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Evidentiary Hearing

March 15, 2010
Jefferson City, Missouri
Volume 22

In the Matter of Union Electric)
Company d/b/a AmerenUE's Tariffs)
To Increase Its Annual Revenues) File No. ER-2010-0036
For Electric Service)

MORRIS L. WOODRUFF, Presiding,
CHIEF REGULATORY LAW JUDGE.

ROBERT M. CLAYTON III, Chairman,
JEFF DAVIS,
KEVIN GUNN,
ROBERT S. KENNEY
COMMISSIONERS.

REPORTED BY:

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P R O C E E D I N G S

JUDGE WOODRUFF: Let's come to order, please. Good morning everyone. Welcome to the start of this hearing on AmerenUE's rate request. This is File No. ER-2010-0036. My name is Morris Woodruff. I'm the Regulatory Law Judge assigned to hear this case. We'll begin today by taking entries of appearance, beginning with AmerenUE.

MR. BYRNE: Thank you, your Honor. I'm Tom Byrne appearing on behalf of AmerenUE. My address is 1901 Chouteau Avenue, St. Louis, Missouri 63103, and I'd also like to enter the appearance of Wendy Tatro at the same address and James Fischer at 100 Madison Street, Suite 100 -- or Suite 400, Jefferson City, Missouri.

MR. LOWERY: Good morning, your Honor. Also appearing on behalf of AmerenUE, James B. Lowery of the law firm Smith Lewis, LLP, 111 South 9th Street, Suite 200, Columbia, Missouri 65201.

JUDGE WOODRUFF: Thank you. For Staff.

MR. WILLIAMS: Thank you, Judge. Steven Dottheim, Nathan Williams, Jaime Ott, Samuel Ritchie, Jennifer Hernandez, Sarah Kliethermes, appearing on behalf of the Staff of the Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, and additionally Kevin Thompson.

JUDGE WOODRUFF: For Public Counsel.

MR. MILLS: Appearing on behalf of the Office of the Public Counsel and the public, my name ius Lewis Mills. My address is Post Office Box 2230, Jefferson City, Missouri 65102.

JUDGE WOODRUFF: Thank you. For NRDC, Natural Resources Defense Council, anyone here from them?

(No response.)

JUDGE WOODRUFF: Department of Natural Resources?

MS. WOODS: Appearing on behalf of the Missouri Department of Natural Resources, Sarah Mangelsdorf and Shelley Woods, Assistant Attorneys General, Post Office Box 899, Jefferson City, Missouri 65109. Thank you.

JUDGE WOODRUFF: Thank you. For MIEC.

MS. VUYLSTEKE: Appearing on behalf of the Missouri Industrial Energy Consumers, Diana Vuylsteke of the law firm of Bryan Cave. Also appearing with me are attorneys Mark Leadlove, Brent Roam, Carol Iles and Ed Downey of Bryan Cave, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102.

JUDGE WOODRUFF: Thank you. For Missouri Energy Group.

MS. LANGENECKERT: Appearing on behalf of the Missouri Energy Group, Lisa Langeneckert, the law firm of Sandberg, Phoenix & von Gontard, 515 North 6th Street, St. Louis, Missouri 63101.

JUDGE WOODRUFF: For the Municipal Group.

(No response.)

JUDGE WOODRUFF: For MEUA.

MR. WOODSMALL: Good morning, your Honor. Appearing on behalf of MEUA, David Woodsmall, the firm Finnegan, Conrad & Peterson.

JUDGE WOODRUFF: For AARP and Consumers Council.

MR. COFFMAN: Appearing on behalf of AARP and the Consumers Council of Missouri, John B. Coffman, 871 Tuxedo Boulevard, St. Louis, Missouri 63119.

JUDGE WOODRUFF: For KCPL. Mr. Zobrist had asked to be excused, so he will be excused.

For Charter Communications.

MR. COMLEY: On behalf of Charter Communications, let the record reflect the entry of appearance of Mark W. Comley, Newman, Comley & Ruth, 601 Monroe Street, Jefferson City, Missouri.

JUDGE WOODRUFF: Thank you. Laclede Gas.

MR. PENDERGAST: On behalf of Laclede Gas Company, Michael C. Pendergast. My business address is 720 Olive Street, St. Louis, Missouri 63101.

JUDGE WOODRUFF: Okay. For the unions?

(No response.)

JUDGE WOODRUFF: For the Missouri Retailers.

MR. SCHWARZ: May it please the Commission? For the Missouri Retailers, Tim Schwarz with the firm of Blitz, Bardgett & Deutsch, 308 East High Street, Suite 301, Jefferson City, Missouri.

JUDGE WOODRUFF: For Missouri ACORN.

(No response.)

JUDGE WOODRUFF: For MJMEUC.

MR. MICHEEL: Doug Healy, counsel for MJMEUC, Healy & Healy, Attorneys at Law, 939 Boonville, Suite A, Springfield, Missouri 65802.

JUDGE WOODRUFF: I believe that's everyone. Is there anyone here that I missed?

(No response.)

JUDGE WOODRUFF: Okay. There have been a number of pending motions filed that I wanted to try and address some of them today, and some of them we'll wait until we get to the actual issues when they come up throughout the schedule.

The first one was a motion to accept AmerenUE's late-filed Statement of Position. Anyone object to that?

(No response.)

JUDGE WOODRUFF: Hearing none, it will be granted.

There was a motion for leave to file supplemental testimony of Mark Birk. Does anyone object to that?

MR. ROAM: MIEC objects to that, and we'll file a motion to strike this afternoon.

MR. LOWERY: Your Honor, if it pleases the Commission, I would like to take that matter up -- I really would like to take it up now, but certainly earlier rather than later since the issue is scheduled to come up this afternoon.

JUDGE WOODRUFF: Will MIEC be filing something before then?

MR. ROAM: Yes.

JUDGE WOODRUFF: We'll take it up this afternoon, then.

MR. LOWERY: Thank you.

JUDGE WOODRUFF: AmerenUE filed a motion to strike the direct testimony of Michael Walter. That issue is coming up on March 23rd. We'll take it up then.

AmerenUE filed a motion to deny the request by AARP and Consumers Council for administrative notice of previous testimony. That's coming up on March 19th and

22nd. We'll take it up then.

MEUA filed a motion to strike portions of MIEC's testimony. That issues coming up at the end of the hearing, the 25th and 26th. We'll take that up then also.

AmerenUE filed a motion to file Weiss' supplemental testimony. Anyone object to that?

(No response.)

JUDGE WOODRUFF: Hearing no objection, then that motion will be granted.

And then there were a couple motions filed this morning. Noranda Aluminum filed a motion for a protective order concerning a subpoena directed to Kip Smith. That was just filed a few minutes ago, so I'm assuming MEUA has not had a chance to review that yet.

MR. WOODSMALL: No. I was just handed it when I came in the hearing room.

JUDGE WOODRUFF: I'm not going to make a ruling on it at this time, but I will encourage the parties to get together and try and come up with a mutually agreeable time to depose Mr. Smith. That would certainly be easier than asking the Commission to try to impose something.

There was a motion in limine filed this morning also by MIEC concerning designation for portions of deposition transcripts. I don't know if everyone's had a chance to see that, but it essentially asked the Commission to require the same procedure that was followed in the last Ameren rate case. I am inclined to grant that. That seemed to work well last time to be fair to everyone. Does anyone have any response to that?

MR. LOWERY: Your Honor, we may not have any objection or concern about that, but honestly we really haven't had any time to really examine the motion and consider it carefully. We'd like a little bit more time before the Commission makes a ruling on that.

JUDGE WOODRUFF: I won't make a ruling on it at this time, but if anyone does have an objection, we'll take it up before we get the first transcript designation.

MR. LOWERY: We don't have any designations pending right now anyway. So thank you.

JUDGE WOODRUFF: Okay. And there was also a motion filed by the Muni Groups to accept their late-filed statement of position. Anyone have any objection to that?

(No response.)

JUDGE WOODRUFF: Hearing none, it will be granted.

Okay. I think that's gone through everything that was filed. I did want to make one other announcement, and that is about mini openings. In previous cases we've gone through the process of we'll take general openings today; as we get to the additional individual issues, we'll take mini openings on those issues, and we'll follow that same procedure again for this case.

MR. CURTIS: Judge Woodruff?

JUDGE WOODRUFF: Yes.

MR. CURTIS: I apologize for being late. I'd like to make an entry of appearance.

JUDGE WOODRUFF: Go ahead.

MR. CURTIS: Leland B. Curtis, the law firm of Curtis, Heinz, Garrett & O'Keefe, entering on behalf of the Municipal Group.

JUDGE WOODRUFF: Thank you. And I believe everyone has given me their prefiled testimony numbers, so we don't need to worry about premarking anything at this point. And I believe with that, then, we are ready to get started with opening statements.

MR. BYRNE: Your Honor, I had one other preliminary matter. We have a witness issue. Lee Nickloy filed testimony on behalf of the company. He filed only direct testimony. He's listed on the -- on the schedule, and he has left the company. And I guess my -- and I sent out an e-mail to the parties on Friday asking whether anybody had cross-examination related to his testimony because I'll need to get another witness to appear and take cross-examination, but I'd like to -- I'd like to raise that and ask the parties if anyone has cross-examination related to that testimony.

JUDGE WOODRUFF: Does anyone have any cross-examination for Mr. Nickloy? What was his issue?

MR. BYRNE: It was generally the return -- he provided some direct testimony on the condition of the credit markets, just sort of background information. He's not sponsoring a particular adjustment or anything.

JUDGE WOODRUFF: Okay. Mr. Williams?

MR. WILLIAMS: Staff does not anticipate having any cross-examination for this witness.

JUDGE WOODRUFF: When would he be up?

MR. BYRNE: He would have -- he would be -- I think he's scheduled Thursday with all the other ROE witnesses.

MR. MILLS: Judge, I don't know yet. I will be happy to let you know by the end of the day today.

JUDGE WOODRUFF: Thank you, Mr. Mills. I'll make that requirement for everyone. If you do have any cross-examination for Mr. Nickloy, inform myself and AmerenUE by the end of the day.

MR. BYRNE: Thank you.

JUDGE WOODRUFF: Thank you.

MR. WOODSMALL: Your Honor, my issues won't come up 'til next Thursday and Friday, and I'd ask for leave to be able to come and go and not stay through the entire hearing.

JUDGE WOODRUFF: That is a request I'm sure will be repeated by several other attorneys in the room if given the opportunity. I'll just go ahead and say that, yes, as -- be here as needed. I don't expect everyone to be here at all times. So come and go as you please.

MR. WOODSMALL: Thank you.

JUDGE WOODRUFF: And Mr. Woodsmall, of course, you do have the pending disputes with MIEC. Be available to deal with those as needed.

MR. WOODSMALL: Yes.

JUDGE WOODRUFF: Anything else? All right. Let's go ahead and get started with opening statements, beginning with AmerenUE.

MR. MILLS: Judge, while they're getting organized, is the ELMO functional today?

JUDGE WOODRUFF: I don't know. Will you be needing it?

MR. MILLS: If it was available, I would use it. If not, I'll work around it.

MR. LOWERY: You've become dependent on

ELMO.

JUDGE WOODRUFF: It looks like it is. We'll figure it out.

All right. Opening for Ameren.

MR. LOWERY: Thank you, your Honor. May it please the Commission? My name is Jim Lowery, and I along with Tom Byrne, Wendy Tatro and Jim Fischer represent AmerenUE in this rate case.

As you may know, this is the third rate case that AmerenUE has filed in just about the past 37 months, and, in fact, I stood in this very spot almost to the day three years ago and spoke to the Commission about that first case.

This rate case filing, not unlike the other two, asks the Commission to approve a rate increase that will allow AmerenUE to recover the revenue requirement associated with literally hundreds of millions of dollars of investment in energy infrastructure that it's made since the last rate case that is already serving customers today.

It asks the Commission to allow it to recover its reasonable and necessary operating expenses and to have a reasonable opportunity to earn a fair return on its shareholders' investment, a fair ROE, commensurate with the ROEs allowed for comparable companies with whom the company must compete for capital.

In addition, the company is requesting the continuation of three important mechanisms that mitigate excessive regulatory lag: The vegetation and infrastructure inspection tracker established just about a year ago, the pension and OPEB tracker established in 2007, and the fuel adjustment clause that became effective on March 1 of last year. The company's also asking for one additional tracking mechanism relating to what I think everyone would agree are volatile, unpredictable and uncontrollable storm restoration costs.

These requests are straightforward and fair. They are also necessary for the company to deliver the kind of reliable service its customers and the Commission expects at a reasonable cost that reflects the company's true cost of service. Indeed, they are necessary if the company is going to be able to meet its customers' expectations and invest and operate in a manner that's consistent with the long-term energy needs of the state while also at the same time having a reasonable opportunity to earn a fair ROE.

Now, having summarized the main requests that the company's asking of the Commission, I'd like to step back a minute and address what this case is and what we believe it should be about.

First, any rate case is obviously about cost recovery, but it's important to keep in mind that cost recovery is not just some accounting convention, for if a utility cannot recover the cost that it incurs to provide service, including its cost of capital, and if utilities don't have the cash flows that they need to make investments in their energy infrastructure, inevitably service will suffer.

This is a well recognized and fundamental principle of rate of return regulation, and it was recognized as such in 1925 shortly after this Commission was formed. And what the Supreme Court said at that time, and I'm going to just paraphrase that, but what they said at that time is, the reason we're here, the Public Service Commission Act that we're all here about today, what the purpose of that act is is to require the general public not only to pay rates which will keep the public utility infrastructure in good repair so that service can be provided, but also to ensure that investors who are providing the capital for that infrastructure are fairly compensated for taking that risk.

That infrastructure, as the court said, is the life blood of the state. It's very important to the state and, of course, the company's customers. And in doing so, of course the Commission has to be fair, but that fairness extends to the public, of course, but it also extends to the investors in the utility.

The second thing that this case is about -- is about is the many steps that AmerenUE has taken to do what it has been asked by its customers and we believe the Commission to do, to improve the reliability of its system, to maintain the high level of performance of its power plants, to comply with new Commission rules, to respond effectively to storms, to manage its costs, to invest in energy efficiency measures, To name just a few items that the company's been asked to do and the company is doing.

The actions the company has taken are working, as the chart Mr. Byrne is placing on the easel depicts. The evidence reflects that reliability is improved, and that reflects top quartile performance among utilities. The evidence reflects that the company's power plants continue to enjoy high levels of efficiency in performance. The Callaway plant had record generation in 2009. The fossil units continue to have extremely high equivalent availability, which generates off-system sales that reduces fuel costs for customers.

The evidence reflects that the company is in compliance with the Commission's new rules and is pursuing energy efficiency. And the evidence reflects that the company is engaging in appropriate cost management, and the effects of those cost management efforts will be taken into account in this rate case as the case is trued up.

Third, this case is about what the Commission can do and what the company and ultimately its customers very much need the Commission to do to allow AmerenUE to continue to do the things that it has been asked to do.

And what does the Commission need to do to promote the long-term best interest of both utilities it regulates and the customers that they serve? The answer to that question is rather straightforward. What the Commission needs to do is make constructive rate case decisions that are consistent with the service expectations of the company's customers and energy policy over the long term.

This means doing what can be done to reduce excessive regulatory lag so the company can timely recover its costs, maintain its existing investment levels and indeed be encouraged to make new investments where that's an appropriate step to take.

Maintaining those investment levels in the face of excessive regulatory lag that the company has been facing is candidly a difficult exercise. The company, of course, has an obligation to provide safe and adequate service and the company will always do so. However, without appropriate cash flows, without sufficient earnings -- and those cash flows and earnings by the way are promoted by fair return on equity -- without mainstream depreciation rates, without timely recovery of investments and full recovery of a reasonable level of operating expenses, the company could be left with no choice but to meaningfully reduce the company's current investment levels.

And if that need arises, reliability inevitably will suffer, and that we believe would be inconsistent with the very high expectations of our customers and inconsistent with sound long-term energy policy.

It's important to note that this is not a path that the company wants to go down. To the contrary, the company has consistently sought regulatory policies that maintain, that encourage it to maintain and increase its investments where appropriate. But the company expresses its concern that it could be put in the position of facing that difficult choice because of the aggressive positions taken on some of the issues by some of the parties in this case.

These aggressive positions are not

consistent with constructive regulatory policies and the long-term needs of the company's customers and the state. They're not -- they do not reflect full and timely cost recovery. They do not reflect fair ROE commensurate with the ROEs allowed for companies with whom the company has to compete for capital.

These aggressive positions will not promote the kind of investment in the company's energy infrastructure that led to top quartile performance and has led to have high power plant performance that's important to its customers.

So what are some of these aggressive positions that I'm talking about? I'm going to address five of them this morning, and then, of course, obviously there are other issues in the case. The five are return on equity, depreciation expense, power plant maintenance expense, other reliability related expenditures and fuel adjustment clause sharing.

First, ROE. Approximately one year ago the Commission approved a 10.76 percent ROE for the company. That ROE was in line with allowed ROEs for other integrated electric utilities at the time, but even before that decision the company had been unable to earn its allowed ROE for some time.

Since that decision was made, the inability to earn anywhere close to its allowed ROE has worsened materially. This is demonstrated by the graph Mr. Byrne just put up on the easel, which is similar to graphs you've seen before but has been updated through the end of 2009. I want to make note of the fact that the figures on this graph take into account the company's absorption of the impact of the Taum Sauk plant of being out of service.

Over the past approximately 32 months, the earned versus allowed ROE gap has exceeded 200 basis points. It's been more than 400 basis points over the last year, and each 100 basis points equates to before tax earnings shortfall of about $46 million per year. So in the last year, that shortfall in before tax earnings and cash flows has exceed $180 million.

That shortfall was about 90 basis points the last time I stood here less than a year and a half ago. So you can easily see the trend. Despite three rate cases in 36 months and aggressive cost management, AmerenUE has been unable to earn anywhere close to its allowed ROE, and the situation has worsened despite repeated rate cases.

These facts are important because setting an ROE that is below a reasonable level that's materially below that allowed for other comparable companies with whom the company has to compete for capital only exacerbates excessive regulatory lag that this graph depicts. It only exacerbates the already significant negative free cash flows the company has had, more than a billion dollars in the last three years, and it will not promote the kind of investments that the company needs to continue to allow it to deliver that top quartile performance and keep its power plants running as it has been able to do. As Mr. Baxter has testified, the trend shown on this chart is simply not sustainable.

As you can see from the next graph Mr. Byrne is putting on the easel, certain other parties in this case are recommending just that, a very substantial, in the case of the Staff a shockingly substantial departure from the company's currently allowed ROE and from ROEs allowed to comparable companies in recent times.

The recommendation of the company's ROE expert, Professor Roger Morin, a nationally recognized expert who for decades has taught and done research in the cost of capital area, and who is, in fact, the author of one of the leading textbooks on regulatory finance, is that a fair allowed ROE for the company is 10.8 percent, which is close to the currently allowed ROE, and it's also close to allowed ROEs for similarly situated utilities which have averaged 10.59 percent over the last year, and, in fact, they've trended up slightly as the white line on the chart indicates.

By contrast, the Staff, based upon at times novel and inconsistent analyses and reliance upon inappropriate and unorthodox methodologies which have been touted in particular for a number of years by their admittedly consumer advocate ROE witness Mr. Hill, recommends an ROE of just 9.35 percent, more than 120 basis points below the national average.

And you can see where it falls with respect to other allowed ROEs. It's 65 basis points below the next ROE recommendation in the case. In fact, if Staff's proposal were to be adopted, AmerenUE's ROE would be lower than any approved by any commission for an integrated electric utility in recent memory, perhaps in memory at all.

Notably, the approach advocated by Mr. Hill and Mr. Murray in this case stands in stark contrast to the recommendations of other Staff ROE experts in the last completed KCPL and Empire rate cases.

And while the other ROE recommendations, 10.1 percent for OPC and 10 percent for MIEC, are not as aggressive, they would still place the company's allowed ROE below the 10th percentile as compared to companies with whom the company must compete for capital. If adopted, these ROEs would be very harmful to AmerenUE's financial condition, and they would directly undermine the goals that I talked about a minute or two ago.

The second issue, main issue in the case is depreciation expense. Now, the determination of depreciation expense appears at times to be a complex exercise involving life and net salvage analyses. Necessarily all of those things depend on certain estimates.

But while the analyses are complex at times, the goal of depreciation and the manner in which those analyses should be conducted are rather well established and simple. So while the testimony in this case necessarily talks a great deal about methodology and analysis, it's very important that you not lose the forest for the trees in this issue. The goal of depreciation is to recover from the ratepayers being served by utility assets the full cost of those assets over the life of the asset themselves.

The chart Mr. Byrne is placing on the easel now tells a very important story, and in it you can see the forest without getting lost in the trees. You should keep this chart in mind as you listen to the depreciation experts debate various aspects of their analyses.

