privilege of having an FAC
17 and what the customers get from that. And you
18 mentioned reduced borrowing costs --

19 A. Uh-huh.

20 Q. -- do you recall that?

21 A. I do.

22 Q. Have you quantified the benefit to
23 customers from those reduced borrowing costs?

24 A. No.

25 Q. Okay. Now, in response to questions by

1 Commissioner Jarrett you mentioned weather, I believe,
2 as one of the factors that's also outside your
3 control. Do you recall that?

4 A. Uh-huh.

5 Q. Can aggressive DSM, such as increasing
6 the efficiency of air conditioners on your system,
7 help mitigate the risk of increased costs due to
8 weather?

9 A. Sure. Customers are using less.

10 Q. Okay. Same thing with other kinds of
11 energy efficiency measures like improved insulation --

12 A. Uh-huh.

13 Q. -- and that sort of thing?

14 A. Sure. Any energy -- any energy con-- any
15 energy conservation efforts customers do will reduce
16 our demand.

17 Q. Okay. Yeah. And -- and wouldn't these
18 kinds of improvements we talked about, the energy
19 efficiency improvements, also reduce the volatility of
20 demand in response to weather?

21 A. It would have to be on a pretty large
22 scale. I'm not sure that we're seeing that with the
23 number of customers that may be in those programs
24 today. But if you assumed that every single customer
25 was taking advantage, then yes, I think you would

1 notice it.

2 Q. Okay. Let me see if I can clarify that.
3 Even if just one customer puts in a more energy
4 efficient air conditioner, there would be some effect,
5 but your testimony is that it's just not noticeable?

6 A. Yeah. There would be some effect. And
7 that would then -- I mean whatever our native load
8 customers don't use, we obviously have available to
9 sell off-system.

10 Q. So what you're saying is you would need
11 to aggressively pursue energy efficiency to get major
12 effects?

13 A. It -- I think we are aggressively
14 pursuing it. I guess that's conversation for
15 tomorrow. But whether or not customers take advantage
16 of those is up to the customers. And if they do and
17 we see a difference, then obviously, any reductions in
18 our native load allow us to sell more generation
19 off-system and that's a benefit to the customers

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

22 JUDGE WOODRUFF: AARP?

23 MR. COFFMAN: Thank you.

24 RECROSS-EXAMINATION BY MR. COFFMAN:

25 Q. Ms. Barnes, you were with the Company

1 during the experimental alternative regulation plan?

2 A. Part of it. I joined the Company in 1997
3 so I think it was ongoing at that point.

4 Q. Would you -- and you did I think testify
5 earlier that some of those years were extensively
6 litigated. Correct?

7 A. The complaint cases, yes.

8 Q. Right. And during a period of time when
9 Ameren's rates were -- were being reduced --

10 A. Yes.

11 Q. -- or certain credits were being made to
12 consumers. Would you agree with me that -- that
13 during that period of -- during the period of time
14 that the experimental alternative regulation plan was
15 in effect and during other years before and after that
16 when rates were trending down and -- would you agree
17 with me that those -- some of those complaint cases
18 took more than 11 months to resolve?

19 A. Actually, I don't know. I wasn't
20 directly involved in that effort at that time, so I
21 couldn't recall.

22 Q. You mentioned the reduced borrowing costs
23 that you believe are related to a fuel adjustment
24 clause and that you didn't quantify it. Are you aware
25 of anyone within the utility that has attempted to

1 quantify that?

2 A. No, I don't -- I don't think so. I mean,
3 I -- it's -- it's a -- having the fuel adjustment
4 clause in the regulatory framework we have in Missouri
5 is a consideration that credit rating agencies would
6 make. And so when we're competing for capital with
7 other utilities who have them versus those who don't,
8 it's going to impact what our interest rate is going
9 forward.

10 Q. Are you aware of any -- anyone who has
11 been retained by a credit rating agency that has
12 attempted to quantify that?

13 A. No. I'm not aware.

14 Q. Do you think that's because it's an
15 immaterial amount or just a -- because it's -- it's
16 just too hard to get a grasp on?

17 A. You know, these questions are probably
18 more appropriate for Mr. Rygh. He's much more
19 familiar with how the credit rating agencies and the
20 investors view fuel adjustment clauses and the
21 commensurate benefits from that perspective.

22 Q. With regard to weather risk, would you
23 agree that the process of weather normalization in our
24 rate cases tends to mitigate some weather risk to the
25 utility?

1 A. I'm not sure what you mean by that
2 exactly. Weather normalization in what context?

3 Q. In the context of the revenue
4 requirement. Generally, wherever --

5 A. Well --

6 Q. -- items are --

7 A. -- for setting rates I think it's
8 appropriate to not assume spikes in weather or -- or
9 less than normal weather. So I think that is
10 appropriate. That doesn't mitigate the impact of
11 weather in a particular period when it occurs.

12 Q. Are you familiar with the emergency
13 interim rate case process?

14 A. No. I don't think I am.

15 Q. Okay.

16 MR. COFFMAN: Then that's all I have --
17 I'll have at this point.

18 JUDGE WOODRUFF: Redirect?

19 REDIRECT EXAMINATION BY MR. BYRNE:

20 Q. Ms. Barnes, Mr. Mills asked you a number
21 of questions about the coal pool and gave you some
22 testimony and had you read it into the record. Do you
23 recall those questions?

24 A. I do.

25 Q. Can you explain to the Commission

1 what's -- what's happened to the coal pool that Ameren
2 Missouri was involved in?

3 A. Certainly. While the coal pool was an
4 effective mechanism in the 2008 timeframe when the
5 2008 case was being litigated, since that time, power
6 prices obviously have impacted -- or lower power
7 prices have impacted how our sister company on the
8 unregulated side operates. And actually they're
9 purchasing a lot less coal these days. So it was not
10 beneficial for us to necessarily be involved in a coal
11 pool with them any longer as a benefit from a customer
12 or from a Company perspective.

13 Additionally, the FERC has come out with
14 code of conduct rules that actually give -- or prevent
15 us from participating in a coal pool with our
16 unregulated sister company. So we needed to abide by
17 those code of conduct rules and, frankly, it wasn't
18 financially beneficial for us necessarily to be
19 involved anyway and so that was why the coal pool was
20 dissolved.

21 Q. Mr. Mills has generously let me look at
22 some of the testimony he -- he showed you and I'd like
23 to show you it and ask you to look at some other parts
24 of it. The first piece of testimony I'd like you to
25 look at is the rebuttal testimony from Martin J.

1 Lyons, Jr. from Case No. ER-2008-0318, which I think
2 is the piece of testimony that Mr. Mills showed you
3 before.

4 A. Okay.

5 Q. Does that look like what it is?

6 A. Yes.

7 Q. Can you look at page 20 of that
8 testimony? And I think part of what Mr. Mills had you
9 read was the -- the places where we said that the coal
10 pool was one incentive to -- that one incentive that
11 would work under the FAC, but are there other
12 incentives listed in that testimony? And I think
13 there are maybe headings of -- headings of paragraphs
14 as you go further on in the testimony.

15 A. Yes. Individual employee incentives,
16 prudence reviews, cash flow lags, heat rate efficiency
17 testing, periodic reviews of any FAC. All are listed
18 as other incentives that we have available.

19 Q. Okay. And then similarly Mr. Mills asked
20 you to take a look at the Report and Order issued in
21 that case -- or at least the excerpt of it that he
22 had. And I'd like you to look at that Report and
23 Order. And again, ask you the same question beginning
24 on page 73.

25 Are there in the -- in the -- in the

1 paragraphs that follow the discussion of the coal pool
2 that he asked you to read, are there a whole list of
3 additional incentives that the Commission relied on
4 when it issued its order in that case?

5 A. Yes. It mentions that, you know, key
6 employees are responsible -- that are responsible for
7 managing our fuel costs have personal financial
8 performance incentives related to generation levels,
9 generation availability and cost of generation. It
10 talks about the fact that by having a historical
11 prudent-- using a historical estimate for base costs
12 versus projected makes it difficult to escape
13 regulatory lag, and that is true. And so we have an
14 incentive to minimize the fuel cost just to mitigate
15 that remaining regulatory lag.

16 Q. And I think each paragraph has -- there
17 may be some more if -- if you take a look at it.

18 A. The detailed heat rate efficiency testing
19 plan that we are required helps guard against
20 imprudent operation and maintenance of our generating
21 units, so that controls our net fuel costs. The fact
22 that we have to come back in our rate cases to have
23 the fuel adjustment clause renewed is also an
24 incentive.

25 And that's where the quote that we've

1 talked about is included. The fuel -- a fuel
2 adjustment clause is a privilege, not a right, which
3 can be taken away if the Company does not act
4 prudently. And --

5 Q. Keep going until -- until the end --

6 A. I'm looking. The 95 percent
7 pass-through, the order says that is likely -- that is
8 the likely impact the pass-through provision will have
9 on AmerenUE credit worthiness in the eyes of Wall
10 Street. The Commission has recently allowed two other
11 Missouri utilities to implement a fuel adjustment
12 clause, including a 95 percent pass-through.

13 To now impose a less favorable
14 pass-through provision on AmerenUE would signal
15 investors that AmerenUE was less well regarded by this
16 regulatory agency.

17 Q. Okay. Are there other utilities that
18 have fuel adjustment clauses, Ms. Barnes?

19 A. Yes.

20 Q. And -- and do all those other utilities
21 have a coal pool with an unregulated affiliate?

22 A. I'm not aware that any of them do, at
23 least in Missouri.

24 Q. Okay. Commissioner Jarrett asked you
25 some questions about things we can't control. Do

1 you -- do you recall that?

2 A. Yes.

3 Q. Can we control the market for coal?

4 A. No.

5 Q. Can we control the market for natural
6 gas?

7 A. No.

8 Q. Can we control the railroad market for
9 railroad capacity?

10 A. No.

11 Q. Can we control the market for diesel
12 fuel?

13 A. No.

14 Q. Can we control the market for natural gas
15 pipeline transportation?

16 A. No.

17 Q. Can we control the international market
18 for nuclear fuel?

19 A. No.

20 Q. Can we control the international market
21 for nuclear fuel processing?

22 A. No.

23 Q. Can we control the off-system sales
24 market in the MISO?

25 A. No.

1 Q. You had a discussion with Commissioner
2 Kenney about whether nuclear fuel reduces risk or not.
3 And I think -- I don't know -- I don't think you ever
4 got on the same page, but I think Commissioner Kenney
5 was suggesting that -- that having an FAC might reduce
6 our risk.

7 A. Uh-huh.

8 Q. Do you recall that set of questions --

9 A. I do.

10 Q. -- and answers?

11 Let me ask it this way: Does having an
12 FAC reduce our risk relative to other electric
13 utilities that have FACs?

14 A. Reduce our risk relative to other
15 utilities that have them? I think not having an FAC
16 and competing in markets with utilities that do have
17 FACs makes it more difficult for to us compete.

18 Q. Well, let me ask this way --

19 COMMISSIONER KENNEY: I couldn't get a
20 direct answer either.

21 BY MR. BYRNE:

22 Q. Let's assume for a minute -- let's assume
23 for a minute that Commissioner Kenney's question's
24 right and having an FAC reduces risk compared to not
25 having an FAC.

1 A. Okay.

2 Q. Can you assume that for a second?

3 A. All right. I'll assume that for a
4 second.

5 Q. Do most of the other electric utilities
6 have FACs?

7 A. Yes.

8 Q. So if we have an FAC, does it reduce our
9 risk relative to those other utilities that have FACs?

10 A. It reduces our risk similarly to those
11 other utilities that have FACs.

12 Q. If we don't have an FAC, does that in--
13 assuming it affects risk, as Commissioner Kenney
14 posited, if we don't have an FAC, does that increase
15 our risk relative to utilities that have FACs?

16 A. Yes.

17 Q. Okay. Do you know if the -- in terms of
18 setting a return on equity, do you know to the ex-- to
19 the extent that there are proxy groups, do you know if
20 those utilities have FACs or not?

21 A. I think to -- the ones that we compare
22 ourselves to all have them.

23 Q. Okay. Commissioner Kenney asked -- I'm
24 paraphrasing. I think he was asking shouldn't --
25 shouldn't the Company kind of give something in order

1 to have the -- in order to have an FAC. I'm
2 paraphrasing here.

3 A. Uh-huh.

4 Q. But let me ask you this: Do you -- do
5 you think the Company ought to have to pay for the
6 privilege of recovering its fuel costs from its
7 customers -- its prudently incurred fuel costs from
8 its customers, no more and no less? Should we have to
9 pay for the privilege?

10 A. No. No. I don't believe so.

11 Q. Okay. Mis-- Ms. Ott asked you some
12 questions about depreciation. And I think where she
13 was going, she was saying maybe we benefit -- the
14 implication was that maybe the Company benefits from
15 regulatory lag in that in between rate cases our
16 rate-base depreciates and -- and that's not reflected
17 in rates in between rate cases. And I think you
18 said -- in response to her question you said something
19 about, well, you have to offset that with --

20 A. Uh-huh.

21 Q. -- the investment the Company makes in
22 its system in between rate cases.

23 A. Uh-huh.

24 Q. Do you know in recent years how has that
25 compared? How has the depreciation that accumulates

1 in between rate cases compared to the investment that
2 the Company has made in its system in between rate
3 cases?

4 A. Well, I mean our capital costs are in our
5 annual reports, but our investment on an annual basis
6 in our system has far exceeded what our annual
7 depreciation expense has been. So the result of that
8 is that our rate-base -- and rate-base only grows
9 obviously when we can get those assets into rate-base
10 through a rate case. But our assets, in general, have
11 gone up in -- far in excess of what the depreciation
12 would reduce.

13 Q. So -- so on a net basis is rate-base -- I
14 mean is regulatory lag helping or hurting us with
15 regard to our plant balances?

16 A. Oh, it's definitely hurting us.

17 Q. Okay. Someone asked you -- I don't
18 remember who, but they asked a question about are you
19 just accepting contracts from suppliers in terms of --
20 in terms of --

21 A. Uh-huh.

22 Q. -- like rail contracts --

23 A. Uh-huh.

24 Q. -- and escalators and fuel contracts with
25 escalators. And I guess do you think -- could you

1 elaborate a little bit more? You said no, but could
2 you elaborate a little bit more on -- on your answer?
3 I mean, to what degree do we have a robust fuel
4 negotiating --

5 A. Process?

6 Q. -- team in place or process in place?

7 A. Yeah. I mean, we have folks who do
8 those, that's their job to procure fuel. And we, you
9 know, do requests for proposal and we go through
10 several rounds of negotiations with these companies
11 before our contract is completed. And so there is a
12 very robust process in place and it's not a sedentary
13 process where we accept the first offer that we're
14 given.

15 Q. Do we have experienced personnel or
16 novice personnel in place who are doing those
17 negotiations?

18 A. No. The folks who are there have been
19 doing that for quite a long time.

20 Q. Okay. You were asked by -- let's see.
21 You were asked by Mr. Mills a question -- I think he
22 said if your incentive becomes less, does your motive
23 to negotiate become less. And I think you said that's
24 human nature or something like that?

25 A. Uh-huh.

1 Q. Do you remember that question --

2 A. Uh-huh.

3 Q. -- and answer?

4 A. Uh-huh.

5 Q. Let me ask you this: Do you think that's
6 happened at all at Ameren Missouri since it's had a
7 fuel adjustment clause? Has our motivation decreased
8 and our -- and our -- motivation to negotiate
9 vigorously decreased?

10 A. Not at all. I mean because we are
11 experiencing regulatory lag, we -- we're looking at
12 all of our costs and we're trying to keep all of our
13 costs low to mitigate any regulatory lag and fuel's no
14 different.

15 Q. Mr. Coffman asked you some questions
16 about -- well, I think really Ms. Ott started,
17 Mr. Mills followed up and Mr. Coffman asked some
18 questions too about the -- about the period from I
19 think it was 198-- well, let me think, 1985 to 2006 --

20 A. Uh-huh.

21 Q. -- and -- and how the -- what the cost
22 situation was --

23 A. Uh-huh.

24 Q. -- for Ameren Missouri. And I think you
25 mentioned in response that we had an alternative

1 earnings plan.

2 A. Uh-huh.

3 Q. Do you know how many years we had that in
4 effect?

5 A. I wasn't here during all of it. My
6 recollection was that it was around the period of 1995
7 through 2001.

8 Q. Okay. And -- well, and -- and would you
9 agree that to the extent that we had an alternative
10 earnings program in effect, it -- it set -- it --
11 it -- it set levels of earnings and levels of refunds
12 back to customers?

13 A. Yes.

14 Q. And that was approved by the Commission,
15 wasn't it?

16 A. Yes, it was.

17 Q. So is it -- so would it have been
18 possible to over-earn during the period we were
19 complying with the alternative regulatory plan
20 approved by the Commission?

21 A. Well, no. Because we refunded back to
22 customers whatever that difference would have been.

23 Q. I think you had a discussion with
24 Mr. Coffman about -- about the impact -- I think to
25 some degree you deferred to Mr. Rygh, who's going to

1 be testifying later, but I think you talked about the
2 impact of an FAC on creditors and the -- our access to
3 credit.

4 A. Uh-huh.

5 Q. Do you recall those --

6 A. Uh-huh.

7 Q. -- questions?

8 Does having an FAC have an impact on
9 equity investors also?

10 A. Yes.

11 Q. And what impact does it have?

12 A. Well, again they're looking at whether or
13 not they believe that we will have the opportunity to
14 earn a fair return for them. And if they're comparing
15 us when they're making their investments to other
16 utilities who do have that opportunity because they
17 have an FAC, they're going to invest their money with
18 those companies instead of us.

19 Q. Okay. Thank you, Ms. Barnes.

20 MR. BYRNE: I don't have any other
21 questions.

22 JUDGE WOODRUFF: All right, Ms. Barnes.
23 Then thank you very much. You are excused. We're due
24 for a break. We'll come back at 11:15 with Mr. Haro.

25 (A recess was taken.)

1 JUDGE WOODRUFF: Before we get started on
2 Mr. Haro, I wanted to make a ruling on the Motion to
3 Strike that was filed yesterday by Ameren to strike a
4 portion of the surrebuttal testimony of Lena Mantle.
5 And the Motion to Strike was to strike a couple of --
6 a short paragraph of discussion about a couple
7 document -- and a couple documents from Wyoming and
8 Utah. And the Motion to Strike indicated that these
9 were improper hearsay.

10 I'm going to overrule the motion. I
11 don't believe these documents are hearsay. And my
12 basis for that is Section 490.220 of the Revised
13 Statutes of Missouri in which it says public documents
14 from a sister state are not hearsay. And it's also
15 supported by a decision from the Missouri Supreme
16 Court which is Rodriguez versus Suzuki Motor
17 Corporation, which is 996 S.W. 2d 47.

18 So the Motion to Strike the portion of
19 the prepared surrebuttal testimony of Ms. Mantle is
20 denied -- is overruled.

21 MS. OTT: Judge, I have one other matter
22 I'd like to address before Mr. Haro takes the stand.
23 MIEC's witness Maurice Brubaker filed testimony in
24 relationship to the recovery period; however, he's not
25 listed as a witness in this matter. I'm just curious

1 when MIEC plans to have him available for
2 cross-examination on that issue?

3 MS. VUYLSTEKE: Sure. Your Honor,
4 Mr. Brubaker is available. He is down at the lake and
5 he is about 45 minutes away. He's working from there
6 today at his lake home and we'd be happy to bring him
7 up for any cross.

8 It was our understanding -- and perhaps
9 it was a mistaken understanding, but it was our
10 understanding that no one had cross for Mr. Brubaker.
11 And so it was not our intention to tender him for
12 cross. But if the Staff has questions or anyone else
13 regarding this issue or anything else covered in his
14 direct testimony or his rebuttal, we'll bring him up
15 and make him available.

16 I do need a little time to find out
17 exactly how quickly he can get here.

18 MR. LOWERY: Might I make a suggestion?
19 And, you know, it's up to you, Ms. Ott. But he is
20 going to be here for energy efficiency tomorrow.

21 MS. VUYLSTEKE: He'll be here tomorrow.

22 MR. LOWERY: Perhaps not to inconvenience
23 him with a second trip, I mean, I would have no
24 objection to us dealing with the issue -- it's a
25 pretty narrow issue -- when he's here, if Ms. Ott

1 doesn't.

2 JUDGE WOODRUFF: Is that acceptable to
3 you?

4 MS. OTT: That's acc-- that is acceptable
5 to Staff.

6 JUDGE WOODRUFF: All right. We'll deal
7 with him tomorrow then.

8 MS. VUYLSTEKE: And there's one other
9 matter, Judge, that I brought up briefly yesterday and
10 you suggested I just bring it up on the record, which
11 is that our witness Kip Smith, the CEO of Noranda is
12 on the witness list right now and scheduled to testify
13 after energy efficiency tomorrow afternoon.

14 And we would like to move his testimony
15 to first up on Friday morning at 8:30. He'd be taken
16 out of order on rate design issues. And with his
17 travel, it would be easier to do it Friday morning.
18 I've polled the parties by e-mail and didn't hear any
19 objection from anyone on that.

20 JUDGE WOODRUFF: Let me ask. Does anyone
21 object to moving Mr. Smith to Friday morning?

22 MR. LOWERY: We do not.

23 JUDGE WOODRUFF: That's what we'll do
24 then.

25 COMMISSIONER DAVIS: And, Judge, can I

1 inquire? I just -- I came in a couple of minutes late
2 here. So what do-- I mean what case were you citing
3 that said documents from sister states are public
4 records that --

5 JUDGE WOODRUFF: It's Rodriguez versus
6 Suzuki Motor Corporation. There's a copy of it if
7 you'd like to see it.

8 COMMISSIONER DAVIS: All right. All
9 right. And, Judge, is that for the premise that if
10 it's a court-filed document or what's the --

11 JUDGE WOODRUFF: It's any public document
12 from a sister state can be treated as non-hearsay.

13 COMMISSIONER DAVIS: Any public document
14 from a sister state can be treated as non-hearsay.
15 All right. Thank you.

16 JUDGE WOODRUFF: All right.

17 MR. LOWERY: I will read the case, your
18 Honor. Thank you.

19 JUDGE WOODRUFF: All right. If Mr. Haro
20 would take the stand.

21 (Ameren Exhibit Nos. 124 and 125 were
22 marked for identification.)

23 (Witness sworn.)

24 JUDGE WOODRUFF: Thank you.

25 JAIME HARO testified as follows:

1 DIRECT EXAMINATION BY MR. LOWERY:

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

4 A. Jaime Haro.

5 Q. Mr. Haro, did you cause to be prepared in
6 this docket two pieces of testimony that have been
7 pre-marked as Exhibits 124 and 125, which are your
8 direct and rebuttal testimonies?

9 A. Yes, they are.

10 Q. Do you have any changes or corrections to
11 those testimonies?

12 A. No changes.

13 Q. If I were to ask you the same questions
14 that are posed in those testimonies, would you --
15 would your answers here today be the same?

16 A. Yes, they would.

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

19 A. Yes, they are.

20 MR. LOWERY: With that, your Honor, I'd
21 move for the admission of Exhibits 124 and 125 and
22 tender Mr. Haro for cross-examination.

23 JUDGE WOODRUFF: All right. 124 and 125
24 have been offered. Any objections to their receipt?
25 Hearing none, they will be received.

1 (Ameren Exhibit Nos. 124 and 125 were
2 received into evidence.)

3 JUDGE WOODRUFF: For cross-examination
4 beginning with MIEC?

5 MS. VUYLSTEKE: No questions.

6 JUDGE WOODRUFF: Staff?

7 MS. OTT: No questions.

8 JUDGE WOODRUFF: Public Counsel?

9 MR. MILLS: Just a few. Thank you.

10 CROSS-EXAMINATION BY MR. MILLS:

11 Q. Mr. Haro, your position with AmerenUE now
12 is director of asset management and trading; is that
13 correct?

14 A. That's correct.

15 Q. Does the asset management and training
16 group -- I'm sorry, trading generate some earnings
17 from wholesale power market transactions that are not
18 flowed through the FAC?

19 A. Currently?

20 Q. Yes.

21 A. I think everything's flowing now through
22 the FAC after the last ruling.

23 Q. Okay. There was a period in time in
24 which this group made transactions that we'd refer to
25 in the past as speculative sales?

1 A. We still do a small amount of speculative
2 sales, you're correct.

3 Q. Okay. And is that an activity that as
4 director of AM&T, that you have responsibility for?

5 A. Yes, it is.

6 Q. What's the approximate amount of earnings
7 or losses in the last three years from those
8 activities?

9 A. I would say it's close to zero.

10 Q. Close to zero on which side of zero?

11 A. Probably a year negative, then the
12 following year positive. I'm -- I'm talking within
13 \$50,000.

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

16 JUDGE WOODRUFF: AARP?

17 MR. COFFMAN: No questions.

18 JUDGE WOODRUFF: All right. Questions
19 from the bench then. Commissioner Davis, do you have
20 any questions?

21 QUESTIONS BY COMMISSIONER DAVIS:

22 Q. All right. Mr. Haro, I just got
23 confused. Did I -- did I hear you say that -- is it
24 Ameren Corporation's net trading was plus or minus 50-
25 or 500,000 from zero one way or the other? Is that

1 what I heard?

2 A. I'm referring only to the speculative
3 trading, which is something that gets accounted below
4 the line and doesn't flow through the fuel adjustment
5 clause. It's a very small volume that we've talked in
6 the past about.

7 Speculative trading, when a trader has no
8 position and just tries to make money out of it, but
9 it helps us to see the -- the -- the market depth and
10 establish some contracts with other counter-parties.
11 So it's really not a core activity that we do. It's
12 just a small activity.

13 Q. So it's -- like a swap that you're using
14 to balance out -- is that --

15 A. We have our main operation where we look
16 at the excess generation and the availability of the
17 plants and the weather forecast and we transact.
18 That's what we call the off-system sales that flow
19 through the fuel adjustment clause. That's our main
20 activity.

21 And then we have a very small book that
22 we use to just do speculative transactions, which is
23 where a trader, without any specific assets that he's
24 trading around, just starts with a book that is flat
25 and just buys or sells to make a profit out of it.

1 Q. Okay. And you provided testimony on
2 capacity sales revenue, did you not?

3 A. I did.

4 Q. And that was for the period of March 2010
5 through February 2011?

6 A. Yes.

7 Q. And so Taum Sauk is -- is operational
8 for -- for most of that period from approximately
9 April 15th, 2010 forward. Can you -- can you tell me
10 how much actual megawatt hours of energy your -- your
11 capacity number for Taum Sauk is based on?

12 A. Okay. I'm -- I'm going to have to go
13 back to the explanation of capacity and -- and energy.

14 Q. Okay. Okay.

15 A. You're talking about the capacity?

16 Q. Right.

17 A. It's just based on -- it's just the
18 440 megawatts --

19 Q. Okay.

20 A. -- which we have a deduction that makes
21 it only 428 because of the way MISO values capacity.

22 Q. Got it. Okay. So it's -- so the
23 capacity has not -- not changed. It's the exact same.
24 Okay.

25 A. Well, if -- if I may, I think it has

1 changed because if we hadn't rebuilt it, it would have
2 been zero according to Dr. Rizzo's testimony.

3 THE COURT REPORTER: I'm sorry?

4 THE WITNESS: It would have been zero
5 because we wouldn't have had the ability to operate
6 the plant.

7 BY COMMISSIONER DAVIS:

8 Q. Okay. And so do you have any involvement
9 in off-system sales?

10 A. Absolutely, yes. That's my
11 responsibility.

12 Q. Okay. Are you -- are you -- since
13 April 15th, 2010, have you sold more units of
14 energy -- more megawatt hours of energy out of Taum
15 Sauk than you had modeled previously?

16 A. I can tell you what we have sold. We
17 have sold -- we have generated approximately 317 days
18 from that plant in the last year for the period that
19 maybe you're referring to. I don't know compared to
20 planned how much it is. I mean it's a starting year
21 and we have had several issues that we have to deal
22 with.

23 Q. Uh-huh.

24 A. So I don't have the reference versus what
25 was pl-- modeled or what model you're referring to,

1 but it's been -- we've used it a lot more above the
2 number that I've been hearing here been said about --
3 it was not 200 days. It's been over 300 days that we
4 have used the generation coming from that plant.

5 Q. So today is May 4th and is the plant
6 running almost every day?

7 A. Pretty much. Except for situations like
8 the ones we had where the Black River has too much
9 water. We have had to shut it down for the last week
10 or so, but it has run quite often.

11 Q. And could -- could you provide us with
12 a -- with a breakout number of how many megawatt hours
13 of energy have actually been generated from Taum Sauk
14 since April 15th of 2010?

15 A. We should be able to give you very
16 specific numbers. But roughly -- I heard the
17 conversation about the negative 250,000 megawatt
18 hours.

19 Q. Uh-huh.

20 A. That's -- that's because the pumping.
21 That's indeed what -- you were getting to that
22 conclusion.

23 Q. Right.

24 A. But that means that we are generating
25 probably eight hours at night with 440 -- I'm sorry,

1 generating 6 to 8 hours during the day, 440 megawatts.
2 So maybe the calculation is about somewhere between
3 1 and 1.2 million megawatt hours generated versus
4 1.4 pumped. So that's kind of the proportion. So a
5 million -- just to put it in round numbers, a million
6 megawatts hours of generation, 1.4 million of --

7 (Hearing interrupted.)

8 JUDGE WOODRUFF: Voice of God. You can
9 go ahead.

10 COMMISSIONER DAVIS: Okay. All right.

11 MR. BYRNE: Your Honor, it's showing
12 Intermission. I don't know if that matters.

13 JUDGE WOODRUFF: That's what we were on
14 before we came back. Thank you.

15 BY COMMISSIONER DAVIS:

16 Q. All right. So basically you put in
17 approximately 1.4 million megawatt hours of
18 electricity and you take back out approximately
19 1.2 million megawatt hours of electricity; is -- is
20 that correct?

21 A. It's -- yeah, the efficiency is 1.4 like
22 you mentioned before, yes.

23 Q. Okay. And I guess what I'm trying to do
24 is I'm just trying to quantify how much -- how many
25 additional megawatt hours of energy the plant has

1 generated above what was either assumed in the -- the
2 economic modeling when we were all assuming that Taum
3 Sauk was still in rates or over what was actually
4 generated in the last three years of -- on an annual
5 basis the last three years of when Taum Sauk was
6 operational.

7 A. Yeah, I understand your question. I
8 don't have the numbers with me, so --

9 Q. Can -- can you provide those numbers?

10 A. Sure I can.

11 MR. BYRNE: Should we have an exhibit
12 reserved, your Honor, for that?

13 JUDGE WOODRUFF: Is that what you want?

14 COMMISSIONER DAVIS: Yes.

15 JUDGE WOODRUFF: Okay. The next number
16 for Ameren would be 162. Would these be highly
17 confidential?

18 MR. LOWERY: I'm guessing no because it
19 was going to be historical information. Would that be
20 correct, Mr. Haro?

21 THE WITNESS: That's correct. It should
22 be public eventually.

23 MR. MILLS: Judge, could I ask a
24 clarifying question on just what exactly it is we're
25 looking for?

1 JUDGE WOODRUFF: Sure.

2 MR. MILLS: Is this going to be a
3 comparison of the actual generation of Taum Sauk from
4 April 15, 2010 through April 15, 2011 compared to some
5 weather normalized modeled results?

6 JUDGE WOODRUFF: If the witness can
7 answer that.

8 BY COMMISSIONER DAVIS:

9 Q. Mister -- mister -- Mr. Haro, what
10 would -- what would be your preference? I mean,
11 should we weather normalize it?

12 A. Well, what I understood is you wanted to
13 see what was in the rate case previous to this one.

14 Q. Yeah, I want to see what's in the rate
15 case previous to this one, what was modeled, as well
16 as I guess the -- the amounts of energy that was
17 actually generated out of Taum Sauk in its last three
18 full years of operation prior to the collapse.

19 Now, and I guess what -- the question
20 that Mr. Mills is asking is should that information be
21 weather normalized?

22 MR. MILLS: If I can interject, my
23 question was won't the information from the last case
24 be weather normalized?

25 THE WITNESS: And yeah, that's correct.

1 MR. MILLS: So -- so this -- this would
2 be compar-- comparing weather normalized data from the
3 previous case with actual data from a year leading up
4 to about now. Right?

5 THE WITNESS: That's correct.

6 MR. MILLS: Okay.

7 COMMISSIONER DAVIS: Okay.

8 JUDGE WOODRUFF: Can it be weather
9 normalized easily, the new data?

10 THE WITNESS: I don't think it can easily
11 be weather normalized, but again, I don't think
12 weather normalization will have much of an impact
13 because the pricing of such a unit is a ratio between
14 modern day prices. So the weather normalization I
15 don't think would affect it much.

16 BY COMMISSIONER DAVIS:

17 Q. Okay. And then Mister -- Mr. Haro, I
18 know in your testimony you -- you -- you summarized
19 your observations regarding the data that Ms. Mantle
20 provided. Could you -- could you restate with me
21 again your opposition to the -- to the 85/15 sharing
22 model that she has proposed in her testimony?

23 A. Yes. There's a couple of things.
24 When -- when we look at how many megawatts we can
25 sell, you have to take a look at two parts of the

1 equation; how many megawatts are available to sell and
2 how many -- from the generation side, how many
3 megawatts are being generated versus how many
4 megawatts are being used for -- by our -- our retail
5 load.

6 In the two scenarios that we are
7 discussing here, we actually had less megawatts
8 available to sell because our retail load was using
9 more megawatts for na-- native -- retail sales
10 consumption. And in the other period that she was
11 making the comparison, this -- we had some unit
12 outages so the output of the units was reduced so we
13 have less availability to sell. So when we compare
14 the drop in off-system sales, it's explainable by
15 factors like unit availability or consumption by the
16 general -- by the retail load.

17 So when we make a change from a sharing
18 mechanism of 85 -- from 95/5 to 85/15 and we set up a
19 rate base at certain number, any deviation from there,
20 I will have to -- even though I had prudent actions, I
21 will have to bear the cost of 15 percent -- of 10
22 percent more than with the 5 percent sharing
23 mechanism.

24 Q. And getting an additional 10 percent in
25 revenue from off-system sales doesn't -- doesn't make

1 up for that loss?

2 A. Well, like Ms. Barnes was explaining
3 before, we've been using historic prices for setting
4 the net base fuel cost, which means that the
5 off-system sales are probably higher than what we're
6 going to achieve. So the likelihood of me coming
7 short in the off-system sales revenue is a lot bigger
8 than the likelihood of me coming below that number --
9 I'm sorry, above that number in the off-system sales.

10 So if I am expecting 350 million of --
11 dollars in revenue for the off-system sales --

12 Q. Uh-huh.

13 A. -- it's highly likely that I will achieve
14 less because that's based on historic prices.

15 Q. But in the historic price period that
16 we're -- we're looking at here is through February
17 2011. Correct?

18 A. Correct. So -- but still includes 2008,
19 which was a pretty high price year.

20 Q. Okay. So it still includes 2008 --

21 A. Yes.

22 Q. -- as well?

23 So are you saying that if you were going
24 to do that, if -- if the Commission was going to do
25 that, then they would just need to go with the -- say

1 the last year?

2 A. Well, if I had my choice, I would rather
3 use forward prices. But I think that has been tried
4 before and not -- we couldn't achieve that.

5 So it's -- what I'm suggesting is -- in
6 this rate case is to be consistent. In the last
7 couple of rate cases we have used two to three
8 years -- actually in the last case we used three
9 years. That's what -- based on consistency, we used
10 three years again to mitigate some of the volatility
11 that you may have in using somehow the weather
12 normalization practice.

13 COMMISSIONER DAVIS: Okay. Thank you,
14 Judge. No further questions.

15 JUDGE WOODRUFF: Thank you. Any recross
16 based on questions from the bench? Mr. Mills?

17 RECROSS-EXAMINATION BY MR. MILLS:

18 Q. Mr. Haro, with respect to the -- to the
19 late-filed exhibit showing the Taum Sauk numbers,
20 would it be possible for you to put together the
21 actual Taum Sauk generation for the -- say the three
22 years leading up to the collapse of the upper
23 reservoir?

24 A. So just make sure that I understand what
25 I'm going to provide is three years up to the

1 collapse, then what was modeled in the rate case --
2 previous rate case --

3 Q. Yes.

4 A. -- and the actual generation?

5 Q. The actual generation for a -- a current
6 year or relatively current year with the new upper
7 reservoir.

8 A. Yes.

9 Q. Can you do that?

10 A. I can.

11 MR. MILLS: Judge, can I suggest that
12 we -- that that would be a more meaningful comparison
13 perhaps?

14 JUDGE WOODRUFF: Any objection to
15 including that information in the same document?

16 MR. LOWERY: No. In fact, that's what I
17 thought we were already doing.

18 MR. MILLS: That's all the questions I
19 had.

20 JUDGE WOODRUFF: All right. Anyone else?
21 Redirect?

22 REDIRECT EXAMINATION BY MR. LOWERY:

23 Q. Mr. Haro, Commissioner Davis was asking
24 you some questions about capacity and -- and energy
25 that's been produced from the Taum Sauk plant recently

1 and actually in other periods as well. Do you
2 remember all those?

3 A. I do.

4 Q. I think you indicated in an answer that
5 during the past year -- and I take it the past year's
6 April 15th, '10 to April 15th, '11 that the plant
7 operated 317 days out of 365 days?

8 A. Yes. April to May, yes.

9 Q. Were you here earlier when Mr. Mills I
10 think was I think responding to some questions from
11 Commissioner Davis and he indicated that the
12 assumptions the Company had made in the -- in the
13 numbers that Mr. Birk was talking about Monday were
14 three out of four days?

15 A. I recall him saying that.

16 Q. So in actuality it's run quite a bit more
17 than the three out of four days that was assumed in
18 the numbers Mr. Birk talked about?

19 A. It's possible. This is -- this is just a
20 number of days that we have had generation coming out
21 of the plant. So it requires a lot more complex
22 analysis to -- to really make that kind of assertion.
23 But yes, it -- I mean it's almost 90 percent of the
24 time.

25 Q. As you sit here today, and I know you're

1 going to do this analysis, do you have any sense about
2 whether or not the generation in the last year has
3 been more than the generation was in those -- on
4 average those three years leading up to the collapse?
5 I mean you may not remember, but I was just wondering
6 if you had any memory of that?

7 A. It's difficult to say because we are
8 learning how to operate a new plant. So it may be
9 not -- even one year may not be enough to make a
10 comparison.

11 You're starting new equipment, you're
12 starting new controls in the plant. So we have
13 different way of operating it. We're very -- very
14 conservative regarding at what point do we stop or
15 start. So I don't think we're yet in the fully normal
16 way of operating the plant based on what we've seen so
17 far.

18 Q. Do I understand your answer to suggest
19 that once you've sort of -- and at least this is my
20 term -- you've sort of worked the bugs out or you get
21 used to how to run that plant, that you would expect
22 to run it more than you've been running it?

23 A. I -- yes. I still believe the ability to
24 pump higher elevations during the winter will
25 definitely render more megawatt hours. I think

1 operationally speaking, at some point we're going to
2 definitely have the proof to show that the megawatt
3 hours coming out of that plant will be a lot higher.