As you can see, today AmerenUE's composite depreciation rates, simply its depreciation expense divided by its investment, puts it at just the 13th percentile as compared to electric utilities nationally. 87 percent of them have higher depreciation rates than the company, although utilities all have power plants, at least integrated ones do, and all have distribution systems.

So we're starting from a place where it seems obvious that something is amiss. Yet in particular if you look at MIEC's depreciation recommendation, and they have two alternatives, their recommendations would put the company's depreciation rates almost entirely off the chart.

There are a number of issues, and we'll address them in more detail tomorrow when the issue will be heard, but briefly the main bone of contention between the Staff and MIEC with respect to one of the recommendations and the company deals with steam production plants.

And that bone of contention lies in the fact that the Staff and MIEC on that recommendation are essentially treating the company's four large coal-fired power plants as if they will for all practical purposes last forever or at least last much, much longer than anyone reasonably expects them to last. And what this means is they are treating this obvious property, this life span property as you'll hear about in the hearing as mass property, like poles and wires and conductor, and this treatment is virtually alone across the entire country when it comes to power plants.

This treatment leads to a result that is directly at war with the fundamental goal of depreciation. AmerenUE witnesses John Wiedmayer and Larry Loos will be here to testify about these issues, and I encourage you to ask them questions about this.

By contrast, the company's proposed rates for production, for transmission, for distribution were calculated in the manner that is used by almost every single other jurisdiction. And even the company's proposed depreciation expense will put it at just the 33rd percentile nationally, leaving it still below two-thirds of all electric utilities. Certainly an improvement, but certainly not high level depreciation expense.

The question that I urge you to ask yourself as you listen to the evidence on this issue is this: Which proposal, MIEC's, Staff's or the company's, is going to promote the fundamental goal of depreciation, the recovery of the full service value of those assets over their service life? Which proposal is going to provide the cash that the company needs to continue to invest in its system as we believe its customers expect it to do?

A third area where there are aggressive and harmful positions that have been taken relates to the expenses the company incurs to maintain its four large base load coal-fired power plants, an issue that you'll hear called power plant maintenance in this case.

AmerenUE witness Mark Birk, who for many years has managed this high-performing steam production plant fleet, will testify on this issue. I encourage you to ask Mr. Birk what it's going to take to maintain the power plants in the way that the company would like to maintain them.

The bottom line is that MIEC and to an even greater extent the Staff are proposing to, quote, normalize an expense that should not be normalized. Their adjustments if adopted would amount to a disallowance of costs that the company needs to spend on maintenance on these power plants to continue that high level of coal-fired power plant performance that it and its customers enjoy.

The evidence in this case will show that the Staff is using out-of-date dollars to normalize an expense, and those dollars were examined during a period that was not normal. The goal of the test year is to set rates that will be reflective of the conditions in effect when rates are set after June of this year. The company's proposed test year amount of power plant maintenance does that. The Staff's recommendation does not.

MIEC took a totally different approach than the Staff but still proposes to normalize this expense in a manner that will effectively amount to a cost disallowance. MIEC used data during some of the same periods that Staff examined but went back somewhat farther, but MIEC entirely failed to account for the obvious fact that a dollar in 2010 is not worth the same amount as a dollar in 2004, 2005, et cetera.

As the evidence will show, just applying a conservative inflation rate to properly take that into account puts MIEC's normalization adjustment at a level that is within just 5 percent of the test year amount, indicating that test year sum does not need to be normalized.

The fourth particularly troubling area that has been raised in the case relates to the reliability of another part of the company's system, that is its energy delivery system as compared to its power plant.

Just one year ago this Commission adopted symmetrical tracking mechanisms to track expenses for infrastructure investment -- infrastructure inspection and vegetation management, costs that have been driven higher by the Commission's new rules which are not yet two years old. The beauty of the tracker is the customers would pay exactly the right amount, the amount that's been spent on those activities, no more and no less.

Now, just a year later, the Staff and MIEC propose to end those trackers. The question you have to ask yourself is why. The evidence will show that their theory that the company knows with a high level of certainty what its compliance costs will be because the company is in compliance with the rules, which is true, is wrong.

AmerenUE witness Dave Wakeman will testify on those issues. Mr. Wakeman has worked in this area for many years. Ask Mr. Wakeman if Staff's and MIEC's theory is accurate. What Mr. Wakeman will tell you is that the company has only trimmed about one-third of the circuit miles on its system on the four and six-year trim cycle prescribed by the rules, four year urban, six years rural.

The evidence will show that the cost to trim vegetation varies a great deal from circuit mile to circuit mile, and that's particularly true now that we have vertical clearance requirements under the rule that we didn't have before. In short, the company's current compliance with the rules when only one-third of those circuit miles have been trimmed don't give us all that much information about what the ultimate cost of compliance is going to be.

Similarly for inspections, the company has only inspected a fraction of the facilities that it now must inspect under the Commission's new rules. Again, the fact that the company is in compliance, is on track to inspect the facilities when it's supposed to doesn't give it the kind of information it needs to have any high level of certainty about what these costs are going to be.

The subject rules specifically contemplated that the Commission would use mechanisms like the existing trackers to help ensure that utilities had the opportunity to recover the higher compliance costs that it is facing as a result of the rules. Those trackers are still needed and no one is harmed by continuing them.

Why then do the parties propose to place the company at jeopardy of under-recovery of these important expenditures required by Commission rules? That's a question that I believe the evidence will indicate has no satisfactory answer.

The last aggressive position I want to address are the recycled sharing percentage proposals thrown out by MIEC and OPC in response to the Commission's order inviting testimony relating to the company's fuel adjustment clause.

At this moment in time, not even one recovery cycle under the fuel adjustment clause has been completed. The first adjustment took place October 1, about six months ago, and it was a downward adjustment. Having had nearly five months to examine every aspect of the company's business, including the fuel and purchased power procurement, its off-system sales, management of power plants, not a single party expressed any material concern about the fuel adjustment clause between when this case was filed and when their direct cases were due. Not a single party alleged imprudence in net fuel cost management. Not a single party took any issue with the 95/5 percent sharing percentage.

However, two parties now assert, there's no evidence to back up the assertion, but they assert in a recycled proposal from the earlier case that AmerenUE needs an 80/20 sharing mechanism. MIEC would cap the impact at 50 basis points. OPC does not propose a cap. Their assertions ring hollow. Nothing has changed since the FAC was approved. Most FACs have no sharing at all, and almost all utilities have FACs.

The only thing that has changed, in fact, is that the components of the net fuel cost, fuel and purchased power and off-system sales, have become more volatile, not less volatile, and that the swings in cash flow and earnings if those are not tracked would be even greater today than they were before.

And there's already been one more change, and that is that earned versus allowed ROE gap that we looked at a minute ago has gotten greater, and without an FAC, it would have been even greater than that, and with greater sharing in this rising net fuel cost environment it would have been greater still.

There is no evidence of imprudence, no evidence that UE is not continuing to do the very good job that it's always done to manage its net fuel costs and to operate its power plants well. There's no evidence of any lack of incentives.

There are, of course, a number of other issues that you're going to hear about over the next two weeks, but in the interest of saving some time today, I won't address any more of those now. We'll deal with those in the mini openings that Judge Woodruff mentioned.

As I conclude my remarks, I'd like to touch on just a few additional thoughts. As Mr. Baxter's testimony indicates, it's certainly true that there's no good time to ask for a rate increase or for you to have to decide a rate increase request. Some of the company's customers are hurting. 50 cents a day, even that matters to them. The local public hearing testimony that we all heard confirmed that to be true.

This company has taken and is taking the steps it can to mitigate rate increases. Cost cutting already done while this rate has progressed will be reflected in the true-up of this case. The company's request is lower than what it was initially made because of that in part.

The company has cut a billion dollars out of the plan it adopted just about a year ago, including some pretty good projects. The company is investing in energy efficiency, which of course will help customers reduce their consumption, which actually is going to reduce the company's revenues. The company has funded millions of dollars in low income energy assistance and is supportive of an industry collaborative to look at low income rates.

But that same local public hearing testimony confirmed some other very important facts. It is crystal clear from that testimony that customers expect a very high level of reliability, and it's also clear that they recognize the company has made grade strides in that area. It's crystal clear that the customers expect timely, prompt, solid storm response, and it's also clear that they believe that they are getting that from the company.

The company's rates are low, and even with the full rate increase request that the company has asked for in this case, as the chart Mr. Byrne put on the easel indicates, will remain lower than any utility in the state.

This rate increase really is pretty simple. The company asks the Commission to permit it to recover the cost of money that it has spent to invest in infrastructure. The company asks the Commission to allow it to have a reasonable level of operating expenses that will be reflective of expenses on a going-forward basis, to allow it to have an ROE that's commensurate with the ROEs allowed other companies with whom it must compete for capital as required by law.

With a constructive decision by the Commission, the company believes it can meet the high expectations of its customers and promote sound energy policy. Without one, doing so will be very difficult, much harder, if not impossible.

We know that you'll consider the evidence carefully. We know you have a tough job. We'll do the best that we can to develop the best record that we can for your consideration. I appreciate your patience and your attention, and look forward to presenting the case to you. Thank you very much.

JUDGE WOODRUFF: Thank you. Chairman.

CHAIRMAN CLAYTON: Mr. Lowery, just very briefly, I want to ask a couple of questions. I'm looking at Attachment A, which is part of Staff's reconciliation filing that has been made in this case setting out positions of the parties in a quantitative manner. I just wanted to make sure that I understand this.

As I read this document, it suggests that the company's all out, if you go to the extreme, the maximum amount that the company's requesting at this point, the company's position is a rate increase of approximately $320 million. Do you agree with that?

MR. LOWERY: That's right, your Honor.

CHAIRMAN CLAYTON: So basically the company's request is down about 90 million from its opening filing?

MR. LOWERY: It's down. It's down because of some issues that have been settled in the first unanimous -- or nonunanimous stipulation that was filed about a week ago, and it's down because some things have changed. This is -- this is an attempt to take into account things that have changed, most of which will be taken into account formally in the true-up, between the time the case was filed and now.

For example, there was a voluntary separation program and the involuntary separation program, the reduction in force at Ameren. So some costs have been taken out. There are some items that pro forma adjustments were made when the case was filed based on budgets and expectation of what that would be as of -- at the time it was February. That's when we thought the true-up would be, and numbers came in lower than that. So there's just a variety of things that have happened that have lowered that request.

CHAIRMAN CLAYTON: Okay. But you would agree it's about $90, almost 25 percent of your total request has either been resolved or taken off the table?

MR. LOWERY: Whatever an $82 million drop is.

CHAIRMAN CLAYTON: I wanted to ask you, you had several graphs, and I just wanted to ask -- I don't want to ask specifically of information here today, but is Ameren going to provide an analysis or comparison of actual returns on equity comparing itself to other Missouri utilities as you've compared yourself in actual costs per kilowatt hour or comparison of rate case decisions, that sort of thing? Is Ameren out of line or earning far less than comparable utilities in the state of Missouri?

MR. LOWERY: I can't answer that question. I haven't seen the analysis about that.

CHAIRMAN CLAYTON: Okay. Thank you.

JUDGE WOODRUFF: Commissioner Davis.

COMMISSIONER DAVIS: Good morning, Mr. Lowery.

MR. LOWERY: Good morning.

COMMISSIONER DAVIS: Going back to the Chairman's question about the true-up reconciliation -- well, no. It's not the true-up. It's just the reconciliation. Okay. The number that Ameren is asking for right now is approximately $320 million?

MR. LOWERY: Yes.

COMMISSIONER DAVIS: How much of that is already flowing through the fuel adjustment? Because I remember from the interim rate hearing, there was some testimony by Mr. Gorman that approximately 200, 225 million was already flowing through.

MR. LOWERY: I'm going to restate your question a little bit, at least how I --

COMMISSIONER DAVIS: However you want to respond is fine with me.

MR. LOWERY: I don't know what component of the 320 million as I sit here today is a change in net fuel cost that you're tracking in the FAC and what is non-fuel, because that's a number that's going to be trued up as part of the true-up phase.

Initially it was about half and half. I don't think it's drastically different than that in terms of the net fuel cost change versus the non-fuel change, but I don't know exactly what the number is.

In terms of what's flowing through the fuel adjustment clause, there's only been one adjustment. So there's been an adjustment in October for costs incurred in March, April and May, I believe. So the change between what you got -- what the Commission set in the last case as the net fuel cost, the change between that number and the actual net fuel cost in March, April and May is reflected in rates, and that was a decrease.

There will be another adjustment filing, I believe, at the end of this month which will cover the change from that base in June, July, August and September, and then rates will change again to reflect that change. But that's tracked against the base level in the last case.

The net fuel cost that everyone agrees there's some different -- there's some variation about the exact number, but everyone agrees that the net fuel costs have gone up substantially from the base that was set in the last case. But in terms of what's flowing through, it's only the difference between the base in the last case and the actual amount in March through May last spring.

COMMISSIONER DAVIS: Okay. Now, you just made reference, AmerenUE had really -- had originally requested a February 28th true-up date?

MR. LOWERY: That's correct.

COMMISSIONER DAVIS: What is the financial significance between the February 28th true-up and the January 31st true-up?

MR. LOWERY: What would that do to the revenue requirement if you trued it up one month later, is that what you're asking?

COMMISSIONER DAVIS: Yes.

MR. LOWERY: I don't know exactly. There would be another month of rate base investment that would go into rate base. With respect to any cost that continues to go up, the cost would be higher, if revenues were to go up or down. I don't know where they're going. It would change. So I can't -- I can't really answer that question. It would be different, but I don't know exactly how much.

COMMISSIONER DAVIS: There's no -- to the best of your knowledge, there's no big ticket item hanging out there in February that's not included as of January? It doesn't affect, like ,at nuclear fuel issue or anything like that?

MR. LOWERY: There will be a refueling starting April of this year, and there will be higher fuel costs that will take effect before the rates in this case are set, take effect, and that's a contested issue in the case that you're going to hear about next week.

But based on the theory of the other parties, going in the end of February wouldn't change their view that those costs should not be reflected, and it doesn't change our view that they should be reflected since they've been bought and paid for and they're sitting at the plant right now.

COMMISSIONER DAVIS: Referring back to Mr. Byrne's, his green bar chart about outages, what is the definition of an outage?

MR. LOWERY: Now you've gone beyond -- probably gone beyond. I don't know. I think it's -- I mean, I think it's literally what it says. I think if a customer's -- are you asking if it's momentary versus --

COMMISSIONER DAVIS: Is it 15 minutes? Is it an hour? I'm just trying to figure out what --

MR. LOWERY: I don't know the answer to that. This information is derived from Mr. Wakeman's testimony, and he'll be able to tell you with great specificity, but I can't answer that question.

COMMISSIONER DAVIS: That's for Mr. Wakeman. All right. Now, in your opening statement you referenced integrated electric utilities. Are those utilities that manage their own generation fleet?

MR. LOWERY: Yes. They are utilities in essentially non-restructured states that have -- they're integrated. They have generation, they have transmission, they have distribution, as opposed to essentially a wires only company, a distribution utility.

COMMISSIONER DAVIS: Okay. And you made some other statement that virtually all integrated electric utilities have 100 percent FACs or something. Those that have restructured don't necessarily have FACs because the cost of electricity is separate.

MR. LOWERY: Right. I mean, effectively their prices change with the cost of the purchased power that they're buying. They're typically buying purchased power in some kind of arrangement. So the way the rates work as if they had an FAC, but it's not an FAC in the sense of the way their rates are set and their costs are set are just handled differently.

I think there's roughly 33 states that are regulated similar to Missouri, so-called non-structured, the traditional states, that almost every utility in those states has an FAC.

COMMISSIONER DAVIS: Last question. This may be a question for Dr. Morin. But in the last year or two, do you know what the lowest Commission authorized ROE award for a vertically integrated utility was?

MR. LOWERY: I don't know off the top of my head. I know that -- I know that the, I think the lowest according to RRA in the last couple of years for any utility, a wires only utility in Connecticut, I think United Illuminate is 8.75 percent.

COMMISSIONER DAVIS: And they're wires only?

MR. LOWERY: There's RRA data attached to some of our testimony and in some of the Staff's testimony, and that information I think -- the answer to your question I think is there.

COMMISSIONER DAVIS: Right. I just thought maybe you might know it off the top of your head.

MR. LOWERY: I must admit, I haven't mastered all 10,000 pages of the record yet.

COMMISSIONER DAVIS: All right. Thank you, Mr. Lowery.

MR. LOWERY: Thank you.

JUDGE WOODRUFF: Thank you, Mr. Lowery.

MR. LOWERY: Thank you.

JUDGE WOODRUFF: Opening for Staff.

MR. WILLIAMS: Thank you, Judge, Commissioners. May it please the Commission? My name is Nathan Williams, and I'm here appearing on behalf of the Staff of the Missouri Public Service Commission.

You as Commissioners are charged by statute to review and consider the record in this case in determining just and reasonable rates to be paid by AmerenUE's retail customers. That record will include not only the evidence you're going to hear in the next two weeks, but also the evidence during the true-up and the evidence that was brought before you during the local public hearings in this case, those 17 local public hearings.

Staff agrees, AmerenUE is entitled to a rate increase. The Staff disagrees with the amount of that increase. Before true-up, Staff determined that AmerenUE is entitled to an increase about $155 million of rate revenues. Of that $155 million, Staff believes 154 million of it is fuel costs which AmerenUE would have recovered 95 percent of through its fuel adjustment clause.

Therefore, in Staff's view, this case is primarily about shifting when AmerenUE recovers its incremental fuel costs, sooner through new rates rather than later through the fuel adjustment clause. That shift is shown by the fact that AmerenUE did not file its first change to its customers' bills due to its fuel adjustment clause until a week after it filed this rate increase case. In fact, AmerenUE has filed this case before it's had the opportunity to see how it will recover incremental fuel costs through its fuel adjustment clause.

As usual in terms of the dollars being requested, return on equity is the biggest issue in this case. Staff is recommending a midpoint of 9.35 percent, a range of 9 to 9.7 percent. AmerenUE has reduced its return on equity request from 11.5 percent to 10.8 percent.

And Commissioner Clayton, in response to your inquiry about the difference in AmerenUE's case between when it originally filed and approximately 321 million it's requesting now, Staff believes that approximately 33 million of that is due to this change in Ameren's position on the return on equity it's requesting.

Staff estimates the difference between its midpoint of 9.35 percent and AmerenUE's current 10.8 percent requested return on equity is worth about $67 million as it's reflected on the reconciliation Staff filed last week.

The next biggest difference between the parties is in fuel and purchased power where Staff and

AmerenUE differ by approximately $56 million. The third biggest difference in areas that Staff and UE differ is in depreciation. Staff continues to recommend that AmerenUE's steam plant, with the exception of Callaway, be treated as mass property, and AmerenUE is proposing that it be treated as life span, that a life span approach be used. The difference due to this disagreement is about 14 and a half million dollars. And overall, all the depreciation issues, Staff and AmerenUE differ by about $13 million.

As AmerenUE has stated, this is the third case AmerenUE has filed in the past 37 months seeking to increase its electric rates. It is also the first electric rate increase AmerenUE has sought since obtaining its fuel adjustment clause. Before AmerenUE's 2006 rate case, which was docketed as Case ER-2007-0002, the Commission had not granted AmerenUE an increase in its electric rate since 1988, and that increase was part of a rate increase phase in the Commission had ordered in 1985.

In response to AmerenUE's complaints about regulatory lag, the Staff notes that part of the settlement of Staff's general electric rate overearnings complaint against AmerenUE in 2001, Case No. EC-2002-1, was a phase in a $110 million rate decrease, an initial reduction of $50 million followed by two years of

$30 million reductions annually.

The Staff reminds the Commissioners they should keep in mind that the officers and directors of AmerenUE have a fiduciary duty to the shareholders of AmerenUE to maximize the value of AmerenUE. One of the major purposes of the Public Service Commission Act is for the Commission to act as a break on the economic activities of the utility so that it doesn't overreach in what it receives in rate revenues from its customers.

The Commission should keep that in mind, but not stifle that economic benefit to the point where it's harming the company, and it needs to balance doing that with assuring that the company does have the ability to provide safe and adequate service.

Also, during this case Staff will adduce evidence that will show what AmerenUE has not been what Staff would characterize as aggressively implementing its demand side programs.

Commissioner Davis, you asked some questions about the true-up period. The primary reason the parties agreed to a January 31 true-up date was to capture the full month of January. And AmerenUE experienced an increase in its coal prices through its coal contract effective January 1, and we wanted to make sure we captured that.

Thank you for your attention.

JUDGE WOODRUFF: Thank you. Questions for Staff?