4 But again, I mean, my reference is to
5 zero too. Right? I will have more megawatts than
6 what I had before, but I will have a lot more
7 megawatts that if I didn't have the plant at all
8 because FERC wouldn't let me run it anymore.

9 Q. Now, you've done some calculations about
10 what you expect the new upper reservoir to be able to
11 generate versus the old upper reservoir; is that true?

12 A. I have made some calculations.

13 Q. Did you make some calculations that
14 Mr. Birk used in his testimony?

15 A. Yes.

16 Q. And could you -- could you tell us --
17 tell us what you did and how you did it? Because
18 Mr. Birk had a pretty good understanding, but he
19 indicated when he testified the other day that you
20 actually did the analysis, did the calculations and
21 provided those to him. So perhaps you could explain
22 to the Commission a little more in depth exactly what
23 you did and how you did it.

24 A. Sure. What we did is we looked at the
25 next 80 years of generation. And we valued two

1 portions of it. We valued the capacity revenues that
2 we would get that from plant. But we only have
3 visibility probably three years out for capacity
4 prices. So we use the first three years that we have
5 visibility and then we kept fixed the third year for
6 the following 80 years.

7 And that's -- that's where he was saying
8 that it's pretty conservative because we're using
9 \$9.63 for those outer years and it's likely at some
10 point we're going to see what MISO calls cost of new
11 entry, which is the cost of building a new plant in
12 the next 80 years. And that's close to \$90 per
13 kilowatt year. So it's a tenth of that, what we are
14 using.

15 Now, we discounted that at 8.46 percent
16 rate and that brings us to back to a capacity value
17 45 million. So the capacity itself is worth
18 45 million for the next 80 years. And then we used
19 the next five years of energy. That again is starting
20 from the press market where we are right now and have
21 small escalation going out five years, which is where
22 we have the visibility. And we can fix that number
23 going out for 80 years.

24 So again, that's no assumption of cost
25 for carbon or any other emission regulations. That's

1 why it's also a very conservative number that we used.
2 We're picking up -- from '15 to 2090 for that price.
3 And then we discount it as well and that brought us a
4 value of 125 million. So we have those two, that's
5 where we get the -- the 169 million that Mr. Birk was
6 talking about.

7 Q. So just to make sure that I understand,
8 so if capacity prices don't go up any more then you
9 expect them to be three years from when you did the
10 analysis and energy prices don't go up any more then
11 you expect them to be five years from when you did the
12 analysis, in 2010 dollars, you're seeing an energy and
13 capacity benefit of 165, 170 million; is that right?

14 A. Almost right. It's not that I don't
15 expect them to go higher. I do expect them to go
16 higher. I just want to use a conservative number for
17 this estimation. So at least will be 169, but I'm
18 pretty sure it's going to be a lot more.

19 Q. I was going to ask you, do you have an
20 opinion about whether the actual energy capacity value
21 in 2010 dollars is more than the 165 or 170 million or
22 substantially more or do you have an opinion about
23 that?

24 A. I would think it's substantially more. I
25 mean the upper end of our calculation was way over

1 700 million.

2 Q. Why did you choose the discount rate of
3 8.46 percent?

4 A. That is the cost of capital for Ameren
5 Missouri that we used in the case.

6 Q. Commissioner Davis -- I'm going to move
7 onto another topic that Commissioner Davis asked you
8 about. I think he asked you about why you had the
9 position you did on the 85/15 and you gave some
10 explanation about unit outages and those kind of
11 things. Do you remember that?

12 A. I do.

13 Q. And you said -- I think you told him that
14 the Company had had some unit outages in this period.
15 Were those unit outages planned or unplanned?

16 A. They were planned. Well, we had both,
17 but the ones that we're specifically referencing here
18 are planned.

19 Q. There were significant unit outages in
20 that -- in the period of time you're talking about?

21 A. Maintenance, yes.

22 Q. Why do you -- why do you take those kind
23 of maintenance outages? What's the -- what's the
24 purpose of doing that?

25 A. Well, we got to keep maintaining our

1 units so we can keep getting the megawatts out of
2 them. Just like you would do with a car that you want
3 to la-- you want to make sure it lasts a long time.
4 Sometimes we actually get more output of the plants
5 after we do those outages. And many times we do them
6 before the summer when we know we're going to have to
7 use a lot of the generation.

8 Q. In connection with the questions
9 Commissioner Davis was asking you about the 85/15, you
10 had a discussion with him about the use of historic
11 prices to set the off-system sales price for
12 rate-making purposes. Correct?

13 A. Yes.

14 Q. Why do you use historic prices?

15 A. Because that's the way that the
16 Commission has asked us to do our calculation. We are
17 not allowed to use forecast. We got to do the -- the
18 rate-making based on history.

19 Q. And why do you use multi-year averages?

20 A. Because the multi-year average allows me
21 to do some of the weather normalization. If I have
22 a -- a very strong winter, very strong summer in one
23 year, it would skew the numbers. Whereas, if I have
24 multiple years that will also move the -- move the
25 prices to a more average or weather normalized.

1 There's also the disruptions that tend to
2 be atypical in the transmission operations that may
3 move prices one way or another when you have
4 transmission outage or some plants disrupting the
5 transmission systems.

6 Q. Do you -- do you have an opinion about
7 whether from rate case to rate case you ought to --
8 you ought to be changing in material ways without a
9 good reason the methodology that you're using?

10 A. No. I do believe that we need
11 consistency. It's important to be consistent

12 Q. Thank you, Mr. Haro.

13 MR. LOWERY: No further questions, your
14 Honor.

15 JUDGE WOODRUFF: Mr. Haro, you can step
16 down.

17 THE WITNESS: Thank you.

18 JUDGE WOODRUFF: It's now about
19 12 minutes till 12:00. We'll need to break for agenda
20 today, which is at noon. So we'll take a break now
21 and we'll come back at one o'clock or after lunch.

22 (A recess was taken.)

23 JUDGE WOODRUFF: We're back from lunch
24 and ready to continue on fuel adjustment clause
25 issues. I understand there's a question about --

1 Mr. Birk will not be testifying; is that correct?

2 MR. LOWERY: That's correct, your Honor.

3 And I apologize. I actually thought his name was not
4 on the schedule, the same as Mr. Brubaker and
5 Mr. Dafini, but the testimony that they sort of
6 rebutted each other about, all of those issues have
7 been resolved and so -- and nobody had any questions
8 for him.

9 So he -- he's not here today and we
10 didn't intend to produce him for the fuel adjustment
11 clause unless there was -- Commissioners, you know,
12 needed to talk to him about that or something.

13 JUDGE WOODRUFF: Nothing that I'm aware
14 of. Then we'll move on to Gary Rygh -- Rygh. Sorry.

15 MR. LOWERY: Rygh.

16 JUDGE WOODRUFF: Rygh. Good afternoon.

17 THE WITNESS: Good afternoon.

18 (Ameren Exhibit No. 126 was marked for
19 identification.)

20 (Witness sworn.)

21 JUDGE WOODRUFF: Thank you.

22 GARY RYGH testified as follows:

23 DIRECT EXAMINATION BY MR. BYRNE:

24 Q. Mr. Rygh, can you please state your name
25 for the record.

1 A. Gary Rygh.

2 Q. And by whom are you employed, Mr. Rygh?

3 A. Barclays Capital.

4 Q. And are you the same Gary M. Rygh who
5 caused to be filed in this case rebuttal testimony
6 that's been marked as Exhibit 126?

7 A. Yes.

8 Q. And do you have any corrections to make
9 to that testimony at this time?

10 A. Not at this time.

11 Q. Is the information contained in that
12 testimony true and correct to the best of your
13 knowledge and belief?

14 A. Yes.

15 Q. And if I were to ask you the questions
16 contained in that pre-filed testimony here today when
17 you're under oath, would your answers be the same?

18 A. Yes.

19 MR. BYRNE: Your Honor, I'd offer
20 Exhibit No. 126 and tender Mr. Rygh for
21 cross-examination.

22 JUDGE WOODRUFF: 126 has been offered.
23 Any objections to its receipt?

24 Hearing none, it will be received.

25 (Ameren Exhibit No. 126 was received into

1 evidence.)

2 JUDGE WOODRUFF: For cross-examination
3 we'll begin with Staff.

4 CROSS-EXAMINATION BY MS. OTT:

5 Q. Good morning, Mr. Rygh.

6 A. Morning.

7 Q. Ameren's fuel adjustment clause was first
8 implemented in March of 2009. Correct?

9 A. Yes.

10 Q. Do you know how many FAC true-ups Ameren
11 has been through?

12 A. How many -- how many true-ups they've
13 been through? I know that I think it's six periods of
14 measurements. Right? So is it -- I think they've
15 been through one prudence review.

16 Q. Well, I was asking about the true-ups.
17 If I said they'd been through -- they're in the
18 process of being two true-ups, would that sound
19 accurate to you?

20 A. Yes.

21 Q. Would you have any reason to dispute
22 that?

23 A. No.

24 Q. Okay. And you said there had been one
25 prudence review?

1 A. I think I read that in your testimony,
2 yes -- or your -- I heard you say it this morning.

3 Q. Okay. So is it your position that once a
4 utility has been in the middle of two true-up
5 proceedings and one prudence review, that that
6 constitutes a well-established regulatory review?

7 A. I -- I think -- I mean to answer your
8 question -- well, I mean there should be a deep and
9 informative regulatory review consistently. Right?
10 There won't be a pi-- time when you've reviewed it
11 enough where you shouldn't be continuing to review it.
12 I mean, it's -- it's --

13 Q. Okay. So I guess --

14 A. -- a large component of your rate-making
15 I would assume it's going to be reviewed thoroughly,
16 you know, for the rest of its -- you know, for--
17 forever.

18 Q. Okay. So one -- one prudence review and
19 two true-up in relationships to the fuel adjustment
20 clause means that Ameren's fuel adjustment clause has
21 been through an exhaustive, well-established
22 regulatory review. Is that your position?

23 A. Well, it -- it was certainly exhaustive
24 in -- in establishing it. And the -- even -- even
25 though, you know, obviously the number of -- of

1 true-ups is -- is not significant, I would assume they
2 were thorough as well.

3 Q. So then again, is it your position that a
4 fuel adjustment clause that has been in place for
5 barely two years is a well-established program?

6 A. Is it a well-established program? Well,
7 just fuel adjustment clauses are certainly very well
8 established. Your -- your program I'm assuming you
9 established it well --

10 Q. I'm asking about this particular fuel
11 adjustment clause, sir.

12 JUDGE WOODRUFF: Please don't talk over
13 each other. Now the three of us are talking over atop
14 of each other. For the benefit of the court reporter,
15 please don't talk over top of each other as you go.

16 All right. You can ask -- re-ask your
17 question if it's been forgotten or you can answer it
18 as --

19 BY MS. OTT:

20 Q. My question was, is Ameren's fuel
21 adjustment clause that has been in place for a little
22 less than -- or a little more than two years a
23 well-established mechanism?

24 A. Yes. I would assume that --

25 Q. Okay. Thank you.

1 A. -- the existence means it's well
2 established.

3 Q. Now, are you familiar with Missouri
4 statute that authorizes the Commission to issue -- or
5 authorize electric utility with a fuel adjustment
6 clause?

7 A. Yes.

8 Q. So are you aware that under the statutory
9 section, that the Commission can only approve, modify
10 or reject the adjustment clause during a general rate
11 proceeding?

12 A. Yes.

13 Q. So is it still your testimony that you
14 are surprised that Staff didn't raise a change to the
15 sharing mechanism during the true-up or prudence
16 review?

17 A. I'm sorry?

18 Q. So is it still your testimony -- if you
19 want to look on page 8 --

20 A. Sure.

21 Q. -- line 17 that you are surprised that
22 Staff did not raise the change in the sharing
23 mechanism during a true-up or prudence review?

24 A. Maybe I'd word this more -- differently.
25 I'd say I'm surprised that -- that Staff didn't

1 have -- you know, didn't -- is raising a change to the
2 sharing mechanism while -- while not have found
3 anything in the prudency review that would warrant it.
4 Right?

5 You would -- the two are somewhat linked.
6 Right? If -- the assumption would be that if you
7 found something during the prudency review that was
8 imprudent or poor behavior, that that would be
9 reflected in the next proceed-- proceeding that
10 would -- you know, where you would talk about the, you
11 know, the major components of the fuel adjustment
12 clause.

13 Q. Are you aware of the outcome of Ameren's
14 last -- their one prudence review?

15 A. Are you talking about the -- and I know
16 this is -- you know, some moving parts here. Talking
17 about the separate pieces, whether it's the contracts
18 or the calculations and -- and other things? I'm
19 aware of all -- you know, in general the move -- you
20 know, the large components of it, yes to answer your
21 question.

22 Q. So you are aware that this Commission
23 found that Ameren acted imprudently, improperly and
24 unlawfully in relationships to how they treated the
25 revenues associated with those contracts?

1 A. Yes. I'm aware of that.

2 Q. Okay. And then Ameren's Moody credit
3 rating for the year 2008 was a Baa2?

4 A. I know what it is today. In 2008 I'll
5 take your word for it, if you've got something there I
6 can check for you. Are you talking about Ameren or
7 are you talking about Union Electric?

8 Q. Ameren Missouri.

9 A. Ameren Missouri. And, you know, not to
10 get too deep into this. -- there's obviously two or
11 three credit ratings for -- from each -- for each one.
12 Are you talking about the senior unsecured or the
13 secured rating? They issue debt -- I mean the reason
14 why it matters is, you know, they issue -- you know, I
15 think all their issuance is of debt.

16 Q. The issuer.

17 A. The issuer rating, yeah, which is -- you
18 know, Baa2 sounds right.

19 Q. Okay. And then that was the same for the
20 year 2009. Correct?

21 A. Yes.

22 Q. And then that is what the current credit
23 rating for 2010 was?

24 A. Yep. Yes.

25 Q. Now, have you quantified the benefits to

1 ratepayers of a lower cost of capital?

2 A. Have I quantified the -- the benefits of
3 ratepayers of a lower cost of capital? I -- I -- I
4 can quantify the -- you know, where we've seen the
5 cost of capital change to -- for the fuel adjustment
6 clause if that's the question you're trying to ask
7 or --

8 Q. Have you done that?

9 A. Well, yeah. I mean we've -- we -- yes, I
10 have. We've -- we, you know, obviously have looked at
11 how the bonds of -- of UE or Ameren Missouri have
12 traded since 2009 and -- you know, and different
13 milestones after that.

14 Q. And what was the result of that
15 quantification?

16 A. Yeah, I think in consultation with our --
17 you know, our experts who spent a lot of time in
18 utility debt market and I think one inc-- you know,
19 one key -- you know, if you're just looking from the
20 establishment of the fuel adjustment clause until
21 today, you know, the barring cost of Ameren Missouri
22 has -- has decreased significantly.

23 Now a lot of that is the market has
24 improved so we look to see where they've outperformed
25 the market. If -- one interesting milestone, if you

1 look in -- you know, December -- I think
2 December 15th, 2010 where S&P upgraded Ameren Missouri
3 one notch in large part because of the recovery
4 mechanisms that allows them to have the opportunity to
5 earn their cost of capital -- their -- their allowed
6 cost of capital, you know, we've seen relatively --
7 you know, relative to other issuers of the same credit
8 rating, we've seen them outperform by about 25 basis
9 points.

10 Q. Okay. And have you narrowed that down to
11 a quantification just directly related to the fuel
12 adjustment clause?

13 A. Well, I --

14 Q. It's a yes or no question --

15 A. The upgrade --

16 Q. -- if you can.

17 A. To just? No, that's impossible to say
18 just the fuel adjustment clause.

19 MS. OTT: Okay. I have no further
20 questions. Thank you.

21 JUDGE WOODRUFF: All right. For Public
22 Counsel?

23 CROSS-EXAMINATION BY MR. MILLS:

24 Q. Mr. Rygh, you're opposed to changing
25 the -- the flow-through percentage from 5 percent to

1 15 percent; is that correct?

2 A. Yes.

3 Q. Does your opposition rest on any kind of
4 assumption about the validity of the establishment of
5 the 5 percent in the first place?

6 A. Does my opposition -- no, my opposition
7 is related to -- you know, in large part that, you
8 know, based on the testimony I've read, the -- the
9 reason given for changing the mechanism and Going from
10 5 to 15 percent is based on, you know, reading through
11 the testimony. And when -- when asked whether there's
12 evidence of poor behavior, the answer is no.

13 It seems like the justification is to try
14 to create a mechanism that incents a change of
15 behavior without any finding that the behavior is --
16 is not correct today.

17 Q. And what is your understanding of the
18 rationale for using 5 percent in the first place at
19 the Missouri Commission?

20 A. Well, 5 percent is certainly within the
21 band of reason where we've seen other fuel adjustment
22 clauses.

23 Q. Specifically I'm asking, do you know the
24 reasons that this Commission adopted 5 percent in the
25 first place?

1 A. I -- I -- I believe the reason was is
2 that was the agreed upon number they thought that, you
3 know, was a balance between allowing -- I mean giving
4 Ameren UE -- sorry, Ameren Missouri the opportunity to
5 earn its allowed cost -- its allowed cost of capital,
6 but also having an incentive to continue to do, you
7 know, A-plus work.

8 Q. If the -- the Commissioner who initially
9 proposed that number conceded that it was completely
10 arbitrary, would that change your position?

11 A. It would change my position on Missouri
12 regulation. Not my position on -- on -- on -- the
13 95/5 is well within the constructs of what we've seen,
14 you know, for the last 50 years and -- and -- and
15 today.

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

18 JUDGE WOODRUFF: For AARP?

19 CROSS-EXAMINATION BY MR. COFFMAN:

20 Q. Yes. Would you agree with me that --
21 that regulatory lag does provide some incentive for a
22 regulated utility to do A-plus work, to -- to be cost
23 efficient and strive for lower costs, some incentive?

24 A. Yeah, I mean it's -- it's -- it's -- I --
25 I agree that you need to be doing -- in order to earn

1 your allowed cost of capital, the regulatory
2 construct, should be -- should be doing A-plus work to
3 get there.

4 Q. And I assume you'd tell me that the
5 Public Service Commission's resources and its pruden--
6 prudence review procedures are adequate incentive.
7 But would you agree with me that there is also an
8 additional incentive or at least some incentive to the
9 extent that Ameren must have some skin in the game
10 with regard to where costs go?

11 A. Certainly has to have skin in the game.
12 But, you know, from a -- I think from an investor
13 perspective, we're talking about something about
14 regulatory lag.

15 If I'm investing, whether it's debt or
16 equity into -- into Ameren Missouri, regardless of
17 maybe points in the -- you know, historically
18 speaking, sort of putting them aside, I'm a
19 prospective investor and I'm -- I'm by no way, you
20 know, going to pay for or assume there will ever be
21 the case where there will be an over-earning scenario
22 again. I mean, that's -- that's -- you know, to find
23 a utility in this day and age that's over-earning
24 is -- is -- is -- is impossible. Only -- you know,
25 very difficult to do. I'm sure there's examples of

1 it, but it's --

2 Q. So is your support for the fuel
3 adjustment clause for AmerenUE based in part on your
4 expectation that costs are -- are going to be
5 increasing in -- in -- the fuel costs are going to be
6 increasing in the foreseeable future?

7 A. My support for it, you know, putting on
8 the investor -- you know, the hat here sort of a
9 representative of them and not -- and in our -- our
10 firm --

11 Q. Could you answer my question first?

12 A. Sure.

13 Q. Just is -- is your -- is your
14 recommendation, at least in part, based on your
15 expectation that costs are going to be increasing over
16 the next few months?

17 A. No. My recommendation is based on the
18 fact that I believe that in -- in -- that -- if
19 properly managed, the fuel costs should not be -- you
20 know, should -- should be something that Ameren is
21 doing for the customers to make sure it's -- it's
22 procured in, you know, A-plus fashion, but the
23 risk/reward here from an investor perspective is -- is
24 skewed.

25 You know, if -- there's a lot more risk

1 than there is potential reward so it's not something
2 that I want to -- you know, to -- to -- you know, at
3 the end of the day, it's something we know the
4 incentive to do it correctly is -- is significant from
5 an investor perspective. Right? That is the largest
6 cost they have. To -- to not do that correctly would
7 -- would be, you know, a regulatory issue that would,
8 you know, be -- you know, for -- would -- would cause
9 significant turmoil. So the expectation is they're
10 doing it well and they have every incentive to do it
11 well.

12 And, you know, frankly, that's why you
13 see the majority of fuel adjustment clauses in the
14 United States are 100 percent pass-through.

15 Q. So is it fair to say that you believe
16 that the fuel adjustment clause is necessary because
17 it -- it alleviates a very large piece of this
18 utility's business risk?

19 A. I believe it's necessary in order for
20 them to have the opportunity to earn their -- their
21 allowed cost of capital, you know. And with a utility
22 that's earning significantly below it right now --

23 Q. Is that a no or a yes?

24 A. Sorry. I forgot. Do I -- do I believe
25 it significantly changes the risk profile of AmerenUE

1 to have a fuel adjustment clause?

2 Q. Answer that question, yes.

3 A. I think it changes the -- you know --

4 Q. Yes or no? I mean --

5 A. No, I don't think it does change the risk
6 profile at the end -- at the end of the day. Because
7 like I said, putting on my investor hat, my assumption
8 is they will have the opportunity to change --

9 Q. So you don't -- you don't think Moody's
10 will care?

11 A. Oh, no. Mo-- certainly Mo-- maybe to
12 phrase it a different way, absolutely the credit
13 rating agencies care. People invest in -- in equity
14 investors. People invest assuming that there's the
15 opportunity to earn your allowed cost of capital. You
16 take that away and there's no incentive to -- you
17 know, to put new -- you know, to put new money into
18 the utility.

19 Q. You don't think the fuel adjustment
20 clause has any impact on risk?

21 A. Yeah. It has -- certainly has -- it
22 has -- it has an impact on the risk. Sorry if I --

23 Q. But you don't think that it changes the
24 risk profile of the utility, whether or not it has a
25 fuel adjustment clause?

1 A. Oh, I'm sorry. I think -- I thought --
2 does it change the risk profile of the utility? Yes,
3 it changes the risk profile of the utility whether or
4 not it has or -- you know.

5 Q. And -- and just to be clear, it -- you
6 believe it reduces the risk profile of the utility.
7 Correct? I'm just -- it's just a fundamental
8 question.

9 A. Yes. It reduces the risk profile of the
10 utility to be consistent with what investors expect.

11 MR. COFFMAN: Thank you. That's all I
12 have.

13 JUDGE WOODRUFF: All right. Questions
14 from the bench, Commissioner Davis.

15 QUESTIONS BY COMMISSIONER DAVIS:

16 Q. Good afternoon Mr. Rygh. Going back to
17 your -- your rebuttal testimony and what you just
18 testified to, I think in one place you said that more
19 than 90 percent of the traditionally regulated
20 utilities have -- have a fuel adjustment that's
21 100 percent pass-through or close to; is that correct?

22 A. 90 percent of utilities have a fuel
23 adjustment clause -- there might be slightly higher
24 than 90 percent. And yeah, I think well over
25 75 percent of those is -- is 100 percent. I can -- I

1 can -- I don't have the sheet in front of me, but I
2 can provide that to you at your convenience, like I
3 said. But it's -- that's fairly consistent with my
4 understanding, that's correct, yes.

5 Q. Do you -- do you have that information?
6 Could you --

7 A. Sure.

8 Q. -- readily -- readily provide it?

9 A. I can -- I can e-mail it to you when I
10 get home tonight.

11 Q. Well, no. I don't want you e-mailing it
12 to me personally.

13 JUDGE WOODRUFF: We'll need to mark it as
14 an exhibit.

15 BY COMMISSIONER DAVIS:

16 Q. Maybe -- maybe you can e-mail it to your
17 counsel and -- and they can file it.

18 JUDGE WOODRUFF: Next number is 163.

19 BY COMMISSIONER DAVIS:

20 Q. And you regularly interact with
21 institutional investors?

22 A. Yes.

23 Q. Have you ever heard institutional
24 investors say that they will not invest in a utility
25 because they're operating in a -- in a state that does

1 not have a fuel adjustment clause?

2 A. Yes.

3 Q. Have you ever heard institutional
4 investors say that they will not invest in a
5 particular company because they operate in a state
6 that has a -- what they view to be a -- a poor fuel
7 adjustment clause?

8 A. I -- I -- sort of a nuance question. Let
9 me -- tell -- tell me if this answers it for you. I
10 mean once it's established, you know, investors will
11 decide whether it's a good or a bad one. Whether
12 it's -- and they will -- if it's -- if it's a good one
13 and they like it, you'll borrow cheaper. If it's a
14 bad one and it's no so awful, it -- it will be more
15 expensive to borrow.

16 The -- sort of the -- the place where
17 you -- you -- you even find more discomfort is in the
18 unknowable. To the extent that the sharing mechanism
19 can change based on no finding that -- that the -- the
20 sharing mechanism needs to change in order to
21 incentivize new behavior or -- or poor behavior had --
22 had occurred.

23 Q. All right. And prior to your employment
24 with -- with Barclays, you were with Lehman Brothers.
25 Correct?

1 A. Briefly. It was a quick run.

2 Q. When did you become employed with -- with
3 Lehman?

4 A. It would -- it would have been the late
5 summer or early fall -- sort of late summer/early fall
6 2007. So about -- about T-minus a year before.

7 Q. And when you -- when you took that job,
8 did you do any -- any due diligence?

9 A. Yes. You know, so did the market. The
10 stock was at 80 bucks at the time so I guess I
11 wasn't -- you know, wasn't any more dumb than a lot of
12 people, but -- doesn't feel really good, but --

13 Q. All right. And so is it fair to say that
14 you were in a state of shock when -- when -- when
15 Lehman collapsed a year later?

16 A. Yeah. That's a pretty good ascertainment
17 of the state.

18 Q. And were you -- were you equally as
19 shocked by the -- you know, the collapse of some of
20 the other firms that are out there like Wachovia, et
21 cetera?

22 A. Absolutely. And I can show you my -- my
23 statements where I was, you know, buying Wachovia
24 Preferred because I thought it was great yield at the
25 time. So yeah, there was -- there was a systemic

1 problem which no one seemed to be able to call
2 correctly.

3 COMMISSIONER DAVIS: Okay. Thank you,
4 Judge. No further questions.

5 JUDGE WOODRUFF: Commissioner Jarrett?

6 COMMISSIONER JARRETT: I don't have any
7 questions. Thank you.

8 JUDGE WOODRUFF: All right. Commissioner
9 Kenney?

10 QUESTIONS BY COMMISSIONER KENNEY:

11 Q. Good afternoon. How are you?

12 A. Fine. Thanks. Yourself?

13 Q. I'm doing well. In response to a
14 hypothetical question by Mr. Mills, he asked you would
15 it change your position if you knew that the 5 percent
16 was proposed as an arbitrary number by some
17 Commissioner, your response was that it would change
18 your position on Missouri regulation, not your
19 position on the 95/5 split. Do you remember that
20 answer?

21 A. Yes. Uh-huh.

22 Q. What -- what is your position on Missouri
23 regulation and how would it change?

24 A. Well, if -- if I was to have been told
25 that, you know, fuel adjustment clause, which is a

1 significant piece of the rate-making now in Missouri,
2 it's an important tool for the -- you know, for Ameren
3 Missouri, it's an important tool for customers at the
4 end of the day, that a large component of it was based
5 on an arbitrary, you know, view at the time, you know,
6 regardless of -- I mean it obviously was very
7 consistent with where you've seen other fuel
8 adjustment clauses been established.

9 Like I said, the assumption is, you know,
10 I'm sure you guys read all the investor stuff and
11 people grade and judge and, you know, the --
12 commissions and probably, you know, have your view on
13 that. The assumption is regardless of how
14 investor-friendly or not investor-friendly a
15 Commission is at the end of day, that the homework is
16 being done to get to the -- to get to the view and get
17 to the decision.

18 I mean, that's -- you know, that --
19 that's the -- if the -- it was well known that
20 significant decisions were made without -- you know,
21 without the proper investigation, I think that, you
22 know, there would obviously be some confusion in the
23 market and -- and view of the Ameren -- I'm sorry,
24 view of Missouri Commission would not be enhanced.

25 Q. That -- that was a long-winded answer to

1 my question.

2 A. Sorry.

3 Q. What's your position on Missouri -- you
4 said it would change your position on Missouri
5 regulation. So what is your position on Missouri
6 regulation now?

7 A. My position on Missouri regulation is
8 that it -- you know, it's not too different from the
9 rating agencies, which it's -- it is significantly
10 improved over the last couple of years and -- and
11 giving Ameren the opportunity to earn their allowed
12 cost of capital. That doesn't mean that that's an
13 investor-friendly Commission. And I know you don't
14 want long-winded answers, but I'll -- tell me to stop
15 if I'm getting there.

16 Q. Let me ask you this: You said
17 significantly improved over the last couple of years,
18 but it's -- but it doesn't necessarily mean it's an
19 investor-friendly Commission. So -- did I quote you
20 correctly?

21 A. Yeah. That's a good --

22 Q. Those are -- did I quote you correctly?

23 A. No, no. That's quoted correctly, yes.

24 Q. Okay. So over the last couple years, it
25 has improved, but it's still not investor-friendly.

1 What distinguishes an investor-friendly Commission
2 from an unfriendly -- or a non-investor-friendly
3 Commission?

4 A. It's the regulatory mechanisms that
5 allow -- allow a company to earn its -- earn its cost
6 of capital. And to go further, I mean, the fuel
7 adjustment clause, which was a -- a big component
8 which was granted, which has been very helpful, is not
9 something that invest-- you know, the lack of it was
10 an issue with investors. Obviously it was -- it was
11 it was -- a very positive change to get one.

12 But now we see Commissions that are --
13 you know, we're talking decoupling, forward -- you
14 know, forward test years, we're talking about
15 pre-approval of -- of large projects, you know, at the
16 end of the day, CWIP in rate base. I mean, there --
17 there -- you know, different states have different
18 views on the -- you know, what is needed to attract
19 the capital to the utility, to attract the investment
20 in the economy, the state.

21 And we've -- you know, we've seen some,
22 you know, significant moves by, you know, places like
23 Michigan and others who have -- have done some of
24 these things, whether legislatively or through the
25 Commission to -- to attract capital to the state.

1 Q. You named four thin-- four mechanisms;
2 decoupling, use of forward test year, pre-approval of
3 significant projects and CWIP in rate-base. That's an
4 acronym, C-W-I-P. Are you able to say how each of
5 those mechanisms, either individually or collectively,
6 would affect a hypothetical utility's cost of capital?

7 A. I mean, do you want an educated guess or
8 do you want a -- a -- you know, exact -- I mean there
9 is no exact science to all together or individually,
10 but --

11 Q. Well, okay. That's a good question.
12 You're offered as an expert in this case. Right?

13 A. Yes.

14 Q. All right. So you could give me an
15 expert opinion --

16 A. Okay.

17 Q. -- or you can give me an educated guess.

18 A. No, no, no. It's expert --

19 Q. I'll let you decide.

20 A. -- opinion. Expert opinion would be that
21 on -- on the debt side, it's -- it's going to be -- I
22 mean that's the difference between a -- you know,
23 right now the -- Ameren Missouri, you know, borrowing
24 effectively we talked -- talked -- mentioning before
25 sort of issuing -- most of the borrowing is done on

1 the secured side. So it's sort of an A-minus,
2 Bbb-plus credit.

3 I mean, that's -- with all those
4 mechanisms, that's a one- or two-two notch increase.
5 You know, that's probably 50-plus basis points on the
6 debt side and two multiple points on the P side from
7 an equity perspective. And if you look at utilities
8 today that are earning their cost of capital, they
9 trade at significant premiums to Ameren.

10 Q. So if -- if Missouri had 100 percent FAC
11 and then these additional -- th-- these four
12 additional mechanisms, it would have on the debt side
13 a 50 basis points effect?

14 A. If it had all those mechanisms and --
15 and -- and Ameren was now earning their allowed cost
16 of capital, yes, it would have a significant --
17 50 basis points plus effect on -- on the debt side.

18 If it had all those mechanisms and Ameren
19 still wasn't earning its allowed cost of capital, I
20 think investors would have significant questions as to
21 what -- you know, there's obviously an issue as to,
22 you know, those components. So it's -- these are
23 tools in order --

24 Q. There would be an issue as to those
25 components?

1 A. No. There would be an issue -- I mean,
2 well --

3 Q. Or as to Ameren's running of the company?

4 A. I think that's a -- if -- if given all
5 the tools, you know, to earn, the allowed cost of
6 capital and still not, I think, yeah, there would
7 be -- probably, yeah, wouldn't be questions of the
8 Commission or the regulatory environment. It would be
9 questions of the -- the management of the company.

10 Q. And what -- what states are you aware of,
11 if any, regulated, vertically integrated states that
12 are -- that are like Missouri that have an FAC and
13 also are decoupled, also use a forward test year,
14 allow pre-approval for major projects and allow CWIP
15 in rate-base. Are there any?

16 A. Michigan.

17 Q. Has all of those mechanisms?

18 A. I believe they have all of those
19 mechanisms.

20 Q. They have 100 percent pass-through on the
21 FAC?

22 A. It's -- if not, it's pretty darn close.
23 I mean, I can certainly check for you.

24 Q. Okay. Any others?

25 A. You know, I believe -- you know,

1 instead -- I mean, listen, I can get -- let me provide
2 you with that information. I don't want to speculate
3 and name states that are wrong. There are certainly
4 examples of it.

5 Q. If it's in your testimony and I missed
6 it, it's --

7 A. No, it's not -- it's not in my testimony.
8 It's just something -- yeah, I, you know, have a --
9 you know, have some experience with. But I want to
10 make sure I get you right data.

11 JUDGE WOODRUFF: Commissioner, do we want
12 to mark that as an exhibit for later submission?

13 COMMISSIONER KENNEY: Sure.

14 THE WITNESS: Sure.

15 BY COMMISSIONER KENNEY:

16 Q. And maybe along with that, I guess what
17 I'm curious is if Michigan's -- Michigan's vertically
18 integrated. Right?

19 A. (Witness nodded head.)

20 Q. And its electric utilities, as far as you
21 know as you sit here today, that -- and you may change
22 that when you file whatever it is you're going to
23 file. It has nearly 100 percent pass-through and it
24 has all four of those other mechanisms. Right?

25 A. Uh-huh.

1 Q. Are all of its electric utilities earning
2 their authorized rates of return, as far as you know?

3 A. Yes. Or pretty darn -- pretty close,
4 yeah, they are pretty close to earning their r-- you
5 know, it's slightly below but it's not significant.

6 Q. Well, what's insignificant?

7 A. Half a percent. Is that insignificant?
8 It's sort of a -- you know --

9 Q. I'm asking you.

10 A. Yeah, that's a -- that's a good rule of
11 thumb.

12 Q. So each -- all -- so essentially then you
13 can say that it's a guarantee, at least in Michigan,
14 that with all of these mechanisms, you will hit
15 your -- and what is the authorized rate of return
16 for -- the average authorized rate of return in
17 Michigan for electricity utilities?

18 A. It's not -- I mean it's -- it's -- once
19 again, I don't want to speculate, but I certainly know
20 it's not inconsistent with what's been granted over
21 the last several years in all different states. Sort
22 of a -- you know, low 10 percent ROEs.

23 Q. And they've consistently hit that
24 10 percent or low 10 percent?

25 A. Actually yes, somewhat of a recent

1 phenomenon. A lot of this legislation was passed in
2 2000 -- you know -- 8 and '9.

3 Q. So it may -- it may not have been in
4 effect long enough to know whether it's directly --
5 well, let me ask you --

6 A. It's been in effect long enough to -- you
7 know, at least one -- you know, through one cycle
8 to -- to -- you know, to -- to judge that it's -- it's
9 been, you know, very useful in allowing them to earn
10 their allowed ROEs.

11 Q. Were they allowing [sic] their returned
12 ROEs before those mechanisms were passed, if you know?

13 A. They were under-earning. It wasn't -- it
14 wasn't, you know, egregious, but there was certainly a
15 significant amount of regulatory lag or, you know,
16 regulatory under-earning.

17 Q. Do you know how much?

18 A. No. But I can get that for you.

19 Q. More than half a percent?

20 A. Yes.

21 Q. Significantly more than half a percent?

22 A. I believe so, yeah.

23 Q. So would you say that having all four of
24 those mechanisms, plus 100 percent FAC, guarantees
25 that all electric utilities will reach their allowed

1 rate of return?

2 A. It guar--

3 Q. Would you be comfortable saying that, I
4 guess?

5 A. I would be comfortable saying it
6 guarantees that -- that it gives the electric utility
7 the opportunity to do so. Certainly -- I mean, and it
8 goes back to your question, which is if you -- if
9 given the opportunity and it's not -- if it's not --
10 if it's not utilized or seized upon by the company,
11 then that's not an issue with regulation. That's an
12 issue with the company.

13 Q. Now, you named Michigan. Are there
14 states that have less than -- than these other
15 mechanisms that you mentioned, maybe two or three of
16 the mechanisms --

17 A. Sure.

18 Q. -- but not all four?

19 Okay. And then there are states that may
20 have none of these mechanisms. Right?

21 A. Yes.

22 Q. And --

23 A. The -- sorry.

24 Q. No, go ahead.

25 A. I mean it's a very small number of states

1 that don't have a fuel adjustment clause, but the rest
2 of them do.

3 Q. Yeah, but I'm talking about the other
4 four mechanisms; decou--

5 A. Yeah. But certainly -- there's certainly
6 states that do not have that.

7 Q. And are there states that don't have
8 those other four mechanisms that still hit their
9 allowed ROEs that are vertically integrated?

10 A. Yes.

11 Q. Okay. So the presence or absence of
12 those four additional mechanisms may or may not have
13 anything to do with a utility's ability to hit its
14 ROE?

15 A. Well, I would -- certainly wouldn't say
16 that. What I'd say is that, you know, whether it's,
17 you know, two or four of them, you know, it's going to
18 be dependent upon the utility; historic-- you know,
19 historic-- historically where the rates have been set;
20 where they've invested; where they haven't invested;
21 their own capital structure.

22 I mean, you know, southeastern states are
23 different than, you know, upper midwest states in cost
24 structure. So it's kind of hard to -- sort of a
25 general rule of thumb.

1 Q. Well, how do you explain -- I mean,
2 Ameren was able to achieve its allowed ROE at least
3 for some percentage of the time. There was a chart in
4 Mr. Baxter's -- Mr. Baxter's testimony. And they
5 don't have any of these other four additional
6 mechanisms of 95/5 FAC, but they were able to achieve
7 their allowed ROE at least some percentage of the
8 time.

9 A. Are you talking about this -- historical
10 years or -- or recently on a -- I don't have the chart
11 in front of me so it's hard to -- we're talking about
12 the 1985 through --

13 Q. I don't have it either.

14 A. -- 1996 again?

15 Q. No. I'm talking about in the last two or
16 three years. I mean recently.

17 A. I -- I don't believe they've earned their
18 authorized return in the last -- I mean, you know,
19 maybe if you look at different periods of time. On
20 an -- on an annualized basis, what, you know,
21 investors get in the Ks and the Qs, it's -- it doesn't
22 look like they're earning they're allotted returns.