CHAIRMAN CLAYTON: Just very briefly. Mr. Williams, I just want to ask, this is kind of a follow-up to a question that Commissioner Davis asked. If I look at Appendix A of Staff's reconciliation filing, Staff's position is an increase on base rates of approximately $155 million.

If you compare that to the current revenues received by the company with their fuel adjustment clause, what is the difference between this increase and the rates that they are paying with that adjustment in the fuel costs?

MR. WILLIAMS: I don't know the answer to that offhand, but I can tell you that the -- there's a period of time where increases -- increased costs get phased in because you're talking about a year, you're looking at a test year of costs. Whereas, with the fuel adjustment clause, I don't recall if UE is every three months or every four months, but it gets broken down and spread out over time. So I don't know that -- it would be kind of an apples and oranges comparison.

CHAIRMAN CLAYTON: I understand. So you've got a time issue there, a time issue of when the revenue would be collected. But what I'm going to get a sense, and I think you said you don't know, is comparing what is Ameren entitled to today with that 95 /5 fuel adjustment mechanism compared to what Staff is recommending in this increase right now?

MR. WILLIAMS: I believe the answer to that would be 95 percent of 154 million is what AmerenUE would eventually collect through its fuel adjustment clause, approximately.

CHAIRMAN CLAYTON: So basically just 5 percent of 155 million is all they'd be entitled -- is the only additional revenue that Staff is suggesting that they receive?

MR. WILLIAMS: No. I'm saying that, we're saying that their fuel and purchased power costs are 155 million -- or 154 million, I'm sorry, and that they -- if we're right about the dollar amount, they would have eventually collected 95 percent of that in the future. So you're time shifting when they get the money.

CHAIRMAN CLAYTON: Right. Is what Staff's position is?

MR. WILLIAMS: Yes.

CHAIRMAN CLAYTON: And basically it would recalculate how base rates are set with regard to fuel costs?

MR. WILLIAMS: We would be resetting base rates, yes.

JUDGE WOODRUFF: But the actual dollar -- the dollar difference to a retail customer would be negligible?

MR. WILLIAMS: You're asking, I think, a bit about how a few clause works. Right now, there's a lag between whenever the cost is incurred and whenever it's passed through to customers. So if you go down the road far enough, I think it's two or three years, it will work out so that, if the numbers are right, the customers would pay the same amount over that period of time.

CHAIRMAN CLAYTON: If nothing happens, if nothing were to happen in this case today, let's say it's a zero gain and there are no change in current rates, basically this amount of increase would be recognized by customers over that period of time?

MR. WILLIAMS: 95 percent of it.

CHAIRMAN CLAYTON: 95 percent. Okay. Thank you.

JUDGE WOODRUFF: Commissioner Davis.

COMMISSIONER DAVIS: All right. I'm going to go back to Chairman Clayton's question, phrase it another way. All right. Mr. Williams, I heard you say it, and I apologize. I was listening. I just didn't quite catch it. What percentage of this case is fuel? Did you say that in your opening statement?

MR. WILLIAMS: I believe it's $154 million of Staff's case is fuel and purchased power.

COMMISSIONER DAVIS: So is that Staff's number or the company's number?

MR. WILLIAMS: Staff's number.

COMMISSIONER DAVIS: So the company's number is 50 million higher, roughly?

MR. WILLIAMS: I believe.

COMMISSIONER DAVIS: All right. And then to the best of your knowledge, has any commission in this country since January 1, 2009, awarded a vertically integrated utility an ROE below 10 percent?

MR. WILLIAMS: I do not know.

COMMISSIONER DAVIS: Okay. Thank you.

CHAIRMAN CLAYTON: One follow-up. This is on depreciation. There's been some discussion about differences of opinion and positions with regard to depreciation schedules and the different methodologies. Without getting into specifics, can you give me from Staff's perspective, is the depreciation issue, is Ameren being consistent with past practice or is Staff being consistent with past practice? Who is changing the methodology or advocating for change in this case?

MR. WILLIAMS: I believe it's AmerenUE who's advocating for change.

CHAIRMAN CLAYTON: I'm shocked you would say that.

MR. WILLIAMS: In terms of what the Commission's done. Now, in terms of positions the parties have taken in the case, I think both parties are being consistent.

CHAIRMAN CLAYTON: Got you. Thank you.

JUDGE WOODRUFF: Thank you, Mr. Williams.

MR. WILLIAMS: Thank you.

JUDGE WOODRUFF: Opening for Public Counsel.

MR. MILLS: Good morning. May it please the Commission? My name is Lewis Mills, and I represent the Office of the Public Counsel and the public in this matter.

You know, I always struggle with opening statements in this venue. In civil litigation the purpose of an opening statement is to basically explain your case to the jury, let them know what they're going to see and sort of lay it out for them and draw a big picture. That model doesn't really work very well here. For one thing, you-all are not a jury. You're an expert body.

For another, 90 percent of the information or so that you're going to decide this case on has been in front of you for some time. You're familiar with it. It doesn't make a lot of sense to go back through and sort of tell you what you've already seen.

So what I'm going to try to do is try to look at things from a slightly different perspective, and the chart that I've handed to you and passed out to the -- to counsel really sort of -- it's an illustration based on the Staff accounting schedules of where the money goes. When you take all of the money that UE collects in rates, this is a pie chart illustration of what happens to it, how it's allocated, how it's spent by the company.

And I think there's some really instructive things that you can gain by looking at it in this way. First off, one thing that's sort of instructive is the perspective that Word puts on pie charts. For example, depreciation expense and payroll look like very different sizes, but they're exactly the same.

But looking at just those two sections of the pie, those are issues that always seem like huge issues in rate cases. Really not a lot of the money goes there. Depreciation expense, you're going to hear a lot of convoluted and complicated testimony about depreciation expense in this case. It's only 12 percent of the revenues that go to depreciation.

Fuel and purchased power, of course you're going to hear a lot about that with respect to the fuel adjustment clause. There's a lot there. But the big chunk of the money goes to other operating expenses. This is buying paperclips, buying paper, running the office buildings. That's where the bulk of the money goes to.

You're going to hear a lot of discussion about earnings, and this illustrates the pie based on Staff's ROE of 9.35 percent. It's only 10 percent. So when you hear UE talking about the fact that this case is all about investment in plant that they put in since the last rate case, it's really not. Most of the money here is going to operating expenses.

And I think that's particularly interesting because that's really not something that comes up much in a rate case. Nobody's going out to UE and seeing how they've got the thermostat set in their office buildings. Nobody's seeing what kind of contracts they've got for paper and paperclips to see if they're doing the best they can, but yet that's where most of the money is going.

The way utility regulation is set up is that most of that stuff is presumed prudent unless somebody comes in and challenges it. Nobody really spends a lot of time getting way down in the weeds to look at where all that money's going, where the productivity could be gained, and how much is available there. Yet that's where most of the money is.

Now, another thing, and I don't have -- I was counting on the ELMO to help me out here, too, so I don't have nearly as many copies of this, but I'll give a couple to the Bench, if I can, and you can share this. These are really just the numbers that go into the pieces of the pie, and you can see that some of them are quite huge. We talk about increments to these numbers in rate cases, but most of the money that UE collects in rates is not in dispute. We're talking about adding an increment to a huge amount of money that they already collect.

And so, for example, you'll see that other operating expenses is somewhere in the neighborhood of 700 and -- close to $800 million. So that's a huge amount of money. And I'm going to come back to some of those numbers when I can, but let me switch over and talk a little bit about the issues in this case and the way they relate to the amount of money that UE already collects.

And I think you've got a very good illustration with respect to where the dollars is in the issues in this case with the reconciliation filed by the Staff. But one of the things that the reconciliation doesn't show is, sort of from UE's perspective, what's the worst case? It shows what happens if you accept all of

Staff's numbers, if you accept OPC's numbers, if you accept MIEC's numbers, but what happens if you, for example, accept Staff's ROE number and MIEC's depreciation numbers, if you just sort of go through and highlight the lowest numbers in each category and do the math there? And I did that, and it brings you down to about $89 million.

So you might look at this reconciliation and say the range in this case really is between the 320 million that UE wants and the 129 million that MIEC is advocating, but that's not the case. Really if you go through and you look at all of the issues issue by issue and if the Commission were to decide all of the issues in the -- in a manner most unfavorable to Union Electric, it comes down about an $89 million decrease. So I think that's an interesting perspective on the range of outcomes of this possible case.

Now, for example, one of the things that would take you down to 89 million is accepting Public Counsel's position on rate case expense. At this point, Union Electric wants approximately 2.2 million. On the reconciliation at least it doesn't show as though MIEC has any issue with that 2.2 million. So with that one particular issue, that would lower the MIEC revenue requirement by $1.8 million.

And you can go through and look at all the issues. ROE is another one that's approximately a $30 million difference between the Staff and the MIEC. $30 million seems like a huge amount of money, but if you look at it with respect to, for example, the other operating expense that we talked about, which is an $800 million pie, it takes about a 3.7 percent productivity gain to make up that $30 million. 3.7 percent productivity gain. That's not much. It's easily achievable.

Look, for example, at rate case expense. A couple of cases ago UE was asking for about $4 million in rate case expense. In this case they're down to 2.2 million. From my point of view, of course, that's gone from mind boggling to astronomical. But nonetheless, that's roughly a 50 percent productivity gain in just a couple of rate cases. That's the kind of stuff that's achievable.

The $30 million with respect to the other operating expense, the difference between the Staff case and the MIEC case on ROE is really negligible.

Now, I'd like to touch on just a couple of issues that the -- that have been raised in opening statements. The first is the question of trackers. I think -- I think Mr. Lowery's exact phrase was that if the -- if the rates recover, quote, just exactly the -- if the rates recover what has been spent, they recover, quote, just exactly the right amount. Well, we have no way of knowing that. There's no reason to believe that just because that money was spent it was spent just exactly right.

And that's one of the main issues that Public Counsel has with trackers is that they send -- they send very little incentive to the company t do things more efficiently. If the company knows it is going to recover $45 million for trimming trees, it's going to spend $45 dollars for trimming trees. And I don't believe that anybody has a very good opportunity or very good ability to go back and audit tree trimming expenses and say that could have been done for a million dollars less or more should have been done and more should have been spent.

You can do that in very, very broad strokes, and that's been done in other cases. There have been cases in which Staff has alleged that UE has been behind in tree trimming. But when you get down to money that's been actually spent, the notion of trying to prove that it was 10 percent too high or 5 percent too high is a really tough hill to climb.

And so if you put in, as the Commission does with virtually all expenses with few exceptions, if you put in a representative amounts or based on test year amounts or based on normalization or based on evidence that says you need to do something else and give that as a target for the company to shoot for, then the company has the incentive to do that the most efficient way as possible. They either want to meet that target so that they don't come out of pocket for it or they want to go below it so they get more flow to the bottom line. That's the problem with trackers.

And finally, the other issue that I want t mention that you're going to hear some more about is the question of -- and both Mr. Lowery and Mr. Williams mentioned this in their opening statement -- is the question of what's going on with UE's energy efficiency programs. We're going to hear some more about that as the case goes on.

I'm going to reserve the rest of my more detailed comments to the mini openings on particular issues. Thank you.

JUDGE WOODRUFF: Thank you, Mr. Mills. Questions?

CHAIRMAN CLAYTON: Just very quickly, Mr. Mills, I wanted to ask, you've discussed some of the questions that have been raised regarding Appendix A of Staff's reconciliation. I wanted to be clear of starting off this case what Public Counsel's position is. Are you recommending an increase in base rates or are you recommending a decrease in base rates? Can you clarify your position in dollars?

MR. MILLS: I can tell you we are recommending an increase in base rates. I have not gone through each issue and tallied that up. I will do that and provide that the Commission. It's somewhere in between the Staff's case and MIEC case, I believe.

CHAIRMAN CLAYTON: So would it be a fair way of computing that, adding in approximately 34 million based on your difference in return on equity and then another decrease of rate case expense?

MR. MILLS: In terms of our filed position, those are really the only issues that we filed testimony on as a revenue requirement impact. We have supported on some issues the Staff position and on some issues the MIEC position. I haven't gone through and done the math to figure out where that comes from bottom line.

CHAIRMAN CLAYTON: So in base rates, Public Counsel is recommending an increase in base rates between 130 million and 155 million?

MR. MILLS: Exactly. And I will -- I probably should have done that by now, but I will do that quickly and make sure it gets into the record.

CHAIRMAN CLAYTON: Now, can you tell me -- and I ask this question of Staff earlier. Can you give me an idea of the net difference between the rates that customers are paying now with the fuel adjustment clause and your recommendation in increase in base rates? What is the real dollar difference?

MR. MILLS: Let me see if I can put this a different way. I think that -- I think taking -- well, let me put it this way. Our position is that UE really does not need an increase in non-fuel costs, so that the increase here is all to fuel costs. And if you were not to -- and if you were not to have this rate case, all of that money would eventually come to UE through the fuel adjustment clause. I'm not sure if that exactly answers your question.

CHAIRMAN CLAYTON: Would you be able to identify an amount of time in which all of those dollars would be available to AmerenUE through the fuel adjustment mechanism? Does that -- you know, in six months time, they would be up to -- they would be caught up with collecting their fuel costs?

MR. MILLS: And this is probably a better question to ask of a witness like Lena Mantle, but I believe the lag between the actual increase in fuel costs and recovery through rates is approximately a year or 14 months.

CHAIRMAN CLAYTON: Okay. Thank you very much.

JUDGE WOODRUFF: Commissioner Davis.

COMMISSIONER DAVIS: Mr. Mills, do you recall the most -- the previous AmerenUE rate case, what did we -- what did we set the amount for vegetation management at? You opposed it.

MR. MILLS: I believe it was -- I'm not sure I opposed the amount. I believe I opposed the tracker. I believe the amount was 45 million. I'm going from memory here. I don't recall exactly.

COMMISSIONER DAVIS: Wasn't there like a 64 and a half million dollars number for something?

MR. MILLS: That may be vegetation management and infrastructure inspection together. I honestly don't recall.

COMMISSIONER DAVIS: Did they spend all of that amount?

MR. MILLS: I don't know that.

COMMISSIONER DAVIS: Based on the --

MR. MILLS: I think they did, but I had -- you know, I can't say that with certainty.

COMMISSIONER DAVIS: Okay. Now, you stated earlier that if the Commission accepted all of the, quote, low positions, that AmerenUE would only be entitled to approximately 89 million or something of that nature; is that correct?

MR. MILLS: Yes.

COMMISSIONER DAVIS: You're not advocating for that position, are you?

MR. MILLS: No.

COMMISSIONER DAVIS: Thank you.

JUDGE WOODRUFF: Commissioner Gunn.

COMMISSIONER GUNN: Yeah. I want to get back to the tracker issue, and I just want to be clear on this. Your contention is that it is a greater danger to track the exact amount or there's less of an incentive to track the exact amount that is spent on a certain item that we do a tracker than the Commission setting the tracker number too high or too low. If we set it too high, then are we encouraging the company to spend more than is actually needed? And if we set it too low, are we not doing what we expect to get done, and is that a greater or lesser danger than tracking what -- than just saying track your expenses and we'll determine if it's prudent?

MR. MILLS: I think it's -- I'm not sure what you asked, but I think it's a greater danger to ratepayers to have a tracker, because the company doesn't go through and say, well, according to the Commission's decision we have X amount of dollars to spend on tree trimming and we're going to budget to that. They look at the Commission's decision and say they've got to operate their business as efficiently as they can to make the most return for their shareholders as they can.

And I think when you -- when you put a tracker for a number of expenses, for those particular expenses that are tracked they have much less incentive to try and control productivity in those areas, and so they'll look somewhere else to try and get a benefit to the shareholders. For example, if you do a tracker in -- say you set the tracker at $50 million and they realize that they can do it for 45 million, they've got no incentive to do it for 45 million because that 5 million goes back to ratepayers through the tracker.

Conversely, if it really takes $55 million to do it, they're going to get that money back. And so they really have no incentive under the tracker to try and do it the best way possible. They simply -- they'll generally target, I suppose, the amount that's in the tracker, but there's no incentive to either control overruns or to achieve underruns.

COMMISSIONER GUNN: Does that create a perverse incentive for the Commission to set tracker -- or to set target numbers lower than we might normally think that they would be in order to incent the company to find productivity increases?

MR. MILLS: With respect to tracker or with respect to expenses in general?

COMMISSIONER GUNN: To expenses -- let me give you an example. Let's say we didn't have a tracker for vegetation management. Is there an -- and we generally think that it's going to cost $40 million to do. I'm pulling these numbers out as numbers. Is it -- is there a perverse incentive for the Commission to really set that number at 35 million, saying that we want to -- you know, the company needs to find those, you know, the productivity enhancements in order to save that $5 million to get to where we need to be

MR. MILLS: I mean, if you set the -- if you set the tracker based on that at $35 million --

COMMISSIONER GUNN: I'm not talking about trackers. I'm talking about instead of a tracker, we set the target number and say, you've got to spend this much money on vegetation management.

MR. MILLS: You have to spend this amount?

COMMISSIONER GUNN: That's what you're suggesting, isn't it, that that's a better incentive than a tracker?

MR. MILLS: No. I'm suggesting that you -- and this sort of goes back to the question of whether setting rates is sort of a cost plus exercise or is it an attempt to look at the relationship between revenues and rate base and expenses and try to come up with a rate that works going forward.

It's always been Public Counsel's position that it's the latter, that we're not really setting rates to try to recover specific expenses. We're trying to look at a snapshot in time and say, based on the test year, the company had this many revenues, this much expenses, this much rate base, making some shifts to that to try to adjust it going forward, but the relationship among those is such that here's the amount of revenue they need going forward to cover their expenses and make a profit.

We're not trying to -- we shouldn't be trying to say that you should be spending $50 million on tree trimming or you should be spending $35 million on tree trimming. We're saying the basic revenue rate base expense relationship is such that if we set revenues at this amount, the company has the opportunity to recover all of its prudent costs and earn a return.

So I think when you start getting into the level of detail of saying this is exactly amount that you're going to spend on this particular expense, you run into problems whether you put a tracker around that or not, you know.

You do your best to say, here's what we think it is in terms of a contested issue, but you're not really saying here's exactly what you should spend in the future on that expense, and if you don't, you should be able to recover more or recover less.

COMMISSIONER GUNN: What we should be saying is, trim all your trees on a four to six-year cycle?

MR. MILLS: Right. And do it the most efficient way you possibly can.

COMMISSIONER GUNN: And then we'll take a look at those costs?

MR. MILLS: Yeah. And I think just by setting -- by trying to do the best amount that you can based on test year information and letting them figure out the best way to do that. If they can do it cheaper, that goes to their bottom line. If it costs them more, it cuts away from the bottom line.

COMMISSIONER GUNN: But if we determine that they do the -- they trim the trees they're supposed to trim on the four to six-years cycle, you would think -- and we made that determination, you would say that they would be able to recover the actual costs they put in or you have to throw it into the big -- the big mess of the overall view?

MR. MILLS: I hesitate to call it a big mess, but yeah, if you want to refer to it that way, you throw it into the pot of dollars. For every expense that you try to carve out of the general equation and say you've got actual dollar recovery of this, eventually there's not going to be much incentive for the company to go out and try to achieve efficiencies because they're getting actual recovery of costs, actual recovery of actual expenses rather than a representative amount in the rate base, rate case setting process.

COMMISSIONER GUNN: Thanks. I don't have anything else.

COMMISSIONER DAVIS: I've got to go back and ask Mr. Mills one question. All right. Mr. Mills, I want to challenge you. On the issue of infrastructure inspection, can you be thriftier than AmerenUE? Because I've been told that they hire migrant workers that are lawfully here, I'm assuming they're lawfully here, that only one member of the crew has to speak English, and that they send them out and they actually put them up in pop-up campers at state parks so they can house them for like $9 a day or some astronomically low number, in my opinion.

Can you get any thriftier than that? Only one member of the crew has to speak English I'm told.

MR. MILLS: Commissioner, I don't know specifically with that. If that's the case, that does seem pretty thrifty, but I don't know that that's the case. You know, I don't know if there are efficiencies to be gained by having everybody speak English. You may be losing if some people in the crew can't communicate with others in the crew.

COMMISSIONER DAVIS: You're not concerned about taking jobs away from --

MR. MILLS: As I said, I don't know whether they hire migrant workers. I don't know if they hire English speakers or not. My response was having to do with the efficiency of that practice, not the political ramifications. I don't know -- I don't know that that's the case, and I don't know that that's the cheapest way to do it.

COMMISSIONER DAVIS: If that is the practice, it sounds fairly low cost to you; is that a fair assertion?

MR. MILLS: It may very well be. I just don't know.

COMMISSIONER DAVIS: Thank you, Mr. Mills.

CHAIRMAN CLAYTON: Just very quickly, Mr. Mills. I'm sorry to come back to this. Some of the comments from Mr. Lowery in AmerenUE's opening statements related to reliability, and as the advocate for the residential customer I wanted to ask you today, do you believe AmerenUE is providing sufficiently reliable service to its customers?