23 Q. You mean 10Ks and 10Qs --

24 A. Yes.

25 Q. -- SEC filings?

1 COMMISSIONER KENNEY: I don't have any
2 other questions. Thank you.

3 JUDGE WOODRUFF: I reserve No. 164 for
4 Mr. Rygh's -- Rygh's --

5 MR. LOWERY: I made a note. Thank you.

6 COMMISSIONER DAVIS: Let me -- let me go
7 back and inquire of Mr. Rygh.

8 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

9 Q. Rygh or Rygh?

10 A. Rygh.

11 Q. Rygh. Okay. Are you familiar with
12 regulation in Alabama?

13 A. I wouldn't say -- yeah, I'm familiar with
14 it. I -- but I wouldn't say, you know, off the tip of
15 my tongue, no, but I -- I am familiar with it.

16 Q. Well, I mean isn't on-- isn't Alabama one
17 of those states that's -- that's generally thought of
18 as -- as sort of being -- being near -- at or near the
19 gold standard for -- for utilities in terms of
20 regulation?

21 A. Yes. Yes. Yes, it is.

22 Q. And why is that?

23 A. Well, a lot of it's driven by the fact --
24 you know, the larger utilities in that area have --
25 have consistently for years earned their allowed --

1 you know, allowed returns. I believe, you know,
2 they've historically been, you know, thoughtful in
3 setting the allowed returns. Not that they were
4 outsized by any means, but there hasn't been a lot of
5 surprises in Alabama as far as kind of what the -- you
6 know, what the overall construct is.

7 I mean Al-- I mean, you know, people tend
8 to see -- you know, try to think what is the -- you
9 know, on the judgment on the state. You can't -- you
10 can't sort of -- to use the word "decouple," you can't
11 decouple the judgment from the state from the -- how
12 the larger utility -- the majority of utilities
13 interact with that Commission at the end of the day.

14 And, you know, it's hard to say what was
15 working in partnership or what was, you know, one view
16 versus the next, how to get to a certain result. You
17 know, investors judge the -- you know, what is -- at
18 the end of the day the -- you know, what is the
19 returns and are they meeting expectations. But to
20 answer your question, Alabama significant -- you know,
21 has -- has a long history of being able to do that.

22 Q. Well, it's -- it's because they have
23 formula rates, the timely recovery of costs with --
24 with an equity return range that's -- that's built in.
25 Is that a fair statement?

1 A. Yes.

2 Q. And then they also have separate rate
3 mechanisms for power supply costs, new generation
4 costs, environmental compliance costs and authorized
5 increased charges to provide for the recovery of
6 restoration costs during hurricanes, storms, et
7 cetera?

8 A. Yeah. That's -- that's the --

9 Q. I mean, that sounds -- that sounds pretty
10 generous to me.

11 A. You know, depending on -- you know,
12 generous or, you know, depending on from whose
13 perspective. If -- if they were -- if a utility in
14 that state was earning 300 basis points over their
15 allowed cost of capital, it's unwarranted and -- and
16 too generous.

17 And that's why when an investor looks
18 whether it's debt or equity, they're not going to pay
19 for an over-earning situation because it should not
20 last, you know, very long into the future. If you're
21 investing for a next decade, you -- you can't assume
22 that someone's going to over-earn so --

23 Q. All right. And so there are probably
24 some -- some mechanisms like Alabama has that are --
25 that are in other states that you didn't mention.

1 Correct?

2 A. Yes. Yeah. I mean, there's -- there's a
3 laundry list of -- of things that are, you know, done
4 differently in different places and called different
5 things that kind of, you know -- exactly, that will
6 help allow a utility earn its cost of capital.

7 Q. Right. You weren't here for Mr. Baxter's
8 testimony, but -- and you have testified that -- that
9 on an annualized basis, Ameren is significantly
10 earning less than their allowed ROE. Correct?

11 A. Yes.

12 Q. And if I said that they had gotten close
13 to their allowed ROE in basically three of the summer
14 months in the last calendar year, would that -- that
15 seem reasonable to you? Because they're not
16 decoupled.

17 A. Right. No -- yeah, that would seem
18 reasonable that there could be some seasonal
19 adjustment, yeah. But -- maybe you didn't ask me this
20 question. It's -- it's -- I'm -- you know, when I'm
21 buying a utility bond or putting, you know, and -- and
22 putting money into utility on an equity perspective,
23 I'm not looking to bet on weather. I'll go somewhere
24 else to put my money into.

25 So that really is not of any comfort that

1 for three months when things were really hot, they
2 earned their allowed return. Because, you know,
3 unless -- like I said, I'm not -- I'm not taking a
4 view on climate.

5 Q. All right. When -- when talking about
6 Missouri and comparing Missouri to other states, is
7 it -- is it -- is it fair to say that it's not that
8 our utility regulation here is that constructive; it's
9 just that we've avoided doing anything really stupid
10 as potentially some other states have done?

11 A. You're talking in ter-- you're talking
12 about regulation or deregulation versus --

13 Q. De-- deregulation, re-regulation. I'm
14 thinking of, I don't know, states like Connecticut,
15 Illinois where they've had some significant turmoil.

16 A. I could certainly say that -- that --
17 that, you know, the assumption is you haven't done
18 anything stupid. At the -- you know, at the end of
19 the day -- I'm sorry. Maybe I've missed -- forgotten
20 the beginning part of the question. If you want to
21 ask it again, I'm -- I'm --

22 Q. All right. It's -- it's not that we're
23 that constructive. It's just that we haven't done
24 anything destructive?

25 A. I think that's a fair assessment of why

1 you can access the capital markets today and why you
2 have access to capital, but not the cheapest capital
3 that could -- you know, a possibility.

4 And in an environment where it seems like
5 the new paradigm is spending, you know, two times
6 depreciation versus, you know, 1.2 times historically,
7 there's a lot of capital even in the utility sector
8 and, you know, investors are hypersensitive to, you
9 know, these issues going forward and will -- and, you
10 know, will -- will put their capital where they think
11 it works best.

12 So answer to your question, you -- no,
13 you haven't done anything where you sort of binary
14 result where -- where, you know, you've -- you know,
15 we worry about your access to capital. It's -- it's
16 just not the optimal cost.

17 COMMISSIONER DAVIS: No further
18 questions, Judge.

19 JUDGE WOODRUFF: All right. Recross
20 based on questions from the bench beginning with
21 Staff?

22 RECROSS-EXAMINATION BY MS. OTT:

23 Q. Mr. Rygh, when Commissioner Davis was
24 asking some questions and you were talking about
25 whether or not it would be -- what investors would

1 have to be okay with, is it your position that once a
2 utility has a fuel adjustment clause, that investors
3 would not be okay with any kind of change to that fuel
4 adjustment clause?

5 A. No. That's not my position at all. They
6 want -- you know, and I think it was said, you know,
7 in the -- in the opening statements that -- that --
8 and you can debate what isn't prudent -- what is
9 prudence and what is not imprudent.

10 From an investor perspective, a D is not
11 a passing grade. If a utility is a D-player,
12 investors want to know about it and they want -- you
13 know, and -- and recognize that changes need to be
14 made in the regulatory construct. And if -- and if
15 the management that they -- that exists there today
16 screwed it up, they'll be replaced. That's the one
17 thing investors can have a say on at the end of the
18 day.

19 Q. When you were discussing other states and
20 jur-- jurisdictions that have fuel adjustment clause,
21 do you know whether those states that have statutes
22 that authorize their Commission to grant fuel
23 adjustment clause have an incentive provision in them?

24 A. You mean a sharing mechanism or --

25 Q. Well, within their -- yeah, sharing

1 mechanism or it specifically allows that the
2 Commission authorize a sharing mechanism, incentive
3 mechanism?

4 A. Is your question do -- do other states
5 have sharing mechanisms? The answer is yes.

6 Q. No. My -- okay. But my question was, do
7 you know whether those statutes of the -- you said
8 90 percent of utilities have a fuel adjustment clause.
9 Do you know whether those states' specific statutes
10 that authorize them to have a fuel adjustment clause
11 specifically allow for an incentive mechanism?

12 A. No, I don't. I haven't read the statutes
13 of each state; just the resulting fuel adjustment
14 clauses.

15 Q. Okay. How would you define decoupling?

16 A. Well, I mean decoupling is -- is -- and
17 the way I was thinking about it before, it's really --
18 it's a weather mechanism. Right? It's sort of taking
19 apart the -- the load component of -- and the
20 variability in load for the overall ability to earn
21 cost of capital.

22 MS. OTT: I have no further questions.

23 Thank you.

24 JUDGE WOODRUFF: Public Counsel?

25 RE-CROSS-EXAMINATION BY MR. MILLS:

1 Q. Mr. Rygh, the late-filed exhibit that
2 you're going to be preparing, what do you envision
3 that consisting of?

4 A. Well, I think there was two. One is we
5 could just give you the -- the list of all the fuel
6 adjustment clauses out there and -- and -- and what
7 they cover and what their sharing mechanism is, was
8 part of it.

9 And the other one I think was just a --
10 Michigan was one. Just to give you an overview of the
11 change in Michigan regulation and what -- you know,
12 what they have and -- and what the performance have
13 been of the utilities there.

14 Q. And is that exhibit going to cover
15 50 states or is it going to be states that you decide
16 to -- to analyze?

17 A. Well, I guess the question was which
18 states who have all four of those components and, you
19 know, how -- how have their utilities performed.

20 COMMISSIONER KENNEY: And are vertically
21 integrated.

22 THE WITNESS: Vertically integrated to
23 add another dimension to it. We will -- yes, we will
24 look to see -- we will screen to find which ones have
25 those components.

1 BY MR. MILLS:

2 Q. So a list of the states that have all
3 four of those components?

4 A. Right.

5 Q. And -- and are vertically integrated.
6 And then are you going to show the -- the weighted
7 cost of debt for each of the electric utilities
8 operating in those states?

9 A. I can certainly do that if you'd like.

10 Q. Are you going to show the cents per
11 kilowatt hours for residential ratepayers?

12 A. Sure.

13 MR. MILLS: Okay. That's all I have.

14 Thank you.

15 JUDGE WOODRUFF: AARP?

16 MR. COFFMAN: Yes.

17 RECROSS-EXAMINATION BY MR. COFFMAN:

18 Q. Do you know the last year -- do you know
19 when an electric utility in Alabama had a general rate
20 case last?

21 A. I -- I don't. I don't. Sorry.

22 Q. Do you believe it -- that there -- they
23 haven't had a general rate case since the 1980's?

24 A. That wouldn't surprise me.

25 MR. COFFMAN: That's all. Thanks.

1 JUDGE WOODRUFF: All right. Redirect?

2 REDIRECT EXAMINATION BY MR. BYRNE:

3 Q. In the first round of cross-examination
4 Ms. Ott was -- you were talking to Ms. Ott about
5 how -- how -- how well established the FAC is. Do you
6 remember that --

7 A. Uh-huh.

8 Q. -- discussion?

9 And I think you started to say something
10 about the -- the -- the fact that FACs are well
11 established in other jurisdictions, but I think you
12 were cut off. What -- what can you tell us about
13 that?

14 A. Yeah. I mean, you know, fuel adjustment
15 clauses have been around for significant amount of
16 time. A large majority of utilities have them. You
17 know, not that each state is cookie cutter and -- and
18 the Missouri solution or -- or design should be
19 weighted towards one or the other. From an investor
20 perspective, you know, the -- the adoption of the fuel
21 adjustment clause was a significant event in -- in the
22 sense that it stopped disadvantaging you; not like it
23 created -- it created a significant advantage.

24 The definition of well established I
25 guess is a semantic discussion, which is I'm not

1 debating the review and, you know, the necessity to
2 make sure that everything's checked and -- and things
3 are being done right on every end.

4 What our -- the assumption would be from
5 an investor perspective if it exists, it's well
6 established, meaning it went through a thorough and
7 thoughtful design process, whether it was
8 legislatively or regulatorily before it ever -- you
9 know, was ever put in place.

10 Q. Can the state of Missouri benefit from
11 the fact that FACs are not a new thing across the
12 country?

13 A. Can it benefit? I'm sorry?

14 Q. Yeah. Can it -- can it benefit in
15 dealing with its own FAC?

16 A. Oh, I mean if -- if -- if it's used to
17 certainly looking -- I mean, there's plenty of
18 examples of FACs and a lot of the growing pains have,
19 you know, been dealt with in different states. And
20 I'm sure there's, you know, different lessons to be
21 learned there if --

22 Q. Ms. Ott also asked you I think about the
23 FAC prudence decision of the Commission that was
24 recently issued. Do you recall that --

25 A. Yes.

1 Q. -- set of questions?

2 A. Uh-huh.

3 Q. Let me ask you this: When you filed your
4 rebuttal testimony, had that decision been issued yet?

5 A. No.

6 Q. And does the issuance of that decision
7 change the view that you expressed in your rebuttal
8 testimony at all?

9 A. No.

10 Q. And why not?

11 A. That specific issue, whether you want to
12 call it prudent, impru-- there was a very specific set
13 of facts. Obviously the Company, Ameren, or investors
14 would have liked a certain decision. It did not come
15 out that way.

16 I wouldn't call it -- that a -- that -- a
17 glaring example of -- of imprudency or lack of ability
18 to -- you know, to do -- to do the job, you know, that
19 needs to get done.

20 Q. Wh--

21 A. It was a specific example of a -- of a
22 disagreement over how things should, you know, be
23 characterized and dealt with it.

24 Q. Would -- would it matter to investors if
25 all the parties in the case agreed that Ameren's entry

1 into the transaction was not imprudent but -- but it
2 was its classification of the transaction that was?

3 A. That does matter. I mean if -- if
4 investors -- I mean, let -- the decision came out,
5 the -- you know, the -- it obviously didn't go the
6 Company's way. That's -- I think because of the
7 specific example of the case, it's not an issue that's
8 going to linger.

9 Now, if you tell -- or everyone knows the
10 rules now. The rules are better defined. The odds of
11 something like that happening again are probably
12 pretty low, but if they do, everyone kind of knows
13 what to do.

14 If the issue was is that -- you know,
15 that Ameren Missouri was, you know, imprudent or was,
16 you know, acting poorly when they actually signed the
17 contracts or -- or did that, I mean that would be more
18 of a -- of a -- you know, evidence of just, you know,
19 less to do with that issue, more to do with Ameren.
20 But it's very specific to that particular case.
21 That's why I don't -- I don't think it will -- you
22 know, it will be a lingering issue.

23 Q. In response to some of Ms. Ott's
24 questions, I think you were talking about the
25 quantification of the impact of the FAC on debt cost.

1 Do you recall those questions?

2 A. Uh-huh.

3 Q. And I think you -- I think maybe
4 Commissioner Kenney asked you some about that too.
5 And I -- as I understood it, you thought in your
6 opinion about a 25-basis point difference in debt
7 cost. Is that true or can you elaborate on that a
8 little bit?

9 A. No. I mean, I think when -- when Ameren
10 Missouri was upgraded by S&P in December, largely in
11 part because of the recovery mechanisms that have been
12 put in place, we saw spreads tighten, you know,
13 instantaneously. And then talking to our -- our --
14 you know, my debt desks obviously track that, you
15 know, did 25 be-- you know, poi-- 25 basis points at
16 least in most cases better than indices.

17 And the -- the, you know, the form of
18 secured credit ratings, which were eight-three, which
19 is Moody's equivalent of sort of A-minus, then you had
20 Bbb at S&P. Being two notches apart was ob-- you
21 know, was something of an issue when you go to issue
22 debt, which is, is it an A credit or is it a B credit?
23 And you kind of get in the middle.

24 Well, now that -- you know, the grade of
25 S&P would have gone to A-minus, but they're within

1 spitting distance of each other, you know,
2 eight-three, Bbb-plus where you can say -- when you go
3 to sell more paper, you're looking at an A credit
4 and -- and it actually will ring true in the market.
5 So, you know, that's 25 basis points at least.

6 Q. Okay. I think Mr. Coffman in the first
7 round asked you some questions about regulatory lag
8 providing a utility with incentives to do a good job.
9 Do you recall that --

10 A. Yes.

11 Q. -- question?

12 Do you know how regulatory lag that
13 Ameren Missouri faces compares to regulatory lag of
14 other utilities?

15 A. I certainly are -- am familiar with what
16 their earned returns are versus their allowed returns,
17 you know, versus other utilities, yes.

18 Q. Well, how -- how does that compare?

19 A. You know, it's -- you know, it's --
20 it's -- you know, I wouldn't -- it's probably mid-pack
21 at best, if not -- if not, you know, lower than that.
22 It's certainly not, you know, one where the -- you
23 know, whether it's equity or debt have -- have
24 identified them as a out-performer.

25 Q. Are there a lot of other utilities --

1 integrated utilities that are consistently earning
2 200 basis points below their authorized return?

3 A. There's certainly many others that --
4 that -- that -- but there's also many that earn their
5 allowed returns. You know, at the end of the day,
6 like -- keeping going back to I'm a portfolio manager,
7 I've got billions of dollars to put in the utility
8 space. You know, I don't need to be in every -- every
9 company. So I'm going to go to the ones where I feel
10 are, you know, deserving of the capital.

11 Q. How does the fact that Ameren Missouri is
12 earning significantly below its authorized return
13 impact this issue, the FAC issue that's being
14 considered now?

15 A. Well, from -- from an investor
16 perspective, you know, as we -- as we talk about the
17 sharing mechanism, what's -- what's important there
18 is -- is -- is that the FAC is such an important tool
19 in order to earn the allowed return.

20 With lack of finding that it's necessary
21 to incentivize Ameren more, changing it from 95 to 85
22 is basically saying -- they're saying that it doesn't
23 really have any definition of any -- how do you rely
24 upon it as an investor if it wa-- if there wasn't --
25 if it basically -- in the testimony I've read, sort of

1 you don't know what's going to happen. If you change
2 to 85, next time it's going to be 75, then it's going
3 to be 20 and it's not going to be -- how do you rely
4 upon it? So, you know, tinkering with that important
5 component really, you know, just basically diminishes
6 any value it has.

7 But to the point, if -- if -- if found
8 that there was a need to because of -- during the --
9 during the review process, that -- you know, some
10 investor will -- will under-- you know, they'll
11 understand if there was a -- you know, a concrete
12 and -- and definable need why it needs to be done.
13 It's just that there's no -- that doesn't exist today.

14 Q. The Staff has referred to this as an
15 experiment. You know, in other words, even though
16 there's not necessarily a need shown, they'd like to
17 try things out, try different percentages out.
18 What -- how -- how would investors view that?

19 MS. OTT: I'm going to object. This is
20 not based off of any question that was for Mr. Rygh
21 during cross-examination or questions from the bench.

22 MR. BYRNE: Well, I think there were a
23 lot of questions about the different sharing
24 percentages. I do think it's related to that.

25 MS. OTT: Maybe counsel can rephrase

1 because the word "experiment" was --

2 JUDGE WOODRUFF: Is it assuming facts not
3 in evidence? Is that what you're --

4 MS. OTT: Yes. Thanks.

5 JUDGE WOODRUFF: I don't think Staff
6 characterized it as -- as an experiment. I think that
7 was the way Ameren described it. And perhaps when you
8 cross-examine Ms. Mantle, you may bring that out, but
9 I don't think that's in the record at this point. So
10 you can rephrase your question.

11 MR. BYRNE: Fair enough. That's okay.

12 BY MR. BYRNE:

13 Q. When you were answering questions from
14 Commissioner Kenney, I think there were -- I think
15 there were four separate mechanisms that you talked
16 about that would I guess improve things from an
17 investor standpoint. I remember one was CWIP in
18 rate-base and forecasted test year I think was
19 another. Do you remember those?

20 A. Uh-huh.

21 Q. How about -- how about having an ROE that
22 is consistent with the national average of ROEs for
23 integrated electric utilities? Is that --

24 A. That's -- that's certainly important.

25 You know, and -- and -- and, frankly, it becomes more

1 of importance as you -- as you -- as you start to earn
2 your allowed ROE. Right now there -- you know, if --
3 if -- if -- you know, I think people have over the
4 years kind of gotten the -- you know, having a high
5 sort of allowed ROE but being, you know, significantly
6 below it, I mean it -- they're going to invest and pay
7 you when they -- when they buy investments in you
8 based on what you can do, not what you're -- you know,
9 not so much at least in this environment as to -- you
10 know, it's still -- it's still very important -- you
11 don't want to be outside the bounds of where you've
12 seen things come out recently for -- for peers, but,
13 you know, obviously the focus is -- is first, you
14 know, earning the allowed return you have and then,
15 you know, debate what is the proper -- because I mean
16 the appropriate return will change.

17 Q. How about having interim rates to reflect
18 rate-base additions? Is that another --

19 A. Yeah. That's -- that would sort of --
20 I'd add -- I'd add that to the list of four at -- you
21 know, at some point as well. We've certainly seen
22 that.

23 Q. How about having a rider or tracking
24 mechanisms to reflect rate-base additions?

25 A. You know, that's -- that's kind of part

1 and parcel to one of the ones I mentioned, which is
2 pre-approval of -- of major projects.

3 MR. BYRNE: All right. Thank you,
4 Mr. Rygh.

5 JUDGE WOODRUFF: Thank you. And you can
6 step down.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: We'll take a short break
9 before we begin with Ms. Mantle. We'll come back at
10 2:15.

11 (A recess was taken.)

12 JUDGE WOODRUFF: All right. Let's go
13 ahead and get started after our break. Before we get
14 started with the next witness, Commissioner Kenney,
15 you had something you wanted to say?

16 COMMISSIONER KENNEY: I did. I had asked
17 yesterday for Ameren to file the notice that was filed
18 in the Taum Sauk ca-- or the Taum Sauk matter and I
19 don't see that it's been filed yet.

20 MR. BYRNE: We -- we haven't filed it
21 yet. I apologize, Commissioner. I've been in the
22 hearing room and it's -- it's in my files and -- back
23 in St. Louis and I just haven't gotten it yet, but we
24 will.

25 COMMISSIONER KENNEY: I'm going to home

1 tonight. Do you want me to stop and get it? I mean,
2 I'm anxious to read it.

3 MR. BYRNE: Okay.

4 COMMISSIONER KENNEY: But here -- and
5 secondarily though, so just as soon as we can get
6 that.

7 And I just wanted to give the parties a
8 heads-up. Laura Wolfe I think is testifying for DNR
9 tomorrow on the DSM issues, if I'm not mistaken. She
10 also has testimony relative to Taum Sauk and I was
11 unable to question her because she was not here.

12 And so I'm going to question her tomorrow
13 about that -- about specifically -- and I'll just tell
14 you specifically what I'm going to ask her about is
15 what their concerns are and ask her to expand on her
16 testimony. So I just wanted to give the parties fair
17 warning. And I'll be doing it from St. Louis so you
18 won't be able to stop me from doing it because I will
19 not be physically present.

20 MR. BYRNE: I'll try to get the letter
21 filed as promptly as possible.

22 COMMISSIONER KENNEY: Okay. That would
23 be great.

24 JUDGE WOODRUFF: All right.

25 COMMISSIONER KENNEY: Thanks.

1 JUDGE WOODRUFF: Ms. Mantle has taken the
2 stand. Did you testify last week?

3 THE WITNESS: No.

4 JUDGE WOODRUFF: First time you've
5 been -- please raise your right hand.

6 (Staff Exhibit No. 218 was marked for
7 identification.)

8 (Witness sworn.)

9 JUDGE WOODRUFF: Okay. You may inquire.
10 LENA MANTLE testified as follows:

11 DIRECT EXAMINATION BY MS. OTT:

12 Q. Can you please state your name for the
13 record.

14 A. My name is Lena M. Mantle.

15 Q. And who are you employed, in what
16 capacity?

17 A. I'm employed by the Missouri Public
18 Service Commission as the manager of the Energy
19 Department, Utility Operations Division.

20 Q. And are you the same Lena Mantle that has
21 caused to be filed pre-filed sections of Staff's cost
22 of service report, specifically page 105 through 121?

23 A. Yes.

24 Q. And that is in relationship to the fuel
25 adjustment clause issue?

1 A. Yes.

2 Q. Do you have any changes to that section
3 at this time?

4 A. Yes. Yes, I do. On page 107, line 29 --
5 I got my case numbers mixed up. That Case No. is
6 actually ER-2008-0318.

7 Q. Do you have any other changes?

8 A. And on page 114, I actually have two
9 changes. In line 14 it currently reads "reports to
10 identify why there is the case." I'd change that to
11 "reports to identify why this is the case."

12 And also that graph on the bottom, the
13 right-hand axis says "dollars per megawatt." It
14 should be "dollars per megawatt hour."

15 And on the Schedule LNM-1, on the
16 right-hand side I've got a line that starts in red
17 "AP-6 begins." As a part of that it says "RP-3
18 begins" and that should be "RP-4 begins" because R3-P
19 [sic] began four minutes prior to that. So that --
20 those are my changes.

21 Q. To the cost of service report?

22 A. Yes.

23 Q. And are you same Lena Mantle that has
24 caused to be filed -- pre-filed surrebuttal testimony
25 that has been marked as Exhibit 218?

1 A. Yes.

2 Q. And do you have any changes to that
3 testimony?

4 A. Yes, I do.

5 Q. And what are those changes?

6 A. On page 1, line 24 -- line 23 and 24, I
7 wrote that "Staff witness David Roos is providing
8 rebuttal testimony." That should be "surrebuttal
9 testimony."

10 On page 2 at the end of line 4 there
11 should be a period.

12 On page 3 on line 10, I have in there a
13 case, ER-2007-0002. It should be ER-2010-0036.

14 And then on page 17, line 11, I have "of
15 the 566 public comments in this case, 99 of the
16 comments referred to the FAC." We went back and
17 rechecked that and it was 86.

18 In addition, AmerenUE pointed out some
19 errors in my graphs in the spreadsheets and I have
20 replacements for my Schedule LNM-S1, and also for the
21 graph that is on page 5 -- top of page 5 in my
22 surrebuttal testimony. And Ms. Ott has copies of
23 that.

24 JUDGE WOODRUFF: Do we want to mark these
25 as separate exhibits?

1 MS. OTT: No. They're just an update to
2 an error that was in a formula in the spreadsheet, if
3 they can just be with her testimony.

4 JUDGE WOODRUFF: That's fine with me.
5 And this is corrections to her surrebuttal?

6 MS. OTT: Yes. It's the chart on page 5
7 and then it's also the revised Schedule LNM-S1.

8 THE WITNESS: And in that schedule, in
9 particular, it's the graphs that at the bottom of the
10 front page, the first page.

11 JUDGE WOODRUFF: Well, I think to make it
12 clear as to what the exhibit is, we'll need to go
13 ahead and mark them.

14 MS. OTT: That's fine.

15 JUDGE WOODRUFF: The FAC cost summary one
16 we'll mark as 242. And the Ameren Missouri OSS we'll
17 mark as 243.

18 And I'll show them as offered. Anybody
19 object to their receipt?

20 Hearing none, they will be received.

21 (Staff Exhibit Nos. 242 and 243 were
22 marked for identification and received into evidence.)

23 BY MS. OTT:

24 Q. Ms. Mantle, if I were to ask you the same
25 questions or similar questions contained within your

1 surrebuttal testimony, would your answers be the same
2 or substan-- substantially similar today?

3 A. Well, I'm thinking of the -- yes, given
4 at the time the prudence audit case had not been
5 decided by the Commission. But I don't think that
6 changes anything that was in my surrebuttal testimony
7 so the answer would be yes.

8 MS. OTT: With that, I'd like to offer
9 Exhibit 218 into evidence.

10 JUDGE WOODRUFF: Exhibit 218 has been
11 offered. Any objections to its receipt?

12 MR. LOWERY: Your Honor, just to make the
13 record clear, I'm going to renew my objection to
14 page 15, line 22 through page 16, line 8, and also the
15 Schedules LNM-S2 and S3.

16 I don't want to get -- I don't want to go
17 into -- in -- in addition to the grounds indicated in
18 our motion that we filed yesterday, I'm also going to
19 object on the basis of improper foundation and lack of
20 relevance given that this witness has admitted that
21 she did not rely upon the information in forming her
22 opinions and I don't think that hearsay that the
23 expert didn't rely on is automatically admissible. I
24 understand the Commission's ruling, but I just need to
25 make a record about the objection.

1 JUDGE WOODRUFF: I understand.

2 MR. LOWERY: I'm also going to object to
3 the change that's been made on page 3, line 10 of the
4 surrebuttal testimony. I believe that's a substantive
5 change. The Company was not advised that that change
6 was going to be made. In fact, Ms. Mantle was deposed
7 extensively about this very issue a little more than a
8 week ago and never testified one time that there was a
9 mistake or that she had misspoken about what cases she
10 was referring to.

11 So I'm going to object that this would be
12 an improper attempt to substantively change her
13 testimony on the witness stand. The Company was not
14 advised and, in fact, is entitled to be advised if the
15 witness is making a change of that nature in advance
16 and I'm going to object to that change.

17 JUDGE WOODRUFF: Well, I think we have
18 two objections out here right now. Let's deal with
19 the first one first. It was your renewal of the
20 objection to the documents from Wyoming and Utah is my
21 understanding.

22 MR. LOWERY: And -- and the testimony --

23 JUDGE WOODRUFF: And the testimony.

24 MR. LOWERY: -- that relate -- that
25 relates to those in the body of the surrebuttal

1 testimony yes, your Honor.

2 JUDGE WOODRUFF: And I will again
3 overrule that objection.

4 Now, as far as the change, what was --
5 what was the change there that was made?

6 MS. OTT: It was a change in a case
7 number in which she's referring to that Staff
8 testified in both the 0007 -- or 0002 and then the
9 0318 case on Ameren's average annual loss factor. And
10 I --

11 JUDGE WOODRUFF: And walk me through the
12 change again because I -- frankly, I wasn't paying
13 attention.

14 MS. OTT: She changed the case number to
15 Ameren's last two rate cases instead of the two prior
16 to the 2010. I don't --

17 JUDGE WOODRUFF: Okay. And let me --

18 MS. OTT: While Ms. Mantle was
19 questioned, she was never questioned about that line
20 during her deposition. It wasn't intentionally trying
21 to mislead the Company. This is an oversight and when
22 she was going back to prepare for preparation today
23 she realized was a mistake.

24 JUDGE WOODRUFF: Let me ask Ms. Mantle.
25 Can you explain the reason for the change?

1 THE WITNESS: I -- I did realize that
2 that was a mistake and partially because of the
3 deposition. I didn't realize that I could not correct
4 for something that I learned was wrong in the
5 deposition. At the time I wrote this, I believed
6 that. And with something that was supplied to me at
7 the deposition, I'm no longer sure of -- of what
8 happened in the ER-2007-0002 case, but I do believe it
9 is applicable to the 2010-0036 case.

10 JUDGE WOODRUFF: Okay. And what is the
11 significance of that change?

12 MR. LOWERY: Well, in fact, I think what
13 Ms. Mantle just indicated proves my point. She was
14 presented with facts and documents in the deposition
15 that indicated that perhaps she didn't entirely
16 understand the facts related to what she was
17 testifying about.

18 And now she it sounds like is deducing
19 that maybe she meant a different case, but that's
20 different than "I had a typographical error and
21 perhaps I just cited the case wrong." And -- and I
22 don't think it's appropriate for her testimony to
23 actually be changed.

24 I will be asking her about some of these
25 things, but I don't think it's appropriate for her to

1 be able to change her testimony on the witness stand
2 because of something that she learned in the
3 deposition and now she's not sure about what she
4 testified. She testified about she testified about.

5 JUDGE WOODRUFF: Mr. Mills?

6 MR. MILLS: Well, I was just doing to
7 say, Judge, one of the foundation questions is "are
8 there any errors in your testimony" and then she's
9 being asked to adopt it as though it's her sworn
10 testimony here today.

11 If the practice is to be to prevent
12 witnesses from correcting known errors, then how is
13 she to testify that that's her testimony today? I
14 mean --

15 JUDGE WOODRUFF: Mr. Coffman?

16 MR. COFFMAN: Yeah. In fact, I would
17 agree with Mr. Mills. Otherwise, she would be
18 compelled to testify to something that she doesn't now
19 believe.

20 JUDGE WOODRUFF: I'm going to overrule
21 the objection.

22 MS. OTT: Staff tenders Lena Mantle.

23 JUDGE WOODRUFF: Okay. For purposes of
24 cross-examination, I guess we'll begin with AARP.

25 CROSS-EXAMINATION BY MR. COFFMAN:

1 Q. Let me see. I think I might have a
2 couple. Ms. Mantle, the -- the recommendation that
3 you made to change the sharing percentage from
4 95 percent/5 percent to an 85 percent/15 percent
5 sharing, was that recommendation made in isolation or
6 was it -- was it packaged together with some other
7 recommendations that you were making?

8 A. That was a part of Staff's position
9 regarding the FAC. I would say that's the major --
10 major change to the FAC, although some others may
11 disagree, but I did have other changes in addition to
12 the 85/15.

13 Q. Were there -- were any of those other
14 recommended changes, in your mind, viewed as linked to
15 the 85/5 [sic] recommendation?

16 A. No.

17 Q. So that recommendation stands alone? If
18 indeed the Commission makes a determination that the
19 fuel adjustment clause should go forward, then this
20 issue could be decide on its own about what -- what's
21 a fair amount of risk of fuel and purchased power
22 variation to be borne by the shareholders and by the
23 ratepayers respectively?

24 A. The recommendation stands alone. How the
25 Commission uses it, I -- I cannot say whether it be

1 alone or with others -- parts.

2 Q. Okay. I have one more question.

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

5 JUDGE WOODRUFF: MIEC wish to cross?

6 MS. VUYLSTEKE: Yes, we do have some
7 questions.

8 CROSS-EXAMINATION BY MS. VUYLSTEKE:

9 Q. Good afternoon, Ms. Mantle.

10 A. Good afternoon.

11 Q. Under AmerenUE's current -- excuse me,
12 Ameren Missouri's current FAC, what period of time is
13 used to reconcile the difference between the actual
14 fuel costs incurred and the fuel costs included in
15 base rates?

16 A. The Company takes two months to make
17 their filing with us and then Staff gets 30 days and
18 the Commission gets 30 days. So with AmerenUE, it's a
19 total of four months.

20 Q. Okay. But it's -- it's actually
21 12 months to -- for the recovery period?

22 A. You're asking the length of the recovery
23 period?

24 Q. Correct.

25 A. Yes. It's 12 months currently.

1 Q. Okay. And you're proposing a change to
2 8 months for the recovery period --

3 A. Yes.

4 Q. -- correct?

5 And is this something that AmerenUE
6 requested in the case or is this a proposal that
7 originates from -- from your analysis or your views of
8 the case?

9 A. It originates with Staff.

10 Q. Okay. And is it true that if there is an
11 over-collection or an under-collection, that interest
12 at the short-term borrowing rate is applied to the
13 over-collection or the under-collection?

14 A. Yes.

15 Q. And have you prepared an analysis of the
16 impact on the level of the fuel -- excuse me, that the
17 level of the fuel adjustment charges would have --
18 what they would have been -- let me start over.

19 Have you prepared an analysis of the
20 impact on the level of fuel adjustment charges that
21 would have occurred in the past had the 8-month
22 reconciliation period been in effect as opposed to the
23 12-month period?

24 A. David Roos actually did that analysis
25 under my direction.

1 Q. Okay. If I showed you a copy of that
2 analysis, would you be able to answer questions
3 regarding that?

4 A. Yes.

5 Q. Okay. And I believe earlier this
6 afternoon we showed you a copy of these items and
7 asked you if you had seen these before and --

8 A. Yes, I've seen this before.

9 Q. And this -- this one as well?

10 A. Yes.

11 MS. VUYLSTEKE: Your Honor, I'd like to
12 take these and mark these as exhibits.

13 JUDGE WOODRUFF: Okay.

14 MS. VUYLSTEKE: These are schedules
15 prepared by Ms. Mantle.

16 JUDGE WOODRUFF: Okay. Do you have
17 copies or --

18 MS. VUYLSTEKE: We do have copies to
19 hand out to everyone.

20 JUDGE WOODRUFF: Okay. MIEC's next
21 number is 416 and 417.

22 (MIEC Exhibit Nos. 416 and 417 were
23 marked for identification.)

24 JUDGE WOODRUFF: I'm going to make the
25 FAC FPA chart 416 and the Impact of Change information

1 417.

2 MR. LOWERY: Your Honor, the chart's 416
3 and the table's 417; is that correct?

4 JUDGE WOODRUFF: Correct. FAC FPA is
5 416.

6 BY MS. VUYLSTEKE:

7 Q. Sorry that took so long. Okay. Now,
8 looking at these schedules, is it true that the
9 12-month reconciliation period -- first of all,
10 without reference to the schedules, is it true that
11 the 12-month reconciliation period was really based on
12 a negotiation -- negotiated stipulation among the
13 parties in the last rate case?

14 A. I believe AmerenUE proposed it, but it
15 was part of a stip and agreement that was agreed to in
16 the 318 case and then I guess in the last case,
17 ER-2010-0036 also.

18 Q. Have any of the parties to that
19 stipulation asked to make a change in the period?

20 A. Not to my knowledge.

21 Q. Okay. Okay. Now, if -- if you go ahead
22 and reference the schedule with the various recovery
23 periods, if you start with the first line, could you
24 go ahead and walk through the numbers for recovery
25 period one for the secondary voltage customers?

1 A. For the secondary voltage customers, the
2 12-month FPA for recovery period one was .00035. If
3 it had been 8 months, it would have been a negative
4 .00054. So it would have been more negative had it
5 had been an 8-month recovery period versus the
6 12-month actual recovery period that it was.

7 Q. Okay. And then can you go ahead and take
8 us through the second line for the primary voltage
9 customers?

10 A. For the primary voltage customers, the
11 12-month recovery period rate was a negative .00034.
12 And if it had been 8 months, it would have been a
13 negative .00052.

14 Q. Okay. And then finally, can you take us
15 through the line for the large transmission voltage
16 customers?

17 A. For 12-month recovery period, it would
18 have been -- it was a negative .00032. And if it had
19 been an 8-month recovery period, it would have been
20 .00051.

21 Q. Okay. Would you say it's fair to say
22 that the percentage of the impact of the change is
23 about the same regardless of the voltage level?

24 A. Yes.

25 Q. Okay. And you made, looking at this

1 chart, kind of an analogous calculation for each of
2 the recovery periods; is that correct?

3 A. Up through recovery period five.

4 Q. And which of the recovery periods had the
5 largest impact?

6 A. I'm sorry. The largest change to the --
7 to the rate or the largest difference between the
8 8 and 12 month? I'm sorry. I just need to --

9 Q. The lar-- the largest percentage increase
10 in the last column.

11 A. That would have been recovery period
12 three had -- the difference between the 12-month and
13 the 8-month recovery period was the 8-month recovery
14 period would have been 86 percent higher than the
15 12-month was.

16 Q. Okay. Now, when you made this proposal,
17 was it your intent to increase cash flow for Ameren
18 Missouri?

19 A. Yes.

20 Q. Okay. And let's try to summarize for the
21 Commission what the impact would be on customers of
22 this proposed change from 12 months to the 8 months.
23 Would you agree that your FAC proposal would result in
24 greater volatility for customers?