MR. MILLS: Yes. I think reliability, as you've seen from their chart that you've probably seen at the local public hearings and saw again this morning, their reliability in terms of outages is increasing, and I think they're at a good point now.

CHAIRMAN CLAYTON: Do you have a goal in mind of at what level they should be providing service in terms of a statistical number, a CAIDI, a CAIFI, a SADI, a SAFI figure, and are they meeting it I guess is my last question?

MR. MILLS: Yeah. Not specifically. I think I would -- I would have an issue if they were trying to target themselves as the lowest or the highest in the country because lowest is obviously not reliable enough. Highest is probably too expensive.

I would think that they should be targeting somewhere in the upper half of reliability, possibly around the break point between the third and fourth quartile as a target.

CHAIRMAN CLAYTON: Do you know, are they

meeting that right now?

MR. MILLS: I think they're about there, yes.

CHAIRMAN CLAYTON: Will there be evidence in this case that suggests that or highlights that?

MR. MILLS: I think we can get to that through Mr. Wakeman.

CHAIRMAN CLAYTON: That will be helpful. Thank you.

JUDGE WOODRUFF: Anything else?

COMMISSIONER KENNEY: Just really quickly. Mr. Mills, it sounds like -- tell me if I'm wrong here. Would you -- would it be OPC's position that all trackers and pass through mechanisms should be eliminated under the theory that presence of risk encourages efficiency?

MR. MILLS: I won't say all. I'll say most. For example, the vegetation management tracker, although we didn't really approve of it, there is a much greater rationale in its favor when the rules were new and nobody really knew what it was going to cost each utility to comply with the new rules.

In this case you've just heard Mr. Lowery say they've done a third of the circuit miles. There's no real reason to think that 33 percent is not a representative sample, and so they should have a fairly,

fairly good idea of what the remaining two-thirds will take based on the third that they've done. When you do the surveys and polls, you don't survey anywhere near a third of the people that you're trying to reach.

Having done a third of the circuit miles, they should know what it's going to take to do the remaining two-thirds. There really shouldn't be a need for a tracker. There are instances in which, you know, a tracker can be more useful than others. So I wouldn't say that they should always be eliminated, but they should be used very, very rarely and with extreme caution.

COMMISSIONER KENNEY: Thank you.

JUDGE WOODRUFF: Thank you, Mr. Mills. Then opening for DNR.

MS. WOODS: Good morning, Judge, Commissioners.

The Department of Natural Resources was able to resolve its issues in the first Nonunanimous Stipulation & Agreement and consequently are not scheduled to be before you in this hearing. Should the Commission have any questions or concerns and schedule a on-the-record presentation, of course the Department will be there to try to answer any of those. Thank you.

JUDGE WOODRUFF: Thank you. Opening for MIEC.

MS. VUYLSTEKE: May it please the Commission?

The Missouri Industrial Energy Consumers is made up of the state's largest employers and largest taxpayers, and its members are truly the economic engines of our state. In this economic crisis, our companies have slashed the cost of doing business to the bone. They've been forced to lay off workers, and they are taking every possible measure to use energy efficiently and wisely.

Yet their cost for the essential commodity of electricity would increase -- would have increased 18 percent under UE's original rate proposal.

Your decision in this case will have a profound impact on Missouri's economic future. It can make the difference in whether a Missouri manufacturing plant stays open or shuts its doors forever. And this is a risk for all of the MIEC's members, but it's most starkly and dramatically true for UE's largest customer, Noranda Aluminum.

Noranda is the pillar of an economically depressed region of the state, the bootheel region, and the loss of Noranda would be devastating to the families of the bootheel, as well as state of Missouri as a whole. If the Commission errs on the side of granting AmerenUE any more of this rate request than is absolutely necessary, the damage to our economy would be irreparable.

Now, it has become UE's customary strategy in rate cases to exaggerate its revenue requirement to the greatest possible extent, and I have a chart that I want to show you that's a comparison of the rate request that Ameren has made since 2002 and the actual results that the Commission has awarded.

As you can see from the chart, in every case UE's rate filing has far exceeded the amount that it has turned out to be just and reasonable by the Commission. And if you fill in the number for the current rate request under commission order, the proposal will be a range of somewhere between the MIEC's proposal of 129 million under the current reconciliation and the Staff's proposal of 155. And as mentioned by Mr. Mills, depending on which adjustments you accept and which you don't, it could be even lower.

UE often claims that its rates are low compared to utilities in other states, but if UE had been granted the inflated rate requests that it has sought over the years, Missouri rates would not be competitive today. It is only because this Commission and the strong regulatory process that we have so carefully guarded over the years is very careful about setting rates that we have actually maintained the very critical economic asset that

Missouri has of reasonable electric rates.

Because of the magnitude of UE's rate increase in this case and because of the Missouri economic crisis, we are presenting even more comprehensive evidence than we have in prior cases on most of the major revenue requirement issues in the case. The MIEC will present evidence regarding plant maintenance, infrastructure inspection, trackers for vegetation management, storm costs. We will be presenting evidence regarding the appropriate return on equity for AmerenUE, also depreciation rates, production cost modeling, fuel costs and off-system sales. And, of course, we will present evidence on cost allocation and rate design.

As you weigh this evidence, we urge you to carefully consider the impact of UE's rate increase on Missouri's economy. Your duty is to protect the public, both the shareholder of AmerenUE and the shareholders of the companies that are AmerenUE's customers, as well as the residentials and commercials.

Missouri requires stable and competitive rates to support our industrial base and jobs in UE's service territory. Rising energy costs are among the greatest challenges that Missouri businesses face. Electric rates will, if they increase too much, eliminate jobs, and there is no doubt the full cost of utility compliance with federal law and regulation and Missouri legal requirements, such as the new renewable energy mandate, will be passed to consumers and borne entirely by them, not by the utilities.

If the Commission is not vigilant to preserve a balanced rate process, these costs will be spread over a shrinking base and our economy will further deteriorate.

I'm going to show you another graph at this point. This is just a graph that shows the Missouri -- excuse me, the Bureau of Labor Statistics' most recent graph, this is from March 10th, showing loss of Missouri manufacturing jobs over the last ten years. Clearly Missouri's bleeding jobs. I think this graph dramatically illustrates that point.

In the past decade, manufacturing employment has declined by over 25 percent from 360,000 jobs down to 250,000 jobs, a drop of 110,000 jobs, and more than 40,000 of these have been lost in the past three years. Many of these losses have been in AmerenUE's service territory, and over the past year the St. Louis area has lost more than 50,000 jobs.

Employers of every size and families are struggling. We need for our economy to go. We need for manufacturing to grow. Our asset of reasonable rates is -- will disappear unless you ensure in this case that the rates are not increased even a dollar more than needed.

Ameren's filing is focused entirely on the need to get more money and get it faster. It complains that it is unable to earn its authorized return on equity. However, unlike its captive customers, UE is a monopoly and has a place to go to get administrative relief in the from of higher prices from this Commission if it believes that costs have risen faster than revenues. The MIEC companies do not have that luxury.

The Commission is part of the Missouri Department of Economic Development, and consistent with the mission of DED, it should take every precaution to enhance rather than to deter Missouri's economic growth. UE's strength depends on the economic strength of its customers. With these utility rates, job losses and lost purchasing power of residential customers will weaken.

And the Commission should keep the dire condition of Missouri's economy in mind when balancing the interests in this case. UE can and will obtain additional rate increases if required, but if rates are excessively increased now, the negative economic impact could be permanent and the jobs lost might never return to Missouri.

And this is true of all the major employers in MIEC, but most dramatically Noranda. The 900 employees of Noranda and the 40,000 employees of the MIEC companies and all the citizens of this state whose livelihoods depend directly or indirectly on the these companies are looking to the Commission to preserve these jobs.

Thank you.

JUDGE WOODRUFF: Thank you. Questions for MIEC? Thank you. I'm sorry.

COMMISSIONER DAVIS: Ms. Vuylsteke, with reference to this chart, loss of Missouri manufacturing jobs, you're not saying that these job losses are due just solely to electric rates, are you?

MS. VUYLSTEKE: No, I'm not.

COMMISSIONER DAVIS: I'll wait, Judge, because they're going to give mini opening statements on the issues?

JUDGE WOODRUFF: Yes.

COMMISSIONER DAVIS: Okay. Thank you.

JUDGE WOODRUFF: Thank you. Opening for MEG.

MS. LANGENECKERT: May it please the Commission?

The Missouri Energy Group's only issue in testimony was energy efficiency. That issue was resolved in stipulation. We're not one of the signatories because there were certain aspects of that stipulation that we didn't feel fully addressed our issues, but we believe that they'll be taken care of in the workshops.

So we have no opening statement, and we have the testimony that we have submitted and we will give to the Commission at the appropriate time.

JUDGE WOODRUFF: Thank you. Questions?

CHAIRMAN CLAYTON: Ms. Langeneckert, you mentioned energy efficiency. Does that include demand response programs?

MS. LANGENECKERT: Yes.

CHAIRMAN CLAYTON: In the last case or I guess going back two cases, the Commission has taken a step towards improving or enhancing offerings by Missouri utilities in demand response areas. How have they progressed? If you go back beginning in, I guess two years -- three years ago, four years ago when we had the first rate case order which addressed demand response. Can you give me some feedback on how things have evolved with regard to demand response offerings?

MS. LANGENECKERT: I believe there are currently a couple programs that AmerenUE has presented, rates L and M I believe they are, and those are somewhat responsive. A few of our customers do not feel that they do exactly what they'd like, but that may not be feasible in Ameren's portfolio. The Senate Bill 376 was our main concern in our testimony relating to the ability to opt out to some for the energy efficiency programs considering all the other energy efficiency actions that our customers already take, and that's where our main concerns lie in this case.

CHAIRMAN CLAYTON: Okay. Thank you.

JUDGE WOODRUFF: Thank you. Opening for MEUA.

MR. WOODSMALL: Your Honor, I would save my comments until March 25th when we start litigating rate design and class cost of service.

JUDGE WOODRUFF: Very good. Opening for AARP and Consumers Council?

MR. COFFMAN: May it please the Commission? I'm here today representing AARP and the Consumers Council of Missouri, both member-based nonprofit corporations that have an intense public interest concern about rising energy costs and fair utility rates.

Since this is just the broad opening, I would like to just state a basic position regarding rate of return regulation and the appreciation of the process that has worked for about 100 years with the way that revenue requirement is set at a set amount, which includes an ROE, essentially a profit for the utility in recognition, as AmerenUE says, for compensating the risk of a utility, and expressing what I think are two biggest concerns for consumers in this ratemaking area. One is the proliferation of requests for trackers and surcharges to try to address single issue problems, and then on the other hand and in a related way, a concern about ROEs that do not seem to go down as quick as they go up and do not seem to fairly recognize, in our opinion, the low risk of operating an energy utility.

In answer to Commissioner Gunn's question about trackers, in almost every case my clients would prefer that these single issue mechanisms would not take place. We believe -- even whether you're erring on the high side or low side, setting a set amount is what is most consistent with rate of return regulation and what is best designed to promote efficient behavior. We think it works fairly well.

It may sound fair to simply give a dollar for dollar actual recovery for a cost, but we believe that past experience has shown that not to be a very good way to promote efficiency and is very often unfair. So even if you were to ask whether I preferred erring on a high side for an expense allowance for an amount as opposed to a tracker, we would usually side against the tracker.

That's the way the system works, and we believe as long as you're within a rate of return regulatory scheme, you should stick with setting a set amount.

Listening to AmerenUE's opening regarding these various trackers, and the fuel adjustment clause included, you would get the idea that risk is something that we should try to avoid. It's our opinion that rates should be designed to put risk on the utility and let them manage it much the way a non-monopolistic company might operate, and that's just general philosophy. You'll see that throughout.

Since I mentioned fuel adjustment clause, I'll just mention that we have attempted to respond to the Commission's request for more information on that particular issue in response to the order that came out about a month ago. We were not able to retain a witness on short notice that fit, although we are asking that the Commission take judicial notice of testimony that we filed in the 2007 case by Nancy Brockway and testimony that she adopted from Ron Benz. It directly relates to questions that the Commission's answered about whether there should be a fuel adjustment clause and, if so, what type of sharing.

Our position on sharing mechanism, if in fact you are going to continue with this fuel adjustment clause, which is not our preference, but if you are, our position is that the risk should be shared evenly, that is by a 50/50 sharing approach. We do not believe that it really is fair to force consumers to bear virtually all of the risk of fuel and purchased power, particularly when you consider that the utility has a great amount of control over where it chooses to look for generating its electricity and the consumers have no control over those costs. You may argue that the utility is to a large extent not in control of fuel prices, but consumers have none. The utility has quite a bit.

On return on equity, it's the opinion of my clients that the double digit ROEs that we have been seeing are really not appropriate for the current economic environment and the current marketplace, and we don't generally encourage looking to other states and averaging what they do, but to the extent -- because we fear that that tends to promote in a circular way ROEs that are higher than they need to be when, in fact, trends are going downward, which is our opinion.

If there is a state that you would look to, we would urge you to look at the currently pending Ameren Illinois cases across the Mississippi River. That case is nearing an order very soon. The administrative law judge has recommended an order in that case which includes an

ROE for all six Ameren Illinois utilities in the single digits, in the nines.

On low income issues, we are offering a witness for your consideration, Jackie Hutchison, who I believe is the only witness on these issues who really has frontline experience dealing with low income customers and the intake, and we believe that she is well qualified to testify on the need out there regarding low income customers and what the rather large rate increase in this case might mean for consumers. And she also has quite a bit of knowledge about what program work and don't work there on the frontline.

We would urge you to take a look at that and to seriously consider a low income program in this case that would help mitigate the disproportionate impact that a rate increase in this case could have on the most unfortunate customers.

That's all I have at this point.

CHAIRMAN CLAYTON: Just very quickly, Mr. Coffman. I have in front of me the position statements of AARP and Consumer Council of Missouri, and it makes reference to positions on issue 10, which is the fuel adjustment clause, and issue 14A through C, I guess, the low income program. But you mentioned other issues that you would have an interest. Can you just identify for me very quickly in which of these issues have either or both AARP on Consumers Council filed testimony?

MR. COFFMAN: We filed testimony on the low income issues, and we are asking for judicial notice of previous testimony on the fuel adjustment clause issues. We were unable to retain witnesses.

CHAIRMAN CLAYTON: I understand.

MR. COFFMAN: We reserve the right to ask question and brief issues that we have particular in, return on equity and perhaps the vegetation tracker.

CHAIRMAN CLAYTON: Would it be a fair characterization that each of these issues, the Commission issued an order asking for additional testimony, additional feedback, so were these filings in response to those orders?

MR. COFFMAN: Yes, on fuel adjustment clause and low income issues.

CHAIRMAN CLAYTON: So if the Commission hadn't entered those orders, can I take from that that AARP and Consumers Council wouldn't have filed any positions on ant issues in this case?

MR. COFFMAN: No. We plan to be involved in cross-examination and briefing on those issues and others.

CHAIRMAN CLAYTON: But you haven't taken a position on anything else? I'm just trying to get a sense of what issues -- I mean, you can cross-examine, but have you taken a position or are advocating for any position other than these two issues?

MR. COFFMAN: Well, I may not have said that in the position statement. We hope that we still do have the right to take positions based on cross-examination on other issues other than those.

CHAIRMAN CLAYTON: Based on other people's filings, not based on your own filings, not on your own testimony?

MR. COFFMAN: For cross-examination, yes.

CHAIRMAN CLAYTON: Do you anticipate that your clients will take positions with regard to rate design, or have you chosen -- are you advocating for either Staff, OPC or MIEC or MEUA, one of the other parties that have set out a rate design position?

MR. MILLS: Yes, we plan to take a position on rate design. At this point I would say that we would favor the Office of Public Counsel testimony. At least our position going into the hearing here would be generally for equal percentages, but we are -- there are some negotiations going on and there are some other possibilities.

CHAIRMAN CLAYTON: Thank you.

MR. COFFMAN: Simply because we haven't stated a position statement in those position statements doesn't mean we won't take a position or alter our position based on --

CHAIRMAN CLAYTON: Well, Mr. Coffman, I understand that. I've been working off Appendix A, which is the company's reconciliations, and trying to get an idea of how this case is going to be framed up in terms of dollars. There's no column up for Consumer council.

I mean, what concerned me is that if the Commission hadn't entered those orders asking for additional information, it doesn't appear that the Consumers Council would have been advocating for any issue at all in the case. That's what I'm trying to get a sense. Today you don't --

MR. COFFMAN: It was my clients' interest to participate in the case to the extent that they can based on the resources they have available.

CHAIRMAN CLAYTON: Okay. Thank you.

JUDGE WOODRUFF: Commissioner Davis.

COMMISSIONER DAVIS: Good morning, Mr. Coffman.

MR. COFFMAN: Good morning.

COMMISSIONER DAVIS: Talking about the Ameren Illinois rate case, you've got three gas utilities and you've got three electric utilities. If my memory serves me correct, Ameren, the three Illinois electric utilities don't manage any generation, correct?

MR. COFFMAN: That's correct.

COMMISSIONER DAVIS: So that may -- does that make them -- I would assume that AmerenUE would be more riskier than those utilities?

MR. COFFMAN: I think they have different risk. I'm not willing to draw any con --

COMMISSIONER DAVIS: You're not willing to. Don't you think more skill is required to operate a nuclear plant than not?

MR. COFFMAN: There are some differences, but --

COMMISSIONER DAVIS: Okay. Well, let's look at cost, then. You know, the distribution utility is not responsible for the cost of electricity, correct?

MR. COFFMAN: Yes, I believe so.

COMMISSIONER DAVIS: Okay. So they're not -- I mean, isn't that a separate -- isn't that done by a separate method? I mean, they're not -- they don't have any -- the distribution utility does not have any risk related to the cost of electricity, does it?

MR. COFFMAN: I suppose in a general sense, that's correct.

COMMISSIONER DAVIS: Okay. Is it true that amongst the overwhelming majority of electric utilities that are vertically integrated, meaning they do manage their generation fleet, that they -- virtually all of them have a fuel adjustment clause?

MR. COFFMAN: Most of them do, yes.

COMMISSIONER DAVIS: And most states it's 100 percent?

MR. COFFMAN: The mechanisms do vary quite a bit in the way they operate.

COMMISSIONER DAVIS: Does Missouri have more trackers or less trackers than other states?

MR. COFFMAN: I'm not sure I can answer that question. I think we have -- well, by trackers, do you mean mechanisms that don't change in between rate cases?

COMMISSIONER DAVIS: Let's go with surcharges. Does Missouri have more surcharges, fewer surcharges, about the same number of surcharges?

MR. COFFMAN: There are some states that have quite a few, a handful of states that have quite a few of those mechanisms, and among regulated -- I believe the handful of states that have really gotten out of control in my opinion with their surcharges, I think Missouri is about in the middle.

COMMISSIONER DAVIS: We're about in the middle of the group that's gotten out of control.

MR. COFFMAN: No. Setting those aside.

COMMISSIONER DAVIS: Okay.

MR. COFFMAN: But I don't -- I'm sorry. I don't have a state by state survey to provide.

COMMISSIONER DAVIS: Did the regulatory law judge in Illinois, did they recommend the uncollectibles tracker that the Staff was recommending?

MR. COFFMAN: Yes. That's part of the recommended order.

COMMISSIONER DAVIS: Okay. And that was significant -- that was a significant adjustment downward for the uncollectibles tracker, was it not?

MR. COFFMAN: Yeah. Yes. I think that has an impact on risk, yes.

COMMISSIONER DAVIS: Do you recall what the Illinois staff's recommended ROE was for the three electric utilities?

MR. COFFMAN: I don't recall.

COMMISSIONER DAVIS: You don't remember?

MR. COFFMAN: I think this is a fair inquiry on the issue, and perhaps we'll find a way to get that into the case now. Again, the Illinois Commerce Commission has not adopted that order, but that decision is forthcoming very soon, I believe.

COMMISSIONER DAVIS: Did you have an opportunity -- I don't know. Mr. Mills was -- I don't know if he could his pie chart up on the -- this is my pie chart here. I don't know. I've already made some marks on it. Do you have -- does somebody have a copy that they can share with Mr. Coffman?

Mr. Coffman, looking at this chart, you've got that red section over there, fuel and purchased power, 26 percent. So that's 26 percent of the entire bill goes to full and purchased power. So if fuel and purchased power goes up, if those expenses go up 10 percent, that would be roughly a 2.6 percent increase on the whole pie, correct?

MR. COFFMAN: That seems to be mathematically correct.

COMMISSIONER DAVIS: Now, if there's a 2.6 percent increase and earnings are only 10 percent of the pie, 2.6 percent of 10 percent would actually be 26 percent of earnings, wouldn't it?