25 A. Yes.

1 Q. And would you agree that based on the
2 experience that we've had under the FAC so far, that
3 customers would be paying higher rates more quickly?

4 A. If the rates -- if the costs were going
5 up, yes. If they were going down, they'd be paying
6 lower ones more quickly.

7 Q. Is -- is it your expectation that those
8 costs will go up?

9 A. Actually in recovery period six, they
10 actually went down. They aren't negative, but they
11 are going down.

12 Q. Is it true that in most of the recovery
13 periods so far under the FAC, they have been going up?

14 A. Yes.

15 Q. And is it your opinion based on this
16 analysis, that not only would they have been higher
17 and more volatile, but that they would have been
18 significantly higher?

19 A. Yes. I believe 86 percent is
20 significant.

21 MS. VUYLSTEKE: Okay. I have no other
22 questions. Thanks.

23 JUDGE WOODRUFF: Did you wish to offer
24 these Exhibits 416 and 417?

25 MS. VUYLSTEKE: Yes. I'd like to offer

1 both exhibits into the record.

2 JUDGE WOODRUFF: 416 and 417 have been
3 offered. Any objections to their receipt?

4 Hearing none, they will be received.

5 (MIEC Exhibit Nos. 416 and 417 were
6 received into evidence.)

7 JUDGE WOODRUFF: Public Counsel?

8 MR. MILLS: Thank you.

9 CROSS-EXAMINATION BY MR. MILLS:

10 Q. Ms. Mantle, did you read the rebuttal
11 testimony of Public Counsel witness Ryan Kind on the
12 fuel adjustment clause in this case?

13 A. Yes.

14 Q. Okay. Do you -- and -- and were you here
15 this morning for the testimony of UE witness Lynn
16 Barnes?

17 A. Yes.

18 Q. Okay. Were you involved in Case No.
19 ER-2008-0318 with respect to the fuel adjustment
20 clause issue?

21 A. Yes, I was.

22 Q. Do you recall in that case AmerenUE
23 making a big deal about the -- the incentive that the
24 coal pool provided to UE to keep coal costs down?

25 A. Yes.

1 Q. Okay. And do you agree with Mr. Kind
2 that the elimination of the coal pool eliminates a
3 significant incentive for UE to keep coal costs down?

4 A. Yes.

5 Q. Okay. Now, with respect to the orders
6 from Utah and Wyoming that are attached to your
7 surrebuttal testimony, have you had a chance to read
8 those orders since the time that you -- you filed your
9 testimony in more detail?

10 A. Yes.

11 Q. And are you familiar with the way that
12 the sharing mechanisms work in -- in Utah and Wyoming
13 under those orders?

14 A. As described in the orders, yes.

15 Q. Okay. And with respect to the
16 Commission's decision in this case, is the point at
17 time at which you became more familiar with those
18 orders the -- the crucial point or is it what the
19 orders say that's more important?

20 A. I believe it's what the orders say.

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

23 JUDGE WOODRUFF: Ameren?

24 CROSS-EXAMINATION BY MR. LOWERY:

25 Q. Good afternoon, Ms. Mantle.

1 A. Good afternoon.

2 Q. I want to talk about what -- a little bit
3 about what you do and what you don't know in relation
4 to your sharing percentage proposal. The Company
5 received approval to the fuel adjustment clause in the
6 0318 -- and I'm going to shorthand ER-2008-0318 as the
7 0318 case and ER-2007-0002 as the 0002 case and
8 ER-2010-0036 as the 0036 case just to try to move this
9 along. You'll understand what I'm talking about.
10 Right?

11 A. Yes.

12 Q. So the Company received approval of the
13 fuel adjustment clause just about two years in the
14 0318 case. Right?

15 A. Yes.

16 Q. And so the FAC in Missouri overall and
17 for Ameren Missouri in particular, it's fairly new; is
18 that true?

19 A. That -- that is correct.

20 Q. And at this point given that relative
21 newness, it's your view that there's really no way to
22 find the right split, the right sharing percentage; is
23 that fair?

24 A. Yes.

25 Q. Now, in your mind, the discussion that

1 you've initiated regarding sharing percentages really
2 has to do with incentives. Is that a fair
3 characterization of the discussion and the -- the
4 topic that you've sort of injected into the case?

5 A. Yes.

6 Q. But as you sit here today, you don't know
7 whether Ameren Missouri does or does not have a
8 sufficient incentive to manage its fuel costs and make
9 off-system sales either way. You don't know either
10 way whether they do or don't have a sufficient
11 incentive; isn't that fair?

12 A. That's fair.

13 Q. The Staff's conducted one prudence review
14 covering the period March 1, '09 to September 30, '09.
15 Right?

16 A. Yes.

17 Q. And putting aside the issues in the
18 EO-2010-0255 docket, Staff's prudence report in that
19 first prudence review alleges no imprudent behavior on
20 behalf of the Company. Correct?

21 A. Other than the -- what is in that docket,
22 that's correct.

23 Q. So no imprudence regarding coal or coal
24 transportation, purchasing, procurement. Correct?

25 A. That's correct.

1 Q. No imprudence regarding natural gas
2 expense or any other fuel for generation. Correct?

3 A. That is correct.

4 Q. No imprudence regarding purchased power
5 energy costs or -- or off-system sales. Correct?

6 A. That is correct.

7 Q. No imprudence regarding the way it's
8 managed its plant outages. Correct?

9 A. That is correct.

10 Q. And the report addressed all of the
11 issues I just walked through with you. Correct?

12 A. The report -- what are you referring to
13 as "the report"?

14 Q. The -- the prudence report in that
15 docket -- in that prudence review docket addressed all
16 of those areas that we just talked about. Correct?

17 A. The Staff report --

18 Q. Yes.

19 A. -- addressed all -- all those, yes.

20 Q. All those areas. Right? Just so the
21 record's clear?

22 A. Yes.

23 Q. Okay. Thank you. Something else that
24 you don't know is whether Ameren Missouri's behavior
25 over the past two years would have been any different

1 in regarding to manage its -- managing its fuel costs
2 or how it makes its off-system sales if the sharing
3 percentage during that period had been 15 versus
4 5 percent. Correct?

5 A. That's correct.

6 Q. And you agreed with me previously that
7 your 85/15 percent sharing proposal can be fairly
8 characterized as an experiment. Correct?

9 A. It's an experiment in the way that any
10 change of something that we've never done before is an
11 experiment. A change of increasing a rate of any kind
12 is an experiment. We don't know how the customers are
13 going to respond. We measure it in a certain way in
14 the case, but we don't know if they're going to
15 respond. So any-- anything that's new that we haven't
16 done before I would characterize as an experiment.

17 Q. My question was, you agree that you can
18 fairly characterize this 85/15 percent proposal as an
19 experiment. Correct?

20 A. Since it hasn't been done before, yes.

21 Q. And you, yourself, characterize it as an
22 expensive experiment. Right?

23 A. Yes.

24 Q. And you actually calculated in your
25 direct testimony -- testimony work papers just how

1 expensive that experiment would be, didn't you?

2 A. I calculated how much it would have been
3 given the same exact circumstances as what happened
4 with the 95/5.

5 MR. LOWERY: Your Honor, I'd like to get
6 an exhibit marked, please. I believe it's 165.

7 JUDGE WOODRUFF: Correct, 165.

8 (Ameren Exhibit No. 165 was marked for
9 identification.)

10 BY MR. LOWERY:

11 Q. Ms. Mantle, I've handed you what's been
12 marked for identification as Exhibit 165. Do you
13 recognize this?

14 A. Yes. It's a print-off out of one of my
15 spreadsheets in my work papers.

16 Q. And if you -- if you need a calculator,
17 if you need to do the math, we can do that, but the
18 bottom line is that this Exhibit 165 indicates that if
19 the sharing had been 85/15 over this first five
20 accumulation periods, the Company would have -- it
21 would have cost the Company 20-- I think it's
22 19 1/2 million dollars -- almost \$20 million
23 additional dollars in -- beyond what it cost the
24 Company at the 5 percent level; is that correct?

25 A. I don't see that I summed this here, so

1 I --

2 Q. Do you have a calculator?

3 A. No, I do not.

4 MR. LOWERY: May I approach the witness,
5 your Honor?

6 JUDGE WOODRUFF: You certainly may.

7 THE WITNESS: So were you ask--

8 BY MR. LOWERY:

9 Q. In or-- I'm sorry.

10 A. Go ahead and ask your question again to
11 make sure I get it right.

12 Q. In order -- in order to answer my
13 question, what you'd have to do is you would have to
14 add up the numbers for accumulation periods one
15 through five in the 15 percent row in that second
16 table, that middle table. Correct? And then you'd
17 have to compare that to the sum of the numbers in the
18 5 percent row for accumulation period one through
19 five. Right?

20 A. Either that or just take the 10 percent.

21 Q. Or that.

22 A. The --

23 Q. Yeah. That's why you're an engineer and
24 I'm a lawyer. Could you do that calculation, please?

25 A. What was the number that you said?

1 Q. I think it's about 19 1/2 million
2 dollars.

3 A. That's not the number that I've got so I
4 want to calculate it again.

5 Q. Okay.

6 A. Did you say 22? I'm getting all over the
7 place with these numbers.

8 Q. I said 19 1/2.

9 A. 19 -- that's what I --

10 JUDGE WOODRUFF: Remember the first
11 number in the column is negative.

12 BY MR. LOWERY:

13 Q. Perhaps that's the mistake you're making.

14 A. I thought I subtracted that number out.

15 Problem is I'm using an H-- not an HP calculator
16 and --

17 Q. Do you want to try a Texas Instruments?
18 Would that be better?

19 A. No. It's -- HP does it backwards so --

20 Q. Okay. Let me try it this way. You
21 recognize Exhibit 165 as Deposition Exhibit No. 12
22 from your deposition I took on April 25th; is that
23 correct?

24 A. That's correct.

25 Q. Let me ask you if I asked you the

1 following questions and you gave -- and if you gave
2 the following answers. I'm going to hand you
3 Deposition Exhibit 12 and ask you if you recognize
4 that?

5 "Answer: Yeah. It's my work papers."
6 I'm sorry. Do you have a copy of your
7 deposition?

8 A. Yes, I do.

9 Q. Let me let you get there.

10 A. What page would that be?

11 Q. 188.

12 A. Okay.

13 Q. Starting on line 14:

14 "Question: I'm going to hand you
15 Deposition Exhibit 12 and ask you if you recognize
16 that?

17 "Answer: Yeah. It's my work papers.

18 "Question: Okay. Those work papers will
19 answer the question I just asked you, won't they?

20 "Answer: Yeah.

21 "Can you answer it now?

22 "Answer: I'll have to look at it a
23 little bit. It looks like it's been -- for the five
24 accumulation periods, it's been 195 million that's
25 been under-collected. So the difference would have

1 been about 19.5 million."

2 Does that refresh your recollection?

3 A. Yes.

4 Q. So the difference between a 5 percent
5 sharing percentage and a 15 percent sharing period --
6 sharing percentage for the first five accumulation
7 periods, that difference to the Company and what it
8 would have cost the Company additional is
9 approximately 19.5 million; is that right?

10 A. Yes.

11 MR. LOWERY: Your Honor, I'd move for the
12 admission of Exhibit 165.

13 JUDGE WOODRUFF: 165 has been offered.

14 Any objection to its receipt?

15 Hearing none, it will be received.

16 (Ameren Exhibit No. 165 was received into
17 evidence.)

18 MR. LOWERY: Need to get another exhibit
19 marked, your Honor.

20 JUDGE WOODRUFF: This is 166.

21 (Ameren Exhibit No. 166 was marked for
22 identification.)

23 BY MR. LOWERY:

24 Q. Ms. Mantle, I'd ask you if you can
25 identify Exhibit 166?

1 A. It looks like part of my work papers for
2 my direct case.

3 Q. And if we were to add the \$2.5 million
4 number in the 10 percent column under AP-6 in the
5 middle table to the 19.5 million figure that we just
6 discussed, that would tell us that had the 15 percent
7 sharing versus the 5 percent sharing been in place for
8 the first six accumulation periods, the Company would
9 have absorbed an additional \$22 million; is that
10 correct?

11 A. Yes. Because this exhibit that you just
12 passed out is where I did add the additional
13 accumulation period six. So it would -- yes, that's
14 what it is. It's the same page in a worksheet, just
15 with additional information.

16 Q. Thank you.

17 MR. LOWERY: Your Honor, I'd move for
18 admission of Exhibit 166.

19 JUDGE WOODRUFF: Exhibit 166 has been
20 offered. Any objections to its receipt?

21 Hearing none, it will be received.

22 (Ameren Exhibit No. 166 was received into
23 evidence.)

24 BY MR. LOWERY:

25 Q. Ms. Mantle, over the next 19 months if

1 all else remains the same, the experiment that we've
2 talked about would cause the Company to absorb about
3 19.5 million more -- well, over the 19-month period,
4 about 19.5 million more than the 5 percent. Right?

5 A. Over the last months -- or on a going
6 forward basis?

7 Q. Let me start over.

8 A. Okay.

9 Q. If -- for the next 19 months if
10 everything else remained the same, as it -- as it was
11 the last 19 months -- you have to assume everything
12 else remains the same -- the Company would have
13 absorbed an additional \$19.5 million with a 15 percent
14 sharing percentage than it would with 5 percent
15 sharing percentage. Right?

16 A. If everything else remained the sam-- or
17 everything else became the same as what -- what that
18 time period showed in the past, yes.

19 Q. Okay. And if we look forward for the
20 next 23 months -- same question, same assumption.
21 Everything remains the same for the next 23 months as
22 it has been for the last 23 months. The Company would
23 absorb an additional approximately \$22 million with a
24 15 percent sharing versus a 5 percent sharing. Right?

25 A. If everything happened exactly as it has

1 in the past and we started where we started in the
2 past.

3 Q. Right. Let's get a sense of how much
4 money we're talking about. Are you aware of how much
5 the Staff is recommending as a normal level of storm
6 expense in this case?

7 A. No.

8 MR. LOWERY: May I approach, your Honor?

9 JUDGE WOODRUFF: You may.

10 BY MR. LOWERY:

11 Q. I'm going to hand you a copy of the
12 transcript -- I don't have extra copies, but I'll show
13 it to you. Copy of the transcript from this hearing
14 from April 27th, 2011 and I would direct your
15 attention to lines 20 to 25 on page 79.

16 A. Okay.

17 Q. Could you -- could you read the question
18 that starts on page carrying forward to page -- or
19 line -- I'm sorry, line 20 carrying forward to
20 line 25?

21 MR. MILLS: Judge, before we go here, is
22 the transcript for this hearing available?

23 JUDGE WOODRUFF: I've not seen it.

24 MR. MILLS: I've not seen it either so
25 I'm wondering what -- what this is that we're looking

1 at?

2 MR. LOWERY: Your Honor, we -- we paid to
3 expedite the transcript so we'd copies of the
4 transcript from the court reporter.

5 COMMISSIONER DAVIS: Well, there you go.

6 MR. MILLS: If the witness can verify
7 that this was what happened, that's one thing, but an
8 unofficial transcript of a hearing that nobody else
9 has seen, you know, I don't know that that's competent
10 and substantial evidence that someone has had
11 something transcribed that we haven't seen.

12 MS. OTT: And also object to lack of
13 foundation. She said she didn't know the storm
14 expense and --

15 MR. LOWERY: Your Honor, I'll do it as a
16 hypothetical then. The record will show what the
17 record will show.

18 JUDGE WOODRUFF: Okay.

19 BY MR. LOWERY:

20 Q. Ms. Mantle, I want to assume that
21 Mr. Cassidy testified on April 27th that the Staff's
22 recommended level of -- normalized level of storm
23 expense on an annualized basis in this case base was
24 \$4.8 million. Do you have that assumption in mind?

25 A. Okay.

1 Q. Was that a yes?

2 A. Yes.

3 Q. So over 23 -- over a 23-month period,
4 based on that assumption, that would suggest that the
5 Company's normal storm expenses over a 23-month period
6 would be approximately \$9.2 million? And you can
7 check my math if you'd like, but I simply divided 4.8
8 by 12 and multiplied it by 23.

9 A. You're assuming that the same -- this is
10 a normalized number? Is that -- I'm trying to
11 understand what this number is before I can tell you
12 whether or not that's a fair assumption.

13 Q. The assumption is that Mr. Cassidy
14 testified that the normal annual level of storm
15 expense for Ameren Missouri is 4.8 million. Do you
16 understand that assumption?

17 A. Yes.

18 Q. And annual means 12 months. Right?

19 A. Yes.

20 Q. If that's true, then over the next
21 23 months one would expect -- if that normalized level
22 comes true, one would expect the storm expense to be
23 approximately 9.2 million; isn't that right?

24 A. Yes.

25 Q. So your sharing percentage proposal based

1 on that assumption, if all else remains the same for
2 the next 23 months, will cause the Company to absorb
3 an amount of money that is almost two and a half times
4 what its storm expenses according to the Staff would
5 be over that same 20-month -- 23-month period; isn't
6 that right?

7 A. Yes.

8 Q. And so to make up for that, the Company's
9 going to have to increase its revenues or its going to
10 have to decrease its other expenses somehow; isn't
11 that right?

12 A. Yes.

13 Q. Do you remember this morning -- you were
14 here all day for the -- for the FAC issue. Correct?

15 A. Correct.

16 Q. Remember when Mr. Mills was talking about
17 local public hearing testimony this morning?

18 A. Yes.

19 Q. Isn't it true that a majority of the
20 customers don't understand the FAC?

21 A. Yes.

22 Q. In fact, you've had to explain to them
23 that they've actually gotten a -- got a reduction in
24 their -- in their bills in the first accumulation
25 period, haven't you?

1 MR. MILLS: I object to the form of the
2 question. This assumes that -- that Ms. Mantle has
3 talked to the majority of the customers about the fuel
4 adjustment clause, and I think that's an assumption
5 that is not borne out by the evidence in the record.

6 MR. LOWERY: Well, we'll put the evidence
7 in the record.

8 BY MR. LOWERY:

9 Q. Do you have your deposition -- your first
10 deposition, Ms. Mantle? Could you turn to page 66,
11 please?

12 A. Yes.

13 Q. Did you give the following answer:

14 "I would say the majority of customers it
15 makes no -- I think you meant difference -- because
16 they really don't understand the fuel adjustment
17 clause?"

18 Is that not what you testified to?

19 A. That's what that says there, yes.

20 Q. And in answer to my question, just to
21 make sure the record's clear, you've actually had to
22 explain to customers that you've spoken with that they
23 actually got a reduction during the first accumulation
24 period, didn't you, because they didn't understand
25 that? Isn't that right?

1 A. The ones that I've spoken to, yes.

2 Q. Now, you advocate rebasing the fuel cost
3 in each rate case; is that correct?

4 A. That's correct.

5 Q. And while in your direct testimony you
6 made no suggestion that anything having to do with
7 rebasing or not rebasing for the Company should be
8 considered by the Company -- well let me strike that.

9 In your direct testimony you didn't
10 suggest that the rebasing issue was something the
11 Commission needed to consider in this case for Ameren
12 Missouri; is that right?

13 A. That is correct.

14 Q. In your surrebuttal testimony though you
15 stated that Staff is reconsidering this issue.
16 Correct?

17 A. That's correct.

18 Q. More specifically, I believe at page 12,
19 lines 5 to 7 -- and I'll let you get there.

20 A. Yes.

21 Q. You indicate, "If Ameren Missouri is
22 recommending a level of off-system sales that is lower
23 than what it believes it can achieve, then the sharing
24 mechanism is not greater enough for Ameren Missouri to
25 be concerned with getting it right."

1 Did I read that correctly?

2 A. Yes.

3 Q. If Ameren Missouri recommends a level of
4 off-system sales that's lower than what it believes it
5 can achieve and if, in fact, Ameren Missouri achieves
6 more than it recommended, customers will get
7 95 percent of that benefit, won't they?

8 A. Yes.

9 Q. Did you misspeak in your testimony?

10 A. No, I did not. If --

11 Q. Okay. Fair enough.

12 A. If it's too low and the off-system sales
13 should actually be higher, than the base is set too
14 l-- the -- if it was in the base, then the customers
15 would get 100 percent.

16 Q. If Ameren Missouri --

17 A. Where if it's in --

18 Q. I'm sorry.

19 A. Where if it's set wrong and Ameren
20 Missouri actually achieves more off-system sales,
21 customers get 95.

22 Q. If Ameren Missouri recommends 80 --
23 \$80 million as off-system sales, for example -- take
24 that example -- and it turns out that Ameren Missouri
25 makes \$100 million of off-system sales, then customers

1 get 95 percent of \$20 million as a benefit, don't
2 they?

3 A. Yes.

4 Q. Okay. Now, in the first case after
5 that -- after the FAC was established, and that's the
6 0036 case, the Company did propose to rebase its net
7 fuel cost, didn't it?

8 A. Yes.

9 Q. And the Company, in fact, proposed to
10 rebase its net fuel cost in this case as well.
11 Correct?

12 A. Yes.

13 Q. And the fuel-related issues were settled
14 in the 0318 case, were they not?

15 A. Yes.

16 Q. And except for the nuclear fuel issue in
17 the 0036 case, the fuel-related issues were settled in
18 that case as well. Correct?

19 A. Correct.

20 Q. And the Staff was a party to those
21 fuel-related settlements in both of those cases.
22 Right?

23 A. Yes.

24 Q. And the Staff wouldn't have settled on
25 the numbers that are reflected in those settlements if

1 the Staff didn't think the rebase was reasonable,
2 would it?

3 A. It would not have.

4 Q. So the Staff was satisfied in both of
5 these ca-- those cases that it was a reasonable rebase
6 of the net base fuel costs that occurred in both of
7 those cases. Right?

8 A. Yes.

9 Q. And the net base fuel cost which the
10 Company proposed to rebase in this case they've
11 been -- they've been settled in principle and we just
12 haven't formalized the documents; isn't that right?

13 A. Yes.

14 Q. And Staff's going to be a party to that
15 settlement as well, isn't it?

16 A. Yes. It's my understanding.

17 Q. So Staff is satisfied that the rebase
18 that's been agreed on in this case is reasonable,
19 isn't it?

20 A. Yes.

21 Q. And, in fact, if we go back to the 0036
22 case, it was the Staff -- and I think along with MIEC,
23 it was the Staff who opposed including the higher
24 nuclear fuel cost in the rebase of the fuel cost in
25 that case; isn't that right?

1 A. That's correct.

2 Q. And that was 11 -- about an \$11 million
3 issue, do you recall?

4 A. I don't recall the magnitude, no.

5 MR. LOWERY: May I approach, your Honor?

6 JUDGE WOODRUFF: You may.

7 BY MR. LOWERY:

8 Q. Ms. Mantle, do you recognize the document
9 I just handed you as being an excerpt from the
10 Commission's Report and Order in the 0036 case?

11 A. Yes.

12 Q. Would you turn to page 54?

13 A. Okay.

14 Q. Can you verify for me -- and I'm
15 directing your attention to paragraph 2 in
16 particular -- that the opposition that the Staff had
17 to including the higher nuclear fuel costs, that that
18 was an approximately \$11 million issue?

19 A. Yes.

20 Q. And the Company fought to include that
21 \$11 million in the rebase of the fuel costs in that
22 case, didn't it?

23 A. Yes.

24 Q. And are you aware the Company's still
25 fighting that issue in Cole County Circuit Court

1 today?

2 A. No, I'm not.

3 Q. And the Company fought to include that
4 \$11 million in the rebase of the net fuel cost even
5 though the sharing percentage was only 5 percent so
6 that the -- the amount really at issue ultimately
7 would have only been about \$550,000. Right?

8 A. Per year, yes.

9 Q. Per year. And the net fuel costs --
10 would it be fair to say that the net fuel costs in
11 that case were probably on the order of 350, 400
12 million dollars?

13 A. I don't remember, but that sounds
14 reasonable.

15 Q. It looks to me like 5 percent gave the
16 Company plenty of incentive to fight for the \$550,000.
17 Wouldn't you agree?

18 A. In the last case, yes.

19 Q. Now your reconsideration, as you call it,
20 of whether rebasing or lack of rebasing or how
21 accurate the rebasing is, your reconsideration that
22 you bring up in your surrebuttal testimony is based
23 upon the suggestion that the Company made in its
24 rebuttal testimony that the three-year historical
25 average of power prices being used by the Company and

1 by the Staff in this case, and I think by MIEC for
2 that matter, in the fuel modeling is less than the
3 current forward price, which perhaps suggests to you
4 that the Company may not in actuality be able to
5 achieve that level of off-system sales. Is that why
6 you brought up this reconsideration issue?

7 A. No. It's because Ms. Barnes on page 8 of
8 her rebuttal testimony said that fuel costs are likely
9 to be set at a level that is too low because
10 off-system sales of revenue are higher in the case
11 than Ameren Missouri's likely to achieve. That's why
12 I said that.

13 Q. You recall that Mr. Haro testified that
14 the historical -- three-year historical average being
15 used by the Staff and the Company is lower than the
16 current forward price for power for off-system sales.
17 Right?

18 A. I believe that's in his rebuttal
19 testimony. I don't know that I remember him saying
20 that today.

21 Q. Okay. You wouldn't happen to have a copy
22 of his testimony with you, would you?

23 A. No, I do not.

24 Q. Do you recognize the document I just
25 handed you?

1 A. It looks like it's the rebuttal testimony
2 of Jaime Haro in this case, ER-2011-0028.

3 Q. Would you turn to page 3 of that
4 testimony, please?

5 A. Okay.

6 Q. Mr. Haro testified starting at line 19,
7 he says, In my opinion, it is very unlikely that the
8 prices Ameren Missouri will actually obtain will be as
9 high as the three-year historical average. This is
10 because power prices have significantly declined over
11 the past three years. In fact, the current forward
12 around-the-clock price for the 12 months ending
13 July 2012, (the first full year after the new rates
14 will be in effect) is approximately \$29.06 per
15 megawatt versus the approximate 32.51 per megawatt
16 hours -- carries over on the next page -- used in the
17 production cost model run, et cetera.

18 Did I read that correctly?

19 A. Yes.

20 Q. So I ask you again when Mis-- when
21 Ms. Barnes commented about the actual fuel costs the
22 Company expected to have -- net fuel costs the Company
23 expected to have after rates are set and talked about
24 the fact that it's because the off-system sales price
25 may be set lower than what the Company can actually

1 achieve, that's the same issue Mr. Haro's talking
2 about here, isn't it?

3 A. He's stating it's his opinion that the --
4 the position presented by AmerenUE is too high.

5 Q. And that's what Ms. Barnes, in effect,
6 said as well, isn't it?

7 A. Yes. She said that the -- the position
8 of AmerenUE is too high.

9 Q. Of course, that position's the same
10 position Staff has on terms of power prices, isn't it?

11 A. I think we ended up at the same place,
12 but I don't know exactly where we were at time of
13 rebuttal.

14 Q. Staff's been recommending the three-year
15 average of power prices throughout this case; isn't
16 that true?

17 A. Throughout this case, yes.

18 Q. And the -- and the reason the Staff is
19 doing that is because its Staff's best judgment that a
20 three-year historical average was the best it could do
21 to predict what the average hourly market price was
22 going to be after rates are set; isn't that right?

23 A. That is correct.

24 Q. And just to be clear, Staff's not going
25 to support using a forward price to set the off-system

1 sales price using the fuel modeling in this case, is
2 it?

3 A. No, it will not.

4 Q. But you say, well, Ameren Missouri, if
5 you think the power price being used in the modeling's
6 too high, you say take it to the Commission. That's
7 your suggestion, isn't it?

8 A. That was my suggestion in the deposition
9 and that would be my suggestion today.

10 Q. In fact, isn't it true that in the 2007
11 rate case for Ameren Missouri, the 0002 case, some of
12 the parties wanted to use a budgeted or forward price
13 and the Commission said no because it us-- the
14 Commission said, we used historical expenses in
15 revenues and it's fundamentally unfair to use a
16 forecasted price for this one item. Didn't the
17 Commission say that?

18 A. I believe I saw that document during my
19 deposition, that's what it said. I don't have it
20 here, but I --

21 Q. Ms. Mantle, I'm handing you a document.
22 Do you recognize that as an excerpt from the
23 Commission's Report and Order in the 0002 case?

24 A. Yes.

25 Q. Would you read the first full paragraph?

1 A. The second problem with using the 2007
2 budgeted amount to set a level for off-system sales is
3 more fundamental, and Missouri rates are set using
4 historical test year. The Commission examines the
5 utility's revenues and expenses for that test year and
6 uses that information to set rates to be charged in
7 the future.

8 The Commission does not use a
9 forward-looking test year based on budgets and
10 projections to set those rates. If it did, AmerenUE
11 would no doubt appreciate an opportunity to base its
12 rates on what it believes will be higher fuel costs in
13 the coming years.

14 Since the Commission uses historical
15 expenses and revenues to set rates, it would be
16 fundamentally unfair to reach forward to grab a single
17 budget item to reduce AmerenUE's cost of service while
18 ignoring other anticipated costs that might increase
19 that cost of service.

20 Q. Thank you. So the Staff's not going --
21 not going to support using a forward price. Right?

22 A. That's correct.

23 Q. And the Commission's been very clear that
24 it isn't going to entertain using a forward price.
25 Isn't that -- isn't that pretty clear from that

1 statement?

2 A. It was clear in this case, yes.

3 Q. At least it was clear at that time.

4 Correct?

5 A. Yes.

6 Q. You --

7 A. Yes.

8 Q. You don't have any reason to believe
9 that's changed, do you?

10 MS. OTT: Objection. Speculation.

11 MR. LOWERY: I asked her if she had any
12 reason to believe. I didn't ask her what somebody
13 else believed.

14 JUDGE WOODRUFF: Overruled. I'll
15 overrule the objection.

16 THE WITNESS: And the question was?

17 BY MR. LOWERY:

18 Q. You don't have any reason to believe that
19 the Commission's view about that has changed, do you?

20 A. Yes.

21 Q. You do?

22 A. Yes.

23 Q. And what would that be?

24 A. KCPL presented prices that were estimated
25 using their MIDAS model. While the Commission did

1 adopt the Staff's price, it said in its order or its
2 amended order that it believes that MIDAS is a good
3 method for estimating the price -- market price.

4 Q. You don't know whether the prices used in
5 the MIDAS model were forward prices or not, do you?

6 A. No.

7 Q. And the Commission adopted the Staff's
8 model using historical prices, didn't it?

9 A. Yes.

10 Q. Let's talk about the data that we do have
11 and what it shows. In your direct testimony -- and
12 I'm going to refer to your direct testimony as your
13 part of the Staff report. Is that okay?

14 A. Yes.

15 Q. In your direct testimony you presented a
16 graph at page 114. Right?

17 MR. LOWERY: Your Honor, can I inquire
18 whether the Commissioners actually do -- does everyone
19 have that testimony and can look at the graph or I can
20 put it on ELMO if that would facilitate --

21 COMMISSIONER DAVIS: Which graph?

22 MR. LOWERY: Direct tes-- Staff report,
23 page 114. In fact, I think perhaps -- no, that's from
24 surrebuttal testimony.

25 JUDGE WOODRUFF: Do you want to --

1 MR. LOWERY: I was just trying to
2 expedite this as much as possible, but --

3 JUDGE WOODRUFF: You can certainly put it
4 on ELMO if you like.

5 MR. LOWERY: I'll give it a shot. I
6 know -- I know -- I know that folks like it when we
7 use ELMO, so -- if I can actually make this work.

8 COMMISSIONER KENNEY: Why do we like
9 that?

10 JUDGE WOODRUFF: Use of ELMO.

11 COMMISSIONER KENNEY: Why? Just like to
12 hear the phrase ELMO?

13 JUDGE WOODRUFF: That's right.

14 COMMISSIONER JARRETT: Use it or lose it.

15 JUDGE WOODRUFF: And there it is.

16 MR. MILLS: If you zoom it, we'll all be
17 impressed.

18 MR. LOWERY: Well, I can try.

19 BY MR. LOWERY:

20 Q. There. Ms. Mantle, you presented this
21 graph at page 114 of your direct testimony. Correct?

22 A. Correct.

23 Q. And if one looks only at that graph, the
24 point that I think you were making was maybe that it
25 suggests that Ameren Missouri might not have enough

1 incentive to make off-system sales because the power
2 price was going up between say AP-3 and AP-5 and the
3 volumes of off-system sales were going down. Correct?

4 A. Yes.

5 Q. And when I say "AP," that's accumulation
6 period. Right?

7 A. That's correct.

8 Q. And each one of those is a four-month
9 period under the fuel adjustment clause. Right?

10 A. Except for first one, which was three
11 months.

12 Q. Which was three, because we started in
13 March, not February. Right?

14 A. Yes.

15 Q. And the graph in your direct testimony
16 covered just the first five accumulation periods.
17 Correct?

18 A. Yes.

19 Q. Now in your surrebuttal testimony you've
20 updated that graph so that it covers AP-1 to AP-6.
21 Right?

22 A. Yes.

23 Q. And we see that I think on page 5 of your
24 surrebuttal?

25 A. I -- actually it was one of the graphs

1 that I handed out a corrected version of.

2 COMMISSIONER KENNEY: That's the
3 corrected version?

4 THE WITNESS: Yes.

5 BY MR. LOWERY:

6 Q. And I believe --

7 MR. MILLS: 243.

8 MR. LOWERY: Is that 243, your Honor, the
9 corrected graph?

10 JUDGE WOODRUFF: Yes.

11 BY MR. LOWERY:

12 Q. So I want to put 243 up on the screen.

13 So if we add accumulation period six, this graph
14 starts to take on a different look. Right?

15 A. That's correct.

16 Q. And when we add accumulation period six,
17 it may be now that the data that's reflected on the
18 updated graph doesn't necessarily support the
19 hypothesis that there might not have been enough
20 incentive to make off-system sales. And that's also
21 borne out by Mr. Haro's rebuttal testimony, isn't it?

22 A. Yes.

23 Q. And you're not even contending as you sit
24 here today that the Company lacks sufficient incentive
25 to make off-system sales, are you?

1 A. No.

2 Q. Now, as I mentioned, Mr. Haro provided a
3 great deal of information in his -- in his rebuttal
4 testimony about why the level of off-system sales the
5 Company has made during the first five accumulations
6 were what they were, didn't he?

7 A. Yes, he did.

8 Q. And, in fact, you don't have any reason
9 to disagree with anything Mr. Haro said in his
10 rebuttal testimony from page 16, line 1 all the way
11 through page 22, line 17, do you?

12 JUDGE WOODRUFF: Mr. Lowery, are you
13 finished with the ELMO mow?

14 MR. LOWERY: Not quite, your Honor.

15 JUDGE WOODRUFF: I'll leave it on for a
16 while then.

17 BY MR. LOWERY:

18 Q. Ms. Mantle, I'm not suggesting you've
19 testified inconsistently, but just to try to speed
20 this along, let me just ask you if -- if -- if I -- if
21 this refreshes your recollection:

22 "I noticed" -- I asked you in your
23 deposition at page 178, starting at line 25:

24 "I noticed in your surrebuttal testimony
25 that you didn't rebut anything that Mr. Haro said in

1 his rebuttal testimony starting with line 1 on page
2 16, all the way to page 22, line 17. All you said is
3 that you appreciated his thoroughness. Isn't that
4 fair?

5 "Answer: That's fair.

6 "Question: Is it fair for me to conclude
7 that you agree with those lines and pages in his
8 rebuttal testimony?

9 "Answer: I have no reason to. I said in
10 the Staff report that there were outages, that there
11 was -- the Callaway plant was down, that the sales
12 were up, and he just explained those in great detail.

13 "Question: You don't take any issue with
14 any of that?

15 "Answer: I don't have any reason to."

16 Is that accurate?

17 A. Yes.

18 Q. Okay. You agree that the Company has to
19 make retail sales first before it makes off-system
20 sales, doesn't it?

21 A. Yes.

22 Q. You agree that planned maintenance
23 outages at generating units are important?

24 A. Yes.

25 Q. Power prices have generally been down

1 during the time that AmerenUE Missouri has had an FAC
2 versus when -- what the power prices were when the FAC
3 started; isn't that fair?

4 A. I haven't done an in-depth look at that.
5 Talking with other Staff, I -- it's my understanding
6 that they are starting to come back up.

7 Q. Compared to where they were say in 2008,
8 late -- mid-2008, late 2008, they've generally been
9 down starting in -- from March 2-- March 1, 2009 at
10 least until recently they've been down; isn't that
11 true?

12 A. I don't -- I haven't looked at that
13 information recently enough to be able to say
14 accurately.

15 Q. Well, if we look at your own charts, it
16 would indicate that that's the case, wouldn't it?
17 Let's look, for example, the one that's behind you on
18 the screen. It's Exhibit 2--

19 MR. LOWERY: I apologize, your Honor. I
20 don't have the number. The one that's --

21 JUDGE WOODRUFF: 243.

22 BY MR. LOWERY:

23 Q. Exhibit 243. Starting at AP-1, it looks
24 like -- to me like the price is up around, I don't
25 know, 40, 45 dollars a megawatt hour and all the way

1 down through the end of accumulation period five it's
2 more or less trending down; isn't that right?

3 A. The average price is the diamond. And it
4 starts a little below 40, drops down in the second
5 accumulation period and then goes up through the fifth
6 accumulation period and --

7 Q. And then drops?

8 A. Yes, and drops. So the price actually
9 showed that it had been going up and now it's coming
10 back down.

11 Q. Okay. Now, there's a second graph that
12 addresses some of the issues we've been talking about,
13 retail sales, off-system sales, which you had in your
14 work papers for your direct testimony, the Staff
15 report, but which you did not put in the Staff report.
16 Right?

17 A. Yes.

18 Q. And Mr. Haro actually put that graph in
19 his rebuttal testimony at page 18. Correct?

20 A. I know he put it in his rebuttal
21 testimony. I don't know -- don't know what page it
22 is.

23 Q. Could you turn to page 18 of his rebuttal
24 testimony?

25 A. Yes, that graph's there.

1 Q. And this is actually your graph from your
2 work papers. He just put it in his testimony. Right?

3 A. Yes.

4 Q. And what it shows is that -- is that from
5 accumulation period 1 through 5, retail sales went up
6 quite a bit; isn't that right?

7 A. It's easier to see on a color copy than
8 it is the black and white, but -- the retail sales is
9 the lower line and, yes, it has gone -- it went up a
10 lot between accumulation period two and accumulation
11 period five, between those two.

12 Q. Be fair to say from around 90,000
13 megawatts hours a day to approaching 130,000 megawatt
14 hours a day?

15 A. Well, AP-1 -- to do a fair comparison,
16 you need to compare AP-2 and AP-5 because they are
17 both summer months.

18 Q. Okay. So 110 to --

19 A. So comparison between those two is really
20 the -- the accurate comparison. So 110 to 125, '28,
21 something in there.

22 Q. Fair enough. And generation has gone up
23 too, but not by as much. Correct?

24 A. That's correct.

25 Q. So what the graph Mr. Haro included in

1 his rebuttal testimony that actually came from your
2 direct testimony work papers shows, as does the other
3 information Mr. Haro presented, is that any drop in
4 off-system sales volumes was attributable primarily to
5 increased retail loads which have to be served first.
6 Right? Any drop in the volumes that was showed on the
7 graph that you put in your direct testimony is
8 explained entirely or almost entirely by an increase
9 in retail sales; isn't that right?