MR. COFFMAN: I'm not sure I'm following you. I mean --

COMMISSIONER DAVIS: 2.6 --

MR. COFFMAN: 10 percent is less than 26 percent.

COMMISSIONER DAVIS: 2.6 divided by 10 would be 26, would it not?

MR. COFFMAN: Yes.

COMMISSIONER DAVIS: So 10 percent increase in fuel and purchased power would be equivalent to a 26 percent -- be 26 percent of earnings; is that a fair statement?

MR. COFFMAN: I suppose.

COMMISSIONER DAVIS: They didn't tell you there would be a math quiz today.

MR. COFFMAN: I'm not a math whiz. As far as I can tell, I'm following your math.

COMMISSIONER DAVIS: Now, in the past, have you had the opportunity to review Ameren's coal contracts?

MR. COFFMAN: I cannot say that I have reviewed their coal contracts that are relevant to this case.

COMMISSIONER DAVIS: You have --

MR. COFFMAN: In the past I have.

Commissioner DAVIS: In the past. And in the past when you did, were those contracts prudent?

MR. COFFMAN: I don't know that I can make that judgment.

COMMISSIONER DAVIS: So you just don't have an opinion?

MR. COFFMAN: No.

COMMISSIONER DAVIS: Do you think it's prudent for Ameren to own a section of railroad track?

MR. COFFMAN: Maybe.

COMMISSIONER DAVIS: Okay. Do you think it's prudent for Ameren to own their own rail cars?

MR. COFFMAN: It may or may not. I really don't have the expertise to say.

COMMISSIONER DAVIS: So if Ameren buys the fuel for those rail cars directly, you don't have an idea if that's prudent or not, do you?

MR. COFFMAN: No, I don't really don't feel confident stating an opinion on that. I don't have the sufficient background.

COMMISSIONER DAVIS: Well, then, I mean, how can you say that a fuel adjustment is inappropriate or that a 50/50 sharing mechanism is appropriate if you aren't qualified to speak about the underlying costs?

MR. COFFMAN: Because the fairest way I believe is to not have to dig down so deep into those details but rather put upon the utilities the risk that a normal business would have to manage those costs. I think when you don't have a fuel adjustment clause and you can set the rate at a certain level, I think it takes the pressure off the Commission for them to dig down as deeply because you are -- because it is the utility that has the incentive to drive down those costs. And by that, that is the most fair method I think that has been developed.

And my clients' recommendation in this case, which is a 50/50 sharing method, would be symmetrical and would benefit the utility either way and give them sufficient skin in the game to where they would have that incentive to make those decisions. We do not believe that only giving them 5 percent skin in the game is sufficient incentive.

COMMISSIONER DAVIS: Okay. So are you familiar with the nuclear fuel issue in this case?

MR. COFFMAN: Not in much detail.

COMMISSIONER DAVIS: Not in much detail. So --

MR. COFFMAN: It's not an issue that we planned on delving into in this case.

COMMISSIONER DAVIS: Isn't that convenient for you to -- doesn't that sort of assist you in the argument for the 50/50 split?

MR. COFFMAN: My clients don't have the resources that AmerenUE has and they don't have the ability to charge their rate case expense to another party.

COMMISSIONER DAVIS: Well, excuse me, but

how many members does AARP have in this state?
MR. COFFMAN: Several hundred thousand.
COMMISSIONER DAVIS: And don't they all pay dues?
MR. COFFMAN: I can't -- I don't make the decision about resource allocation.
COMMISSIONER DAVIS: Well, it's -- it's one thing to say you don't have the resources. It's another thing to say that your client is choosing not to allocate those resources.
MR. COFFMAN: That's correct.
COMMISSIONER DAVIS: So obviously, you know, AARP has a lot of priorities that include things that are going on the legislature right now, such as Medicaid, all sorts of other things, so I'm not --
MR. COFFMAN: If it was my preference, I would have a stable of witnesses.
COMMISSIONER DAVIS: So Mr. Coffman, let's say hypothetically speaking Ameren has bought and paid for some nuclear fuel, but that the fuel is not going to be to installed until the outage in June. Test year, true-up, end of January 31st. So what should we do with an $11 million expense for nuclear fuel?
MR. COFFMAN: Is your question whether that should be flowed through the fuel adjustment clause or not

or what level?

COMMISSIONER DAVIS: Because it's not -- because it's not in the test year, should we -- should we adopt your methodology and say you only get 50 percent of the 11 million?

MR. COFFMAN: No. My clients' recommendation is that 50 percent of fuel and purchased power costs should be covered in base rates. If, in fact, you have a fuel adjustment clause, 50 percent in base rates, 50 percent in fuel adjustment clause, not that the utility should only receive 50 percent of its costs.

COMMISSIONER DAVIS: Okay. All right.

MR. COFFMAN: 50 percent is treated one way and 50 percent is treated another way.

COMMISSIONER DAVIS: But won't that -- I mean, won't that lead to higher FAC charges, which is what drives customers sort of wild in the first place over the FACs is the fact that people don't like those big surcharges on their bills?

MR. COFFMAN: Our primary recommendation is discontinue the fuel adjustment clause altogether. That is our reference. Our alternative recommendation, if in fact you feel a need to continue the fuel adjustment clause, that you flow no more than 50 percent of those costs through the fuel adjustment clause, leaving

50 percent in the base rates, which would have the effect of mitigating the volatility.

If 100 percent of fuel and purchased power costs are in the fuel adjustment clause, that leads to greater volatility. If only 50 percent of the costs are flowed through in that manner, the ups and downs will be smaller.

COMMISSIONER DAVIS: Well, I'm going to have to go back and read some more, Mr. Coffman. I'm now thoroughly confused. But thank you.

JUDGE WOODRUFF: Thank you, Mr. Coffman. Opening for NRDC. For the Municipal Group.

MR. CURTIS: Judge Woodruff, Commissioners. I represent the Municipal Group. The Municipal Group consists of some cities, the city of O'Fallon, city of Universal City, Rock Hill, St. Ann and the St. Louis County Municipal League. The Municipal League represents approximately 95 of the 98 municipalities in St. Louis County.

You've not seen the Municipal Group or municipalities intervening in any previous AmerenUE rate case. I checked, and they simply have not been present. As a wise gentleman once observed, who is today sitting in the back of this room, in PSC rate cases, if you're not at the table, you're on the menu.

The municipalities are hurting as a group. Everybody obviously in these economic times are hurting, but municipalities especially with loss of their revenues and little give, little ways to cut in their budgets, but they have all been experiencing the same sorts of cost containment and budgetary cutting.

Streetlighting is a big portion of municipalities' budget. For instance, city of O'Fallon in St. Charles County spends about $950,000 annually just on streetlighting. University City spends about $850,000. You can spread that, you know, depending on the city size, all the way down the line. This has caught the municipalities' attention. They have not been concerned about this before. They are concerned now.

There are basically two tariff rates that apply to municipalities, the 5M rate and the 6M rate. The 5M rate is a rate that applies if the poles and fixtures are owned by AmerenUE. The 6M rate is a separate rate for energy and maintenance only which applies if the pole and fixture are customer owned or municipality owned. In most of these cases -- there are some municipalities that have, wisely Clayton is one, acquired their poles and fixtures in the past. Therefore, they pay a monthly rate per pole, per fixture for energy and maintenance of $2.78 under the 6M.

On the other hand, if the pole and fixtures are company, that is Ameren owned, the rate currently is $15.91 under the 5M rate. That's a big spread between energy and maintenance of $2.78 for municipality or customer owned poles and poles that are owned by AmerenUE. That's more than $13. The energy component of the energy and maintenance under the 6M rate is $1.35 per month. Again, wide gaps.

When the municipalities intervened in this case, we wanted to find out what kinds of cost of service studies had been done by AmerenUE or the Commission in any of these past cases regarding streetlighting. None have been conducted that we have been able to find through our discovery.

Streetlighting is a unique class of customer. It's off peak. Obviously it's at night. It differs from most other classes of customers, and yet there has never been a class cost of service study done for streetlighting. We were a little surprised by that. That is obviously one of the requests we're making in this rate case, that as applies to future rate cases, a specific class cost of service study be done so we can understand.

We think what's happened, obviously, with the municipalities not having intervened in the past cases, any rate increases have just been layered on proportionately to whatever the existing previous rates were for 5M and 6M. And so you just got this layering on with no particular reason for streetlighting having to bear the cost that everybody else is bearing. It is a fairly static, again off-peak service. Much of it is non-metered.

So we come to the Commission somewhat late obviously, but we do wish to make the municipals' position known. Municipalities are really all beginning to wake up to this. They came late. We were a late intervention, and we appreciate the Commission allowing the Municipal Group in. There were many others who because of the exigencies of meeting with board of aldermen, city council, getting through, getting the information, never really got the information in time. But they're all attuned very much to this issue now.

So we appreciate the Commission hearing. We'll probably have a little bit more when we get to our particular issue, which is really next Thursday and Friday under rate design and customer class of service issues. Those are the only issues we are concerned with. So thank you.

JUDGE WOODRUFF: Thank you, Mr. Curtis. We've now been going for over two hours. Although the clock on the wall still says 9:40, it's actually 10:40. We'll take a 15-minute break now. Actually, make it a 20-minute break. We'll come back at 11 o'clock with the remaining seven opening statements and then we'll go straight into Mr. Baxter's testimony.

(A BREAK WAS TAKEN.)

(EXHIBIT NOS. 100, 101, AND 200 THROUGH 227 WERE MARKED FOR IDENTIFICATION.)

JUDGE WOODRUFF: Welcome back from our short break, and we're ready to continue with further opening statements. Next on the list are the unions. I don't believe they were here today. We'll move down to KCPL. Move on to Charter.

MR. COMLEY: May it please the Commission? My name is Mark Comley, and I entered our appearance on behalf of Charter Communications, Inc. in this matter. Charter is appearing in this case and intervened to raise the issue of how it was being charged by Ameren for the power supplies it uses in the cable television industry. That issue has been resolved in the Nonunanimous Stipulation that was filed last week.

We filed testimony of one witness, Mr. Richard Stinneford. He is from Bethesda, Maryland, and the parties have waived cross-examination on Mr. Stinneford, but I thought I'd take the opportunity right now to perhaps poll the Commission or ask Judge Woodruff to poll the Commissioners to see whether or not it would be necessary for Mr. Stinneford to appear and take cross-examination from the Commissioners.

JUDGE WOODRUFF: I can ask the Commissioners who are here at the moment.

COMMISSIONER DAVIS: I vote no.

JUDGE WOODRUFF: No cross-examination.

COMMISSIONER GUNN: If the other parties have waived it, I'll be happy to do so.

JUDGE WOODRUFF: I suspect that's the case. If I hear from the other Commissioners who are not here that they do want to cross-examine, I'll let you know by the end of the day.

MR. COMLEY: All right. Thank you very much, Judge.

JUDGE WOODRUFF: Thank you. For Missouri Retailers.

MR. SCHWARZ: May it please the Commission? My client's interest is principally in the area of class cost of service and rate design, and I will save my opening on that subject for next week when the issue comes up. I do want, however, to comment briefly on one aspect of AmerenUE's opening statement specifically concerning the issue of return on equity.

The Commission has in front of it in this case or will have in front of it very shortly the testimony of a number of expert witnesses, all of whom employ economic or financial models to estimate what the market expectation for return on equity is, and they all employ essentially the same models with different, you know, should you compound it quarterly or semiannually or annually and that sort of thing, but basically it's the same.

As with any model or theory, whether it's in the social sciences or natural sciences, the way that you confirm what estimate is good, what estimate is better, is by direct observation; that is, you try to observe the phenomena and see which model or theory or which application of the same model or theory best approximates the observable phenomenon.

AmerenUE suggested in its opening that, as support for the estimates of the experts in this case, that you look to the decisions of other commissions on the subject, and I would suggest to you that those estimates are, if entitled to any weight, very slight weight.

That is, what probative value does the estimate of the Florida Commission on the market expectation for equity returns on Florida Power & Light have to do with whether a particular estimate based on criteria that are specific to AmerenUE in Missouri, how does that support a market estimate for Ameren? I would suggest to you it doesn't. The Florida -- the Pennsylvania Commission's estimate of the market expectation for Duquesne Power & Light return on equity has almost no connection whatsoever with what the real market expectation is for return on equity in AmerenUE's Missouri operations.

The best evidence, of course, would be direct observation of the market. Now, if you look at -- and I think the ValueLine will tell you, the percentage of investment in utilities that's made by institutional investors, that is pensions, mutual funds, insurance companies and the like, and for big electric companies it's on the order of 40 to 70 percent of those shares are owned by institutional investors.

And to my knowledge, in this case, there's only one witness that has provided any direct evidence from those kind of investors, and that's Staff witness David Murray who has provided you with direct observations from financial analysts who follow AmerenUE's stock and express to their clients, not AmerenUE, but to their investment clients, what their expectations are.

He also put in evidence of the MOSERS, the Missouri State Employees Retirement pension funds, what their expectations are for utility-type investments. And I would suggest to you that if you're looking for a support or objective criterion or balance for what's the best estimate of these various experts' application of essentially the same theory, that that's the kind of information you look for. And it's very difficult for non-investors to come up with that kind of information. I think it's long overdue that that kind of information is presented to you. I suspect that there may be other kinds of institutional investors' expectations that you can find.

If, for instance, the Teamsters pension funds or other states' pension funds have those kind of statements publicly available, I think it would be behoove you to encourage the witnesses who appear in front of you to provide you with that kind of information to bolster their particular analysis as opposed to the estimates of other state commissions for other specific individual utilities.

And with that, I have concluded my opening remarks. I'd be glad to entertain any questions this morning.

JUDGE WOODRUFF: Commissioner?

COMMISSIONER DAVIS: So, Mr. Schwarz, do we just trample over Hope and Bluefield?

MR. SCHWARZ: No, not at all. Not at all. The question is, how do you measure the market expectations for return on equity? And the fact that the Indiana Commission estimates that the market expectation for AEP is 11 percent is simply not very probative of what the market expects for AmerenUE. That is, it's not a direct observation. It also is an estimate.

And furthermore, it's less valuable to you than the estimate you have in this case because it's not tailored to the -- to the market expectation that you're looking for. If you wanted to know the boiling point of water, you wouldn't necessarily look at commentary. You'd do direct experimentation and observe the properties that were exhibited. If you want to know the distance between St. Louis and London, you directly measure it.

Now, it's -- it's more difficult, particularly in areas of the social sciences, but direct observation is still the best method for establishing or verifying the estimates of particular economic models. And you have some of that information available to you in this case, and I think you should find that probative.

COMMISSIONER DAVIS: According to your scientific method analogy, then, wouldn't you also check your results of those of your peers? Isn't that called peer review?

MR. SCHWARZ: Well, peer review, it's -- the peers are making the same estimates that you are. Both you and your peers should be checking your estimates off of something that's directly observable. And to the extent that the phenomenon that you're trying to observe is that of institutional investors' expectations for utility returns, the best source of that is those financial analysts' estimates that they advise their institutional clients on and the actual stated expectations of those institutional investors themselves.

So the witnesses in this case and it's -- I'm not a fact witness. I'm not -- you know, it's between, say, 8 and a half and 11 percent, something like that. So those are the -- those are the experts' estimates using essentially the same data that's, you know, that they crank into their models, but the check for the models, the check for which one of those estimates is best is -- the best way to gauge those is direct observation, and the direct observation that you have in this case as far as I know, and I haven't read everyone's completely, but the best evidence you have of that is the three or four examples that are provided in Mr. Murray's testimony.

COMMISSIONER DAVIS: Okay. So if Fidelity Investments, you've heard of them?

MR. SCHWARZ: Uh-huh.

COMMISSIONER DAVIS: If Fidelity Investments had a research report that said you should not invest in states, you should not invest in utilities that have vertically integrated utilities that don't have a fuel adjustment, would that be probative as well?

MR. SCHWARZ: It'd be -- it might be helpful. What would be more helpful would be the positions of the managers of the specific investment funds that Fidelity runs, the manager of Fidelity Magellan saying, I'm going to put 5 percent of my portfolio into utilities and I expect those utilities to return X.

It's the people that are putting the money down, it's the market itself that you want to -- and I certainly at this stage, you know, the credit rating agencies are basically worthless as far as I can tell. They haven't called anything very right in many years.

So, no, but I think that's -- I think that's better than saying, well, gee, the Georgia Commission gave Georgia Power & Light 10 percent or 7 percent or 12 percent. Yeah, I think it's -- I think it's more helpful in that regard.

COMMISSIONER DAVIS: And, you know, does MOSERS own any stock in Ameren?

MR. SCHWARZ: I have no idea, and I -- but again, I don't think it's necessarily important that they own it particularly in Ameren or KC -- I don't know what they call themselves now these days -- or Nicor or those sorts of things. I think it's their expectation of return on the utility sector that would be suitable. And the more specific you can get, the better, but I think that's the kind of thing you should be looking at.

COMMISSIONER DAVIS: Under that rationale, shouldn't we just be doing a company-specific DCF?

MR. SCHWARZ: I don't think so. I don't think necessarily so. I think that what you want to use the observable data for is simply a check on the results of the application of the economic models.

COMMISSIONER DAVIS: Okay. Well, in terms of observable data, I haven't looked at the numbers recently, but isn't Ameren trading at something like 75 percent of its book value?

MR. SCHWARZ: I have no idea.

COMMISSIONER DAVIS: Well, if that's true, then what does that say to you, Mr. Schwarz?

MR. SCHWARZ: Well, it doesn't say anything to me. What I'm interested in is, if the analyst says that he's expecting an 8 percent return or a 10 percent return, that's what interests me because that's what the -- all these models are designed to generate is estimates of the market expectation of a return on equity.

And, you know, the -- the market to book ratios, there are any number of things which may influence the experts in applying these models, but the proof of the pudding is what -- what does the -- do the participants in the market expect as a return on equity, and that kind of information even in little dribs and drabs is far more persuasive than a list of the returns on equities estimated by commissions for other companies in the last 24 months. I mean, that, you know, may be interesting for discussion at NARUC and MARC meetings, at legislative hearings, but as establishing what the market expectation is, I don't think it's very probative at all.

COMMISSIONER DAVIS: Okay. So if everybody writes research reports saying our expectation is 14 percent, is that what we should do?

MR. SCHWARZ: Well, I think that it's a check, because you're still setting it for AmerenUE. I think it's a check on on what the application of the theories to AmerenUE's situation is, but I think the -- that's the kind of information you should be looking, as opposed to other commissions' estimates of market expectations for other companies, which I think is -- I mean, is it irrelevant? Close.

COMMISSIONER DAVIS: And so you don't think that, hypothetically speaking, if no other company, no other vertically integrated company has received below a 10 this year or last year, and we go below 10, you don't think investors are going to view that negatively?

MR. SCHWARZ: I don't know. If their expectations are that the company earns between 8 and 9 percent, I would think they'd look at 9 and a half as a really good opportunity. What are the expectations in the market? Not what are the expectations at other commissions, not what is the expectation at EEI, not -- certainly not what is the expectation at Standard & Poor's and Moody's and Fitch's.

No. I think that the -- I think that the expectation you have to look at is, what are investors, and if you can -- if you can get direct, if you can get direct evidence of what those expectations are, that is the most probative.

COMMISSIONER DAVIS: Okay. But isn't that in a way a self-fulfilling prophecy? Because companies like SNL, Research Regulatory Associates rate commissions and say, you know, this commission's fair, this commission's better than average, this commission's worse than average. So we expect in Connecticut that, you know, UI or whatever their designation is is going to get an unfavorable outcome because, you know, of their commission. Then what, Mr. Schwarz? I mean --

MR. SCHWARZ: What's the connection? Is the Commission's concern it's the commission's rating? Is the Commission's concern that --

COMMISSIONER DAVIS: But you're telling me you're concerned with what these investors expect. Well, if the investors expect to get a bad outcome, then, you know, you're -- I mean, are you saying throw away the fundamentals? You're saying use that as a check and then make adjustments? What are you saying?

MR. SCHWARZ: RRA may not affect the people who are actually investing money. The people who are investing their funds may or may not say, well, gee, RRA doesn't like a particular commission's position, so we're going somewhere else. Investors are going to look at specific companies, specific opportunities. I think if they have some feeling that there's a regulatory problem, and it may not be the state regulatory problem. If there's --

COMMISSIONER DAVIS: Could be the legislature?

MR. SCHWARZ: It could be the legislature. It could be at the federal level. It could be is the company positioned badly with respect to generation or marketing facilities. There's a huge range of things.

And this Commission's action, you know, like the wings of a butterfly in Asia may affect a market once in a while, but the way you gauge what the market reaction is is by looking at the market, not by looking at RRA, not by looking at the Edison Institute, not by looking at all those other things.

The best evidence that you have in any particular case is the evidence, the direct evidence of what investor expectations are. And to the extent that Mr. Murray has given you some of that in this case, I would suggest to you that that's the most probative evidence.

COMMISSIONER DAVIS: Is it what investor inspections are or what the market actually does?

MR. SCHWARZ: It's investor expectations, I think. That is, the -- go back to Bluefield. Go back to Bluefield.

COMMISSIONER DAVIS: But I thought you just said that it was what the market actually does?

MR. SCHWARZ: Well, it's the -- it's the -- what the market does in setting its investment expectations, yes. That is, if I think I can get an 8 percent or 9 percent return from this utility, that's okay. If I think it's going to be 11 percent, that's better. If it's going to be 7 percent, that's worse.

I mean, the -- those judgments are made all the time, but the -- the exercise that all these experts are going through is what's the expected return on equity. And when you can find, you know, significant investors who are willing to stand up and say, I expect X, I think that's -- from this company, I think that's probably the best estimate that you have to confirm all of these applications of theory.

COMMISSIONER DAVIS: Okay. Now, just -- you made a couple of comments about the rating agencies. Okay. So would you agree that if a company got downgraded to junk bond status, that would be a serious event?

MR. SCHWARZ: I think that that would be a serious event, yes.

COMMISSIONER DAVIS: Okay. And so that would affect the cost of capital, would it not?

MR. SCHWARZ: Possibly.

COMMISSIONER DAVIS: Can you conceive of a scenario where a holding company being downgraded to junk bond status would not affect the cost of capital?

MR. SCHWARZ: I don't know. I'm not a fact witness on this issue. But I can tell you if I were a probate judge and a trustee came in and said, gee, I invested all my money in Enron because the rating agencies gave it a triple A rating, and I said, that's all the investigation you do, I would say, sir, I want to know all of your assets because you're going to be liable on the thing?

I don' think that the -- as far as actually gauging the risk or the merit of any particular debt issuance that they have very much credibility left with anybody at this stage. They certainly shouldn't. End of editorial.

COMMISSIONER DAVIS: But at the end of the editorial, are you going to be able to issue debt without them?

MR. SCHWARZ: I don't know. You may not be able to issue them to the institutional investors that typically buy them, but there are people that buy less than investment grade debt all the time. It's a question of cost.

COMMISSIONER DAVIS: And usually the cost is --

MR. SCHWARZ: Higher, yeah.

COMMISSIONER DAVIS: -- significantly higher?

All right. Thank you, Mr. Schwarz.

JUDGE WOODRUFF: Thank you. Any other questions? Thank you.

Next on the list is Missouri ACORN. I

don't believe they're here. Laclede?

MR. PENDERGAST: Thank you, your Honor. If it please the Commission?

Depending on what the evidence produces, we may take additional positions on other issues, but for now we've only taken a formal position on two. One of them is a rate design matter, and we've raised it in the prior cases and it's been satisfactorily resolve in the prior cases. It has to do with the relationship between the winter tail block rate and the summer block rate and maintaining that differential.

I think with the company's proposal to essentially increase all rate components on an equal percentage revenue basis as well as to agree to a study to look at the propriety of the winter tail block and its declining structure in the future, which I believe they indicated they would do in their testimony, that concern has been resolved for us, but we'll continue to monitor that issue.

The second one has been briefly addressed by several parties already, and that relates to how net salvage should be treated as a component of depreciation rates. This may be an issue that's familiar to one or two of you. We had a five-year process in the early part of the last decade to go ahead and address the very issue that's before you in this case.

Essentially comes down to whether in determining depreciation rates you should use the actual amount of net salvage that a utility is incurring in a given period of time or if you should make an allowance for the fact that those net salvage, costs which are the cost of basically removing plant from service, will increase in the future, and it's important to take those increased estimates and spread them ratably over the life of the property rather than just trying to recover them at the end where the property's already been extinguished.

After about five years, two appeals to the Circuit Court, one appeal to the Western District Court of Appeals, and at least two proceedings in front of the Commission here, the Commission concluded that the approach of using actual net salvage rather than the more traditional allowance was inappropriate, it was inconsistent with longstanding commission practice, it was inconsistent with Uniform System of Accounts, it was inconsistent with the academic literature, and was inconsistent with the practice followed by the vast majority of commissioners, commissions in other states.

Nothing's really changed since those determinations were made by the Commission. It's just as bad an idea today as it was then. And I'd really suggest to you that adopting that kind of mechanism would send really a gratuitous, unnecessary and unwarranted message to the investment community we've just been talking about that Missouri wishes to go ahead and take this vital component of cash recovery and the cash that's needed to support future investments and treat it in a different way than almost every other jurisdiction does.

And in contrast to a particular rate of return that may be established in a particular case, this is really a formula that you're talking about. It's talking about having an entirely different practice for determining this key element. And so I think it has even more weight with how it would go ahead and be viewed by the investment community.

So for those reasons, we think that you should go ahead and address this in a way that's consistent with the determination you made a number of years ago in a case involving Laclede, and I think Ameren also participated in that. Thank you very much.

JUDGE WOODRUFF: Thank you. Questions?

CHAIRMAN CLAYTON: Yeah. Mr. Pendergast, on the issue of the net salvage, the depreciation issue, I'm looking at Appendix A of the Staff's reconciliation filed. I've referenced it several times. Can you identify how many different entries on Appendix A relate to the net salvage issue?

MR. PENDERGAST: I really can't. That's beyond my limited capabilities. What I can tell you is my understanding is that when it comes to transmission and distribution, I think it's approximately a $35 million difference. I think there's also a difference on net salvage when it comes to some generating units. I'm not exactly sure what the dollar value of that is.

CHAIRMAN CLAYTON: Is it your understanding that Staff is reverting to the position that was taken in the Laclede case that you mentioned six years ago or whatever?

MR. PENDERGAST: No, Mr. Chairman, it's not. My understanding is that Staff is maintaining the traditional approach to depreciation.

CHAIRMAN CLAYTON: Which would be the accrual method versus the actual method?

MR. PENDERGAST: Yes. I think it was what the Commission had to say, and if I'm not mistaken, I believe that Staff has continued to go ahead and stay with that. It's the MIEC who has come forward in this case and I think proposed a reversion to the method that the Commission has now determined is not appropriate.

CHAIRMAN CLAYTON: Okay. Thank you.

MR. PENDERGAST: Thank you.

JUDGE WOODRUFF: All right. Thank you.

MR. PENDERGAST: Thank you.

JUDGE WOODRUFF: Last party on the list is MJMEUC.

MR. HEALY: May it please the Commission? We'd like to waive our opening at this time. Shortest for last. Thank you.

JUDGE WOODRUFF: All right. That's all the opening statements. The first item, first issue on the list is overview and policy. Before we do that, I just want to deal with one other matter. Mr. Mills, you had filed a motion last week suggesting that Mr. Lawton might be allowed to testify by video conference.

MR. MILLS: Actually, my motion was to allow him to testify by telephone. The Commission essentially turned me down and said we can do it by video conference instead. After getting the quotes on the cost of video conferencing late Friday, it turns out that it will probably cost more to do it that way than to have Mr. Lawton show up. I've instructed Mr. Lawton to show up.

JUDGE WOODRUFF: Thank you. Let's move on, then, to the overview and policy issue. Does anyone wish to make a mini opening on overview and policy?

MR. BYRNE: No, your Honor.

JUDGE WOODRUFF: Let's call Mr. Baxter to the stand. Good morning, Mr. Baxter.

THE WITNESS: Good morning.

JUDGE WOODRUFF: If you'd please raise your right hand, I'll swear you in.

(Witness sworn.)

JUDGE WOODRUFF: You may inquire.

MR. BYRNE: Thank you, your Honor.

WARNER BAXTER testified as follows:

DIRECT EXAMINATION BY MR. BYRNE:

Q. Mr. Baxter, could you please state your name for the record.

A. My name is Warner Baxter.

Q. And by whom are you employed, Mr. Baxter?

A. AmerenUE.

Q. And in what capacity are you employed?

A. I am the president and chief executive officer.

Q. And are you the same Warner Baxter who caused to be filed in this case direct testimony that has been marked as Exhibit No. 100 and rebuttal testimony that has been marked as Exhibit No. 101?

A. Yes.

Q. And do you have any corrections that you need to make to either of those pieces of testimony at this point?

A. No.

Q. And is the information contained in your prefiled testimony true and correct to the best of your knowledge and belief?

A. It is.

Q. Mr. Baxter, if I was to ask you the questions contained in that prefiled testimony here today when you're under oath, would your answers be the same?

A. They would be.

MR. BYRNE: Your Honor, I would offer Exhibit No. 100 and 101 and tender Mr. Baxter for cross-examination.

JUDGE WOODRUFF: Exhibits 100 and 101 have been offered. Any objections to their receipt?

MR. WILLIAMS: No objection.

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

(EXHIBIT NOS. 100 AND 101 WERE RECEIVED INTO EVIDENCE.)

JUDGE WOODRUFF: And for cross-examination, beginning with Laclede.

MR. PENDERGAST: No questions, your Honor.

JUDGE WOODRUFF: KCPL? MJMEUC?

MR. HEALY: No questions.

JUDGE WOODRUFF: Missouri Retailers? Mr. Schwarz left. Charter?

MR. COMLEY: No questions.

JUDGE WOODRUFF: The Municipal Group? ACORN, NRDC, DNR? They've gone. The unions. AARP? Not here. MEG?

MS. LANGENECKERT: No questions.

JUDGE WOODRUFF: MEUA? He's left also. Public Counsel?

MR. MILLS: Just very briefly.

CROSS-EXAMINATION BY MR. MILLS:

Q. Mr. Baxter, in your direct testimony at page 5, you split out the original $402 million rate increase request and state that it's approximately 227 million in net fuel and the remainder 175 in other operating expenses. Do you recall that testimony?

A. Yes, I do.

Q. Those numbers are no longer accurate, are they?

A. That's correct. It will be part of the true-up where all those numbers will be revised.

Q. Can you give us, if not an exact number, a sense of the breakdown between fuel and non-fuel of the current $320million?

A. Referring back to, I believe, the

attachment that Chairman Clayton was referring to, I know that at this stage the entire request is $320 million I know that that's still subject to true-up, and no, I do not know the specific breakdown between those. Perhaps Gary Weiss, who I think is going to be a witness later in the case, will be able to give you a better breakdown for us.

MR. MILLS: Okay. Thank you. No further questions.

JUDGE WOODRUFF: Cross-examination by Staff?

MR. WILLIAMS: Thank you, Judge.

CROSS-EXAMINATION BY MR. WILLIAMS:

Q. Good morning, Mr. Baxter.

A. Good morning. How are you?

Q I'm fine. My name's Nathan Williams. I have a few questions for you today on behalf of Staff.

Mr. Mills just asked you about the numbers on page 5, referring to the $402 million rate request that you originally had and the 227 million of fuel. Do you recall those? Do you recall that he asked you about that?

A. Yes.

Q. By increasing your revenue requirement to rebase your fuel costs that otherwise would have been reflected in adjustments to customer rates pursuant to

AmerenUE's fuel adjustment clause, will not AmerenUE recover those costs sooner than it would have recovered them through the fuel adjustment clause?

A. Yes.

Q. Will AmerenUE's customers see a decrease in the fuel adjustment clause charge on their bills due to the increase in revenue requirement AmerenUE proposes that is attributable to rebasing its net fuel cost?

A. Mr. Williams, you're asking me after the fuel costs have been rebased, is that your question, what will happen to future fuel costs, or are you asking me what will happen to customers' base rates as part of this case?

Q. I'm asking you what impact will there be on the fuel clause charge if rates are re -- if fuel costs are rebased in rates as you propose in this case?

A. Let me make sure if I answer your question. If we rebase our base rates, I'll say I'm not sure if they will actually run through the fuel cost. So, for instance, if that $227 million number is indeed the right number, I don't know if that would be part of the customers' base rates, and then prospectively any changes to net fuel costs either upwards or downwards will run through the fuel adjustment clause.

So I'm not sure if I -- I'm not sure if

that would actually reflect if the change in base rates would actually be part of the separate line item on the customer's bill. I don't know that, how that would actually run through on the customer's bill if that's your question.

Q. Let's make an assumption, then. Let's assume that the net base fuel costs are incorporated in what are called base rates, the permanent rates, and then there's a separate rate for the fuel adjustment clause, a separate charge, separate line item.

A. Yes.

Q. Do you understand that?

A. This is after the rates have been put into effect?

Q. Well, that's the way it works currently, right?

A. Yes. Uh-huh.

Q. If you changed that net base fuel cost, rebase your fuel costs into your permanent rates, you'll no longer collect that money through the fuel clause; is that not correct?

A. That's correct.

Q. So the amount of the customers' charges, assuming that costs have been going up, I mean, that's what you're asking, is that the increased costs be put into the permanent rates as opposed to the fuel charge, are you not?

A. We are.

Q. That will mean in the future that that fuel clause charge will be lower than it would have otherwise been, will it not, assuming that the fuel costs are moved into the permanent rates?

A. I don't know.

Q. Well, you're going to collect them one place or the other, aren't you?

A. Well, I'm sorry. I'm -- I'm obviously not understanding your question. So if we rebase the fuel costs and then what will happen post the rebasing of those fuel costs is that any change in net fuel prospectively had run through the fuel adjustment clause, and they can go either up or they can go down. And if you're asking me whether they will -- after we rebase those fuel costs, whether they'll go up or down, I don't know that answer if that's your question.

Q. I'm asking you about the -- you're changing the -- you're increasing the base amount, are you not?

A. Yes. That's what our proposal is.

Q. That's the proposal?

A. Yes.

Q. If the fuel costs that you're asking to be added in to the rebased amount from what's currently in there, if that is accurate as to your actual fuel cost, don't you have the effect of shifting collection through your fuel clause into collection through your permanent rates, setting aside the 95/5 sharing?

A. Well, setting aside -- and rate case, if we would have incurred those increases in net fuel costs, we would have ultimately run those through the existing fuel clause mechanism, assuming they would have been done -- well, yes. The simple answer is yes. We would have collected those monies under the fuel adjustment clause in a time period much later than we are collecting -- that we would seek to collect under the current rate case or by updating base rates, that is true.

Q. And if you're moving money that you would have collected under the fuel clause into your permanent rates, that will mean what you do collect under the fuel clause, that charge will be less than it would have had you not made that movement, will it not?

A. Yes.

Q. Now, if AmerenUE's proposal is adopted and your fuel costs are rebased, will AmerenUE's customers see a decrease in the fuel adjustment clause charge on their bills due to the increase in the revenue requirement AmerenUE proposes that's attributable to its rebasing its net fuel costs?

A. What period of time are you referring to?

Q. Let's say immediately after the rate case, as soon as new rates go into effect.

A. Mr. Williams, I think in terms of how the specifics would work post the rate case. I don't claim to be the expert in terms of exactly how that fuel clause will work. Perhaps Ms. Barnes or Mr. Weiss can answer you specifically how that would work post this mechanism or post the update to base rates, how that would actually work.

But I can predict exactly what will happen in the first true-up period or the second true-up or third true-up post the implementation of the current fuel adjustment clause in this case.

Q. Well, what about within the first 30 days after new rates are set if you got the rate increase you requested and the rebasing of the fuel costs, will that affect -- will that in and of itself have an impact on the amounts that are flowing through the fuel adjustment clause? There's a lag, is there not?

A. Yes. If you're asking me whether there's an adjustment that occurs within 30 days after the new base rates are put into place, it's my understanding that there are so many adjustment periods that we have, and I don't know if our recommendation is to be that first adjustment period will be within the first 30 days or not. I don't know.

Q. Well, aren't your accumulation periods at least three months, three or four months long?

A. Again, Mr. Williams, the specifics of how the fuel clause -- I know we have three, I believe three adjustment periods in any particular year. Whether they will come three months thereafter, again, I think that's why we have other witnesses who can probably address that better in terms of the detail than I'm able to. I apologize.

Q. I think you're saying you don't really know how to answer?

A. I think that's what I've been saying, refer to other witnesses. I think they'll better be able to answer those.

Q. On page 10 of your direct testimony you state, since 2006 we have made capital investments in our system that total approximately $2 billion. The true-up cutoff date in AmerenUE's last rate was September 30th, 2008. What is the dollar value of the capital investments AmerenUE has made in its system since September 30th of 2008?

A. I want to make sure I'm referring to -- so you're on page 10 of my direct testimony, lines 9 and 10, and I talk about since 2006 we've made $2 billion.

Q. Yes.

A. That's true. Since September 30th, I believe we've actually made investments into our system of approximately $650 million, gross investments into our system of 650 million since our last true-up period.

Q. On page 2 of your rebuttal testimony you state, AmerenUE has reduced its requested return on equity from 11.5 percent to 10.8 percent.

A. I'm sorry. Page 2 of my rebuttal?

Q. Yes. Do you see that?

A. Yes. That's correct.

Q. Is AmerenUE now seeking about $320 million as its rate increase in this case at this point in time?

A. As of -- as of the date of this attachment being prepared, that is the calculation that was established based upon the change in the ROE and the other changes that have been made as part of this partial Stipulation & Agreement.

That number, it is my understanding, will be updated through the agreements that the parties have made through January 31st. So that is not our final position. I would expect that number to be updated still.

Q. That is the number that you're currently at, roughly? And it may -- it be may change during true-up, and it may change as a result of further settlements in this case?

A. It's my understanding that that is the current number based upon the positions taken by the parties in the Partial Stipulation & Agreement and positions we've advocated in our testimony.

Q. Is AmerenUE proposing a phase in of that rate increase?

A. No.

Q. Why not?

A. We believe that the costs that we have incurred are not only prudent but necessary to recover those costs in a timely fashion so that we can make the necessary investments in our energy infrastructure on a timely basis, because cash flows are a big deal, and so that's part of the big issues in this case, at least to the cash flows that we can make in our -- have the cash flows necessary to make the investments in our energy infrastructure. So that's why we haven't proposed a phase-in plan.

Q. If a rate increase of that magnitude, $320 million, was phased in over, say, three years of roughly $100 million a year, wouldn't that give AmerenUE's retail customers an opportunity to adjust to the increase in their rates?

A. Yes.

Q. Are you familiar with Staff's complaint case from back in 2001, Case No. EC-2002-1, against AmerenUE?

A. What year are you referring to? Is it 2002?

Q. I believe it was a 2001 case.

A. Okay. I'm not familiar with the specific number, but I'm generally familiar with the cases that took place at that time. So perhaps ask me, maybe I'll have a better recollection.

Q. That case settled, did it not?

A. If you're referring to the case that settled in 2001, I don' t know if it was finalized in 2002, yes, there was a settlement at that point in time that I can recall.

Q. And wasn't there a -- wasn't a part of that settlement that AmerenUE would decrease its rates by $110 million over a period of three years?

A. Yes, I believe that's correct.

Q. And wasn't that done in a phase in of a rate reduction of $50 million in the first year followed by $30 million in the second and another $30 million in the third year?

A. Yeah. It is true that that rate reduction was phased in over three years, but it's also true that that was a stipulated agreement with all the parties in the case. So there are a host of issues that were contemplated during that time, and the parties came to an agreement --

MR. WILLIAMS: Judge, would you direct the witness to quit going on. He's answered the question, which is -- I just asked about an aspect of --

JUDGE WOODRUFF: I'll direct the witness to just answer the question that's asked, and if your counsel wants to ask you follow-up questions, he can do that.

THE WITNESS: Fine, your Honor. Thank you.

BY MR. WILLIAMS:

Q. Wasn't there another part of that agreement where Ameren committed to undertake commercially reasonable efforts to make energy infrastructure investments totaling 2.25 billion to 2.75 billion from January 1, 2002 through June 30th of 2006?

MR. BYRNE: Your Honor, I'm going to object on the grounds that provisions of a settled case in 2002 are irrelevant to the issues being addressed in this issue, in this case today.

JUDGE WOODRUFF: What is the relevance?

MR. WILLIAMS: Judge, AmerenUE's been

talking about the infrastructure investments it's made since 2006. I just want to flesh out a fuller picture about what AmerenUE's done prior to that.

JUDGE WOODRUFF: I'll overrule the objection.

THE WITNESS: I'm sorry. Could you ask the question again?

BY MR. WILLIAMS:

Q. Wasn't another part of that agreement that AmerenUE was to take commercially reasonable efforts to make energy infrastructure investments that totaled 2.25 to 2.75 billion between January 1 of 2002 and June 30th of 2006?

A. I honestly don't recall. I know that there was a provision in there for energy infrastructure investments, but I don't recall the specific numbers or the time periods.

Q. Was it between 2 and $3 billion?

A. I simply don't recall.

Q. Has AmerenUE ever filed a rate case seeking to lower its rates in the absence of a Staff audit or complaint where somebody asserted AmerenUE was earning more than its authorized rate of return?