10 A. I'd have to go back and look at the
11 numbers for that month, but it is a reason why the
12 re-- there was not as much energy to sell on market.

13 Q. And also the more planned outages.
14 Right? Because there were more planned outages during
15 these periods as well. Correct?

16 A. I don't believe there was probably in
17 accumulation period five since that was a summer
18 accumulation period.

19 Q. Well, you agreed with what Mr. Haro said
20 on the lines and pages in his testimony that I -- that
21 I gave you, so whatever he says controls on that
22 issue; isn't that right?

23 A. That's right.

24 Q. And then in your surrebuttal testimony
25 you presented a graph similar to the one that's up on

1 the screen right now, the one that was at page 8 of
2 Mr. Haro's rebuttal testimony, but you carried it out
3 through accumulation period six. Correct?

4 A. That is correct.

5 Q. And it actually had a mistake in it that
6 the Company pointed out to you. Right?

7 A. Yes.

8 Q. And you corrected that mistake and you've
9 actually provided a substitute graph here today.
10 Right?

11 A. Yes.

12 Q. And that corrected graph is the bottom
13 one on this Exhibit 242. Correct?

14 A. That is correct.

15 Q. So what we see if we look at -- between
16 accumulation period five and six, we see that -- get
17 my colors right -- that the generation stayed
18 essentially flat between five and six, went down a
19 little bit, but retail sales went down quite a lot.
20 Correct?

21 A. It decreased at a less rate than the
22 sales did.

23 Q. Generation decreased at a lesser rate
24 than the sales. Right?

25 A. Yes.

1 Q. Which means we had more off-system sales
2 between accumulation periods five and six. Right?

3 A. Yes.

4 Q. Now, you sort of qualitatively talked
5 about the data in the -- in your direct testimony that
6 Mr. Haro did include in his rebuttal testimony. And
7 you acknowledge qualitatively in the text that any
8 drop in off-system sales shown in that graph that you
9 did not include might be explained by things like
10 higher retail sales. But you didn't graphically
11 present that information to the Commission in your
12 direct testimony. Correct?

13 A. That's correct.

14 Q. And you had the data and you had the
15 graph in your work papers so you could have done that.
16 Right?

17 A. Yes.

18 Q. Now I asked you before and I'm going to
19 give you another chance to answer it yes or no. Would
20 it or would it have not have given the Commission a
21 more complete picture at the time of your direct
22 testimony had you included both that graph and the
23 graph that you did include?

24 A. There were other graphs that I did not
25 put in either. I'm -- I --

1 Q. Well, I'm --

2 A. -- Mis-- obviously Mr. Haro thought it
3 was important and put it in and that's why I showed an
4 updated version of that same graph.

5 Q. Well, if we put these side by side, one
6 of them makes it look like price is going up and sales
7 are going down. And the other one sort of explains
8 that the reason that's happening is because more
9 retail sales are being made; isn't that fair?

10 A. Yes.

11 Q. I mean you can see that pretty easily if
12 you look at them both. Right?

13 A. Yes.

14 Q. And the one that you included tended to
15 suggest that there might be a problem with off-system
16 sales, the incentive to make off-system sales, but the
17 one you didn't include sort of suggested maybe not.
18 Maybe there's not a problem with the incentive to make
19 off-system sales, maybe retail loads have just gone
20 up; isn't that true?

21 A. That can be -- yes, that can be derived
22 from those graphs.

23 Q. And you don't really have an explanation
24 for why you didn't -- you don't really remember, you
25 don't really have an explanation of -- in terms of why

1 you didn't include that second graph; isn't that
2 right -- that second graph; isn't that true?

3 A. That's true.

4 Q. Now, let's talk about your surrebuttal
5 testimony and your discussion of the EO-2010-0255
6 docket, which is the first prudence review docket. Am
7 I right?

8 A. Yes.

9 Q. You do not know whether or not the
10 Company would have done anything differently regarding
11 its treatment of the AEP and Wabash contracts had the
12 sharing percentage been 85/15 versus 95/5, do you?

13 A. No, I do not.

14 Q. The Commission has the power to disallow
15 costs recovered under the FAC if there's imprudence.
16 Correct?

17 A. Correct.

18 Q. And the Commission just issued an order
19 in that docket that disallowed some costs, didn't it?

20 A. Yes.

21 Q. And the ability to disallow costs in a
22 prudence review is a powerful incentive for the
23 utility to avoid imprudent behavior, is it not?

24 A. I'd like -- it didn't disallow costs.

25 It -- it said that revenues needed to flow through the

1 FAC. It wasn't -- it didn't have anything to do with
2 costs. It had to do with the revenues.

3 Q. I stand corrected. The Commission's
4 ability to change whether it's to disallow costs or to
5 require more revenues, since we have revenues in our
6 fuel adjustment clause, is a powerful incentive for
7 the Company to not engage in imprudent behavior, isn't
8 it?

9 A. Yes.

10 Q. And the fact that the Commission's not
11 required to approve an FAC or to allow it to be
12 continued also provides a powerful incentive for
13 utilities to act reasonably and prudently regarding
14 their FACs; isn't that right?

15 A. I will leave it to the Company as to
16 whether it's powerful or not, but yes, it is an
17 incentive.

18 Q. Do you have your first deposition with
19 you?

20 A. Sure.

21 Q. Turn to page 45, please.

22 A. Yes, I'm there.

23 Q. Starting at line 7, I'm going to ask you
24 if I -- if you were asked these questions and you gave
25 these answers?

1 "Question: Would you agree with me that
2 the use of a fuel adjustment clause in Missouri is a
3 privilege and not a right for utilities?

4 "Answer: That is correct.

5 "Question: And isn't it true that the
6 Commission can take away a utility's fuel adjustment
7 clause if it believes a utility is misusing it?

8 "Answer: Yes.

9 "Question: And doesn't that also provide
10 a powerful incentive for utilities to act reasonably
11 and prudently with respect to their FACs?

12 "Answer: Yes."

13 Did I read that correctly?

14 A. Yes, you did.

15 Q. In your direct testimony, pages 112 to
16 113 you've presented some basic facts about the ER--
17 excuse me, EO-2010-0255 docket. Correct?

18 A. What page did you say that was?

19 Q. 112 to 113. I believe starting at
20 line 10 on 112 is where you began presenting some
21 basic facts about the EO-2010-0255 docket.

22 A. That is correct.

23 Q. And that carried over to the next page.
24 Correct?

25 A. Yes.

1 Q. And then after you presented those facts,
2 you said -- and I'm on lines 19 and 20 of page 113.
3 You said, "Staff recommends the Commission consider
4 this action by Ameren Missouri as a basis for changing
5 the sharing mechanism from 95 percent/5 percent to 85
6 percent/15 percent?"

7 A. That's correct.

8 Q. Did I read that correctly?

9 A. Yes.

10 Q. And then you talk about that docket some
11 more in your surrebuttal testimony. Right? In
12 rebuttal to I think Mr. Wills, Mister -- probably
13 Ms. Barnes, Mr. Haro, others. Correct?

14 A. I know I talked about the -- the true-up
15 case -- the 0274 case, but can you point me to where I
16 talked about the -- the prudence case?

17 Q. Oh, you talked about it -- and actually
18 you were rebutting Mr. Rygh on page 15 of your
19 testimony.

20 A. Okay.

21 Q. You also talk about it on page 7.

22 A. Oh, yes.

23 Q. And on page 7 at line 21 you say that the
24 Company "may" have acted differently in terms of the
25 AEP and Wabash contracts if the sharing had been

1 different. Right?

2 A. Yes.

3 Q. Then on -- then you say on page 8, line
4 16 that "no one knows" what the Company would have
5 done had the sharing been 85/15. Right?

6 A. On line 16?

7 Q. I believe so.

8 A. Yes.

9 Q. Oh, I'm sorry page 8, line 16. I jumped
10 pages on you.

11 A. Yes. On page -- or line 16, page 8, yes
12 I said it's Staff's position no one knows.

13 Q. And then after saying that on line 18,
14 you state that you believe that it's "very likely"
15 that Ameren Missouri's actions would have been
16 different if the sharing had been 5 percent/95
17 percent. Right?

18 A. Yes.

19 Q. I'm going to ask you a hypothetical
20 question. I want you to assume for me that the
21 Company did exactly what it actually did in entering
22 into the AEP and Wabash contracts and -- and believing
23 that they should be excluded from factor OSSR in the
24 FAC as the Company contended that it -- that it is
25 allowed to do. And I want you to assume further that

1 the Staff had agreed with the Company's treatment of
2 the -- of those contracts. Are you with me?

3 A. So the Company --

4 Q. Did all that we did --

5 A. -- followed the same actions but in your
6 hypothetical, Staff agreed with it.

7 Q. Staff agreed. Right?

8 A. Okay.

9 Q. Under those facts, the Company would have
10 retained the 17 million that's at issue in the 255
11 docket and ultimately the \$42 million that would be at
12 issue in some -- in some future accumulation periods.
13 Right?

14 A. Unless some other party brought it up --

15 Q. Let's assume nobody else brought it up.

16 A. -- in the case. Okay. That would be
17 correct.

18 Q. Okay. Now, I want to reverse the
19 hypothetical. This time the Company enters into the
20 AEP and Wabash contracts but reads the tariff just
21 like the Staff did and says, okay, those fall within
22 factor OSSR. Do you understand that hypothetical?

23 A. Okay.

24 Q. Now, on those facts, the Company
25 ultimately keeps -- under the current sharing

1 percentage, ultimately keeps just 5 percent of the
2 42 million; isn't that right?

3 A. That's correct.

4 Q. And would you agree with me that's about
5 \$2.1 million or do you want to do the math yourself?
6 I thought you engineers could do this in your head.

7 A. It has been a long day. Were you talking
8 of the 42 million or the 17 million?

9 Q. I'm talking of the 42 million.

10 A. Yes, 2.1 million.

11 Q. And if the sharing had been 85/15, the
12 Company gets to keep just 6.3 million. Right?

13 A. That's correct.

14 Q. And if it's 50/50, the number would be
15 21 million?

16 A. Yes.

17 Q. And if it's 25/75, it's 31.5 million.
18 Right?

19 A. Yes.

20 Q. Now, when I say the Company keeps, that
21 means the shareholders are financially better off by
22 that 2.1, 6.3, 21, 31.5, whichever sharing percentage
23 we're looking at; isn't that right?

24 A. Yes.

25 Q. So purely from the standpoint of

1 arithmetic, the shareholders, the Company's,
2 financially better off if the sales from those two
3 contracts are not part of the FAC as the Company
4 actually contends in that docket then if they are part
5 of the FAC even if the Company's sharing percentage in
6 the FAC changes a lot; isn't that true?

7 A. That the Company is better off?

8 Q. The Company's better off from the stan--
9 financially better off if the sales under those
10 contracts do not fall within the FAC even if the
11 Company's sharing percentage under the FAC is much
12 larger than it is now; isn't that true?

13 A. That's true.

14 Q. And when I asked you whether if Ameren
15 Missouri were to engage in a different behavior,
16 whether if Ameren -- strike that.

17 I asked you before whether if Ameren
18 Missouri were to engage in different behavior
19 regarding the AEP and Wabash contracts, whether that
20 different behavior would be driven by change in the
21 sharing percentage. You said, I don't have any idea.
22 Isn't that right?

23 A. That's correct.

24 Q. I guess we'll both have to let the
25 Commission draw their own conclusion about that.

1 Okay. You also rebutted Mr. Rygh's
2 testimony. Right?

3 A. Yes.

4 Q. I just want to be sure I understand what
5 you do or don't know about the impact of an investor
6 on inv-- of an FAC on investor perceptions of a
7 utility felt in general or Ameren Missouri in
8 particular. You have no experience with credit rating
9 agencies; isn't that true?

10 A. That's correct.

11 Q. You have no experience with lenders who
12 fund utility credit facilities?

13 A. That's correct.

14 Q. You don't have any experience with large
15 institutional investors that own a lot of shares;
16 isn't that right?

17 A. That's correct.

18 Q. You're not an expert in how those
19 entities or groups evaluate state regulatory
20 commissions or the decisions they make. Right?

21 A. That's correct.

22 Q. You don't know how they evaluate a
23 utility's regulatory risk; isn't that right?

24 A. That is correct.

25 Q. You're not qualified to give an opinion

1 about the impact on the Company's cost of capital
2 either in the short or the long term if the sharing
3 mechanism were changed?

4 A. That's correct.

5 Q. You don't personally know how the
6 investors view the prospect of the sharing
7 percentage -- that the percentage might be increased,
8 do you?

9 A. No, I do not.

10 Q. Now, Mr. Murray helped you write one Q
11 and A in your surrebuttal testimony, didn't he?

12 A. Yes, he did.

13 Q. And that Q and A I think is on page 14,
14 starting at line 15 and carries over to line -- to
15 probably page 16, I think I have a typo in my notes,
16 line 2; is that correct?

17 A. It starts on page 14 and carries over on
18 to page 15, line 2.

19 Q. Fifteen, yes. I'm sorry. And in
20 substance, that question and answer it came from
21 Mr. Murray. You may have edited it slightly, but the
22 substance of it came from him. Correct?

23 A. Yes. I did edit it, but the su-- but he
24 provided the paragraph that I edited.

25 Q. Your editing didn't change the meaning or

1 the import of the question and answer; is that fair?

2 A. That's fair.

3 Q. He seems to have a future as a shadow
4 writer. Let me -- let me ask you a few additional
5 questions about that.

6 COMMISSIONER DAVIS: Judge, I don't know
7 if it's appropriate or not, but I'm going to move to
8 strike that remark because that's the attorney
9 testifying. I don't believe he's testified.

10 JUDGE WOODRUFF: The remark about the
11 shadow writer?

12 COMMISSIONER DAVIS: Yes.

13 JUDGE WOODRUFF: It will be stricken.

14 BY MR. LOWERY:

15 Q. Now Mr. Mills and of course in your
16 surrebuttal testimony, you attached these two
17 schedules. And they're two very lengthy decisions
18 from the Wyoming and Utah commissions -- about I think
19 they're the equivalent of a fuel adjustment clause
20 sort of, but they call them I think energy cost
21 adjustment mechanisms. Right?

22 A. That's correct.

23 Q. And at least as of eight or nine days ago
24 you couldn't tell -- you couldn't tell me how the ECAM
25 for Rocky Mountain Power in Wyoming or in Utah worked,

1 could you?

2 A. I don't know that I could tell you all
3 the specifics about it now.

4 Q. Which means you certainly couldn't
5 tell -- couldn't -- couldn't have understood how it
6 worked at the time you attached it to your surrebuttal
7 testimony on April 15th. Right?

8 A. Right.

9 Q. In fact, you read them essentially
10 concurrently with or as you were attaching them to
11 your surrebuttal testimony on April 15th; isn't that
12 right?

13 A. Or I wouldn't have attached them if I
14 hadn't.

15 Q. You couldn't tell me how those utilities
16 were the same or different or how their circumstances
17 were the same or different than Ameren Missouri, could
18 you?

19 A. I know some. Just from reading the
20 orders, they're winter peaking utilities, they --

21 Q. That wasn't my question, Ms. Mantle.

22 A. Okay.

23 Q. When I asked you about this on
24 April 25th, you couldn't tell me any of those details,
25 could you?

1 A. No, I could not.

2 Q. Which means you couldn't -- you could not
3 have known any of those details when you attached them
4 to your surrebuttal testimony; isn't that right?

5 A. I may have known them that -- that day
6 when I put them on there, but I did not know them
7 when -- when you did the deposition. I have read them
8 since so I do have more knowledge now.

9 Q. And I think you perhaps recognized
10 several days ago and would recognize now that the base
11 in those adjustment mechanisms is set based on
12 forecasted fuel and -- I don't know whether it covers
13 off-system sales or not, but it's based -- whatever --
14 whatever it covers, it's based on forecasted, not
15 historical data; isn't that right?

16 A. Yes.

17 Q. Now, in an environment when net fuel
18 costs are rising or whatever the fuel costs are that
19 may be tracked in a mechanism like that, and -- and we
20 are in an environment and we have been for some time
21 when net fuel costs are rising; isn't that true?

22 A. Yes.

23 Q. If the net fuel costs are rising and
24 they're expected to continue to rise, then a greater
25 sharing percentage for a utility is going to impact

1 the utility less if it's set in its base using
2 forecasted power prices and forecasted fuel prices
3 than if it's using historical information to set
4 those -- that base; isn't that right?

5 A. It's according to how the forecast is
6 done and how accurate it is.

7 Q. Well, if historically the net fuel costs
8 were lower, because I said we've been in a period of
9 rising costs in my example. So if we look back in
10 history and the trend is up, then that history
11 necessarily is going to be lower than the trend; isn't
12 that right?

13 A. Yes.

14 Q. And if the trend -- the upward trend
15 continues in the future, and assuming they capture the
16 upward trend in their forecast, that they capture it
17 correctly or with some reasonable level of accuracy,
18 if they do that, then it's going to be a higher number
19 than the historical number if that trend is up, isn't
20 it? Isn't the actual going to turn out to be -- isn't
21 their forecast going to be higher than the historical
22 numbers that they're using -- than the historical
23 numbers are if we're in a rising fuel cost
24 environment?

25 A. Yes.

1 Q. So if they capture some of the upward
2 trend and they do a good job or a reasonably good job
3 of capturing that upward trend, then a higher sharing
4 percentage under those circumstances for the utility
5 is going to impact the utility less than the utility
6 that's required to set its base using historical
7 numbers when we're in a rising fuel cost environment
8 like that; isn't that true?

9 A. Yes.

10 Q. And isn't a significant difference
11 between the mechanisms that are reflected in those two
12 schedules you've attached and the one that Ameren
13 Missouri must live with in -- is that Ameren Missouri
14 has to use historical prices; whereas, those utilities
15 can use forecasted prices and values? Isn't that a
16 significant difference?

17 A. That is one of the significant
18 differences, yes.

19 Q. Now, another consideration -- and I put
20 consideration in quotes -- that you suggested the
21 Commission -- suggested to the Commission with regard
22 to your 85/15 sharing proposal was the fact that there
23 exists a dispute in the Company's pending true-up
24 docket, the ER-2010-0274 case. Right?

25 A. That is correct.

1 Q. And I'll refer to it as the 0274 case to
2 shorten it up. And you talked about what Ms. Barnes
3 had characterized as a simple mistake in your
4 surrebuttal testimony on page 9. Right? Line 9.

5 A. Yes.

6 Q. And in response you've asserted that it
7 was, quote, virtually impossible for the Staff to
8 recognize the error back when net base fuel cost rates
9 were calculated when the FAC was implemented in early
10 2009. That's your testimony. Right?

11 A. That is.

12 Q. And you attribute this virtual
13 impossibility to what you characterized to be, quote,
14 repeated misrepresentations by the Company about
15 information the Company's provided the Staff. Right?

16 A. Yes.

17 Q. And in connection with your surrebuttal
18 testimony about this issue and -- and your direct
19 testimony, you're the one that injected the 0274 case
20 into this rate case and into this issue about the
21 sharing percentage; isn't that right?

22 A. That is correct.

23 Q. In connection with your surrebuttal
24 testimony you also claim that the Company "made
25 changes in information it was reporting to Staff

1 without informing the Staff"?

2 A. That's correct.

3 Q. And you effectively claim that the
4 Company didn't provide what the Commission Rule
5 4 CSR 240-3.190(1)(c) required. Correct?

6 A. Yes.

7 Q. And I'm just going to refer to that as
8 3.190 just to shorten this up without having to go
9 through all the precise citations. Will you under--
10 you'll understand that if I ask -- if I do that in the
11 future with my questions --

12 A. Yes.

13 Q. -- is that fair?

14 Now, you have specifically contended that
15 the 3.190 data was used by Staff in its fuel modeling
16 in this 0002 case. Right?

17 A. Yes.

18 Q. And you also claim that the Staff used
19 this 3.190 data in its fuel modeling both in the 0002
20 case and in the 0318 case. Right?

21 A. Yes.

22 Q. Now your sur-- in your surrebuttal
23 testimony you refer to the calculation that the NBFC
24 rates coming out of the 0318 case as the Company's,
25 possessive, quote, erroneous calculation or as the

1 Company's calculation or too as an error that Ameren
2 Missouri made in the calculation. I counted about
3 nine -- nine different times. Does that seem about --
4 about right?

5 A. I haven't counted them, but I do make
6 those statements, yes.

7 Q. Page 1, line 27 of your surrebuttal,
8 Ameren Missouri erroneously calculated?

9 A. Yes.

10 Q. I see five different references on page 2
11 to Ameren Missouri calculating, it calculating. Do
12 you see those? Line 3, 6, 14, 15, 18, 21.

13 A. Three.

14 Q. Six.

15 A. Three it says, Ameren Missouri had not
16 calculated the -- the NBFC rates Ameren included in
17 the original -- so it's saying that Ameren Missouri
18 calculated those. And then line 6 it says, When it
19 calculated. "It" being Ameren.

20 Q. Line 14 and 15 you again refer to Ameren
21 Missouri -- what Ameren Missouri used in calculating?

22 A. Yes.

23 Q. Suffice it to say, quite a number of
24 times you refer to that calculation as being Ameren
25 Missouri's calculation and Ameren Missouri's

1 calculation alone. Correct?

2 A. It is their calculation, yes. I said
3 that.

4 Q. That's how you characterized it?

5 A. Yes.

6 Q. The 0318 case is the case where the FAC
7 was established and where the NBFC rates that are at
8 issue in the 0274 case were calculated; is that right?

9 A. That is correct.

10 Q. Now, what happened in the 0274 case is
11 that the kilowatt hour sales used in the denominator
12 of the calculation of the NBFC rates used sales that
13 were not at the generation level, even though the FAC
14 tariff approved in that case required that the sales
15 be at the generation level. Right?

16 A. Yes.

17 Q. And then when the adjustment filings were
18 made, the accumulation period where filings were made,
19 the adjustments were made using kilowatt hour sales
20 that were at the generation level. And the tariff
21 also requires that. Correct?

22 A. That were estimated to be at the
23 generation level, yes.

24 Q. When the estimates were made, they were
25 using generation level estimates. Right?

1 A. They used billing -- my understanding
2 is -- what I was told they used billing month sales
3 made in calendar month and then brought them up to
4 generation with the loss -- losses all the way up to
5 generation.

6 Q. Well, in fact, the Staff stipulated that
7 that is what happened. Correct?

8 A. I believe so.

9 Q. And what that -- what happened is that
10 led to a mismatch. We had a base that was not
11 calculated using sales at the generation level, we had
12 adjustments that were calculated using sales at the
13 generation level. And because of that mat-- mis--
14 mismatch, which I believe affects or will effect five
15 recovery periods ultimately, had that mismatch not
16 existed, the Company would have collected
17 approximately \$5 million more in net fuel cost
18 changes. Right?

19 A. I believe that's the estimate.

20 Q. I want to make sure the Commissioners are
21 clear about some terminology. At the generation
22 levels means that the kilowatt sales include both
23 distribution losses and transmission losses. Right?

24 A. It is what is necessary to meet -- at the
25 generator to meet. So if it's a secondary customer,

1 yes, it means distribution and transmission.

2 Q. Okay. And at the transmission level
3 means that the kilowatt hour sales don't include
4 transmission losses, they only include the
5 distribution losses. Right?

6 A. They don't include the losses from
7 transmission to generation.

8 Q. Okay. Now, you call data reported at the
9 generation level net system input. Right?

10 A. Yes.

11 Q. And you call data -- or maybe you say the
12 Company calls data, but you -- but -- but when we talk
13 about net system output, you would say that data's
14 being reported at the transmission level. Right?

15 A. That's what I understand now.

16 Q. Okay. And we now know that the kilowatt
17 hour sales used to calculate the NBFC rates coming out
18 of the 0318 case were at the transition level because
19 they did not include transmission losses. Right?

20 A. Yes.

21 MR. LOWERY: Your Honor, I could spend a
22 lot of time walking Ms. Mantle through some of these
23 things -- actually one of the stipulations has already
24 been -- you've already taken administrative notice of
25 the off-system sales stipulation in the 031 [sic]

1 case. I'd ask the Commission to take administrative
2 notice of the stipulation as to FAC rate design issues
3 in the 0318 case as well, because they are part and
4 parcel -- they are first cousins of each other.

5 JUDGE WOODRUFF: Anyone have any
6 objection to -- to that? Mr. Mills?

7 MR. MILLS: I don't know that I would
8 agree with the characterization as first cousins, but
9 I have no objection to the Commission taking
10 administrative notice.

11 JUDGE WOODRUFF: All right. Hearing no
12 objection, the Commission will take administrative
13 notice of that document.

14 BY MR. LOWERY:

15 Q. Now, I want to talk about your alloc--
16 allegations about changed data that you have in your
17 surrebuttal testimony. Because you're the manager of
18 the energy department, you at least indirectly had
19 responsibility for the fuel modeling in the 0002 case.
20 Right?

21 A. Yes.

22 Q. And Shawn Lange was likely the Staff's
23 net system input and weather normalization person for
24 the 0002 and for the 0318 case. Right?

25 A. He supplied the -- the loads for the fuel

1 run. I don't know if he did the weather normalization
2 in the 318 case, but -- of the billing month sales
3 which is a part of that whole analysis, but he is
4 res-- he was responsible for providing the net system
5 input in those cases.

6 Q. Do you have your second deposition there,
7 Ms. Mantle?

8 A. Yes.

9 Q. Would you look on page 41, please?

10 A. Yes.

11 Q. Starting at line 13,

12 "Question: And who else? Who else did
13 you say on the Staff didn't really understand? You
14 sort of used a description of categories of people,
15 not names as I recall it.

16 "Answer: We have Staff that weather
17 normalized the system input. That was likely Shawn
18 Lange for the 2008 case and the 2010 case.

19 "Question: And when you -- I'm sorry to
20 interrupt you, Ms. Mantle, but when you say the 2008,
21 so it was likely Shawn Lange for the 0318 and 0036
22 cases?

23 "Answer: Yes."

24 Did I read that correctly?

25 A. But then I went on to -- oh, okay.

1 Q. Well --

2 A. Okay. I thought the -- the next one had
3 to do with the 3--

4 Q. Turn to --

5 A. -- 0036.

6 Q. I'm sorry. Turn to page 42. Well, let
7 me just carry on, line 24 on page 41.

8 "Okay. I'm sorry to interrupt you.

9 "Answer: Walt Cecin-- Cecil is the
10 person in the current case.

11 "Question: --

12 A. And I was -- I've since found out that he
13 is not the person in the cur-- in the current case.
14 It is Shawn Lange.

15 Q. Okay.

16 A. So Shawn likely -- they're --

17 Q. Well, let me --

18 A. Shawn -- there is weather normalization
19 of the sales and there is weather normalization of the
20 load, the net system input load. Shawn did do the
21 weather normalization of the net system input loads.
22 But the weather normalization, as I would typically
23 characterize it, was done by -- it may have been done
24 by Shawn in the earlier cases and Walt at some point
25 started helping him and I don't know exactly what case

1 that was.

2 Q. Well, I -- I read -- I read lines 13
3 through 23 on page 41. You agreed I read that
4 correctly. Correct?

5 A. Yes.

6 Q. Let me start over at line 24.

7 "Question: Okay. I'm sorry to interrupt
8 you.

9 "Answer: Walt Cecil is the person in the
10 current case."

11 Now I'm over on page 42, line 2.

12 "Question: Okay.

13 "Answer: Shawn likely was the
14 normalization and net system input person for the 2007
15 case also."

16 Did I read that correctly?

17 A. Yes.

18 Q. Now, Ms. Maloney -- Erin Maloney was
19 the -- was responsible for the loss factors in the
20 0002 case. Right?

21 A. She filed direct testimony with loss
22 factors in it, yes. She was the Staff's expert on
23 loss factors in that case.

24 Q. And Alan Bax was responsible for the loss
25 factors in the 0318 case. Right?

1 A. That is correct.

2 Q. Now, you've testified that until
3 January of 2011, this year, the Staff thought that
4 maybe the kilowatt hour sales used to calculate the
5 net base fuel cost arising from the 0318 case were at
6 the generation level. Right?

7 A. Yes.

8 Q. And you blame the fact that the Staff did
9 not understand that until two years later that --
10 didn't understand that fact until two years after it
11 happened essentially, you blame that on, quote,
12 communication issues, which at least until a few days
13 ago you attributed or blamed entirely on the Company;
14 isn't that fair?

15 A. Yes.

16 Q. And when you say Staff, what you mean by,
17 quote, Staff when you're talking about what the Staff
18 didn't understand, you're referring to six people;
19 you, Mr. Lange, Ms. Maloney, Mr. Bax, Mr. Beck and
20 Mr. Roos. Right?

21 A. And I've since realized that Mr. Nathan
22 Williams also would have been involved in those
23 discussions and I believe he has an understanding now
24 also.

25 Q. But he's a lawyer, he doesn't really

1 matter. Okay. And, in fact, you say that none of
2 those six individuals knew back at the time of the
3 0002 case or the 0318 case that the kilowatt hour
4 sales that were being used in the fuel modeling and
5 that were being used in the 0318 case to calculate in
6 NBFC rates were not at the generation level. Right?

7 A. That's correct.

8 Q. And your testimony is that the 3.190 data
9 at some point used to be at the generation level back
10 in the early 2000's, but sometime between then and the
11 time of the 0002 case, the Company changed it so that
12 it started to be at the transmission level. Right?
13 That was your testimony?

14 A. That was my testimony, yes.

15 Q. And your testimony was that the Staff
16 uses that data, the 3.190 data, to determine what you
17 call net system input in the Staff's production cost
18 modeling. Right?

19 A. Yes.

20 Q. But, in fact, you had not actually
21 verified whether the 3.190 data that the Company was
22 giving the Staff at the time of the 0002 case or the
23 0318 case was or was not at the generation level, had
24 you?

25 A. No.

1 Q. What you really claim is that the data
2 had changed -- and I'm -- I'm not conceding it
3 changed, but I'm just talking about what you're
4 claiming. What you're really claiming is that the
5 data was formerly at the generation level and sometime
6 between the early 2000's and this case, the one that
7 we're in now, the data changed. Right?

8 A. That's correct.

9 Q. So you were mistaken when you suggested
10 it had changed as of the 0002 and the 0318 case,
11 weren't you?

12 A. I have no idea when it's -- in -- when it
13 changed.

14 Q. Okay.

15 A. The Company did not tell us when it
16 changed.

17 Q. So to the extent you testified it changed
18 between -- at the time of the 0002 case, you testified
19 about something you had no -- you actually had no idea
20 about; isn't that true?

21 A. That's correct. Well, I -- I wouldn't
22 say that I had no idea about. I have worked with that
23 data and I have worked with Ms. Maloney and Alan Bax.
24 I -- the -- none of us had any awareness of -- of what
25 level that -- we thought it was at generation and you

1 showed us a data request supplement that showed that
2 Tim Finnell also told us that in that case.

3 Q. Tim Finnell told you that the 3.190 data
4 was at generation. Right?

5 A. That's correct.

6 Q. So when you said in your surrebuttal
7 testimony that it had changed to where it wasn't at
8 generation, you were wrong, weren't you?

9 A. That's correct. I was -- I was incorrect
10 that it had changed --

11 Q. And you --

12 A. -- when it had changed.

13 Q. And you -- and -- and the claim you made
14 about the changed 3.190 data, you're making that claim
15 in relation to your discussion of the mismatch, the
16 mistake, whatever you want to call it in the 0274
17 case. Right?

18 A. Ask that question again.

19 Q. That may have been a bad question. When
20 you talk in your surrebuttal testimony about the
21 Company changing the 3.190 data, you're -- that
22 discussion in your surrebuttal testimony is in
23 relation to your discussion of the mistake that
24 occurred in the 0274 case that you've told the
25 Commission it ought to consider in relation to your

1 sharing percentage proposal. Right?

2 A. It's in relation to that and the 3.190
3 data that we've been getting for 15, 20 years.

4 Q. And you claim that the Company repeatedly
5 misrepresented data -- and when you claim the Company,
6 quote, repeatedly misrepresented data, you were
7 talking about the 3.190 data, aren't you?

8 A. Yes.

9 MR. LOWERY: Your Honor, I need to mark
10 an exhibit, please.

11 JUDGE WOODRUFF: All right. We're at
12 number 167.

13 (Ameren Exhibit No. 167 was marked for
14 identification.)

15 BY MR. LOWERY:

16 Q. Ms. Mantle, I've handed you what's been
17 marked for identification as Exhibit 167. You
18 recognize that as a copy of Exhibit 3 from your
19 April 25th deposition, do you not?

20 A. Yes.

21 Q. And Exhibit 167 is Miss Maloney's direct
22 testimony from the 0002 case. Correct?

23 A. Yes.

24 MR. LOWERY: And, Judge, since I have
25 copies of it, I'll just move for its admission unless

1 you'd just rather take administrative notice of this
2 testimony.

3 JUDGE WOODRUFF: Since it's been offered,
4 anybody object to its receipt?

5 Hearing none, 167 will be received.

6 (Ameren Exhibit No. 167 was received into
7 evidence.)

8 BY MR. LOWERY:

9 Q. Now, if you turn to page 3, line 19 of
10 Exhibit 167 and if you also look at Ms. Maloney's
11 Schedule ELM-2, she indicates that she got the net
12 system input that she used from the Company's response
13 to DR 137. Correct?

14 A. Yes.

15 Q. And when she's talking about net system
16 input, she's referring to -- I think you corrected me,
17 I think you said it's probably megawatt hour sales
18 that are at the generation level. Right?

19 A. Yes.

20 Q. So if she says she got the net system
21 input from DR 137, then she thinks that the DR 137
22 data was at the generation level, doesn't she?

23 A. Yes. I would assume that. She's not
24 known to -- to lie.

25 Q. Well, she -- she defined net system input

1 in that testimony as very specifically defined as
2 being at the generation level. Right?

3 A. Yes.

4 Q. So if she says, I'm using net system
5 input and I -- and she identifies that data as coming
6 from DR 137, then she must think DR 137 data is at --
7 is at generation. Right?

8 A. Yes. She did think that.

9 MR. LOWERY: I need to mark another
10 exhibit, your Honor.

11 JUDGE WOODRUFF: 168.

12 (Ameren Exhibit No. 168 was marked for
13 identification.)

14 BY MR. LOWERY:

15 Q. I've handed you what's been marked for
16 identification as Exhibit 168. You recognize that as
17 Exhibit 5 from your April 5 -- April 25th deposition,
18 do you not?

19 A. Yes.

20 Q. And you recognize that this is a response
21 in a supplemental response to Mr. Lange's DR 137 in
22 the 0002 case. Correct?

23 A. Correct.

24 Q. And we know that Ms. Maloney saw this
25 because on the second page it reflects a telephone

1 conversation that she had with Company witness Tim
2 Finnell. Right?

3 A. That is what it reflects, yes.

4 Q. And we'll get to this in a minute, but
5 based upon a data request response that the Staff
6 recently provided the Company, we know Mr. Lange saw
7 it at that time as well, don't we?

8 A. Yes.

9 Q. Both pages of -- of Exhibit 168.
10 Correct?

11 A. Correct.

12 Q. Now, if we look at the second page of
13 Exhibit 168, is it fair to say that what happened here
14 is that Ms. [sic] Lange called Mr. Finnell, sent him a
15 file that had been produced in response to DR 137 and
16 asked him why are the loads in -- in the DR 137 data,
17 why are they different than the 3.190 data. Is that a
18 fair characterization of what led to the second page
19 of D-- DR 17 -- excuse me, Exhibit 168?

20 A. That's a fair question, because they both
21 are supposed to be net system input. But, yes, that's
22 a correct representation.

23 Q. Can you just answer my questions? And
24 Ms. Ott can ask -- ask you questions if you want to --
25 if you want to talk about other questions later. How

1 about that? And we'll get through this a little more
2 quickly.

3 And is it a fair characterization of
4 Mr. Finnell's answer on the second page of Exhibit 168
5 that he indicates to Ms. Maloney that the 3.190 data
6 does -- it -- it is, in fact, at generation because it
7 includes physical transmission line losses. That's
8 what it says at the very end; isn't that right?

9 A. Along with non-AmerenUE customers, yes,
10 that's what it says.

11 Q. But the data is at generation, isn't it?

12 A. Yes, it is.

13 Q. And he also explains to her that the
14 DR -- that the DR 137 data is not at generation
15 because it does not include transmission losses; isn't
16 that right?

17 A. The data re-- that was supplied in
18 response to request for net system input did not
19 include transmission losses in that case.

20 Q. That wasn't my question. My question was
21 whether or not he clearly explained to Ms. Maloney
22 that the data supplied in response to DR 137 was not
23 at generation because it did not include transmission
24 losses. Yes or no?

25 A. I will agree that it says that. I don't

1 know that it clearly says that because it starts with,
2 MDMA MISO day two loads do not have any transmission
3 losses. And I couldn't find anybody on Staff that
4 knew exactly what that meant so --

5 Q. Well, maybe Staff didn't understand the
6 MISO.

7 A. At that time, that's right. I'm --

8 Q. The -- the next-to-last full paragraph
9 says, Note: That MDMA MISO day two loads do not have
10 any transmission losses. Correct?

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

12 Q. And did he or did he not say that the
13 data provided in response to DR 137 came from MISO day
14 two MDMA?

15 A. Yes.

16 MR. LOWERY: Your Honor, I'd move for the
17 admission of Exhibit 168.

18 JUDGE WOODRUFF: 168 has been offered.

19 Any objections to its receipt?

20 Hearing none, it will be received.

21 (Ameren Exhibit No. 168 was received into
22 evidence.)

23 BY MR. LOWERY:

24 Q. Now, we talked about before that net
25 system input for you means at the generation level;

1 net system output means at the transmission level.

2 Right? Just so we have the --

3 A. For the Staff, yes.

4 Q. -- terminology straight. For the Staff.

5 Now, the change that you claim was made
6 between the early 2000's and the 0002 case, which you
7 now agree wasn't made during that timeframe to the
8 3.190 data. Right?

9 A. According to this DR that we just saw,
10 yes. I did not go back and check the data to see, but
11 I've never known Tim Finnell to lie to me.

12 Q. Well, in fact, you -- you've seen an
13 affidavit that's been submitted in this case that
14 Mr. Finnell submitted that indicated that the 3.190
15 data was at generation all the way up until the spring
16 of 2010, haven't you?

17 A. No, I haven't.

18 Q. You haven't. All right. So the change
19 that you claim was made was that the Company used --
20 used to supply data at generation, what you call NSI,
21 but then started supplying the data at transmission,
22 NSO, in its 3.190 data. Right?

23 A. Right.

24 Q. But we now know that Ms. Maloney used the
25 data from DR 137, which is not NSI, not at generation

1 as you and she both defined it. Right?

2 A. It was not at t-- it was not at
3 generation. It was at transmission.

4 Q. And we know that she used that data
5 because her testimony says, My net system input --
6 what she called net system input -- came from DR 137
7 and DR 1-- but that data was not at generation.
8 Right?