A. Not that I recall.

Q. Before June of 2006, when was the last time

AmerenUE filed a general rate increase case?
A. Before 2006?
Q. Yes.
A. Mr. Williams, I don't -- I don't recall specifically. I know there were a host of settlements that took place during that -- during a period of time, and there was the alternative rate regulation plan which was going on during that time. So I don't know if you consider those general rate cases and settlements. I'm not sure the vernacular.
Q. I'm asking about rate increase cases, not cases where rates were reduced.
A. Prior to 2006, I don't recall the time that -- the last one we did prior to that honestly. I know we filed one in the '80s associated with Callaway, but I don't recall what we did -- I don't know what we did between that time with Callaway and when we filed a general rate increase case to 2006. I just don't recall.
Q. So the earliest rate increase that you're aware of by AmerenUE is in 2006? I mean, I was --
A. No. I said I do recall that there was a rate increase, I believe it was referred to maybe a little bit earlier, in the mid to late '80s associated with the Callaway case. I recall that. I know there were a host of regulatory proceedings between that case and ultimately

I guess in 2006. Whether any of those included a general rate increase filing by UE during that period of time, I just don't remember. I know there were a host of settlements, and I know there was an alternative rate regulation plan during that period of time, and that's what I recall.

Q. As president and chief executive officer and director of AmerenUE, don't you have a fiduciary duty to the shareholders of AmerenUE to maximize the value of AmerenUE?

A. Yes.

Q. Was AmerenUE incorporated in 1922?

A. I don't know.

Q. Do you know if AmerenUE has been through several financial crises?

A. Tell me what you mean by crises, please.

Q. Say the Depression in the 1930s.

A. That would be a crisis, sure.

Q. And didn't AmerenUE survive that crisis?

A. We did.

Q. Has AmerenUE made changes to the implementation of its preferred resource plan that it filed with this Commission?

A. I'm sorry. Could you repeat the question?

Q. Has AmerenUE made changes to the

implementation of its preferred resource plan that it filed with this Commission?

A. Mr. Williams, are you referring to our integrated resource plan?

Q. I believe parties typically refer to it as that, yes.

A. So that the -- the integrated resource plan we filed about a year, year and a half ago with this Commission?

Q. Yes.

A. Have we made changes to that? No, we have not made any changes that I'm aware of to that specific plan, but as you know, we're going through a process to update that plan and intend to file an updated integrated resource plan with the Commission, I believe it's early next year.

Q. Actually, my question wasn't whether you made changes to that plan, but whether you changed implementation of that plan.

A. I'm not aware of any specific changes that we have made to the implementation of that plan, but I don't pretend to know all, every detail to that specific plan.

Q. Has the cost effectiveness of the demand resource programs in that plan changed?

A. I don't know.
Q. Do you know if AmerenUE has any demand resource programs currently?
A. It's my understanding that we do have some.
Q. Do you know what they are?
A. I don't know the specifics of all of those.
Q. Do you know if AmerenUE's initiating any new demand response programs in the summer of this year?
A. I do not know the specifics, no.
Q. Do you know who would be the witness to ask about these programs and the plan?
A. There would probably be two witnesses who are still involved in the case that would be worth talking to. One would be Steve Kidwell, who I believe is filing testimony or is sponsoring the rate case expense issue, and another person might be Richard Mark, who's in charge of all of our customer operations, and he too could probably address the specifics of your questions.
Q. Given how you're responding, I think I'll leave further questions along those lines to them.
A. Great.
MR. WILLIAMS: Thank you.
THE WITNESS: Thank you.
JUDGE WOODRUFF: Cross-examination from MIEC?

MS. VUYLSTEKE: No questions. Thank you.

JUDGE WOODRUFF: Come up to the Bench for questions, then. Chairman Clayton.

CHAIRMAN CLAYTON: Thank you, Judge.

QUESTIONS BY CHAIRMAN CLAYTON:

Q. Good morning, Mr. Baxter.

A. Good morning, Chairman.

Q. I'll try to make this brief or as brief as possible. First of all I wanted to ask you, did you attend any of the local public hearings associated with this case?

A. Yes, I did.

Q. And as I recall, there were some 14 or 15 local public hearings held throughout Ameren's service territory. Out of those, how many would you say you attended?

A. I believe, Chairman, that there were 17, some of those probably because of the additional hearings. I personally attended eight of those. Of course, some of those were at the same time, so I wasn't able to attend all of them. And to those that I did not attend, I read either the transcripts of those hearings and I watched the hearings on the website here.

Q. Okay. That is somewhat different than the testimony I think in the last case where perhaps management had not been attending hearings. Am I characterizing that accurately from the last rate case, where there perhaps wasn't a concerted effort of attending or paying attention to the local public hearings testimony?

A. I think, Mr. Chairman, you may be referring certainly to maybe two cases ago where that was an issue. I believe at the last case, similar to what we did in this case, we had either the chief executive officer or a vice president at every one of those local public hearings to answer questions. Prior to that, in I guess it was the 2006 time period, frankly, those hearings were not as well attended by the officers, and we corrected that.

Q. Okay. Do you feel like attending the local public hearings, that there are benefits that could be taken from those hearings by management? Do you see them as worthwhile --

A. Absolutely.

Q. -- efforts?

A. Absolutely.

Q. What did you take -- from the at least 50 percent of the hearings that you attended personally, what did you take from the testimony that was received by the Commission at those hearings?

A. I think I -- well, I took several messages.

Certainly one is the message that has been brought forth here, is that obviously the economy's difficult on many of our customers, and so they are -- many of those customers who were at those hearings were either fixed or low income customers, and so they indeed were raising some of the issues associated with an increase.

What I also took from those hearings were that customers still believe reliability and recovery of storms are -- when storms happen, that we get out and get at it as quickly as possible, they still value that as very important. Customers also came forth and obviously raised some issues in terms of service or billing.

But by and large, when you look at the number of people who attended the hearings, and I know Mr. Wakeman filed testimony in this case of customers who had issues, by and large that percentage I think was relatively low. And so I think we are -- we are doing a good job in providing reliable service. I think customers want our energy, and obviously they raised issues associated with affordability.

Q. I don't disagree with your characterization of the testimony that came out of those local public hearings, especially with regard to the economy, with regarding -- with regard to the struggles that ratepayers, customers, that citizens in general are facing in a difficult economic climate.

I wanted to ask you, how do you think the Commission should accept that testimony and how do you think it should be applied as we make a decision in this case?

A. Commissioner, that's a good question. You know, Mr. Chairman, I think certainly those public hearings are for a purpose, and they're to give you and frankly me and my employees an opportunity to hear what the public concerns are. So to the extent that people raised issues those hearings, that should be a factor for you-all to consider in this case, as is the other points that were raised at those public hearings.

And so I would say that is a factor that should be reflected as well as all the other factors that you hear, not just at the public hearings, but certainly they're brought forth here in the sponsored testimony that we have and many of the other parties, including the need for energy infrastructure improvements, the need for reliability, the need to really invest. Those are all relevant factors I think you should consider.

Q. In my experience being on the Commission, I've been here six and a half, almost seven years, with every local public hearing that I attend, I learn something new. I learn something that the Commission can do better, whether it be something as basic as the facility that we use or whether it's accessible, whether we're communicating over the Internet, whether we're providing ample opportunity for question and answer. I always take something, even the smallest thing, in how we can do better.

I wanted to ask you, listening to the testimony, reading the testimony that you have in this case, and I appreciate the fact that AmerenUE is taking this testimony seriously, what did you take from the testimony that AmerenUE can do better as it provides service, communications to its customer and the rates that it charges to its customer?

A. Sure. Are you speaking, Mr. Chairman, about the testimony at the public hearings?

Q. Yes.

A. Okay. Thank you. Well, I'll tell you, one thing that I learned that I thought was very helpful for me and frankly all of our employees was probably the 30 to 45 minutes that we spent, and sometimes an hour, prior to the hearing answering customers' questions, because the business that we run, it's a complicated business. The business that you-all oversee, it's complicated, and customers are confused.

So one of the things that we learned was that we need to be even more proactive in communicating were our customers about the energy issues which they face and the energy issues which are coming down the road, because many of them simply, you know, they pick up the paper and they read snippets of it. They don't really know how it affects them.

So in those questions and answers we had a great opportunity to not just speak about this case but actually to speak about some of the broader energy issues. So we certainly learned that we have to figure out an even better way to communicate to them about energy issues, in many respects what's going on here today.

I think even in the testimony that was provided, customers really don't quite understand how rates are established in this state and the process, and so we can be -- we can be a participant in that as well. There's no doubt. This is not just a commission issue. This is a company issue. I think it's frankly an industry issue.

The other thing we certainly learned was that when we have an opportunity to meet with our customers, whether at the public hearings or even day to day, you know, customers appreciate that touch, and they appreciate the opportunity when we had people sitting out there at the tables and had people come in and answer questions.

And one of the things we may -- that I think we will do prospectively is not wait for a rate case to have the customers have the ability to come and have a kiosk to raise issues and things. We may find another opportunity to simply set up a -- go to a place throughout our service territory, say, hey, if you have questions, let's just talk about them. Maybe even provide a similar forum for questions and answers outside of the context of a rate case. I think that would be very helpful.

Q. In a general manner, just generally speaking, in listening to the testimony at local public hearings, do you think AmerenUE has the trust of its customers? Do think that customers that are served by AmerenUE trust the company and the decisions that they're making, or do you think there are problems in not just confusion but do you think there are concerns, legitimate concerns that customers may have about how AmerenUE operates?

A. You know, Commissioner, Mr. Chairman, I apologize, I think our customers do trust us. Obviously you have the testimony at the hearings, and people certainly have raised issues, and I think that we -- frankly, since that time we followed up with each of those customers, and I think those customers who were concerned before are -- may still have issues, but I feel that they know that they're being listened to.

I think secondly when we do other work with our customers outside of the public hearings and we -- we have customer satisfaction statistics that -- that show their interaction and their rating of our call center or their ratings of our linemen that are out there doing work, we actually receive scores that are in the 90th percentile in terms of customer satisfaction.

And so all of those things point to me that -- and our customers not only are satisfied but especially it gets to the point that I was referring to before. When we have the ability to interact directly with customers, by and large our customers are very pleased with what they see and what they do, and the issues that we face often are more areas of confusion.

Q. So if I were to ask the question, do you think there is room for improvement in -- in how Ameren interacts with its customers in establishing trust in the work that it does and because it is a -- it is a two-way relationship and they're relying on the company, would you disagree that there's room for improvement in how you answer?

A. If I meant -- if my answer suggested that we couldn't improve, that was not my intention. We absolutely can always improve. In fact, you know, one of the things, Mr. Chairman, we try to do, we want to become our customers' trusted energy advisor. That is one of the things that we focus on as a company is because -- because of the complexity, you know, we have a lot of employees within our organization who understand this business, who have the ability to -- to try and inform our customers as to what's going on. And can we do a better job at that? Absolutely. Are we doing a good job? Yes, I think by and large, but we absolutely can improve. We're not at the pinnacle yet.

Q. Do you have any suggestion for me why when the Commission visits service territories that are served by Ameren, generally speaking, why there are more customers that perhaps attend those local public hearings to provide testimony than perhaps, generally speaking, we see in other service territories? Do you have an explanation for that? Or you may disagree with it, too.

A. Mr. Chairman, I don't know how many folks attend the other local public hearings. I do know that in connection with these hearings, there was a group who -- who was actively speaking to customers in the form of either letters or robo calls and these other types of things and -- and -- and as I even put in my testimony, I suspect that that had some impact. I don't know to what extent.

So beyond that, I think the other thing is we are the largest energy provider in the state, and I think consequently we have several more people that we touch, and so on average it would make sense that you would see more people at our hearings than perhaps others, but I really can't offer much more than that.

CHAIRMAN CLAYTON: Thank you very much for being here.

THE WITNESS: Thank you, Mr. Chairman.

JUDGE WOODRUFF: Commissioner Davis, do you have any questions?

QUESTIONS BY COMMISSIONER DAVIS:

Q. Sure. Good morning, Mr. Baxter.

A. Good morning, Commissioner.

Q. Ms. Vuylsteke, can we go back to your previous slide? Do you have that available?

MS. VUYLSTEKE: Sure. I'll have to -- I'm afraid I have to get in the way of Mr. Baxter for a second.

BY COMMISSIONER DAVIS:

Q. Okay. Now, Mr. Baxter, this is my mental impression from looking at that chart there, is that there was an earnings complaint filed in late 2001, that it was settled sometime there in 2002. There was agreement by

all the signatory parties that Ameren was going to reduce rates over three years. I think there was a one-time $40 million credit; is that correct?
A. Yes, I believe generally that's correct.
Q. Okay. And it was also part of that agreement that those signatory parties, the Staff, MIEC, all these other parties agreed that they weren't going to file any earnings complaints against AmerenUE until, what was it, late 2005 or early 2006? I don't remember the exact date.
A. Commissioner, I know there was a period where the rates were -- were -- frozen is not the right word because we had rates going down over those years, but that there would not be another rate case that would be filed.
Q. There wouldn't be another rate case or an earnings complaint, correct?
A. I believe that's correct.
Q. Now, there was nothing in that stipulation about -- there was nothing in that stipulation -- not asking about any negotiations, but just the stipulation itself, to the best of your recollection, there was no amount of money required or that the company was required to spend on plant maintenance, vegetation management, those issues?

A. Commissioner, to the best of my recollection, I don't remember anything like that.

Q. Okay. Now, are you familiar with Mr. Birk's testimony?

A. Yes.

Q. Okay. You tell me if I've got this right or wrong. I mean, my impression from Mr. Birk's testimony is that in 2003, right after the rate case settlement, maybe a few months later, AmerenUE management made a decision to lengthen the period of time between scheduled outages. Do you agree with that?

A. Yes.

Q. Okay. Now, at the same time, there's this -- looking at that schedule there, there's a gap between the earnings complaint case that was filed in 2002 and the -- the electric rate case that was filed in 2006, July 2006. So, I mean, roughly you're talking about a four-year gap there, and is it -- is it fair to say that, during that period of time, AmerenUE lengthened the term of the scheduled outages in order to maximize profit over that period and stay out of the Commission?

A. Commissioner, I think that Mark Birk would be best served to answer the question, but I believe that what Mr. Birk has stated is that we felt that was the prudent operating practice for us to do that with the outages, but I don't recall the specifics.

Q. Okay. Now, let's fast forward now. So am I getting the right impression from Mr. Birk's testimony that they are now going back to the scheduled maintenance on the name plate capacity or whatever, and so that there are going to be more frequent outages for scheduled maintenance that is more in line with the, you know, original manufacturing specs, whatever you call them, as opposed to this methodology that was sort of -- that was adopted in '03 where you were going to have fewer scheduled maintenance outages?

A. Commissioner, I know Mr. Birk is going to be available for testimony later today. You'd probably be better served to talk to him about the specifics of that plan.

Q. So --

A. I can say we do know that there will be more scheduled outages. In fact, in 2010 we are having those. As we speak, we're in the middle of a meaningful outage at our Rush Island plant. I know we have outages scheduled obviously in the near future for our Sioux as we bring the scrubber online, and I know we have other outages that is part of the issue that we're dealing with in this particular rate case.

Q. Okay. You're aware that AmerenUE has asked for a higher amount, roughly $14 million more than the MIEC has recommended for scheduled coal plant maintenance and roughly 17, 18 million more than what the Staff is recommending?

A. Yes.

Q. Okay. If this Commission were to decide in AmerenUE's favor on that issue, is AmerenUE willing to commit to perform all of the scheduled maintenance that's in its budget for 2010 and 2011?

A. Well, Commissioner, the simple answer is we plan to execute our plan, and we believe that's the prudent course of action. To say that it -- what I can't predict is what may happen in -- in the economy or other things that would -- that could implicate what we would plan to do.

So it's hard for me to say I will commit, but I will say this. We absolutely believe that is the right thing to do. We believe it's the prudent thing to do, and that is absolutely what's in our plan to do for both 2010 and '11. And Mr. Birk can even speak to that -- speak to beyond that.

Q. Okay. Going back to the fuel adjustment issue, is it fair to say that a significant portion of AmerenUE's fuel expenses are hedged with -- and that most of those expenses are on some sort of schedule to escalate?

A. So Commissioner, are you referring to 2010 or are you referring to a longer period?

Q. Well, like the coal contracts. I mean, it's been my impression based on the past rate cases that AmerenUE hedges its coal several years in advance.

A. That's correct.

Q. And that those coal contracts have escalator clauses in them where something, more at the discretion of the coal company, Arch, Peabody, whoever, as opposed to Ameren as to how much that clause goes up, 2, 3, 4 percent. Is that a fair assumption?

A. Commissioner, so let me try and be a little more specific.

Q. Okay.

A. Let's talk about 2010.

Q. Okay.

A. There -- there is no doubt that our fuel costs are going up, and it's basically coal and related transportation.

Q. Right.

A. By and large because we implemented our hedging practices a year ago, we were for all practical purposes 100 percent hedged for 2010. And the components in those contracts are causing both our coal and related transportation costs to go up, but also our nuclear fuel costs, and you look at the broader picture, it -- all aspects of our costs are going up.

Q. And what percentage of your fuel costs are hedged for 2011?

A. Commissioner, I don't know that specifically in its entirety. I can generally say that -- and we can get that answer for you either by -- either Mr. Weiss or Mr. Neff, frankly, I believe is going to be a part of this case and he can answer explicitly.

But generally speaking, each year as you go out, you do not have 100 percent hedge. We may only have 80 to 100 percent hedge and the next year 60 to 80 percent, generally speaking, for the coal related piece of that.

The transportation piece, the contracts that we have with the rails, they sometimes are multi-year contracts that may not mimic exactly the -- the hedging percentages for coal, as an example.

Q. So is it your best -- best estimate that you've probably got more than 80 percent of 2011 hedged?

A. Commissioner, I don't know specifically. I know that it is somewhere north of 50, and it's probably somewhere between 50 and 90 percent, but specifically, it's probably closer to 80. That would be my guess.

Q. Okay. And is it your impression that those costs are going to be higher than they are as of your January 31 true-up date?

A. It is my understanding as they relate to coal and transportation, they are indeed rising.

Q. I would assume that -- that purchased power and off-system sales would be the other major component of a fuel adjustment?

A. Yes. We've spoken about coal. We've talked about transportation, gas just a little bit. The nuclear we spoke to. And then you're right, it would be purchased power and off-system sales.

Q. Right. And just in general, is it -- is AmerenUE's load still growing? Is it flat? Is it --

A. Well, you know, I think -- Commissioner, you have to look at what's happened here in the last year. I would say that our load did not grow in 2009. In fact, it went down meaningfully because of many of the economic issues that we've spoken about.

Now, prospectively it's going to be contingent upon the economy. We do expect over time that the economy will get better and so consequently we would expect growth. So what we don't know about all that either is energy efficiency, of course, and how that too could impact our overall growth pattern.

So it's a little bit uncertain, but we're coming off a very low 2009 base. If you rebase your -- your customer numbers, your energy usage, over time we would expect from that very low base that you would expect to see some level of growth, but -- but it would not be particularly robust necessarily.

Q. Okay. But -- so if we have a fuel adjustment clause in place and the economy does pick up and you do experience robust off-system sales, that would be -- that would be picked up, wouldn't it?

A. Absolutely. Absolutely. Absolutely.

Q. Do you meet with investors?

A. Yes.

Q. Frequently?

A. Not as frequently as I used to, but I do occasionally meet with them in my new role, yes.

Q. When did you take over your new role?

A. It was May 1st of 2009.

Q. Okay. And prior to that, you were CFO?

A. That's correct, of all of Ameren.

Q. Of all of Ameren?

A. Yes.

Q. And in that capacity you met with investors very frequently?

A. Yes.

Q. And how long were you CFO?
A. I was chief financial officer from 2001 until -- until just last year, so approximately eight years.
Q. Well, thinking back, the period from say 2005 through 2009, do you have a mental impression of what fuel adjustment means to investors?
A. Yes. It means a great deal to investors. It means a great deal to the company. I mean, the fact of the matter is that -- is that investors recognize the volatility associated with fuel costs and they recognize the volatility in particular in our case with power prices and consequently off-system sales.
And so to investors, that is a significant issue and a significant risk, whereby approximately 90 percent of all other utilities have a fuel adjustment clause, which is obviously one that most of them have where it's 100 percent pass through, not even the 95/5 that they propose in this case. And so it is -- it is absolutely critical from an investor's perspective, and I'm not just talking about shareholders. I'm talking about bondholders as well, because they -- they are the ones who provide the critical source of capital that we need to invest in our energy infrastructure.
And so it is -- it is absolutely critical,

and, in fact, when this Commission just over a year ago today made the determination to implement a fuel adjustment clause, almost universally it was applauded by investors, by rating agencies, by bond investors, because they saw that Missouri was moving towards the mainstream in terms of regulation, associated not just with that but just broadly.