9 A. That's correct.

10 Q. And she was told it wasn't at generation?

11 A. That's what the DR response says, yes.

12 Q. And Mr. Lange was told it was not at
13 generation, because he read the DR response?

14 A. Yes.

15 JUDGE WOODRUFF: Mr. Lowery, if I can
16 interrupt. We have been going for about two hours so
17 we're -- for the benefit of the court reporter, we're
18 about due for a break unless you're close to
19 finishing.

20 MR. LOWERY: I'm probably three-fourths
21 of the way done, but I -- it's up to you, your Honor.

22 JUDGE WOODRUFF: Let's take a break and
23 come back at 4:30.

24 MS. OTT: Before we go off the record, I
25 wanted to note Ms. Mantle's not available after

1 6:00 p.m. so hopefully we're able to finish with her
2 before, but --

3 JUDGE WOODRUFF: If we can't finish her,
4 we'll take her tomorrow. Is that --

5 MS. OTT: Okay.

6 MR. LOWERY: That would be acceptable to
7 the Company, but I -- I don't think it's going to take
8 too much longer.

9 JUDGE WOODRUFF: All right. We'll come
10 back at 4:30.

11 (A recess was taken.)

12 JUDGE WOODRUFF: We're back on the record
13 and we'll continue with the cross-examination of
14 Ms. Mantle.

15 MR. MILLS: Judge, what -- can I ask
16 before we get started, what is the intention for this
17 evening? Are we just going to keep going until we
18 finish this issue?

19 JUDGE WOODRUFF: Yeah, that's my
20 intention. And I'm hoping it won't take too terribly
21 long.

22 MR. MILLS: Okay.

23 BY MR. LOWERY:

24 Q. Okay. I think we established -- pardon
25 me. I think we established before that we now know

1 and you now know that the 3.190 data had not been
2 changed at the time of the 0002 case. Right?

3 A. Yes.

4 Q. You don't know how Ms. Maloney could have
5 believed that the DR 137 data was net system input as
6 you and she defined it after she had been told that it
7 did not include transmission losses, do you?

8 A. That would be for Ms. Maloney to answer,
9 not me.

10 Q. She made a mistake. Fair to say?

11 A. Yes.

12 Q. And because the Staff knows how to take
13 that 3.190 data that was provided at that time at the
14 generation level and to pull out municipal and other
15 loads that were in the data, Staff could have used
16 that data to get net system input, couldn't it?

17 A. Yes.

18 Q. But it didn't do that?

19 A. It did use the 3.190 to get -- data to
20 get the load shapes that went into the fuel run. It
21 used other estimates of NSI in calculation of the
22 losses. And that's where it was really critical was
23 calculation of the losses.

24 Q. But that caused -- that caused the loss
25 calculations to be understated, didn't it?

1 A. The other -- yeah, her other sources of
2 NSI, I -- I don't know -- I will actually say I don't
3 know. In the 2007 case we had a test year with part
4 MISO in it and part not MISO. I would be surprised if
5 anybody really understood what all those hourly loads
6 meant and when different things recorded different
7 ways and what it might have meant.

8 Q. The losses -- I'm sorry. I didn't mean
9 to -- were you finished? I didn't mean to cut you
10 off.

11 A. That's fine.

12 Q. The loss factors that she calculated,
13 they were lower than they would have been had she been
14 using data generation; isn't that fair? Ms. Maloney
15 being "she" in this question.

16 A. I'm not --

17 Q. If you don't know, you don't know.

18 A. I don't know.

19 Q. Fair enough.

20 MR. LOWERY: I need to get another
21 exhibit marked, your Honor, please.

22 JUDGE WOODRUFF: This would be 169.

23 (Ameren Exhibit No. 169 was marked for
24 identification.)

25 BY MR. LOWERY:

1 Q. Ms. Mantle, do you recognize what's been
2 marked for identification as Exhibit 169?

3 A. It is a response to a DR that you
4 requested of Staff.

5 Q. Now, I know Mr. Lange isn't here, but I
6 think you can -- probably have the knowledge to
7 correct this. On the second page in question three
8 where Mr. Lange responds that he reviewed the initial
9 response on 10/3/11, you're confident he means
10 10/3/06, are you not?

11 A. Actually, I don't have a number three.
12 Mine goes one, two, five.

13 MR. LOWERY: May I approach, your Honor?

14 JUDGE WOODRUFF: You may.

15 MR. LOWERY: Something may have been
16 wrong with the copy machine. Yeah, it looks like
17 the -- looks like the copies are wrong. We'll replace
18 those, your Honor. I'll just -- Ms. Mantle and I will
19 have to share this.

20 BY MR. LOWERY:

21 Q. I'm going to hand you what I think is now
22 a complete document and ask you -- and it's been
23 marked as Exhibit 169 for identification, ask you if
24 you recognize it as the Staff's response to Company DR
25 No. 22?

1 A. Yes.

2 Q. And does this look like it's the complete
3 response?

4 A. Yes.

5 Q. Okay. And on second page do you see
6 where it says Shawn Lange reviewed the initial
7 response on 10/3/11?

8 A. Yes.

9 Q. And that's talking about the response to
10 DR 137 from the 0002 case. Right?

11 A. Right.

12 Q. That's a typo. Right? That should be
13 10/3/06?

14 A. Yes.

15 Q. Excuse me. I'm -- this DR response, it
16 asks some questions about the DR 137 and the -- that
17 we have been talking about, it asks some questions
18 about 3.190 reporting and it asks some questions about
19 the calculation of the NBFC rates in the 0318 case.
20 Is that -- is that a fair summary of what its subjects
21 are?

22 A. I've got my copy so I've got both sides.

23 Q. Okay. Great. Thank you. Thank you.

24 A. Now, you ask -- ask the question again.
25 I'm sorry.

1 Q. The subject of this do-- of this data
2 request, it's about how the calculations of NBFC rates
3 in the 0318 case came about. That's one subject.

4 Would you agree?

5 A. Yes.

6 Q. For example, the first question?

7 A. Yes.

8 Q. And -- and it asks questions about sort
9 of who knew what when -- who knew what and when about
10 DR Number -- the response to DR 137 in the 0002 case,
11 which is Exhibit 168 in evidence in this case. Right?

12 A. Yes.

13 Q. And it asks some questions about current
14 3.190 data. Correct?

15 A. Yes.

16 Q. That the Company's been supplying?

17 A. Yes.

18 MR. LOWERY: Your Honor, I'd move for the
19 admission of Exhibit 169, which is Staff's response to
20 Company's DR No. 22.

21 JUDGE WOODRUFF: Mr. Lowery, I note that
22 there was also some e-mail exchanges and a -- net base
23 fuel cost chart. Is that supposed to be part of this
24 exhibit also?

25 MR. LOWERY: It is, your Honor. Those

1 are attachments to the DR response. There's actually
2 a data file that was also attached which has thousands
3 of lines so I don't have that all printed out, but the
4 rest of it is all there.

5 JUDGE WOODRUFF: Thank you for that. 169
6 has been offered. Any objections to its receipt?

7 MR. MILLS: Judge, I'd like to reserve
8 have to make an objection until I actually see the
9 whole document. I'm missing at least one page.

10 MR. LOWERY: That seems to be fair to me.

11 JUDGE WOODRUFF: That's what we will do.

12 BY MR. LOWERY:

13 Q. As you sit here today, all that you
14 really know about the 3.190 data is that in about
15 April or May 2010 the Company did make some changes,
16 but you really don't know what changes were made or if
17 changes were made prior to that time; isn't that fair?

18 A. With respect to the transmission losses?

19 Q. With respect to the 3.190 data.

20 A. I know that changes have been made all
21 through -- I know as early as the complaint case --

22 Q. Okay. All right. Let me -- let me --

23 A. -- there's been changes to what was in
24 the -- the 3.190 data.

25 Q. Let me ask you this: You -- you -- I

1 think -- I think the clarification you asked me for is
2 what I should have asked you. As we sit here today,
3 all that you really know is that as of April or May
4 2010, the Company started to report -- at least added
5 reporting at the transmission level in the 3.190 data,
6 but you don't know whether the Company stopped
7 reporting that data at generation before that time, do
8 you?

9 A. I haven't even seen the document that you
10 talked about that had been supplied to us that said
11 when that had changed, so I haven't even seen that
12 so --

13 Q. Okay.

14 MR. LOWERY: I need to mark another
15 exhibit, your Honor. Hopefully this one's copied
16 correctly.

17 JUDGE WOODRUFF: This will be 170.

18 MR. LOWERY: I think it is.

19 (Ameren Exhibit No. 170 was marked for
20 identification.)

21 BY MR. LOWERY:

22 Q. Hand you what's been marked as -- for
23 identification as Exhibit 170. I believe you
24 indicated that you had not seen this before; is that
25 true?

1 A. That's true.

2 Q. I'm going to give you a minute to take a
3 look at it.

4 A. Okay.

5 Q. First question I'm going to ask you is,
6 do you -- do you think that Tim Finnell generally
7 knows what he's doing?

8 A. Yes.

9 Q. I think I asked you if he was a good
10 analyst before and you said you didn't think he --
11 didn't do a lot of analysis anymore but in terms of
12 the job that he does, you've worked with Tim Finnell
13 for a number of years. True?

14 A. Yes.

15 Q. And you find him to be a credible person?

16 A. Yes.

17 Q. If Tim Finnell tells you something, would
18 you tend to believe him?

19 A. Yes.

20 Q. He indicates that he has personal
21 knowledge with respect to the load data that's been
22 reported to the Commission under the 3.9-- 190 rule
23 since the early 1990's. Do you believe that to be
24 true?

25 A. I have no reason not to believe it's

1 true, so yes.

2 Q. He indicates that at least from the early
3 1990's until approximately May 2010 that the hourly
4 load data reported to the Commission was at the
5 generation level, meaning it included both
6 distribution and transmission line losses. You don't
7 have any reason to dispute that, do you?

8 A. No.

9 Q. He indicates in paragraph 5 that
10 consequently all 3.190 hourly load data in the
11 Commission's/Staff's possession for both 0002 and the
12 0318 was reported at the generation level. You don't
13 have any reason to dispute that, do you?

14 A. No.

15 Q. If he says it, then you believe that to
16 be true, do you not?

17 A. Yes.

18 Q. He indicates that starting in about May
19 2010 the Company added additional data so that the
20 data was both at generation, but also had an
21 additional column that added transmission losses, does
22 he not?

23 A. That's what it says.

24 Q. And you -- you believe that to be true,
25 don't you?

1 A. That -- I've seen the files. I don't --
2 from what I've seen, I could not tell that that's what
3 those loads were.

4 Q. Okay. You can't tell. Given that the
5 hourly load data at the time of the 0002 and 031 [sic]
6 cases was at generation, had the Staff used it --
7 pulled the municipal and other loads out and used it,
8 then the fuel modeling the Staff did in those cases
9 would have been at generation as opposed to at
10 transmission; isn't that right?

11 A. No, that's not right.

12 Q. The Staff does know how to pull those
13 municipal and other loads out of that data to get back
14 to AmerenUE data, doesn't it?

15 A. Yes.

16 Q. And Mr. Finnell indicated, and you agreed
17 that if he indicated it was true, that the data was
18 being reported at the generation level. Right?

19 A. Yes. Would you like me to explain my
20 answer or --

21 Q. Sure. Go ahead and explain your answer.

22 A. Okay. We use other various sources for
23 what NSI is in the calculation of losses. We don't
24 just use the 3.190 data. And in both the -- the 0002
25 case and the 0318 case there was multiple sources

1 used. And Erin designated in her testimony she used
2 whatever it is, but that -- they do look at multiple
3 sources.

4 So if the NSI that they looked at apart
5 from the 3.190 data was at transmission and it really
6 wasn't NSI, then that was the reason that we didn't
7 get losses at generation -- or we didn't get loads to
8 generation. Because the loss is calculated and added
9 to the sales from which revenue is generated and
10 that's the load that's put under the -- I'm sorry,
11 there's a squealing in the mic. I don't know if
12 anybody other than me can hear it.

13 MR. MILLS: Oh, yeah.

14 THE WITNESS: So if I jump, that's why.
15 That's why we would have had a loss factor at
16 transmission because we used the other sources of NSI
17 that was provided by the Company.

18 BY MR. LOWERY:

19 Q. In your surrebuttal testimony at page 3
20 you said, Because net system input should report at
21 the generation level, Staff should be able to use the
22 hourly net system input loads Ameren Missouri
23 submitted to Staff monthly as required by 4 CSR
24 240-3.190(1)(C). However, without notifying Staff,
25 Ameren Missouri much earlier changed its 3.190

1 submissions to provide the hourly load requirement at
2 the transmission level.

3 And we've already established here that
4 at the time of the 0318 and the 0002 case, the Company
5 had not changed its 3.190 data to --

6 A. That's --

7 Q. -- give the transmission level. Right?

8 A. That's correct.

9 Q. So -- so that testimony's wrong, isn't
10 it?

11 A. It -- it wasn't much earlier, that's
12 correct.

13 Q. And -- well, the testimony's wrong. At
14 the time of the 0002 and the 0318 case, the Company
15 hadn't changed its data and you were getting 3.190
16 data that was at the generation level. Correct?

17 A. That's what we know now, yes.

18 Q. That's what you know now. And you don't
19 mention anywhere in here that there's this other data
20 that you also use. You point only to the 3.190 data.
21 And the gist of your testimony here is that the
22 Company repeatedly misrepresented data and changed the
23 3.190 data and that caused the mistake in the 0274
24 case. That's the -- that's what you're essentially
25 telling the Commission; isn't that true?

1 A. And I will stand by that they repeatedly
2 changed the 3.190 data and not have told us what the
3 changes were. It may have been at generation, but
4 there has been changes in that since back when I used
5 it, it was a -- it was always we'd use it and four
6 months into a rate case AmerenUE would -- would call
7 us up and say, Hey, did you know you had the wrong
8 loads. So it is my -- still my testimony that that
9 data has been misrepresented to us repeatedly, which
10 has --

11 Q. Oh, so they called up and said you had
12 the wrong loads, but they're misrepresenting data. Is
13 that your testimony?

14 A. That the 3-- that's right.

15 Q. Okay. Fair enough. You -- you can stick
16 with your testimony.

17 A. When -- when they provide it to us and
18 somebody signs -- when we get 3.190 data, there is a
19 piece of paper on top that someone signs that says
20 this is correct to the best of their knowledge. And
21 actually I believe it's a administrative assistant
22 that signs it. I don't know the person. That's what
23 Erin told me. And so to me, when they say this is
24 NSI, if it isn't, it's been misrepresented to us.

25 Q. Well, you -- you -- you swore that your

1 testimony that was filed in this case was true and
2 correct to the best of your knowledge as well, but we
3 now know that some of it wasn't correct, don't we?

4 A. That -- to my know-- you're right.

5 Q. So I guess were you misrepresenting that
6 testimony to the Commission when you filed it? Is
7 that what you're telling us?

8 A. Not when I -- not when I filed it, I was
9 not. I believed that at that time.

10 Q. And -- and how -- and do you think
11 that -- and you have no way of knowing that the Com--
12 that the Company didn't believe that what they were
13 giving you was also what the rule required, do you?

14 A. That's right. I don't.

15 Q. So you've accused somebody of
16 misrepresentation when you don't know whether that
17 accusation actually is true, haven't you?

18 A. I do know that they misrepresented it
19 because they supplied data in a page that said this is
20 the net system input and it was not the net system
21 input.

22 Q. In your -- in your opinion?

23 A. And that -- I know because they told me
24 later in cases that it wasn't. And -- and when
25 somebody says this is net system input and it's not, I

1 believe that's misrepresentation. Whether it's
2 willful or they realize it or not, that's
3 misrepresenting to the Staff what that data is. And
4 it's not just the net system input. It's market price
5 and other things that are in 3.190 data.

6 Q. The 3.190 rule does not define net system
7 input, does it?

8 A. No, it does not.

9 Q. In fact, Ms. Mantle, in the MISO market
10 world one could define net system input as generation
11 plus purchases, minus sales; where sales in the MISO
12 world include revenues from the transmission losses
13 that are settled financially; isn't that right?

14 A. I don't know how you can calculate net
15 system using financial numbers.

16 Q. Can you turn to page 78 of your second
17 deposition starting on line 17?

18 A. I said that you could define it that way,
19 yes. And yes, you could define it that way.

20 Q. So you've changed your answer to your --
21 to my prior question; is that right? In the MISO --

22 A. You could define it, yes.

23 Q. In the MISO world, you could define net
24 system input to be generation plus purchases, minus
25 sales and include in those sales the transmission

1 losses that are settled financially in the MISO.

2 Correct?

3 A. Oh you're talking about the megawatt
4 hours, not the financial transactions?

5 Q. Yes.

6 A. Okay. In that case, yes.

7 Q. Okay. And, in fact, Ms. Mantle, you now
8 agree that in the MISO world, what you ought to be
9 using is what we've talked about earlier is -- is --
10 generally could be referred to as net system output,
11 kilowatt hour sales at the transmission level. Right?

12 A. I believe that's appropriate to use to
13 get fuel in a rate case, yes.

14 Q. For a utility that's in the MISO. Right?

15 A. Yes.

16 Q. And Ameren Missouri is in the MISO.

17 Right?

18 A. Yes.

19 Q. And they were in the MISO at the time of
20 the 0002 case. Right?

21 A. Not all the test year, but part of it.

22 Q. Are you sure about that?

23 A. No, but I think that's right.

24 Q. MISO started on April 1, 2005. Right?

25 A. And what was the test year in that case?

1 MR. LOWERY: Well, I'll ask the
2 Commission to take administrative notice of the fact
3 that the test year was July 1, 2005 through June 30,
4 2006.

5 THE WITNESS: Okay. Then yes, it was. I
6 thought it -- it crossed over that April 1st date.

7 BY MR. LOWERY:

8 Q. So they were in the MISO the entire test
9 year in that case?

10 A. Yes.

11 Q. And they were in the MISO in the 0318
12 case the entire time?

13 A. Yes.

14 Q. The fact is, Ms. Mantle, part of the
15 communication problems that you attributed to the
16 Company in your surrebuttal testimony, part of that
17 lies with the Staff, does it not?

18 A. Yes.

19 Q. When you wrote your surrebuttal
20 testimony, you were pointing your finger squarely at
21 the Company alone in terms of communication issues,
22 weren't you?

23 A. Yes.

24 Q. Would you agree that Webster's dictionary
25 is a well-known, authoritative dictionary?

1 A. Yes.

2 Q. Now, you just testified a minute ago that
3 you're going to stick to your guns and claim that the
4 Company has misrepresented data; is that right?

5 A. Yes.

6 Q. I want to read you something and ask you
7 if you agree with it. According to Webster's,
8 misrepresent means to give a false or misleading
9 representation with an intent to deceive or be unfair.

10 Is that how you meant to use the word
11 "misrepresentation" --

12 A. No.

13 Q. -- in your testimony?

14 A. No, it was not.

15 Q. Were you sloppy in your choice of words?
16 So you didn't intend to accuse Mr. Finnell or
17 Mr. Wills or anybody else at the Company of intending
18 to deceive; is that true?

19 A. That's true.

20 Q. I've got a few questions about your
21 several references to the Company's calculation of the
22 net base fuel cost rates in the 0318 case. Part of
23 your theory is that if the sharing percentage were
24 increased, the Company might have been more careful in
25 what you characterize as its calculation. Right?

1 A. Yes.

2 Q. Now you aren't saying the Company would
3 have been more careful?

4 A. I have no idea whether they would have or
5 not.

6 Q. You don't know. It's just a theory.
7 Right?

8 A. Yes.

9 Q. You didn't perform those calculations,
10 did you?

11 A. No, I did not.

12 Q. You don't have any personal knowledge of
13 who did or how they were done, do you?

14 A. No, I do not.

15 Q. The kilowatt hour sales that were used in
16 those calculations came from the Staff's fuel run,
17 didn't it?

18 A. Yes.

19 MR. LOWERY: I need to get another
20 exhibit marked, your Honor, please.

21 JUDGE WOODRUFF: This is 171.

22 (Ameren Exhibit No. 171 was marked for
23 identification.)

24 BY MR. LOWERY:

25 Q. Ms. Mantle, I've handed you what's been

1 marked for identification as Exhibit 171. You
2 recognize that as Deposition Exhibit 10 from your
3 deposition on April 25th?

4 A. Yes.

5 Q. You have no idea who prepared those
6 spreadsheets, do you?

7 A. I have talked with our Staff auditor
8 since the deposition and they are under the firm
9 belief that those were rep-- or prepared by Mr. Gary
10 Weiss.

11 Q. Both of them? Both -- both spreadsheets?

12 A. Yes.

13 Q. Do you have Exhibit 169, which is in
14 evidence?

15 A. That's -- that's the DR response?

16 Q. That's the DR response. You said you had
17 your copy.

18 A. Yes.

19 Q. You were -- Staff was asked about
20 Exhibit 171 in the first question of the response to
21 DR 22. Correct?

22 A. Yes.

23 Q. And the Staff's response was -- talking
24 about the second response in particular which refers
25 to the second page of Exhibit 171 -- Staff cannot

1 confirm that this worksheet was prepared by Staff.

2 Is that what it says?

3 A. That's correct.

4 Q. Doesn't say that Staff can't confirm that
5 it wasn't prepared by Staff, does it?

6 A. It was not asked. I answered the -- the
7 question that was asked.

8 Q. The question asked, Please state which
9 Staff member prepared or modified this work--
10 worksheet, did it not?

11 A. And Staff can't confirm that that was
12 done by anyone on Staff.

13 Q. Wouldn't a more straightforward answer to
14 the question have been -- have been, I talked to the
15 auditors and the auditors said we didn't prepare it?

16 A. Well, what I did -- the response does go
17 on to say that I found a -- an e-mail which I did
18 attach -- so it is additional to what your question
19 asked -- that -- that seems to say that Mr. Gary Weiss
20 of the Company provided this -- this worksheet to
21 Staff.

22 Q. Well, it also seems to indicate that
23 Mister -- that the kilowatt hour sales used in the
24 worksheet came from Steve and John. And I suspect
25 that would be Steve Rackers and John Cassidy.

1 Wouldn't you?

2 A. Yes.

3 Q. So even if Mr. Weiss did prepare it --
4 and I'm not conceding that he did or prepared all of
5 it -- he used some information that Mr. Rackers and
6 Mr. Cassidy gave him, didn't he?

7 A. I believe he used a lot of information
8 the Staff gave, because the -- all of the fuel prices
9 came from the Staff's fuel run, there were -- there
10 were a lot of numbers in here that came from Staff.

11 MR. LOWERY: I need to mark another
12 exhibit, your Honor.

13 JUDGE WOODRUFF: Be 172.

14 (Ameren Exhibit No. 172 was marked for
15 identification.)

16 BY MR. LOWERY:

17 Q. Ms. Mantle, I've handed you what's been
18 marked for identification as Exhibit 172. And I
19 assume you haven't seen this before either; is that
20 true?

21 A. That is true.

22 Q. So I'm going to give you a moment to take
23 a look at it.

24 A. Okay.

25 Q. You know Mr. Weiss?

1 A. Yes.

2 MR. MILLS: Judge, before we go down this
3 road, I'm going to make an objection. And I -- and
4 this is -- if we ever get to the point where Exhibit
5 170 is going to be offered, we may go there too.

6 But the Commission rules do not provide
7 for a procedure whereby affidavits of other Company
8 personnel are simply thrown in at the hearing to -- to
9 prevent -- present evidence about issues on which
10 they're not being called to testify.

11 Mr. Weiss is not going to be a witness on
12 this issue. This may or may not be accurate
13 information in this affidavit. We don't have the
14 opportunity to cross Mr. Weiss on this. Similarly
15 with Mr. Finnell. It may or may not be accurate
16 information. We have no opportunity to cross him to
17 judge the voracity of his statements, to judge his
18 demeanor.

19 You know, I don't know where the
20 questions are going to go with this one, but to the
21 extent that the questions with respect to
22 Mr. Finnell -- to the extent that Exhibit 170 is not
23 admitted, I -- the point when I object to Exhibit 170,
24 I'm going to ask that the questions and answers based
25 on it be stricken.

1 And so if we're going to be doing this
2 routinely with a bunch of different Ameren personnel,
3 I want to -- before we even start asking the
4 questions, I want to get to the point where I get to
5 the object to the -- to the exhibit.

6 JUDGE WOODRUFF: Mr. Lowery, what's your
7 response?

8 MR. LOWERY: A couple of responses, your
9 Honor. Ms. Mantle has testified to facts, in fact,
10 has testified to hearsay from Mr. Rackers and
11 Mr. Cassidy saying, I've talked to them and they're
12 convinced that this and this is true, but she
13 professes to have no personal knowledge of it. She
14 brought up things in her surrebuttal testimony for the
15 first time and then indicates -- indicates now that
16 she doesn't know those facts.

17 Company doesn't have the opportunity to
18 file sur-surrebuttal necessarily. If folks want to
19 cross-examine Mr. Finnell and Mr. Weiss about anything
20 in these affidavits, they are here and we will make
21 them available today, tomorrow, the next day or
22 whenever the Commission wants.

23 But the Company can't be put in the
24 position where Ms. Mantle can go talk to people on the
25 Staff and come in here and testify to what they say

1 and what they don't say and they're not here to be
2 cross-examined either and the Company cannot present
3 relevant facts that came up very late in the case to
4 which we had no opportunity to respond. So if folks
5 want to cross-examine those individuals, we'll make
6 them available.

7 MR. MILLS: And I do not want to
8 cross-examine those individuals, but I object to the
9 sur-surrebuttal. And the fact that Ms. Mantle may
10 have testified about what she said to someone else,
11 Mr. Lowery can object to that as hearsay. And I think
12 to a certain extent, he elicited some of that
13 testimony. So I don't think that that somehow
14 justifies adding new testimony at the hearing that is
15 intended to be sur-surrebuttal.

16 MS. OTT: And Staff would second Public
17 Counsel's objection as Ms. Mantle's responses have all
18 been elicited from Ameren's questioning regarding this
19 sur-surrebuttal.

20 JUDGE WOODRUFF: I'm going to overrule
21 the objection and allow the testimony to proceed.

22 BY MR. LOWERY:

23 Q. Ms. Mantle, I don't remember the last
24 question I asked you so I may ask you the same one
25 again. You know Mr. Weiss, do you not?

1 A. Yes.

2 Q. He may cringe when I ask you this
3 question, but do you find Mr. Weiss to be a credible
4 individual?

5 MR. MILLS: And, Judge, I'm going to
6 object to that question specifically because
7 Ms. Mantle's opinion about Mr. Weiss's credibility is
8 not relevant. If this testimony -- if you're going to
9 allow this testimony in either through the admission
10 of this exhibit or through extensive questioning of
11 Ms. Mantle about it, then it's for the Commission to
12 judge Mr. Weiss's credibility.

13 It's not for another witness to opine
14 that someone who's not taking the stand is credible
15 and somehow bootstrap this sur-surrebuttal into
16 evidence on the basis of what one witness's opinion of
17 the credibility of another person who's not even a
18 witness on this issue. So I object to that question
19 in particular.

20 JUDGE WOODRUFF: Again, the objection's
21 overruled.

22 THE WITNESS: I've never known him to not
23 be credible.

24 BY MR. LOWERY:

25 Q. Mr. Weiss indicates that shortly after

1 the Commission issued its Report and Order in the 0318
2 case, that he did develop a spreadsheet containing the
3 various agreed-upon inputs needed to calculate the
4 NBFC rates. Right?

5 A. That is what this says.

6 Q. And he talks about where those inputs
7 came from and they've been agreed upon by the parties
8 in some -- in stipulations and agreement. Right?

9 A. Yes.

10 Q. And he says a true and correct copy of
11 the spreadsheet he prepared is attached as Exhibit A.
12 Can I ask you to take a look at Exhibit A?

13 A. Okay.

14 Q. And would you agree that Exhibit A is the
15 same as -- I got to find it here now, but it's the
16 same as Exhibit 171 which was Deposition Exhibit 10?

17 A. Yes.

18 Q. Then he goes on to say that he
19 transmitted the Excel file, that Exhibit A, with
20 formulas intact to Mr. Rackers, does he not?

21 A. Yes.

22 Q. Then he says that Mr. Rackers called him
23 and indicated that Staff desired to change some of the
24 inputs which he understood to be kilowatt hour sales,
25 did he not?

1 A. Yes.

2 Q. And then he says that Mr. Rackers
3 transmitted him an Excel file with the formulas
4 intact, and that Excel file was Exhibit B?

5 A. That's what he says.

6 Q. And you don't have any reason to
7 disbelieve Mr. Weiss, do you?

8 A. I don't have any reason to disbelieve
9 Mr. Rackers either.

10 Q. Well, answer my question.

11 A. And so no, I -- it may be true. I have
12 no idea.

13 Q. So somebody's wrong. Right?

14 A. Yes.

15 Q. And if Mr. Weiss is correct and
16 Mr. Rackers is wrong, then the NBFC rates reflected in
17 the Company's FAC tariff actually came from a
18 spreadsheet that Mr. Rackers or somebody on the Staff
19 was the last one to work on, and not a spreadsheet
20 that Mr. Weiss was the last one to work on. Isn't
21 that right, if Mr. Weiss is right?

22 A. Yeah.

23 Q. And the fact that Mr. Weiss may have
24 transmitted a spreadsheet to Mr. Hagemeyer upon
25 Mr. Hagemeyer's request doesn't mean that Mr. Weiss

1 hadn't gotten that spreadsheet from Mr. Rackers, does
2 it?

3 A. No, it does not.

4 MR. LOWERY: I don't have any further
5 questions, your Honor.

6 JUDGE WOODRUFF: All right. Did you wish
7 to offer 170, 171 and 172?

8 MR. LOWERY: Yes, I do. Your Honor.

9 JUDGE WOODRUFF: All right. 170, 171 and
10 172 have been offered. Any objections to their
11 receipt?

12 MR. MILLS: Yes, your Honor. I object to
13 Exhibit 17-- well, let me -- I'll take them in the
14 order -- I object to Exhibit 170 because it's being
15 offered for the truth asserted therein. This is not a
16 witness in this case. Furthermore, it's
17 sur-surrebuttal in violation of the Commission's
18 rules.

19 Exhibit 171 I object to for lack of
20 foundation. I think the point of the last half an
21 hour has been to the fact that no one can verify this
22 particular exhibit, no one is willing to con-- concede
23 who prepared it or when or how it got in anybody
24 else's hands so there certainly is no foundation for
25 it.

1 And Exhibit 172 I object on the same
2 basis that I object on 171. It's -- it's -- it's
3 hearsay.

4 COMMISSIONER KENNEY: 170?

5 MR. MILLS: I'm sorry. 172 on the same
6 basis as 170. It purports to be testimony and so it
7 is being offered for the truth of the matters therein
8 so it's hearsay. It's improper sur-surrebuttal
9 testimony in violation of the Commission's rules.

10 MS. OTT: And Staff objects to lack of
11 foundation.

12 MR. LOWERY: And once again, your Honor,
13 we'll be happy to make those witnesses available for
14 cross-examination which will address any hearsay issue
15 whatsoever. And for the same reasons you already
16 overruled the objection, I think you should overrule
17 this one.

18 COMMISSIONER KENNEY: Well, let me ask a
19 question before you rule. Was your original
20 overruling of -- because I think the objection was as
21 to Ms. Mantle's testimony. Were you overruling the
22 objection as to that? I mean because this objection
23 is as to the admission of the two affidavits and you
24 hadn't offered the affidavits yet so --

25 MR. LOWERY: I had not.

1 JUDGE WOODRUFF: This is a new objection.

2 COMMISSIONER KENNEY: New objection. And
3 are you saying that making those witnesses available
4 for cross-examination cures that these affidavits are
5 hearsay or are you disputing that they're hearsay in
6 the first place?

7 MR. LOWERY: I'm saying that the Company
8 had no fair opportunity to respond to things that were
9 brought up late in the case and that Ms. Mantle has
10 confirmed that she has no reason to dispute these.
11 Yes, I think they are technically hearsay. Of course
12 there's a residual exception to the hearsay rule, your
13 Honor. The Commission certainly has discretion and
14 cer-- the Commission certainly has the discretion to
15 allow those witnesses to be cross-examined.

16 And the principal objection here is,
17 well, we can't cross-examine them. Because of how
18 this issue came up, Company had no opportunity to
19 respond to allegations of repeated misrepresentations
20 and changes of data. And I am asking the Commission
21 to provide a fair process and allow that to be
22 responded to. If folks want to cross-examine those
23 folks, we'll make them available.

24 JUDGE WOODRUFF: All right. You
25 indicated Mr. Finnell and Mr. Weiss are here today?

1 MR. LOWERY: They are here today.

2 JUDGE WOODRUFF: All right. I'm going to
3 overrule the objections on all three documents. And
4 if anyone wishes to cross Mr. Finnell and Mr. Weiss,
5 let us know before the end of the day.

6 MR. MILLS: For the record, Judge, also
7 with respect to the questions with respect to -- of
8 Ms. Mantle and her answers with respect to Exhibits
9 170 and 172, I request that they be stricken.

10 JUDGE WOODRUFF: Again that will be
11 overruled as well.

12 And I believe that was -- you concluded
13 your cross?

14 MR. LOWERY: I have no further questions,
15 your Honor. Thank you.

16 JUDGE WOODRUFF: Come up for questions
17 from the bench. Commissioner Davis?

18 QUESTIONS BY COMMISSIONER DAVIS:

19 Q. Good evening, Ms. Mantle. I'm trying to
20 figure out how to ask this question. How did you come
21 to testify in this case and how did that -- how did
22 that come about?

23 A. Initially actually John Rodgers was going
24 to testify on this issue, but he had -- I think it was
25 the KEMA study, your favorite study, that he -- he --

1 Q. Yes.

2 A. -- was asked to provide some analysis
3 regarding. And because his workload was too great, I
4 took this issue since I have been the FAC witness for
5 every case that AmerenUE had -- well, had requested an
6 FAC.

7 Q. And please don't be offended when I ask
8 you this question, but did -- did anyone talk to you
9 about the position that -- did anyone from Staff talk
10 to you about the position that you needed to take in
11 this case?

12 A. The decision about what position to take
13 in this case was made in a meeting with the division
14 directors; Natelle Dietrich, Bob Schallenberg, I'm not
15 sure whether Kevin Thompson was there or not, the lead
16 attorney would have been there, I think Nathan
17 Williams was there, John Rodgers was there.

18 Q. So it wasn't your decision independently.
19 It was a -- a collective decision?

20 A. It was a Staff decision.

21 Q. And it was the -- the -- the collective
22 decision of -- of the people in that room?

23 A. Yes.

24 Q. I guess this will be my -- be my last
25 question. Ms. Mantle, are you at all concerned that

1 if you objected to that position, that the work might
2 be taken away from you like -- like it was similarly
3 in -- in the prudence audits for Kansas City Power &
4 Light and Iatan 2?

5 A. No. I doubt anybody else on Staff wants
6 this topic.

7 Q. All right. And let me just go back to
8 your -- your surrebuttal testimony. Re-- page 16
9 there at the top of the page. You said you didn't
10 conduct a search; however, you became aware of recent
11 orders issued by the Wyoming and Utah Public Service
12 Commission?

13 A. Yes.

14 Q. How did you become aware of those recent
15 orders?

16 A. Mr. Brubaker supplied them to me.

17 COMMISSIONER DAVIS: Okay. No further
18 questions, Judge.

19 JUDGE WOODRUFF: Commissioner Jarrett?

20 QUESTIONS BY COMMISSIONER JARRETT:

21 Q. Good evening, Ms. Mantle.

22 A. Good evening.

23 Q. I think you testified or said earlier
24 today, probably a couple hours ago, that it's been a
25 long day; is that correct?

1 A. That's correct.

2 Q. Well, I agree with you. I just have -- a
3 just have a couple of questions. To your knowledge,
4 has it been Staff's position consistently in the last
5 few rate cases or fuel adjustment clauses are at issue
6 that the Commission take an 85/15 sharing mechanism
7 versus a 95/5?

8 A. No. In the KCP&L/Greater Missouri
9 Operations case, Staff took a 25 -- or 75/25 --

10 Q. 75/25?

11 A. -- position. But in Empire we did take
12 the position of 85/15.

13 Q. Okay. Have you heard the expression "if
14 it ain't broke, don't fix it"?

15 A. Yes.

16 Q. What is broke about the 95/15 -- or the
17 95/5 in Ameren's case that would cause Staff to want
18 to go to 85/15?

19 A. We've got -- we've got -- well, at the
20 time we had two cases open. You guys have made a
21 decision in one of those since then; the prudence case
22 and the true-up case. If the incentive had been
23 greater, it's very likely they would have looked at
24 those a little more closely. I don't know if they
25 would have or not, but I -- I can't say that either

1 way. But I do know that -- that we have had that.

2 Ms. Barnes testified that the net base
3 fuel cost was going to be too low. It is Staff's
4 opinion that that base needs to be set right and if
5 the Company believes that it is not right, then
6 obviously the incentive isn't correctly -- because
7 they're willing to forego a certain portion of what
8 they would earn or -- or, you know -- they're --
9 they're willing to forego a portion of that.

10 If that portion was 15 percent, we may
11 not have had testimony from Ms. Barnes that -- that
12 the price was too -- that the price wasn't low enough.
13 They would have come in and said, This is the price
14 and if the other parties didn't -- didn't agree with
15 them, they'd take it to the Commission just like we
16 always do on issues if we can't come to an agreement
17 on it.

18 And so we've had a prudence case, a
19 true-up -- two true-ups now where we cannot get
20 resolved and we have net base fuel costs that the
21 Company's saying the base is going to be wrong. All
22 those lead me to believe that -- that it may be broke.

23 Q. Okay. So you -- let's go -- let's go
24 through these one by one. The prudence review, since
25 this is -- is -- is talking about fuel and the fuel

1 pass-through of the fuel costs, that wasn't really an
2 issue in that prudence case, was it? There was no
3 allegation that Ameren was imprudent in -- in the fuel
4 costs in those case?

5 A. No. The allegation was they were
6 imprudent in the decision not to pass those -- flow
7 those back through to customers.

8 Q. Well, it really was the -- the -- really
9 the dispute was the characterization of those
10 contracts. Ameren said they were long-term
11 requirements contracts and Staff said no, they
12 weren't. That had nothing really to do with the
13 prudence of the fuel costs, did it?

14 A. That -- my counsel has said imprudence.
15 I mean, I know what you --

16 Q. Well, fuel costs --

17 A. It's a fuel -- I mean it's -- I believe
18 they made an imprudent decision. It can be in -- also
19 described as a different interpretation of the tariff
20 language.

21 Q. All right. And I think in Mister -- in
22 Mister -- when you were being examined by Mr. Lowery,
23 I think you admitted that it didn't have anything --
24 he walked through a series of questions where he was
25 asking about the purchase cost and the transportation

1 cost. And I think on every one of those you said that
2 those were prudent?

3 A. That's correct.

4 Q. Okay. Now, when you talk about -- when
5 you said the net costs were too low and that would
6 create a possible incentive for Ameren not to be
7 prudent, do you have any evidence that Ameren -- I
8 mean, if someone told you from Ameren that they're
9 going to be imprudent, I mean, I -- I don't under-- I
10 understand its -- it's speculative. It's -- what
11 evidence do you have that Ameren is going to be
12 imprudent?

13 A. I'd be concerned if somebody told me,
14 person on the Staff, that they were going to be
15 imprudent. Now, that would be really -- no, nobody
16 did that.

17 Q. Right. Okay. So the fact that they may
18 be? I -- how are we supposed to base a decision on
19 maybe? Don't we have to have evidence to show that
20 they're going to be -- that they have been imprudent
21 and, therefore, they're likely to continue to be
22 imprudent in -- in the purchase of their fuel costs?

23 A. To me it's the same as when Mr. Rygh was
24 talking about how the cost of capital would be lower
25 for the ratepayer. That's a benefit to the ratepayer

1 and he couldn't quantify that either. It's
2 subjective. It's -- it's just -- you know, for just
3 looking at all of these things piled on top of each
4 other.

5 The Staff -- and taking into account too
6 that the Commission said in the last UE rate case that
7 it wanted some alternatives. I will tell you Staff
8 didn't start out at 85/15, but we moved to there. So
9 it -- it's something that we knew that had to be
10 backed up by something. It wasn't something we just
11 said, Oh, well, the Commission wants something
12 different so let's just -- let's try 85/15. It was --
13 we looked at what had occurred.

14 Q. Can you -- can you point me to any time
15 in the past since the fuel adjustment clause has been
16 in effect that Am-- that Ameren has made an imprudent
17 purchase of fuel?

18 A. No.

19 Q. And has Staff done audits to look into
20 the prudence of purchasing fuel?

21 A. They've done an audit of the first seven
22 months.

23 Q. All right. And did Staff conclude that
24 Ameren's purchase of fuel during those seven months
25 was prudent?

1 A. Yes.

2 Q. Thank you.

3 COMMISSIONER JARRETT: I have no further
4 questions.

5 JUDGE WOODRUFF: Commissioner Kenney?

6 QUESTIONS BY COMMISSIONER KENNEY:

7 Q. Good evening, Ms. Mantle.

8 A. Good evening.

9 Q. I know you got a deadline. Can you look
10 at these two documents? These are the two --
11 Exhibit A and Exhibit B that were attached to Gary
12 Weiss's -- Gary Weiss's affidavit. And I know you
13 just got the affidavit and haven't had much time to
14 review it. But I was looking at it very briefly and
15 it seems that -- well, first of all, this is the
16 document against which net based -- or that net based
17 fuel costs are based upon; is that right?

18 A. This is the -- the documentation from
19 which UE made their filing which included the net base
20 fuel costs.

21 Q. And as I'm reading Mr. Weiss's affidavit,
22 Exhibit A is the Excel spreadsheet with his inputs and
23 Exhibit B is the same Excel spreadsheet but with some
24 modifications from Mr. Rackers according to
25 Mr. Weiss's affidavit. Is that your understanding of

1 Mr. Weiss's affidavit?

2 A. Yes.

3 Q. If you go to -- the bottom two lines have
4 net base fuel costs expressed as dollars per megawatt
5 hour and then as cents per megawatt hour.

6 A. Yes.

7 Q. Is there any difference between these two
8 other than the Missouri summer number?

9 A. No.

10 Q. Okay.

11 A. The kilowatt hour numbers are different
12 because of rounding and where we have -- we stop when
13 we do rates. Those numbers -- the winter number did
14 not change.

15 Q. And so the Missouri summer number is
16 \$10 per megawatt hour and -- on Exhibit A and the
17 Missouri summer number is \$10.01 per megawatt hour on
18 Exhibit B?

19 A. Yes.

20 Q. Can you tell me what would be the
21 significance of that difference in establishing that
22 base fuel costs?

23 A. Well, what -- what AmerenUE put on their
24 tariff sheet that they filed was the 1.001 cents per
25 kilowatt hour.

1 Q. Okay.

2 A. And that would make a difference to most
3 likely a large customer like Noranda.

4 Q. Okay.

5 A. The -- the homeowner, it may be in
6 rounding it makes no absolutely no difference to them.
7 But to a large customer, it could make some
8 difference.

9 Q. Okay. And then I want to make sure I
10 understand what -- the net system input numbers. The
11 inputs that we're talking about and the phrases that
12 we're talking about, at generation level versus at
13 transmission level. And at generation level does or
14 does not include line losses?

15 A. It includes line losses. The secondary
16 up to primary up to transmission and then to
17 generation. It includes all of those line losses at
18 generation.

19 Q. And at transmission level?

20 A. It does not include the losses from
21 transmission to generation.

22 Q. Okay. Am I correct in understanding that
23 somewhere along the way, whether it was -- and I'm
24 going to assume that it was inadvertent, that there
25 was miscommunication between Staff and Ameren

1 somewhere along the line in how we were going to
2 arrive at -- or how net base fuel costs were going to
3 be arrived at. Is that the crux of the last however
4 many hours we've been spending?

5 A. I think the crux of it was that I made
6 the comment that they had misrepresented data to us
7 that we could not -- they made a statement in their
8 rebuttal testimony that Company and Staff made this
9 error. Well, the truth is Staff only knows the data
10 that the Company gives them and how the Company
11 represents that data to them.

12 Q. Okay.

13 A. So Staff goes -- and he had one example
14 of where they had told us it was at transmission.
15 There's other examples where they didn't. So I
16 don't -- and -- and from talking with other Staff, I
17 don't know that anybody really understood it until the
18 middle of the last case, ER-2010-0036. And at that
19 time the Company understood it, but the Company was
20 going through the same confusion that you have right
21 now.

22 Q. Okay. Well, I'm in good company then.

23 A. Yes. It took us quite a while to get
24 where we understood it.

25 Q. Would it be beneficial for the -- for --

1 for our Rule 3.190 to have some definition of net
2 system input and what -- what that should or should
3 not include?

4 A. Yes. And it would have been good for
5 AmerenUE to file a waiver from the rule when it
6 started filing that system output, because then we
7 would have been notified -- the Staff would have been
8 notified that that had changed. The Commission would
9 have been notified. The notification would have come.

10 And -- I mean that's part of the
11 miscommunication problem is things changed. We
12 weren't told -- and yeah, I had no idea when it
13 changed wheth-- I knew I used the data in the
14 complaint case and believe that now the data's at
15 transmission. And all's I knew was sometime between
16 2001 and now the data changed.

17 COMMISSIONER KENNEY: All right. Thanks.
18 I don't have any other questions.

19 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

20 Q. Let me go back and I just need to ask.
21 Ms. Mantle, I mean is it -- is it fair to say that
22 MISO and FERC change things all the time and it takes
23 us a while to catch up?

24 A. Yes.

25 Q. I mean it -- it happens fairly

1 frequently, does it not?

2 A. As I will quote one of our engineers,
3 MISO messed that up for us too.

4 Q. Yes. You think that's why we need a
5 capacity market?

6 A. I'm not going to go there. I don't know
7 why. I don't -- I don't want to make any comments on
8 capacity market.

9 Q. You don't want to make any -- we don't
10 have an open -- well, we're in a case right now.

11 A. Yes, we are.

12 Q. Do you have any -- any -- any thoughts on
13 that?

14 A. No, I do not. I've been too busy.

15 Q. Would you hate to see our IRP rules go
16 for naught?

17 A. Yes.

18 Q. And are you aware that in ERCOT that is
19 in Texas, that they no longer have control over --
20 over their generation?

21 A. No, I'm not aware of that.

22 Q. Wouldn't surprise you though, would it?

23 A. No, it would not.

24 Q. Hypothetically if this Commission had
25 jurisdiction over gasoline prices and we held a local

1 public hearing on gasoline prices, what do you think
2 customers would say about rising gasoline prices?

3 A. They wouldn't see a reason why gasoline
4 prices should rise. They didn't like it and it's
5 eating up too much of their income, that many of them
6 are on a limited income, fixed income and it's taking
7 away from money that they have for food and medicine.

8 Q. And is it -- is it fair to say that any
9 time we have a -- have a hearing for a rate increase
10 and take public comments, that there's a significant
11 portion of customers that are -- that are adamantly
12 opposed to any rate increase?

13 A. Yes. That's true. I'm always surprised
14 when we have one or two that aren't, but typically we
15 do.

16 Q. Right.

17 COMMISSIONER DAVIS: No further
18 questions, Judge.

19 JUDGE WOODRUFF: All right. Recross
20 based on questions from the bench beginning with AARP?

21 MR. COFFMAN: Yes. I have a couple.

22 RE-CROSS-EXAMINATION BY MR. COFFMAN:

23 Q. Ms. Mantle, you were asked by
24 Commissioner Jarrett about the adage of "if it's not
25 broke, don't fix it"?

1 A. Yes.

2 Q. Do you -- you were in similar areas of
3 responsibility, were you not, back in the years or
4 decades before this recent fuel adjustment clause
5 trend took hold in Missouri?

6 A. I worked for the Commission Staff, if
7 that's the question.

8 Q. Do you believe when Ameren -- Ameren
9 Missouri's rates included a fuel -- amount of fuel and
10 purchased power that was baked into the base rates, do
11 you believe that that process worked fairly?

12 A. Yes.

13 Q. Would you agree with me that the enormous
14 level of complexity that we now deal with with the
15 fuel adjustment clause creates opportunities for
16 confusion and errors?

17 A. Definitely.

18 Q. Does it create greater opportunities for
19 gaming the system?

20 A. Yes.

21 Q. Do you recall in the first case where
22 Ameren Missouri requested a fuel adjustment clause,
23 the 0002 case, do you recall evidence that had
24 attached examples from Wyoming about how they handle
25 fuel adjustment clause there?

1 A. I don't remember that, no.

2 MR. COFFMAN: Okay. That's all I have.

3 JUDGE WOODRUFF: Public Counsel?

4 RECROSS-EXAMINATION BY MR. MILLS:

5 Q. Just briefly. Ms. Mantle, does a Staff
6 finding of no imprudence in a FAC prudence review mean
7 that UE got the best coal price it could have during
8 the period under review?

9 A. No, it does not.

10 Q. Best natural gas price?

11 A. No, it does not.

12 Q. Transportation price?

13 A. No, it does not.

14 Q. Best prices for off-system sales?

15 A. No, it does not.

16 Q. Is it possible that during the period in
17 which Staff is reviewing prudence, that imprudent
18 actions could have been taken by a utility,
19 specifically Ameren Missouri, and the Staff simply
20 didn't discover it?

21 A. Yes.

22 Q. What level of the number of transactions
23 in a given prudence review period does the Staff
24 actually examine in detail?

25 A. I cannot say. I don't know.

1 Q. Is it -- is it fair to say that it's not
2 all of them?

3 A. It -- no, it's not all of them.

4 MR. LOWERY: Objection, calls for
5 speculation. She first said "I don't know" and now
6 she's -- now she's answering the question and says
7 "no, it's not all of them." She either knows or she
8 doesn't.

9 MR. MILLS: I asked her --

10 JUDGE WOODRUFF: Over-- overruled.

11 MR. MILLS: Thank you.

12 BY MR. MILLS:

13 Q. Is it a significant percentage?

14 A. Probably not.

15 Q. Now, Commissioner Jarrett asked you some
16 questions about essentially what -- if the 95/5 isn't
17 broken, why should we fix it. Do you recall that --
18 that question?

19 A. Yes.

20 Q. Is there any reason to think that the
21 95/5, when it was first adopted for another utility,
22 was -- was the appropriate sharing percentage?

23 A. I wasn't -- I'm not aware of why that was
24 chosen.

25 Q. Okay. Is it your understanding that it

1 was chosen for AmerenUE in Case No. ER-2008-0318
2 largely on the basis that it was adopted for another
3 utility previously?

4 A. Yes.

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

7 JUDGE WOODRUFF: For Ameren?

8 RECROSS-EXAMINATION BY MR. LOWERY:

9 Q. Ms. Mantle, in some responses to some
10 questions from Commissioner Jarrett, I think you
11 changed your testimony from that what you testified
12 earlier.

13 I believe you said in response to his
14 question that you think it's very likely that the
15 Company's actions with regard to the AEP and Wabash
16 contracts would have been different if the sharing
17 percentage had been 15 percent instead of 5 percent.
18 Is that what you meant to say?

19 A. I didn't say it was very likely. I said
20 it may have been. Or if I said very likely, I -- I
21 will correct myself. It may have been different. I
22 don't know.

23 Q. In fact, your testimony is that -- is
24 that it -- you say it might be very likely if the
25 sharing was 5 -- if the Company had 95 percent.

1 Right?

2 A. Yes.

3 Q. But other than that, you don't know;
4 isn't that true?

5 A. That -- that's true.

6 Q. You also talked a lot about the Company
7 being willing to forego the difference between net
8 fuel -- net base fuel cost and what the fuel costs
9 might be, that is, if the base is set too low.
10 Correct?

11 A. If the base is set incorrect.

12 Q. And, again, Company is stuck with using
13 historic prices, is it not?

14 A. No, it is not stuck with them.

15 Q. Really?

16 A. Yes.

17 Q. The Staff won't support using forward
18 prices though. Right?

19 A. There's a lot of things that you -- I
20 believe that AmerenUE proposes in a case different
21 from the way Staff does.

22 Q. You -- you testified earlier that the
23 Commission indicated maybe the MIDAS model in the KCPL
24 case is a good model, but you also testified that you
25 don't know whether the prices used in that model were

1 forward prices, do you?

2 A. But it wasn't the same -- it wasn't a
3 three-year average.

4 Q. May not have been, but the -- but the --
5 but the Commission ended up using the Staff's modeling
6 results in that case, didn't they?

7 A. Yes, they did.

8 Q. And -- and you have no evidence
9 whatsoever that this Commission would allow the
10 Company to use forward energy prices in setting
11 off-system sales, do you?

12 A. That they will use forward prices?

13 Q. That was my question.

14 A. I don't have any idea whether they would
15 or not.

16 Q. You haven't seen that happen, have you?

17 A. No, I have not seen that happen.

18 Q. So the Company may not be willing to
19 forego anything; isn't that fair?

20 A. No, I don't think that's fair.

21 Q. Do you think -- do you think the Staff
22 would support it if the Company said, you know, We
23 want to project our -- we want to project our coal
24 prices, what they're going -- what our coal costs are
25 going to be in 2012. We want to use that to set the

1 base for the fuel adjustment clause. Would the Staff
2 support that?

3 A. No. I will -- I will --

4 Q. There's no --

5 A. -- qualify that as --

6 JUDGE WOODRUFF: Ms. Mantle --

7 THE WITNESS: -- that's my --

8 MR. LOWERY: There's no question pending.

9 JUDGE WOODRUFF: -- there's no question
10 pending.

11 THE WITNESS: I'm sorry.

12 BY MR. LOWERY:

13 Q. Now, Commissioner Jarrett asked you about
14 why 85/15 or questions along that line. Do you
15 remember those?

16 A. Yes.

17 Q. Now, in the KCPL/GMO case that was just
18 concluded, the Staff, as you testified, recommended
19 75/25. Right?

20 A. That's correct.

21 Q. And am I correct that the principal
22 reason that the Staff recommended that is because --
23 and it was a greater share for the utility. Right?

24 A. Yes.

25 Q. And that the principal reason the Staff

1 recommended that was because you thought -- the Staff
2 thought that the behavior of KCPL/GMO suggested that
3 it needed more incentive than the Company. Right?
4 Than AmerenUE. Right?

5 A. Staff took that position because
6 Ameren -- or KCPL/Greater Missouri Operations Company
7 did not ask to rebase their fuel cost. That is -- was
8 the main reason.

9 Q. And -- and -- and what that told the
10 Staff was that they were willing to forego whatever
11 that difference was between an accurate -- what -- a
12 rebase and a non-rebase and that, therefore,
13 apparently the 5 percent wasn't enough incentive for
14 them. That was your theory. Right?

15 A. That was our justification, yes.

16 Q. But for the Company you're only
17 recommending 15 percent sharing for -- for Ameren
18 Missouri. Right?

19 A. Yes.

20 Q. So you felt that GMO needed more
21 incentive than you think Ameren Missouri needs -- more
22 additional incentive; isn't that right?

23 A. Yes.

24 Q. And the Commission disagreed with you
25 today; is that correct?

1 A. I have not seen that order. I've been in
2 the hearing room all day.

3 Q. Fair enough. Commissioner Kenney asked
4 you about the net base fuel cost calculation sheets,
5 the one -- he was asking you about the ones attached
6 to Mr. Weiss's affidavit. Do you recall that?

7 A. Yes.

8 Q. The Staff -- when tariffs are filed, the
9 Staff examines those tariffs to satisfy itself that
10 they're in accordance with the Commission's Report and
11 Order, do they not?

12 A. Yes.

13 Q. You don't deny that the Staff, whoever
14 performed the calculations for net base fuel cost,
15 examined those calculations, do you?

16 A. I've said in my -- my testimony that the
17 Staff reviewed them.

18 Q. You don't deny that the Staff agreed that
19 the tariff sheets filed by the Company, including the
20 FAC tariff sheets that contain the NBFC rates, were
21 true and correct and in accordance with the
22 Commission's Report and Order to the best of Staff's
23 knowledge; isn't that right?

24 A. That's right.

25 Q. Now, in response to some questions from

1 Mr. Kenney, you suggested that, boy, it would sure
2 have been nice if the Company had asked for a waiver
3 of the 3.190 rule, didn't you?

4 A. Yes.

5 Q. But you agreed with me earlier that in
6 the MISO world, you could define net system input to
7 be generation plus purchases, minus sales, including
8 minus those transmission losses that are settled
9 financially. Right?

10 A. It could be defined that way.

11 Q. So if that's the case, if it could be
12 defined that way in the MISO world, then there's no
13 need for the Company to ask for a waiver, is there?

14 A. When the Company change --

15 Q. Can you answer my question yes or no?

16 A. Okay. It was there was no need for a
17 waiver?

18 Q. If you can define net system input in the
19 MISO world to be generation plus purchases, minus
20 sales, including those transmission -- revenues
21 associated with those transmission losses that are
22 settled financially, and you agreed you could, if
23 that's the case, then there's no need to ask for a
24 waiver under the 3.190 rule because what the Company
25 would have been giving you had -- if they were giving

1 you that what you call net system output, would have
2 been net system input in the MISO world, wouldn't it?

3 A. Yes.

4 MS. OTT: I'm going to object, calls for
5 a legal conclusion.

6 JUDGE WOODRUFF: Overruled.

7 MR. LOWERY: Well, she testified --

8 JUDGE WOODRUFF: It's overruled.

9 MR. LOWERY: Thank you.

10 THE WITNESS: I answered yes.

11 BY MR. LOWERY:

12 Q. You answered yes there would be -- you
13 think that a waiver still needs --

14 A. Oh, I'm sorry. A waiver would not be
15 needed.

16 Q. Okay. Now, Commissioner Davis asked you
17 about the MISO and -- and do things change fairly
18 frequently. Do you remember that?

19 A. Yes.

20 Q. The fact that transmission losses are
21 settled financially in the MISO, that hasn't changed
22 since the market started to your knowledge, has it?

23 A. I'm not aware. I'm -- I'm not aware of
24 the evolution of the market in MISO.

25 Q. If it hasn't changed -- so you don't --

1 the answer to my question is you don't know?

2 A. That's correct.

3 Q. If it hasn't changed, I want you to
4 assume that it hasn't changed, then the Staff's had
5 five or six years to figure that out; isn't that
6 right?

7 A. Yeah.

8 Q. And, in fact, the Staff was told in
9 October of 2006 that it had changed; isn't that right?

10 A. Yes.

11 Q. Thank you, Ms. Mantle.

12 MR. LOWERY: I don't have any further
13 questions, your Honor.

14 JUDGE WOODRUFF: Redirect?

15 REDIRECT EXAMINATION BY MS. OTT:

16 Q. Ms. Mantle, does not finding imprudence
17 mean -- does that equate to there's a finding of
18 prudence?

19 A. No, it does not.

20 Q. Mr. Lowery was discussing earlier in the
21 afternoon what he characterized as Staff's experiment
22 with changing the sharing mechanism. Was it an
23 experiment when they got the fuel adjustment clause?
24 Could that be characterized as a experiment?

25 A. Yes.

1 Q. So would you characterize that as a more
2 or less expensive experiment as Staff's proposal here
3 today?

4 A. For the customers, it was a much, much
5 more expensive experiment to -- to have an FAC at
6 95/5.

7 Q. So then just to understand, so adjusting
8 the sharing mechanism today is a less expensive
9 experiment as the initial creation of a fuel
10 adjustment clause?

11 A. Yes.

12 Q. Now, in Staff's proposal would a customer
13 get less of the benefit of an off-system sales as it
14 does under its current --

15 A. Yes.

16 Q. -- sharing mechanism?

17 A. The customer would only get 85 percent of
18 the off-system sales.

19 Q. Now, you were asked several questions
20 about incentives. Do you know whether or not nuclear
21 fuel contracts are of higher or lower magnitude than
22 most fuel contracts?

23 A. No.

24 Q. You were also asked several questions
25 about the Commission's decision in relationship to the

1 Kansas City Power & Light/GMO fuel cost and whether or
2 not they went with Staff's number or GMO's MIDAS
3 model. Do you know in that case whether or not if
4 Staff's number was higher or -- than the Company's
5 number using the MIDAS model -- model?

6 A. I believe we were talking about the
7 Kansas City Power & Light case, not the GMO case.

8 Q. Oh, sorry.

9 A. The Staff's -- Staff's number was more
10 advantageous for the Company than the Company's
11 number.

12 Q. Do you recall when Mr. Lowery had those
13 charts that you had made within your testimony and he
14 was making comparison between the accumulation period
15 two through accumulation period five?

16 A. Yes.

17 Q. Did the spread between the generation and
18 retail sale decrease between the accumulation period
19 two and the accumulation period five? I guess we need
20 to pull that out.

21 A. You were asking about the spread between
22 generated and retailed sales between two and five?

23 Q. Yes.

24 A. It decreased in -- in five it was less
25 than it was in two.

1 Q. Now, when he was comparing that chart to
2 the one in your cost -- in the cost of service report
3 and making a comparison, the cost of service report
4 was only calculated through accumulation period five.
5 Correct?

6 A. Correct.

7 Q. And that's because we didn't have the
8 data yet for accumulation period six; is that correct?

9 A. That's correct.

10 Q. Also, in relationship to the -- the chart
11 that was what he has marked as Exhibit 242 and a
12 comparison of generated and retail sales, could a
13 difference in the increase in retail sales have any
14 relationship to Noranda coming back online during
15 those -- that period?

16 A. There would be less energy available for
17 sales during that time period.

18 Q. There was also some discussions about the
19 0255 prudence case and whether or not being able to
20 disallow costs through that -- a prudence review is a
21 powerful incentive. Is that the only incentive to
22 have effective and cost efficient fuel and purchased
23 power procurement activities?

24 A. No. If it was, the -- I don't believe
25 the legislature would have put in the statute that

1 there could be other types of incentives.

2 Q. Do you believe Ameren agrees that the use
3 of a fuel adjustment clause is a privilege and not a
4 right in Missouri?

5 A. Yes.

6 Q. Okay. Mr. Lowery also was asking some
7 questions about if it was a 5/95 percent sharing
8 mechanism. Could you explain how that would have a
9 different incentive than the 95/5?

10 A. If -- if the customers only had to pay
11 for 5 percent of the costs -- or difference in costs
12 or only got back 5 percent of the cost and AmerenUE
13 bore the -- the burden or the savings of 95 percent, I
14 believe the Company would act much different than
15 it -- it does under -- when it's flipped the other
16 way, when the consumers -- the ratepayers pay for
17 95 percent of the difference.

18 At -- with respect to those AEP and
19 Wabash contracts, they may have been more likely to
20 say, okay, we can flow those through the FAC if only
21 5 percent was going to flow through the FAC.

22 Q. You were also asked some questions about
23 the schedules you attached to your surrebuttal, the
24 Wyoming and Utah decisions.

25 A. Yes.

1 Q. Have you ever claimed that you're basing
2 your recommendation upon -- based upon those orders?

3 A. No, I have not.

4 Q. Are you claiming that now?

5 A. No, I'm not.

6 Q. So why did you attach those to your
7 surrebuttal?

8 A. They were information from other states
9 about commissions that have made decisions other than
10 95/5 and that there were other states out there that
11 have sharing mechanisms. Granted every state has
12 different statute, every state have different rules
13 and -- so it is all different.

14 But there's some generalities that --
15 that -- and I'm -- I believe Mr. Rygh is going to
16 provide some of that information to the Commission on
17 which states have FACs and which ones don't and which
18 ones have sharing mechanisms. It was just information
19 that I had received that I thought the Commission
20 would like to see. And it didn't cause me to change
21 my initial recommendation of 85/15.

22 Q. Thank you. We were also talking about
23 the true-up docket, the 0274 case, and then
24 conversations about that 3.190 at that time?

25 A. Yes.

1 Q. Can you explain to me what the 3.190 data
2 is?

3 A. It was originally 22-- or 20080 data, but
4 it was data that -- the rule was set up to try to get
5 the utilities to provide, on a regular basis,
6 information so that the Staff could do a fuel run in
7 between rate cases with that data.

8 It -- so the -- the -- it had hourly
9 generation hourly sales. And of course that -- when
10 it was -- first came out it was much simpler world,
11 there was no MISO, there was no RTOs. So the -- but
12 the idea behind it, the genesis was to provide
13 information for Staff so that we could run the model
14 in between rate cases if we needed to.

15 Q. Okay. With -- in terms of the history
16 with the 35-- excuse me, 3.190 data in relationship to
17 Ameren, can you explain the relationship and -- with
18 the data and receiving it?

19 A. Initially -- actually they were the last
20 utility to provide -- start providing it to us
21 electronically. For a period of a time when the other
22 utilities were providing it to us on a diskette, we
23 were still getting stacks of paper from AmerenUE. I
24 do know when I ran it had -- it always -- it changes.
25 The format changes, the file that we receive changes.

1 And sometimes that's good, sometimes it's bad.

2 Very rarely do we get told why it's
3 changed or what has changed in it. We need to -- we
4 have to sit and look at the data and try to figure it
5 out. So, you know, it -- it's enough that in the last
6 case we had to enter into a settlement to try to
7 receive -- where UE agree to provide data that Staff
8 felt they should have been providing all along in --
9 in response to the 3.190 data. We just have trouble
10 getting the data from AmerenUE.

11 Q. Now, that settlement you're referring to
12 was that memorialized into the Market Energy Prices
13 Non-unanimous Stipulation and Agreement in the 0036
14 case?

15 A. Yes. I believe so. In the 0036 case?

16 Q. Correct.

17 A. Yes. I believe so.

18 MS. OTT: Judge, may I approach?

19 JUDGE WOODRUFF: You may.

20 BY MS. OTT:

21 Q. I just want to make sure that this is the
22 same agreement that you're referring to and you can
23 just tell --

24 A. Yes.

25 Q. -- the Court that what you're reading.

1 A. I'm specifically turned to the second
2 page where the fourth paragraph talks about the
3 monthly data submittals shall include the following
4 historical information. And there's listed out A, B
5 and C. And that's -- that corresponds with what I was
6 shown by Erin Maloney as the agreement in this -- that
7 case in which we were to get that data.

8 Q. Okay. Can you just read the date in
9 which that was filed?

10 A. 24th day of March, 2010.

11 MS. OTT: Judge, I'd ask the Commission
12 to take official notice of the Market Energy Prices
13 Non-unanimous Stipulation and Agreement filed in ER--

14 JUDGE WOODRUFF: Anyone object to that?

15 MR. LOWERY: No objection.

16 JUDGE WOODRUFF: Okay. We'll do so.

17 BY MS. OTT:

18 Q. Okay. Not to keep hitting on this issue,
19 but there was some discussion about your choice of
20 word of misrepresentation of the 3.190 data. Can you
21 just explain to me what your understanding of what you
22 characterize as misrepresentation of that data was?

23 A. What I characterize is that we receive a
24 piece of paper every month that someone signs that
25 says this data is to the best of their knowledge what

1 is required by 3.190 data. And it's changed many
2 times and it's -- it's not always met the requirements
3 of 3.190 data.

4 So that's what I meant by misrepresent.
5 They told us it was what was required by the rule.
6 And we cannot find that out and we typically don't
7 find that out until later, that it wasn't what was
8 required by the rule.

9 Q. Now, do you still have Exhibit 168 in
10 front of you?

11 A. Yes.

12 Q. I believe you were going to -- you were
13 trying to provide some additional information. Is
14 there anything else you wanted to address with this
15 particular exhibit?

16 A. This exhibit does say that the -- that
17 the MISO day two loads do not have any transmission
18 losses. We received this in a case at a time where we
19 had four other rate cases in front of us that we were
20 trying to work on. Erin Maloney, this was the first
21 time that she had done losses because the usual Staff
22 witness was unavailable. Staff receives many, many
23 data requests and any individual on the Staff -- I
24 don't know of any of them that go over every single
25 data request that's filed and the supplemental

1 responses to those data requests.

2 So the fact that this was mentioned here
3 means yes, this is a clue, but we had other clues --
4 we had other things provided by the utility that --
5 that conflicted with this. So I'm not sure why we
6 should have believed this over other data.

7 MS. OTT: Judge, may I approach?

8 JUDGE WOODRUFF: Yes.

9 BY MS. OTT:

10 Q. And you said that there would be
11 conflicting data. I'm going to hand you Data Request
12 208 from Case ER-2008-0318. And I want to -- if you
13 can read the question?

14 MR. LOWERY: Well, before she reads the
15 question, could I see the document?

16 JUDGE WOODRUFF: You can approach as
17 well.

18 MR. LOWERY: May I see it, please?

19 Thank you.

20 THE WITNESS: This is -- the request was:
21 Please furnish both monthly gross and net generation
22 output totals for all AmerenUE generating units for
23 each month beginning January 2006 through March 2008.
24 And the response was: See attached file.

25 BY MS. OTT:

1 Q. And what is that attached file?

2 A. It looks like the generation by plant.

3 Q. And --

4 A. For 12 months running from -- this page
5 is January 2006 to March 2008 is what it says.

6 Q. So would that be the data that Alan Bax
7 would use to calculate the average system loss factor
8 in the fuel run?

9 A. Yes.

10 Q. Thank you.

11 A. This would be one of the data sources he
12 used.

13 MS. OTT: Staff would like to have an
14 exhibit marked.

15 JUDGE WOODRUFF: Okay. Staff's next
16 number is 244.

17 (Staff Exhibit No. 244 was marked for
18 identification.)

19 BY MS. OTT:

20 Q. Do you have a copy, Ms. Mantle?

21 A. I don't know.

22 Q. Ms. Mantle, can you identify what
23 Exhibit No. 244 is?

24 A. It's a data request requested from Shawn
25 Lange in Case ER-2008-01-- 0318. The data request is

1 MPSC 0151.

2 Q. And can you read the question?

3 A. It says: Please provide in electronic
4 form the Union Electric Company doing -- d/b/a
5 AmerenUE hourly net system input for November 1st,
6 2006 through April 30th, 2008.

7 Q. And can you read the response?

8 A. It says: Please see the attached file,
9 with the name MPSC 0151, UE net system output.xls.
10 Please note that the load reported in the file
11 includes the load of UE's six wholesale customers
12 along with UE's retail load.

13 Q. And who provided that response to Staff's
14 request?

15 A. Steven wills.

16 Q. Now, on the document attached, is this
17 the net system input/output -- I'm not quite sure,
18 it's labeled output and input on this document -- that
19 is what's been characterized as NSI throughout the
20 day?

21 A. I don't know. The -- the title of the
22 column which contains hourly loads is UE Net System
23 Output, and then in parenthesis it says Input. So I
24 do not know whether it is output or input. It is
25 represented that they are the same thing in this --

1 this file.

2 Q. How could output be the same thing as
3 input?

4 A. Only if they were defined as the same
5 thing.

6 Q. And do you know if they were defined as
7 the same thing?

8 A. AmerenUE has since told us that output is
9 at transmission and -- as different from input, which
10 is at -- at generation.

11 MS. OTT: Staff would like to admit
12 Exhibit 244 into the record.

13 JUDGE WOODRUFF: 244 has been offered.
14 Any objections to its receipt?

15 MR. LOWERY: No objection.

16 JUDGE WOODRUFF: It will be received.

17 (Staff Exhibit No. 244 was received into
18 evidence.)

19 BY MS. OTT:

20 Q. Ms. Mantle, Mr. Lowery was discussing the
21 MISO definition of net system input. Do you think
22 that's a good definition?

23 A. I don't know if he was saying that's
24 MISO's definition of net system input. I took the
25 question as could MISO define net system input that

1 way. And anybody can define net system input to be
2 anything. So I don't know whether it's MISO's
3 definition of net system input or not.

4 Q. There was also discussions regarding the
5 communications with the Company. Is it typical for
6 the Company and Staff to kind of notify each other
7 when there's errors in the data that they provide each
8 other?

9 A. Yes.

10 Q. Can you explain a little bit about that
11 process?

12 A. Typically if Staff finds an error, we
13 will call up the Company witness and say, Hey, did you
14 realize this was in there? And we appreciate the same
15 sort of turnabout with us. We have received that in
16 the past.

17 It works usually pretty good in the
18 net -- or in the fuel model runs that the engineers
19 that are running those work really close together to
20 try to come out with the best number. And -- and
21 typically my Staff, the energy department, works
22 fairly well with the utility analysts that we interact
23 with providing them with any corrections and them
24 doing the same for us.

25 Q. And at what point did the Company notify

1 you that maybe your definition or use of net system
2 input was incorrect?

3 A. I can't really say. I don't -- would
4 have to be during the discussions of the problem with
5 the net base fuel cost rate that's the subject of the
6 274 case.

7 Q. Now I want to go to Commissioner
8 Jarrett's phrase he used earlier "if it ain't broke,
9 why fix it." Just because something didn't break,
10 does that mean it doesn't need enhancements?

11 A. No.

12 Q. There was also some discussions about
13 from Commissioner Davis in relationship to you being
14 the expert witness on this issue and who helped
15 formulate that opinion. Do you agree with Staff's
16 proposal of the 85/15 split?

17 A. Yes.

18 Q. Now, is it Staff's objective to get rates
19 low or is it to get rates right?

20 A. It's to get rates correct.

21 Q. Also, in relationship to questions
22 Commissioner Jarrett was asking, is it your opinion
23 that the sharing mechanism is a punishment?

24 A. No, it's not a punishment.

25 Q. And how would you characterize the

1 sharing mechanism?

2 A. The statute characterizes incen-- as an
3 incentive for efficient fuel and purchased power costs
4 to -- to try to get the utilities to be efficient with
5 their fuel and purchased power. Not as -- as a
6 punishment changing the incentive because imprudence
7 was found or anything. It's -- it's an incentive to
8 try to do the best job of purchasing fuel and
9 purchased power.

10 Q. I want to go back to I think one of the
11 first questions. We were discussing the experiment
12 and the expense of it. Can you explain a little bit
13 more why this is a less expensive experiment than the
14 initial implementation of a fuel adjustment clause?

15 A. Well, with the initial one, the
16 experiment for the customers is having to take on that
17 95 percent or receive back 95 percent of the
18 difference between what's in base and what actually
19 occurs. And this change is only 10 percent. It's the
20 difference between the 95 and 85 percent. So it's --
21 it's not 95 of the difference, it's -- the -- the
22 change would be an experiment with just the 10 percent
23 of the difference.

24 Q. Now, in your opinion is Staff satisfied
25 with the tariff review in the -- for the amount of

1 time to do the prudence reviews or the true-up
2 reviews?

3 A. For the true-up reviews? If all that we
4 have to do is check is whether what was actually
5 billed, it corresponds to what was supposed to be
6 billed, it's -- it's adequate time. But if we have to
7 start checking errors, we have to start sending DRs,
8 it wasn't designed to do a lot of evaluation
9 because -- because of that short -- the 30 days that
10 Staff has. We don't have time to do DRs, do a lot of
11 research and find -- figure out whether an error is
12 actually an error or not.

13 Q. So then is it when Staff submits a
14 recommendation, that it either -- it supports -- that
15 review is based on that limited time to -- to review
16 and assess the limited data you have?

17 A. We check the -- against -- we check what
18 the Company files against what they've been filing
19 monthly. We check the interest calculations to make
20 sure that those are done correctly and that's what we
21 base our review at this time on.

22 Q. Hold on just one second. Ms. Mantle, I
23 have I guess one more further question. When you were
24 asked questions in relationship to the affidavits of
25 Mr. Weiss and Mr. Finnell, were those based upon your

1 personal observations and not your -- as an expert
2 opinion?

3 A. Yes. They were based on my personal
4 observations.

5 Q. So you're not testifying or you're not
6 saying you're an expert on voracity?

7 A. No.

8 MS. OTT: I'd move to strike the
9 affidavits of --

10 JUDGE WOODRUFF: Overruled.

11 MS. OTT: I have no further questions.

12 JUDGE WOODRUFF: All right. Ms. Mantle,
13 you can step down and run out of here as fast as you
14 can.

15 All right. We're once again due for a
16 break. It's been a few hours.

17 MR. BYRNE: Your Honor, could we put this
18 Exhibit 158 in? Because I know Commissioner Kenney
19 probably wants it.

20 COMMISSIONER KENNEY: Yes. That's what I
21 was going to ask because I'm going to run out of here
22 as fast as I can too.

23 MR. LOWERY: Your Honor, if you want to
24 clean a couple other things up, we've got 160-HC and
25 161-HC that were requested earlier that have been

1 reserved. And I've complete copies of 169, which I'll
2 make sure the parties have and they can look at it and
3 see if they have any objection tomorrow morning maybe.

4 JUDGE WOODRUFF: Mr. Byrne, this is 155?

5 MR. LOWERY: 169.

6 JUDGE WOODRUFF: This is the notice --

7 MR. BYRNE: Taum Sauk notice and the --

8 JUDGE WOODRUFF: Okay. 158.

9 MR. BYRNE: Does that match what you
10 have, Judge?

11 JUDGE WOODRUFF: Yes. I was looking at
12 something else.

13 MR. BYRNE: That would be 158.

14 MS. OTT: Can Ms. Mantle be dismissed?

15 JUDGE WOODRUFF: Yes. Absolutely.

16 MS. MANTLE: I'll be back tomorrow.

17 MR. BYRNE: 158, what this is, this is
18 the notice that we provided the Department of Natural
19 Resources, the Department of Conservation, the
20 attorney general prior to filing our case and we met
21 with each of those departments -- the heads of the
22 departments and these were the handouts that we gave
23 them when we had those meetings about Taum Sauk.

24 JUDGE WOODRUFF: I deferred ruling on
25 this at the time. Does anyone have any objection to

1 the admission of this document or do you need more
2 time to look at it?

3 MR. MILLS: Which one?

4 JUDGE WOODRUFF: This is 158, which is
5 the notice to DNR.

6 MS. KLIETHERMES: I guess to the extent
7 it's being offered as the notice that was presented as
8 opposed to authenticating the facts that are contained
9 in it?

10 JUDGE WOODRUFF: Right.

11 COMMISSIONER KENNEY: On that same note,
12 I have another -- I don't know if this is a question
13 or a request. Has the consent judgment itself been
14 offered into evidence?

15 MR. BYRNE: I believe we reserved -- we
16 had an exhibit number for that, Judge, and I believe
17 we've filed it.

18 JUDGE WOODRUFF: That was the settlement
19 agreement. Was the consent agreement --

20 MR. LOWERY: Yes, it has been admitted.
21 Exhibit 157 according to my records, Judge.

22 JUDGE WOODRUFF: That was the settlement
23 agreement, but I think the Commissioner's asking about
24 the actual order.

25 COMMISSIONER KENNEY: No, I'm talking

1 about the consent judgment --

2 MR. LOWERY: The consent judgment and the
3 settlement agreement are one and the same.

4 COMMISSIONER KENNEY: -- between the
5 State and DNR. It's actually titled consent judgment.

6 MR. LOWERY: That's correct. It's
7 actually in evidence as Exhibit 157.

8 MR. BYRNE: It's one document signed and
9 approved by the judge.

10 COMMISSIONER KENNEY: Right.

11 MR. MILLS: Judge, with respect to 158,
12 I'd like to look at before I make an objection.

13 JUDGE WOODRUFF: All right. We'll deal
14 with that later. And, Mr. Lowery, you were having
15 some stuff brought as well as.

16 MR. LOWERY: I have complete copies of
17 Exhibit 169. We had the copy problem before. And
18 I've given those to counsel for the parties.

19 JUDGE WOODRUFF: Again, we'll wait until
20 they've had a chance to look at it before ruling on
21 it.

22 MR. LOWERY: And while we're dealing with
23 housekeeping, I have what you reserved as Exhibit
24 160-HC and probably want to reserve as well on that
25 ruling, but I will hand those out.

1 MR. MILLS: Judge, are we still on the
2 record? She's trying to get all this.

3 JUDGE WOODRUFF: No, we are off the
4 record at this point.

5 (Off the record.)

6 JUDGE WOODRUFF: We're back on the
7 record. We'll take a break and come back at 6:30.

8 (Ameren Exhibit No. 169 was re-marked for
9 identification, Ameren Exhibit No. 160-HC and 161-HC
10 were marked for identification.)

11 (Staff Exhibit No. 225 was marked for
12 identification.)

13 JUDGE WOODRUFF: Looks like during the
14 break Mr. Roos has taken the stand.

15 (Witness sworn.)

16 JUDGE WOODRUFF: Thank you.

17 DAVID ROOS testified as follows:

18 DIRECT EXAMINATION BY MS. OTT:

19 Q. Would you please state your name for the
20 record.

21 A. David C. Roos.

22 Q. And whom are you employed, in what
23 capacity?

24 A. I'm employed as a regulatory economist
25 for the Missouri Public Service Commission.

1 Q. And are you the same David Roos that
2 caused to be filed prepared testimony that's contained
3 within Staff's cost of service report that's been
4 marked as Exhibit No. 204 as well as surrebuttal
5 testimony that's been marked as Exhibit 225?

6 A. Yes, I am.

7 Q. In respects to the class cost of service
8 report, do you have any changes to make at this time?

9 A. No, I do not.

10 Q. And in relationship to your surrebuttal
11 testimony, do you have any changes to make at this
12 time?

13 A. Yes, I do.

14 Q. What are those?

15 A. I'd like to make to change to my exemplar
16 tariff sheets. This would be Sheet No. 98.2.

17 Q. Okay.

18 A. And that would change would be "effective
19 with the Company's April 1st, 2012 filing, the FPAC
20 shall be revised to -- this is an equation -- FPAC is
21 equal to FPA (RP) plus FPA (RP minus 1).

22 Q. So you're just on the formula that's
23 contained towards the top part of the page striking
24 the last plus and then some letters?

25 A. Yes. I'm striking the last variable in

1 that second equation of that page.

2 Q. Do you have any other changes to make?

3 A. No, I do not.

4 Q. If I were to ask you the same questions
5 or similar questions here today that are contained
6 within your surrebuttal testimony, would your answers
7 be the same?

8 A. Yes, they would.

9 MS. OTT: With that, I'd like to offer
10 Exhibit No. 225.

11 JUDGE WOODRUFF: 225 has been offered.
12 Any objections to its receipt?

13 Hearing none, it will be received.

14 (Staff Exhibit No. 225 was received into
15 evidence.)

16 MS. OTT: I'll tender Mr. Roos for
17 cross-examination.

18 JUDGE WOODRUFF: Okay. For
19 cross-examination we'll begin with AARP?

20 MR. COFFMAN: No questions.

21 JUDGE WOODRUFF: Public Counsel?

22 MR. MILLS: No questions.

23 JUDGE WOODRUFF: Ameren?

24 MR. BYRNE: Yes. Just a couple.

25 CROSS-EXAMINATION BY MR. BYRNE:

1 Q. I -- Mr. Roos, I'd like to ask you
2 something related to what Ms. Ott just asked you about
3 in the formula that you just read into the record.
4 And I guess my question is there -- we -- there's been
5 some tariff language developed that -- that the
6 Company believes would -- and I think the Staff
7 believes but I want to ask you about it, would --
8 would -- would implement -- if the Commission did
9 decide to go to an 8-month rather than a 12-month
10 recovery period would implement that change.

11 And I guess I would like to read the
12 tariff language to you and ask if you agree that it
13 would do that?

14 A. Sure.

15 Q. Could I -- and I can show it to you too.

16 A. I'd like to see it too.

17 Q. Okay. And here's the language. Quote,
18 Eff-- and this language would appear below the
19 definition of FPAC. Okay? In the Company's tariff.
20 Are you following me?

21 A. I'm following you.

22 Q. Okay. And it would say, quote, Effective
23 with the Company's April 1st, 2012 rider FAC filing,
24 comma, FPAC shall be revised to: FPAC equals FPA (RP)
25 plus FPA (RP minus 1), closed quote.

1 And let me show it to you.

2 A. Okay.

3 Q. Do you -- my question is, do you agree
4 that the addition of that tariff language would
5 implement the transition from a 12-month to an 8-month
6 recovery period?

7 A. Yes.

8 Q. Okay. And there's also -- on that same
9 page it suggests that one of the line items in the FPA
10 filing would be removed. Can you -- can you read what
11 that says into the record and tell me if you agree
12 that would also be true?

13 A. Note: FPA subscript RP minus 2 Sheet
14 98.7 would be removed in the Company's April 2012
15 filing also.

16 Q. And -- and do you agree that would be
17 appropriate if we went from a 12-month to an 8-month
18 recovery period?

19 A. Yes.

20 Q. Okay. Mr. Roos, an exhibit was offered
21 earlier, which was Exhibit 416. And I'd like to ask
22 you to take a look at it and ask you a question about
23 it.

24 MR. BYRNE: Judge, may I approach the
25 witness?

1 JUDGE WOODRUFF: You may.

2 BY MR. BYRNE:

3 Q. And this is a graph that shows -- I think
4 it purports to show if you had an 8-month recovery
5 period on a red -- shown with a red line and then if
6 you had 12-month recovery period shown with a blue
7 line; is that correct?

8 A. That's correct.

9 Q. And I guess when I looked at that graph,
10 it looked to me like more total money would be
11 collected if it was an 8-month recovery period, but I
12 don't think that's true. Can you enlighten me about
13 what that graph means and about how much money is
14 collected under either alternative?

15 A. The -- the total amount of money would be
16 the same. In the 8-month recovery period, it's
17 recovered quicker. So that's why the red line's
18 higher than the blue line. It shows more of a -- a
19 cash flow that -- that you're receiving -- the Company
20 would receive a greater cash flow under the 8-month
21 period as opposed to the 12-month period.

22 Q. Would you agree with me that a slightly
23 lower total amount of money would be collected under
24 the 8-month because there would be less interest
25 collected?

1 A. Yes.

2 Q. But that wouldn't -- I mean that wouldn't
3 be a significant difference, I guess?

4 A. The -- the interest amounts have been
5 very small to date.

6 Q. Okay. My understanding is that in your
7 testimony you oppose the addition of some language in
8 the true-up that Ms. Barnes proposed about correcting
9 errors; is that correct?

10 A. That's correct.

11 Q. And -- and could you tell me why you're
12 opposed to the addition of that language?

13 A. There's -- there's two reasons. The
14 first reason is that it opens up the -- the review of
15 the -- the calculations really from the beginning of
16 the R-- from the FAC on to as long as -- as the FAC
17 rider is in effect. The FPA calculations are all
18 chained -- or they're all linked to previous
19 calculations so if you -- if you change any number in
20 that chain, you wind up affecting everything
21 downstream of that.

22 Q. Is part of your concern a concern over
23 having enough time to process it if there's a -- if
24 there's a -- an error discovered?

25 A. That's a -- that's my second point, that

1 Staff is limited in time of review.

2 Q. And let me ask you this: What are the
3 limits on Staff's time of review, if you know?

4 A. We have 30 days.

5 Q. And isn't it true that the Commission can
6 waive that 30-day time limit if -- in an appropriate
7 case?

8 A. I -- I'm not sure.

9 Q. Okay.

10 A. I --

11 Q. Well, if the Commission can waive --
12 well, why don't you assume for me that the Commission
13 can waive that time limit. If that's the case, then
14 wouldn't it be possible if an error is discovered,
15 that the Commission could go ahead and allow an
16 adjustment for the -- for the -- for the part of the
17 FPA that's not related to the error and suspend the
18 deadline until the error can be worked out? Wouldn't
19 that be possible?

20 A. Yes.

21 Q. And -- and then when the error is
22 eventually worked out, it would either -- it -- the
23 proper adjustment could be made with interest either
24 to the customers or to the Company depending on which
25 way the adjustment went?

1 A. So the undisputed amount could -- could
2 go ahead and flow through and then the disputed amount
3 would be held back until final decision, final review?

4 Q. Yeah. Until it could be resolved.

5 A. Yes.

6 Q. Wouldn't that be one possible way to
7 handle it?

8 A. That would be.

9 Q. Okay. Thank you, Mr. Roos.

10 MR. BYRNE: I don't have any other
11 questions.

12 JUDGE WOODRUFF: I have no questions from
13 the bench so there's no need for recross. Any
14 redirect?

15 REDIRECT EXAMINATION BY MS. OTT:

16 Q. I have just one question. Mr. Roos,
17 Mr. Barnes --

18 MR. BYRNE: Mr. Byrne.

19 MS. OTT: Byrne. Sorry, it's been a long
20 day.

21 BY MS. OTT:

22 Q. Was discussing that language Staff is
23 opposed to in the true-up. Do you know whether
24 Company is allowed to go back after rates have been
25 implemented and change something because it's an error

1 outside of a rate case?

2 A. My understanding, that once the rates are
3 set from a rate case, they're set, you cannot go back.

4 Q. And do you know if -- in your -- in your
5 opinion and -- if there's any type of legal standard
6 that bars them from doing that?

7 A. Yes.

8 Q. And what's your understanding of that?

9 A. I believe it's -- it's that retroactive
10 rate-making is not allowed.

11 MS. OTT: Thank you. I have no further
12 questions.

13 JUDGE WOODRUFF: Thank you, Mr. Roos.
14 You can step down.

15 THE WITNESS: Thank you.

16 JUDGE WOODRUFF: Next on the list then
17 would be Mr. Kind for OPC.

18 MR. LOWERY: Your Honor, while Mr. Kind
19 comes up, I'd asked Ms. Ott earlier and I hadn't had a
20 chance to ask the other lawyers whether they thought
21 they would have questions for Mr. Finnell and Weiss.
22 And I think the answer or at least Ms. Ott gave is she
23 didn't know yet.

24 Both of them could be -- Mr. Finnell
25 could be available tomorrow, Mr. Weiss could be

1 available Friday. If they're not sure tonight and
2 maybe want more time to think about that and we know
3 that, I'd like to let Mr. Finnell go home if possible
4 tonight.

5 JUDGE WOODRUFF: Let me ask the parties
6 at this point. Do you know if you'll have any
7 questions for Mr. Finnell and Mr. Weiss on those
8 affidavits?

9 MR. MILLS: Judge, you caught me at a
10 weak moment. I'm tired, I've got budget issues. I'm
11 going to say no.

12 JUDGE WOODRUFF: All right. Mr. Coffman?

13 MR. COFFMAN: I'd prefer to submit my own
14 affidavits. At this point, I have no questions.

15 MS. OTT: Staff would like to reserve the
16 right to answer that question in the morning if it's
17 possible. I'd like some time to review them and then
18 determine.

19 JUDGE WOODRUFF: That will be fine. As
20 Ameren's attorney indicated, the witnesses will be
21 available later in the week if needed. If you could
22 answer the question in the morning and then we'll
23 decide whether we need to bring them back.

24 MS. OTT: Thank you.

25 JUDGE WOODRUFF: Thank you.

1 MR. LOWERY: Thank you, your Honor.

2 JUDGE WOODRUFF: Okay. And Mr. Kind, I
3 believe you've also testified last week, so you are
4 still under oath.

5 THE WITNESS: That's correct.

6 MR. MILLS: Judge, did you say that
7 Mr. Kind is still under oath?

8 JUDGE WOODRUFF: Yes, he is still under
9 oath.

10 MR. MILLS: His testimony has all been
11 previously admitted or all except his rate design
12 testimony has been previously admitted so he's
13 tendered for cross-examination.

14 JUDGE WOODRUFF: Okay. For
15 cross-examination we'll begin with AARP?

16 MR. COFFMAN: No questions.

17 JUDGE WOODRUFF: Staff?

18 MS. OTT: No questions.

19 JUDGE WOODRUFF: Ameren?

20 MR. BYRNE: Just a few.

21 CROSS-EXAMINATION BY MR. BYRNE:

22 Q. Mr. Kind, you've filed testimony
23 regarding Ameren Missouri's fuel adjustment clause in
24 a number of cases, haven't you?

25 A. Yes, that's correct.

1 Q. And in this case my understanding is
2 you're supporting the Staff's position that the
3 sharing percentage should be changed to 8-- 85/15; is
4 that correct?

5 A. We agree with the Staff position on
6 changing sharing to 85/15, that's right.

7 Q. And my understanding is the first time
8 Ameren Missouri -- or actually AmerenUE at the time
9 proposed a fuel adjustment clause was in Case No.
10 ER-2007-0002; is that correct?

11 A. I believe so.

12 Q. And do you recall what your position on
13 the fuel adjustment clause was in that case?

14 A. I think we discussed this in my
15 deposition and you were suggesting that my position
16 was 50/50 sharing. In just a -- I think a quick scan
17 of that order subsequent to the deposition I think I
18 did see that our position was supporting 50/50
19 sharing.

20 Q. Well, let me -- there's several different
21 cases so let me -- and I've got -- I went and found --

22 A. And I could have the wrong one. There's
23 a lot that have been mentioned today and --

24 Q. It's late in the date. But let me --
25 I've got your rebuttal testimony in that case, in

1 ER-2007-0002. And I'd like you to take a look at it
2 and maybe it will refresh your recollection of your
3 position in that case. Okay. Does that appear to be
4 your rebuttal testimony from Case No. ER-2007-0002?

5 A. Yes.

6 Q. And there's a page marked and there's
7 some -- there's a highlighted section. Could you just
8 read the highlighted section?

9 A. Sure. Beginning with the question?

10 Q. Yeah.

11 A. Okay. Has the Office of Public Counsel
12 taken a position in this case regarding whether UE's
13 FAC proposal should be approved by the Commission?
14 That's the question.

15 And the answer is: Yes. Public
16 Counsel's recommendation that -- recommendation that
17 the Commission deny UE's proposal to establish a FAC
18 because the approval of such a clause would not be
19 consistent with the public interest. And the basis
20 for that recommendation are set forth in my
21 December 29th, 2006 FAC testimony, which I assume is
22 another round that was filed in this case.

23 Q. Right. So would you agree with me that
24 in that case the Public Counsel was opposed to the
25 FAC?

1 A. At least in rebuttal. Unless I had --
2 I -- you know, some proposal for 50/50 sharing in
3 surrebuttal.

4 Q. Well --

5 A. So -- I don't know where I got that prior
6 idea other than from you in the deposition maybe, but
7 I could be getting cases confused.

8 Q. And then the next case where Ameren
9 Missouri asked for a fuel adjustment clause was in our
10 next rate case which was Case No. ER-2008-0318; is
11 that correct?

12 A. That sounds right.

13 Q. And I also -- and this may be the -- this
14 may be the -- well, this may be the 50/50 situation.
15 I've got two pieces of testimony, direct testimony and
16 rebuttal testimony from that case. And again I just
17 have some highlighted sections that show your
18 position. Okay. So let me show you the direct
19 testimony first. Does that appear to be your direct
20 testimony from that case?

21 A. Yes.

22 Q. And can you again read the highlighted
23 section into the record, if you would?

24 A. Question: Will OPC be taking a position
25 on UE's proposal that the Commission approve a fuel

1 adjustment clause, FAC, for it in this case?

2 Answer: Yes. OPC opposes UE's request
3 that the Commission permit it to use an FAC. A
4 detailed description of OPC's position and support for
5 it will be provided in testimony that will be filed
6 later in this case.

7 MR. BYRNE: Perhaps it's a little late,
8 Judge, but may I keep approaching the witness?

9 JUDGE WOODRUFF: Yes.

10 BY MR. BYRNE:

11 Q. And then, Mr. Kind, I have your rebuttal
12 testimony from that case. And I think this is where
13 the 50/50 comes from. But, again, does that appear to
14 be your rebuttal testimony from that case?

15 A. Yes, it does, Mr. Byrne.

16 Q. And could you again read the highlighted
17 section in that rebuttal testimony?

18 A. Okay. There's a couple of Q and As that
19 are highlighted. First question is: If the
20 Commission decides to approve an FAC for UE despite
21 OPC's recommendation to the contrary, are there some
22 aspects of the UE FAC proposal that should be changed?

23 Yes. There are several details of the UE
24 FAC proposal that should be modified by the Commission
25 if it decides to approve an FAC for UE despite OPC's

1 recommendation to the contrary. These details
2 include, number one, the 95/5 pass-through ratio;
3 number two, the Taum Sauk hold-harmless adjustment
4 factor, the TS factor; and three, the definition of
5 the off-system sales revenue factor OSSR.

6 Next question: Why and how should the
7 95/15 [sic] sharing ratio be modified?

8 Public Counsel believes that if an FAC is
9 approved for UE, only 50 percent of the variation in
10 UE's fuel cost from the baseline cost level
11 established in this rate case should be passed on to
12 ratepayers through periodic adjustments.

13 This lower pass-through would recognize
14 one, the lower dependence of UE on volatile --
15 volatile purchased power and volatile fuels like
16 natural gas relative to other Missouri utilities and;
17 two, the extent to which UE has been able to hedge the
18 prices of the coal and nuclear fuel that is used in
19 its base load units.

20 Q. Okay. And finally, the third case that
21 Ameren Missouri got a fuel adjustment approved was
22 Case No. ER-2010-0036; is that correct? Or actually
23 it's the second case it got approved because it was
24 not approved in the 2007 case; is that right,
25 Mr. Kind?

1 A. Are you asking me the case in which the
2 FAC was initially approved and asking me to verify
3 whether it was the 2010-0036 case?

4 Q. Well, let me -- let me back up.

5 A. Okay.

6 Q. The first document that you read from was
7 from the 2007 case, which was the first case we asked
8 for it, but it was not approved in that case; is that
9 correct?

10 A. That's right.

11 Q. And then the second set of documents were
12 from ER-2008-0318, which is where ultimately the FAC
13 was approved; is that correct?

14 A. Yes.

15 Q. And then the last document I'm about to
16 give you is from our most recent rate case which was
17 Case No. ER 2010-0036, which is where the FAC was most
18 recently re-approved; is that correct?

19 A. Yes. It was approved for -- to be
20 continued.

21 Q. And, again, Mr. Kind, does that look like
22 your additional direct testimony from Case No.
23 ER-2010-0036?

24 A. Yes.

25 Q. And again, could you read the highlighted

1 section of that testimony?

2 A. Has Public Counsel reached any general
3 conclusions regarding the appropriateness of the fuel
4 adjustment clause that the Union Electric Company has
5 had in place for approximately one year?

6 Answer: Public Counsel believes that
7 from a general perspective, the FAC mechanism
8 currently in place for UE does not provide sufficient
9 incentive for the Company to minimize UE's fuel
10 procurement cost and maximize the margins gained from
11 off-system sales.

12 OPC believes that at a maximum, U-- UE
13 should be able to recover 80 percent of its variations
14 from the baseline level of fuel costs net of OSS
15 margins that was set in the Company's most recent rate
16 case. Unless UE has at least this much skin in the
17 game, in other words, 20 percent, ratepayers cannot be
18 assured that UE's making its best efforts to minimize
19 its fuel procurement cost and maximize its OSS
20 margins.

21 Ratepayer confidence that UE is making
22 its best efforts to minimize fuel costs is especially
23 important under the current circumstances where UE's
24 customers are once again faced with the prospect of a
25 double-digit rate increase at the same time many of

1 these customers are experiencing the impact of global
2 economic problems on their household budgets.

3 Q. Thank you, Mr. Kind. Mr. Kind, is it
4 true that you would agree that you don't want to
5 consider making a change in an FAC sharing percentage
6 that would occur just two years after a FAC sharing
7 percentage was set?

8 A. That's not consistent with my testimony.
9 So -- I haven't changed the position in my testimony
10 so I would say no, that's not true, that's false.
11 Unless I'm not understanding the question.

12 Q. Do you have a copy of your deposition
13 from April 21st, 2011?

14 A. Yes. Is there a page reference?

15 Q. Yes. Page 37, line -- beginning at
16 line 1. Tell me when you're there.

17 A. I'm there.

18 Q. Okay. And does it say -- well,
19 actually -- yes, it says -- the question is:

20 "In your view, should the Commission
21 adopt the 85 percent/15 percent sharing mechanism for
22 Ameren Missouri and stick with it or should they, the
23 Commission, reconsider the sharing percentage in every
24 Ameren Missouri rate case?

25 "Answer: Oh, I don't think that's

1 something you want to consider changing. Um, if
2 you've just made a change, you probably don't want to
3 consider making a change in uh -- in another rate case
4 that would occur just two years away unless there's
5 some substantial change in circumstances that would
6 prompt a reassessment of that issue."

7 Did I read that accurately?

8 A. Yes, you did.

9 Q. Okay. Mr. Kind, my understanding is you
10 did not do any quantitative analysis to support your
11 recommendation in this case; is that correct?

12 A. I think that's correct. With respect to
13 the -- my recommendation on the sharing percentage.

14 Q. Okay. And my understanding is that you
15 haven't examined any of Ameren Missouri's coal
16 contracts; is that correct?

17 A. That's correct. Not at least, you know,
18 in this case.

19 Q. Okay. And in this case you haven't
20 examined any of our rail contracts; is that true?

21 A. True. Not in this case.

22 Q. And you haven't examined any of the
23 contracts that underlie our natural gas costs in this
24 case?

25 A. Correct.

1 Q. And you haven't examined any contracts
2 that underlie our nuclear fuel costs?

3 A. No, not in this case.

4 Q. And in this case you haven't examined any
5 contracts underlying our nuclear fuel processing
6 costs?

7 A. No.

8 Q. My understanding is that you agree that
9 we are currently in an increasing cost environment for
10 net fuel costs; is that correct?

11 A. With respect to most fuels, natural gas
12 is -- has been flat for a while and I don't see any
13 big increases coming in the next year or two.

14 Q. But for -- given Ameren Missouri's fuel
15 mix for Ameren Missouri's net fuel cost, would you
16 agree we're in an increasing cost environment?

17 A. For the overall mix, yes.

18 Q. Okay. Thank you, Mr. Kind.

19 MR. BYRNE: I don't have any other
20 questions.

21 THE WITNESS: All right.

22 JUDGE WOODRUFF: Thank you. That
23 concludes cross-examination then. I have no questions
24 from the bench. Any redirect?

25 MR. MILLS: I do have a few, your Honor.

1 REDIRECT EXAMINATION BY MR. MILLS:

2 Q. Mr. Kind, with respect to the -- the
3 Public Counsel position for 50/50 sharing in Case No.
4 ER-2008-0318, did the Commission adopt that proposal?

5 A. No, they did not.

6 Q. Okay. And with respect to the following
7 case, ER-2010-0036, do you still have the testimony
8 that Mr. Byrne had you read from there?

9 A. Yes, I do.

10 Q. I believe that was titled Additional
11 Direct Testimony. Can you explain the circumstances
12 under which you filed that testimony?

13 A. Yes, I can. It was rather late in the
14 procedural schedule in this case, but prior to the
15 hearing when the Commission, of their own initiative,
16 decided that they would like to get additional
17 testimony from parties on the issue of the fuel
18 adjustment clause and testimony I think with respect
19 to whether it should be -- the existing fuel
20 adjustment clause should be continued or modified.

21 Q. Okay. Does OPC sometimes modify its
22 proposals in rate cases based on prior PSC decisions?

23 A. Yes. We certainly take that into
24 account.

25 Q. Can you think of occasions on which you

1 in particular in your testimony have proposed
2 something -- something to the Commission that is less
3 extensive or less dramatic than you would normally
4 have proposed because of a prior Commission decision?

5 A. Well, specifically, yes, here in the --
6 in the area of fuel adjustment clause sharing, that
7 has occurred. And part of the reason is we'll take
8 into account the Commission decision -- for example,
9 their decision on 95/5 sharing and we'll look at that
10 and we'll say, you know, there's very little skin in
11 the game at that point.

12 Perhaps this Commission is, you know,
13 they've already rejected our proposal on 50/50
14 sharing, but ratepayers could be much better
15 protected, if we're going to have a fuel adjustment
16 clause, with some increase in the amount of skin in
17 the game on part of the Company, whether that's going
18 from 5 percent, 10 percent, 15 or 20, it can have a
19 very big impact.

20 So that type of appraisal takes place
21 where we look at -- you know, we may not -- the
22 Commission may never favor what we think as the ideal
23 amount of skin in the game, but still after we see how
24 the Commission's decided a prior case and their basis
25 for it, and -- so we may decide that, well, there

1 could be a more moderate proposal that the
2 Commission -- could be attractive to the Commission
3 and beneficial to customers relative to the status
4 quo.

5 Q. Okay. Now, Mr. Byrne had you read a
6 question and answer from your deposition. Can you
7 please explain your thinking when you answered that
8 question?

9 A. Certainly can. I, unfortunately, have --
10 I don't think I kept the page reference. I can still
11 recall though what it was about.

12 The main thing that he was asking me or
13 the way I interpreted his question was if the
14 Commission changes the sharing percentage in this
15 case, looking out to the future, what -- what is --
16 would it make sense for the Commission to just change
17 it again right away in the next case?

18 And so given that that was how I
19 understood his question, I answered no, rather than
20 the way I think he implied my answer was intended to
21 say that I was somehow saying that the Commission had
22 just made a decision about the sharing percentage two
23 years ago and it shouldn't change it in this case.
24 And I -- I didn't intend to make any -- any answer of
25 that sort.

1 Q. Okay. Now, with respect to some of the
2 final questions that Mr. Byrne asked you, is there a
3 reason why you haven't examined coal, natural gas,
4 transportation, nuclear, et cetera contracts in this
5 case?

6 A. The main reason would just be resource
7 constraints on the part of our office. And just --
8 I've got a number of issues that I'm covering in this
9 case, Taum Sauk, fuel adjustment clause, energy
10 efficiency, class cost of service and you can only dig
11 so deep into any individual issue.

12 And certain issues there's just a minimum
13 amount of time that you have to spend on them in order
14 to address the issue, like class cost of service. If
15 you're going to perform a class cost of service study,
16 there's a number of steps that are involved that have
17 to be accomplished if you're going to complete a
18 study. And so it really is just -- just due to
19 resource constraints.

20 Q. Now, on the -- on the list of witnesses
21 for this case UE has listed -- for this issue in this
22 case, UE has listed Lynn Barnes, Jaime Haro, Mark
23 Birk, Gary Rygh and two of them they've added, Tim
24 Finnell and Gary Weiss. That's six by my count. Does
25 OPC even have six witnesses that we could put on this

1 issue?

2 A. No, we don't have six technical people in
3 our office.

4 Q. Thank you. Now, Mr. Byrne asked you
5 about whether or not UE's overall fuel -- fuel
6 portfolio is -- is most likely in an increasing cost
7 mode. Are increasing but not volatile fuel costs a
8 valid reason to adopt or continue a fuel adjustment
9 clause?

10 A. I think it was the volatility of costs
11 that the Commission emphasized in their order where
12 they've approved fuel adjustment clauses. And that
13 gets at, you know, if the costs are going to be
14 essentially just really unpredictable.

15 There could be sudden increases say just
16 a year from now and that's something that the
17 Commission believe that in those sort of circumstances
18 you should -- utilities should be able to have a fuel
19 adjustment clause. But I don't think they believe
20 that just because you're in a -- in a steadily
21 increasing cost environment that's fairly predictable,
22 that that alone would merit the need for a fuel
23 adjustment clause.

24 Q. And do you recall the -- the reasons that
25 the Commission declined to adopt a fuel adjustment

1 clause for UE in Case No. ER-2007-0002?

2 A. I think part of the reasoning was -- was,
3 you know, what I just addressed in terms of increases
4 in fuel costs being fairly predictable. I think in
5 that order the Commission noted that Ameren had locked
6 in -- and I should say -- well, Union Electric
7 Company, I don't know what the name will be next
8 week -- say that they had locked in contracts for most
9 of their base load units for several years out into
10 the future. And when I talk about the fuel for base
11 load units, I'm talking about coal and -- and nuclear
12 fuel.

13 And the Commission observed that -- that
14 those -- that the Company had a program to -- to hedge
15 those future costs by locking in prices now so that
16 they would be predictable in the future.

17 Q. Okay. Does the Company continue that
18 same program to lock in prices for a period of time
19 for its coal contracts?

20 A. They do from my knowledge, but of course,
21 with the change in the coal pool, I'm not really
22 familiar with how that could -- could affect their
23 future practices. Because I think part of what was
24 driving them to lock in those fuel prices in -- for
25 the future was they -- they wanted to be able to

1 protect the margin on sales associated with their
2 merchant generation, make that predictable because
3 that has a big impact on -- on the earnings of the
4 Ameren Corporation.

5 Q. Would it be important for any fuel
6 adjustment clause that the Commission adopts in this
7 case to provide an incentive to UE --

8 MR. BYRNE: I'll object, that's leading.

9 MR. MILLS: I haven't even finished the
10 question yet.

11 JUDGE WOODRUFF: It's overruled.

12 BY MR. MILLS:

13 Q. -- to provide an incentive to UE to
14 continue to take steps to hedge its fuel volatility in
15 the -- going forward?

16 A. Certainly I think it's -- it's even more
17 important in light of the pooling arrangement with
18 their unregulated affiliate going away, which provided
19 some level of assurance that there was a great amount
20 of diligence applied to ensuring that they acquired
21 coal at the lowest cost.

22 I think the Commission recognized how --
23 what an important element that was and an important
24 protection for ratepayers when they cited it in their
25 order approving UE's first fuel adjustment clause as

1 the number one factor that justified the 95/5 sharing
2 ratio.

3 Q. Do customers like rate volatility?

4 A. No. They --

5 MR. BYRNE: I'm going to object. It's
6 outside the scope of any questions on
7 cross-examination.

8 MR. MILLS: He's asked about -- he asked
9 questions about the increasing fuel costs environment.
10 I'm trying to draw a distinction between increasing
11 fuel costs and volatile fuel costs.

12 JUDGE WOODRUFF: The objection's
13 overruled.

14 THE WITNESS: No. I mean you can see
15 from customers' reactions to the fuel adjustment
16 clause and seeing that -- that line item on their bill
17 change over time, that customers would much prefer to
18 just see a rate that's put in place in a rate case and
19 that's the rate they'll be paying until there's an
20 overall assessment of the Company's cost in a future
21 rate case.

22 BY MR. MILLS:

23 Q. Would the -- would an 85 percent
24 pass-through or a 95 percent pass-through provide a
25 greater incentive to UE to try to mitigate fuel price

1 volatility?

2 A. Well, I think it would be the -- the
3 greater sharing percentage where they could only
4 pass-through 85 percent of increases. If their -- if
5 they could con-- their ability to control volatility
6 would be challenged by that kind of a sharing
7 percentage that got them to really focus in on how
8 they can manage this cost so that they're not going to
9 be passing on the 85 percent piece to customers or the
10 15 percent piece to their shareholders

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

13 COMMISSIONER DAVIS: Judge, I apologize.
14 Can I come back and ask -- I just need to ask a couple
15 of questions of Mr. Kind

16 JUDGE WOODRUFF: Go right ahead.

17 QUESTIONS BY COMMISSIONER DAVIS:

18 Q. Mr. Kind, when you were just responding
19 to some questions from Mr. Mills there, you said that
20 you hadn't had time to look over the -- any of
21 Ameren's coal contracts; is that correct?

22 A. Not in this case.

23 Q. Not in this case. Were you here earlier?
24 I think we had some testimony that said the Labadie
25 contract is -- has been in existence for five years.

1 Does that sound about right?

2 A. I know there was a discussion of that
3 earlier. I, frankly, was working on tomorrow's issue
4 while that discussion was doing on.

5 Q. Well, do you have any -- any reason to
6 dispute that testimony?

7 A. I didn't hear it well enough to either
8 agree or disagree.

9 Q. Okay. Well, let's just assume -- have
10 you ever looked at the Labadie coal contract?

11 A. I last reviewed coal contracts probably
12 in the context of the -- the merger with SIPS in the
13 late '90s and I suspect that the Labadie coal
14 contracts would have been part of that.

15 Q. Okay. So we had the ER-2007-2 rate case,
16 the ER-2008 rate case, the ER-2010 rate case and now
17 we're in the ER-2011 rate case. And, you know, I
18 realize you're small and you're understaffed down
19 there in the OPC's office, but I mean it seems like
20 fuel costs and the sharing is an important issue and
21 yet you're not saying that you have -- have any
22 opinion one way or on -- or the other on -- on whether
23 these coal contracts are prudent?

24 A. Given the limited resources of our
25 office, we really have to rely on the Commission Staff

1 for doing that sort of prudence assessment at this
2 time. I'd say limited resources and -- and the
3 workload. There is just -- there are a broad range of
4 issues that I'm involved in other than rate cases.

5 Q. Okay. Well, let me ask you this,
6 Mr. Kind: I realize that you don't necessarily make a
7 lot of money in your -- in your position, but if we
8 were to reduce your salary by 15 percent and then hold
9 that until the end of the year until your performance
10 review from Mr. Mills, do you think that would --
11 would make -- would that make you more productive?

12 A. I think it depends on the individual as
13 to how they would respond to an incentive like that.
14 When I was a younger man, I suspect that would have
15 probably got me to hustle quite a bit.

16 Q. Well, what about now?

17 A. I don't think I have quite the same
18 amount of hustle ability, but I also -- I think that I
19 can also perform pretty well without that type of
20 incentive and -- because to me, I get a large payoff
21 just from feeling like I contribute to regulation
22 being done well in Missouri.

23 Q. Well, let me -- let me ask you this: Do
24 you think if the Commission were to adopt a similar
25 pay scheme, that we would -- we'd get any more

1 productivity out of our employees here?

2 A. There's sort of a no-win answer to that
3 question. I mean it's --

4 Q. Okay. Well, let's -- one last -- one
5 last scenario. Let's look at the issue of rate case
6 expense and cases -- or and issues that are litigated
7 inside rate case -- cases.

8 What if we went to loser pays on the
9 issue? So if the Company litigated an issue and lost
10 on that issue, then they would have to pay your legal
11 expenses, but if you litigated an issue and lost to
12 the Company, then you'd have to pay Mr. Lowery's
13 expenses.

14 A. I think we'd be out of business pretty
15 quick; our first loss.

16 Q. So you're saying that you don't think
17 that loser pays would -- would be a good way to -- to
18 assess rate case expense?

19 A. It's a new novel idea in the regulatory
20 world that I've never been confronted with prior to
21 now. And so I -- you know, sometimes new novel ideas
22 are good, but I -- I'm not -- not yet seeing the
23 benefits in this one nor am I really seeing how it's
24 analogous to giving the Company incentive by having
25 more skin in the game.

1 Q. Well, I mean you -- you would agree that
2 if we went to a loser pays option, then they would
3 have more incentive to only litigate those issues that
4 they thought they could prevail on, wouldn't they?

5 A. Well, you've sure thought this through a
6 lot farther than I have. I mean that could be -- I --
7 you know, I look at the incentive structure with
8 respect to Ameren, I'm often thinking more in terms of
9 not just their incentive in the regulated world, but
10 the mixture of incentives that the whole holding
11 company has in unreg-- in an unregulated world and how
12 that affects their fuel procurement practices for the
13 regulated utility and a lot of other aspects of
14 regulated operations.

15 COMMISSIONER DAVIS: Thank you, Mr. Kind.

16 THE WITNESS: You're welcome.

17 JUDGE WOODRUFF: Anybody wish recross
18 based on those questions from the bench?

19 MR. BYRNE: No, your Honor.

20 JUDGE WOODRUFF: Any redirect based on
21 those questions?

22 MR. MILLS: Yes, I do.

23 REDIRECT EXAMINATION BY MR. MILLS:

24 Q. Mr. Kind, do you have a feel for the
25 amount of money that UE has spent in rate cases over

1 the last handful of cases?

2 A. I think it would easily reach
3 \$10 million.

4 Q. Okay. Would -- would your willingness to
5 enter into the sort of loser pays kind of deal that
6 Commissioner Davis suggested be different if we got to
7 have the equal resources that the Company had in terms
8 of trying rate cases?

9 A. Certainly. I mean if we had the kind of
10 resources that would allow us to get expedited
11 transcripts from earlier in the week and have access
12 to that to help us litigate a case, it would be a
13 whole different story.

14 Q. And perhaps even another lawyer who could
15 be preparing for tomorrow's issues while we're sitting
16 here?

17 A. Yeah. And that and -- and, you know,
18 maybe even a person who was separate from our office
19 who could deal with office administrative issues only
20 and -- and deal with -- and another person who would
21 deal with litigation issues.

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

24 JUDGE WOODRUFF: Mr. Kind, you can step
25 down.

1 THE WITNESS: Okay.

2 JUDGE WOODRUFF: We've reached the end of
3 another day. We'll resume tomorrow morning at 8:30.

4 (Ameren Exhibit No. 158 was marked for
5 identification.)

6 WHEREUPON, the hearing was adjourned
7 until 8:30 a.m., May 5, 2011.

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1 CERTIFICATE OF REPORTER

2
3 I, Tracy Thorpe Taylor, CCR No. 939, within the
4 State of Missouri, do hereby certify that the
5 testimony appearing in the foregoing matter was duly
6 sworn by me; that the testimony of said witnesses was
7 taken by me to the best of my ability and thereafter
8 reduced to typewriting under my direction; that I am
9 neither counsel for, related to, nor employed by any
10 of the parties to the action in which this matter was
11 taken, and further, that I am not a relative or
12 employee of any attorney or counsel employed by the
13 parties thereto, nor financially or otherwise
14 interested in the outcome of the action.

15
16 _____
17 Tracy Thorpe Taylor, CCR
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