Q. Do you recall ever being told by investors that they would not invest in Missouri utilities as long as Missouri didn't have a fuel adjustment clause on the books?

A. Commissioner, I don't know if a specific investor said that, but that was always an issue that we were asked time and time again about, and it was a big concern for investors.

COMMISSIONER DAVIS: I have no further questions.

JUDGE WOODRUFF: Commissioner Gunn?

COMMISSIONER GUNN: I just have a few.

QUESTIONS BY COMMISSIONER GUNN:

Q. I know you weren't the primary person to file testimony on the low income issue, but you mentioned it in your testimony. So if you can answer these questions, great. If not, we can --

A. I will do the best I can.

Q. I appreciate that. For Dollar More, do you know what the total yearly amount that's in that pool of money, not necessarily that's paid out but that's made available to -- to consumers?

A. In total, no, Commissioner, I do not know in total because the Dollar More program is one that is also funded by the company, but it's also funded by our customers, employees, and it's in excess of a million dollars from what I recall, but I don't recall the specifics. Mr. Mark certainly would be able to give you the exact details on that.

Q. Do you know in terms of either percentages or actual real dollars what the company contribution is to that?

A. It's my understanding that we match dollar for dollar that the -- the contributions which come in and maybe even put more monies in excess of that, but I don't know the specifics.

Q. And I just want to quickly move on to the Clean Slate program. And -- and as I understand it, that was basically an amnesty program where people that have large amounts of -- or that had past debt that was piled up, that was forgiven by the company?

A. Yes. The Clean Slate program was a $3 million program whereby we identified low income, elderly, handicapped individuals. I shouldn't say we identified. We worked with agencies who identified these individuals, and basically the program was they identified these individuals who qualified and for all practical purposes wiped their slate clean. That's why it was called Clean Slate. It was a fresh start. Their bills were paid by monies that we provided, which were not ratepayer monies. They were shareholder monies. And so if you want to call that an amnesty program, but it -- a fresh start is what I would call it.

Q. So the $3 million came from shareholders?

A. Yes.

Q. Did you wrap any of that money into any bad debt requests for rates?

A. No.

Q. In the absence of that program, would that -- would those debts have been farmed out to collection agencies and things like that to try to recover?

A. You know, Commissioner, I don't know because often what happens when customers are having problems, and we said this several times in public hearings, that if customers have a problem, you know, we want them to call us and we work frankly with them and have payment schedules. That may actually be outside of the norm. So I wouldn't automatically assume that those who were part of Clean Slate were immune and would be turned over to bad debt collection. That would not be true.

Q. And do you know on those payment schedules, if they were given Clean Slate, would that actually lead to a reduction in their monthly -- monthly payment or were the -- were the customers that you targeted not the ones that were on the payment plans? Were they more the ones that were kind of at this point beyond the reach of the payment plan?

A. Honestly, I don't know. And again, those customers were identified by the agencies. So I'm not sure if the agencies really used a criteria whether they had a payment plan or not. My sense is that they probably didn't. So I wouldn't know that.

COMMISSIONER GUNN: Okay. I don't have any further questions. Thank you.

JUDGE WOODRUFF: Commissioner Kenney.

QUESTIONS BY COMMISSIONER KENNEY:

Q. Mr. Baxter, good afternoon now.

A. It is afternoon, yes. Yes. It got us on the interim rates hearing before, too.

Q. Thank you. There's a general theme that I've heard in the openings and it's in Ameren's position statement and today also you said that these monies are needed to make needed investments in energy infrastructure. And in the position statement there was a comment that certain needed investments or certain projects were put on hold because of the financial climate.

Are you able to identify some specific worthwhile investments that Ameren was unable to make or did not make because of the financial climate?

A. Sure. And maybe I can break it down, Commissioner, into sort of two buckets. One would be changes that we made in 2009 and then -- which are approximately $100 million, and then there's a bucket that I would say that's the billion dollars, I think, that Mr. Lowery referred to over the next four years because we made changes to our original 2009 five-year plan.

So for 2009, things that we did do, obviously we controlled our labor costs, and we implemented a voluntary and in part an involuntary separation program.

In terms of projects, one of the things that we did was that we suspended our undergrounding program. That was part of that 2009 and then obviously carry over beyond that. We also made reductions in some of our expenditures in our power plants. We moved some of the work that was done either during maintenance outage or actually moved some of the maintenance outages around in part. Mr. Birk, who will be here later, can probably tell you some of the more specifics.

If you think about some of the reliability projects, and maybe not just with 2009, but then stepping into 2010 through '14, not only did we suspend the undergrounding program, but we also moved projects out, deferred projects that some would call Smart Grid type of projects. We had some of the automated switches and those types of things that we have moved some of those expenditures around.

Things like spare transformers, things like mobile substations. We have, Commissioner, a mobile substation that's on a big truck, for all practical purposes, and if we have a major storm and a substation gets taken out, we have spares. We have some of these mobile substations that we'll try and help restore customer service in a more timely fashion.

We also took a look at some of our environmental expenditures and indeed deferred some of the work that we're doing in some of the environmental expenditures because we have some level of flexibility associated with that still.

And then we also -- obviously the labor

costs that I referred to before, the benefits of those labor cost reductions that took place at the end of the year are certainly going to be reflected in the future and indeed are reflective of -- in this particular case. I think Chairman Clayton asked how some of the costs had changed from where we had filed before and where they're at today. Certainly one of them is about $10 million related to reduced labor costs that we had as part of that voluntary plan.

So those are some of the examples that all sum totaled over four years total approximately a billion dollars.

Q. And those projects that are deferred, they will eventually come back online or they will eventually be undertaken?

A. Well, Commissioner, I think in large part that is certainly what we want to do, but it really gets to the issue that was addressed in the opening statement by Mr. Lowery and the issues which are really before this Commission right now, and it relates to the ability to do those projects is directly related to our ability to have the cash flows to be able to do those projects.

And that is why when we look at some of the proposals that are being made by the parties in this case, that one of the significant issues that results from an

ROE which is among the lowest 10 percent in the country, depreciation which is among the lowest 10 percent in the country and power plant maintenance costs which we expect and incur and are disallowed, those numbers for those issues for all the parties are in excess of $100 million.

And so our ability to put those projects back on schedule is going to be directly related to having the cash flows that we need to invest in our energy infrastructure to do those good projects. And so the answer to your question is, that is what we want to do, we have a plan to do that, but that's why I raise the issue in my testimony as to why I have the concerns over the aggressive positions being taken by the parties in this case.

Q. Which is a good segue to my next question. Ameren's asking for the continuation of certain trackers and the addition of an additional tracker. Would you agree with me that the trackers, the purpose of trackers is to reduce risk, in part?

A. Yes, certainly in part, and really to take steps to reduce the excessive regulatory lag that we're facing today. They are clearly designed to do that, whether it be the fuel adjustment clause, vegetation management, the OPEB, the storm tracker.

Q. Storm tracker?

A. Yes.
Q. And if the -- the purpose of certain ROEs is to compensate the investors for the use of their money?
A. Yes.
Q. And the amount or the percentage of that ROE is greater if there's greater risk and it's lower if there's lower risk, generally speaking?
A. I'm sorry. I was trying to follow. So Commissioner, you're saying the lower the risk of the enterprise, that generally has a downward pressure on return on equity versus the higher the risk the enterprise, is that what you're saying?
Q. As you a general practice.
A. As a general proposition, that is true. Of course, the trackers and all those other things are just one factor that are considered in that.
Q. And if the Commission were to grant Ameren all the trackers, all flow through mechanisms that it asks for, why then shouldn't there be a concomitant reduction in the ROE?
A. Well, you know, I think, Commissioner, certainly when you look at the implementation and if the Commission approves all those trackers, I think that's certainly a relevant factor.
I think, too -- of course, our witness

Dr. Morin, when he filed his testimony, he factored those considerations into his recommendation, and so -- so there are a lot of things that go into the determination of ROE, including --

Q. He still came with up 11 and a half percent.

A. And he revised it to 10.8. So where we're at today is at 10.8.

Q. 10.8 is presuming and takes into account the reduced risk associated with these various trackers?

A. Yes. Because I think, Commissioner -- and Dr. Morin is certainly the best person to ask, but I think one of the things that when you look at risk, is certainly those trackers that we have, they're very helpful, to be clear.

But as I said during my interim rates testimony, the framework in Missouri also does not have a lot of other important aspects to it, which results in the excessive regulatory lag that Mr. Lowery showed up there in terms of not just the allowed ROE but the negative free cash flows. So when you have the compendium of those things and we don't have either the ability to have CWIP in rate base, the ability to update our rates for items we put in service between rate cases, historical costs versus projected, I guess my point to all those things, those are all factors.

Q. And I remember we had similar discussions during the hearing on the interim rates, and I'll ask the same question again. Doesn't that risk, isn't that a positive part of the regulatory framework that forces the utility to manage its -- manage the enterprise in a more aggressive fashion? And I guess the secondary part of that is, doesn't the removal of that risk encourage additional risk taking?

A. Well, let me try and respond to that in two ways, Commissioner. No. 1, you know, some level of regulatory lag, as I even put in my testimony on interim rates, does provide incentives. But the issue that we're dealing with is excessive regulatory lag, and it's the excessive regulatory lag that has all those negative policy implications that we talked about, including the -- really the disincentive to make new investments, as well as in this particular situation the challenges to make our existing investment.

So we accept some level of regulatory lag, and frankly, we accept some level -- well, we accept the need to efficiently run our operations. I know Mr. Mills I think raised this issue. No one, to my understanding, has raised a prudency issue on our operations or any of our investments in this case or, frankly, I don't recall, it's been several cases, because I think we do a good job.

But we accept the need to be incented, and some level of regulatory lag is good, but excessive is the problem that we're trying to deal with.

COMMISSIONER KENNEY: Thank you.

THE WITNESS: Thank you, Commissioner.

JUDGE WOODRUFF: Any party wish to recross based on those questions from the Bench? I'm sorry.

COMMISSIONER DAVIS: I wonder if I can ask Mr. Baxter just a couple more questions.

JUDGE WOODRUFF: Sure.

FURTHER QUESTIONS BY COMMISSIONER DAVIS:

Q. Mr. Baxter, you mentioned CWIP and several other things with Commissioner Kenney. Obviously utilities that are in one of the approximately 17 states that have restructured, like Illinois, they really don't have to worry about managing a fleet of power plants or price volatility in terms of fuel or anything. The power cost is an element of the bill that someone else is responsible for; is that a fair statement?

A. I think it's an absolutely fair statement in terms of distribution company who does not have the risks of managing generation, the risk of procuring all the things that you and I just spoke about before. But in our particular case, we have a nuclear power plant, and that, too, obviously raises the risk much more significantly compared to other distribution companies who do not have that.

Q. All right. And amongst the states that haven't restructured, there are, say, a handful that I'm aware of like Wisconsin that have a future test year?

A. That's correct.

Q. And obviously you -- AmerenUE's rates and all rates in Missouri are based on historical test years?

A. That's correct.

Q. So obviously that's a -- you know, all things being equal, if you're looking at a utility in Wisconsin and you're looking at a utility in Missouri, then, you know, if rates are going to be based on a future test year with a true-up, it's obviously more attractive to go to invest money in a Wisconsin utility than it is to invest in a Missouri utility?

A. Yes.

Q. Is it fair to say that a number of these other states have more trackers, more surcharges than Missouri?

A. Yes. In fact, there's a distinction between a tracker and a rider. Let me make sure I get the terminology. A tracker is, for lack of a better term, an accounting. Right? You get what's established in base rates, and then any difference from that you basically reflect on your books, but you don't get the cash flows associated. Of course, it goes both ways.

Many states have rider mechanisms, surcharges, maybe that's what you were referring to, for a host of things, and they are -- they work very similarly to a fuel adjustment clause, but they're for a number of different things. In fact, even in this state we have some of those types of things for infrastructure investment for the utilities in the state.

Q. Other than the fact that Hope and Bluefield require us to give you a fair opportunity to earn a return on equity, commensurate with other like endeavors in your field, are there any other reasons why a return on equity commensurate with your peers might be a good idea or a return on equity significantly lower than that of your peers would be a really bad idea?

A. Well, the simple answer is gentlemen. I think there are at least a couple. One, if you -- so, for instance, if you look at the returns on equity which are being proposed in this case, all of them are below the 10th percentile compared to the other allowed ROEs by others in the state. I know Mr. Schwarz was raising this issue before, but to -- we can say that this is a big technical exercise, but investors look to that, and that matters to them.

And we have to compete with other utilities for the cost of capital, not just within the domestic, but also, frankly, around the world. So to the extent that this -- if a decision is made to render an ROE which is meaningfully outside the mainstream, that will at a minimum impact our overall credit quality and perhaps our credit ratings because cash flows would be so significantly impacted. That will cause our overall cost of capital to rise, our borrowing costs to rise and, therefore, in the long term, costs to our customers to rise. That's sort of the financial piece.

The other piece gets to, I think, the issue I was speaking to with Commissioner Kenney, is that you need cash. This is as much about having the necessary cash to invest in the energy infrastructure consistent with our customers' expectations and consistent with sound energy policy. And investors are trying to figure out the best place to put their cash, and we want them to put their cash in the state of Missouri so we can make the necessary investment. That's what we want to do, and a mainstream ROE is critical to our ability to do that.

Q. As the former CFO of the entire Ameren system, do you think that the Ameren Holding Company can issue any more stock at $25 a share?

A. At a level so far below book value, the simple answer is yes, but it is destroying value to the overall enterprise when you do that.

Q. Very good. At some point you'll get sued, won't you?

A. Well, I won't predict exactly how the --

MR. BYRNE: I'll object. I hate to object to a Commissioner question, but that calls for a legal conclusion.

THE WITNESS: That is a legal determination. Thank you.

BY COMMISSIONER DAVIS:

Q. Right. But certainly -- certainly if you were to continue that practice, it would -- it would make you -- it would make you suspect, wouldn't it?

A. Well, certainly, Commissioner, the issuance of common stock isn't sort of in the purview of this CEO, but certainly to the extent that you issue common stock that is below book value, you're ultimately destroying value of the enterprise as a whole. You are diluting the shareholders' interests.

Q. And is it fair to say that after Ameren reduced its dividends, that the share price of the stock automatically repriced to reflect a multiple of the dividend?

A. I will say that the share price fell significantly, and certainly it was due in part for shareholders to reprice what they felt was a fair return on their dividend.

COMMISSIONER DAVIS: No further questions, Judge.

JUDGE WOODRUFF: All right. Any party wish to recross based on those questions from the Bench? I see Public Counsel and Staff. We'll start with Public Counsel.

RECROSS-EXAMINATION BY MR. MILLS:

Q. Mr. Baxter, in response to some questions from Chairman Clayton about some of the takeaways that you took from the public hearings, you said, and I think you said this a couple of times, you can always improve. Do you recall making that statement?

A. Yes.

Q. What had been your year over year productivity gains for the last five years?

A. Mr. Mills, how do you measure productivity?

Q. Well, in terms of cost per unit output.

A. Are you referring to our distribution system? Are you referring to our --

Q. System-wide. Amerenue-wide, not Ameren Holding Company.

A. I don't know the specific number. I can simply say that our results in our generating plants are in the top 25 percent in terms of equivalent availability. I can say that. I can say that our reliability in terms of frequency of outages are within the top 25 percent the end of 2009. That was a meaningful improvement. I can say that we've taken costs out of our business over the last couple years.

In terms of a unit of output, I don't know the specific number or what that number is.

Q. Now, when you say you've taken costs out of your business, have not your rates been going up constantly over the last three years?

A. Yes.

Q. Now, do you acknowledge that the economy is bad for your customers?

A. Yes.

Q. Do you have plans to file another rate case before the economy improves?

A. Well, Mr. Mills, when do you think the economy's going to improve?

Q. Let me ask it a different way. When do you plan to file your next rate case?

A. I would expect to file another electric rate case potentially in 2010.

Q. And you expect the rates to be effective in this case in approximately the end of June 2010; is that correct?

A. That's correct.

Q. So sometime between when the rates go into effect in this case and the end of the year, you expect to file another rate case?

A. That's certainly a possibility.

Q. I think you said in response to some other questions that you have a plan and you plan to execute against the plan unless things change. Do you recall that?

A. I believe the question that you're referring to or the discussion was associated with our power plant maintenance.

Q. Exactly.

A. Okay. Yes. If that's what you're referring to, yes.

Q. Do you have a similar plan in terms of filing a rate case?

A. Yes.

Q. And is it your plan to file a rate case in 2010?

A. Yes, as I said before, it is my expectation that we would file sometime before the end of 2010.

Q. I think your more recent answer, you said it's a possibility. I wanted to know if it was a plan.

A. Our plan at this time is to file another rate case before the end of 2010.

Q. Will the outcome of this case in terms of whether it's closer to the $89 million end of the range or the $320 million end of the range impact that decision?

A. Yes.

Q. So if the PSC gives you 320 million or something close to it, you may not file this year?

A. At this stage, that -- we would expect to, as I said, that we would still file by the end of 2010 whether it be the 320 or 80 or 90. That's something we'll have to discuss after the outcome of this case.

Q. Isn't the next coming rate case largely driven by the addition of the Sioux scrubber to rate base?

A. Certainly that is a key issue in the next rate case. Whether it's solely associated with that, I wouldn't necessarily say that.

Q. But that's a big driver?

A. Absolutely it's a big driver.

Q. And that has nothing to do with what the Commission does in this case in terms of the amount of the rate relief you're granted in this case?

A. Well, let me make sure I understand. Are you saying that the impact of the Commission's order in this case does not affect what our overall request may be in the next rate case, is that your question?

Q. No. The timing of the next rate case.

A. I'm sorry. Repeat your question again.

Q. Let me ask it more generally. Does the -- is there anything in your plan now that distinguishes the likelihood or the timing of the next rate case depending on the outcome in terms of rate relief of this case?

A. Not specifically, no.

Q. Now, you had a discussion with Commissioner Davis about, and I referred to this just a minute ago, about the concept of if the Commission gave you X amount of dollars for steam plant maintenance, would you guarantee that you would spend that. Do you recall that question and your response?

A. Yes. I believe you said would we commit to spending that, yes.

Q. All right. And I'd like to sort of expand that concept to try and get an idea of the company's perspective on rate setting versus the Commission. If, for example, the Commission -- and just to pick an issue that's in this question, if, for example, the Commission's rate setting order disallowed a portion of executive compensation according to the MIEC position in this case, are you familiar with that position?

A. Yes.

Q. Okay. If the Commission were to disallow some executive compensation, would UE automatically adjust its budgeting according to the Commission Order?

A. So make sure I understand your question. So, in general, are you saying that if the Commission would take a specific issue in our case and they would make a specific change, a lowering compared to our original request, would we automatically take dollars from that bucket of dollars and make the change; is that your question?

Q. That is my question.

A. Just want to make sure I understand it.

Q. You said it very well.

A. Thank you. Well, I think what we do in the context of any case is that, once the Order is issued, we obviously assess that Order. And then consequently what we will do is we will determine the cash flows that we have available to us across the enterprise, and then we will take those cash flows and put those in the place that we believe are most appropriate or the resource constraints that we have to operate as best we can under those resource constraints. It would not necessarily be a one for one.

Having said that, I think that if the Commission would make significant changes associated with depreciation based upon some of the recommendations here or make similar types of recommendations or a position on the ROE, I think inevitably when you step back and look at the size of those dollars, I think that inevitably they ultimately would have an impact on the projects that we're planning on doing. So I don't know what specific projects, but I think they would clearly have an impact on those.

Q.   Now, in response to a question, I believe this was Commissioner Davis again, about load growth, and you brought up the possible impact of your energy efficiency programs on load growth. Do you think that your energy efficiency programs in the future will have an impact on load growth?

A.   Yes.

Q.   And is it the company's position that you will be aggressively pursuing energy efficiency during the time that rates set in this case will be in effect?

A.   Well, I will tell you that it is our existing plan to commit resources to our energy efficiency programs consistent with that was set forth in the integrated resource plan. Of course, you know, the ultimate expenditures for energy efficiency will be impacted by potentially results of this order and the related cash flows that we get from this rate case. And certainly I think, Mr. Mills, you know there's a rulemaking going on associated with energy efficiency I think over the next 12 months. So all those could be factors.

But there's no doubt that we have made a meaningful commitment to energy efficiency, and we've spent and expect to spend tens of millions of dollars to try and implement those programs. So that is our plan.

Q. So let me see if I can just focus in on one particular point that you made in your answer. It is your current plan to execute energy efficiency programs consistent with the preferred resource plan in your last IRP?

A. That's correct, subject to the caveats that I gave you, that's correct.

Q. Now, turning briefly to the question of a fuel adjustment clause, Union Electric Company operated for a long time without a fuel adjustment clause, did it not?

A. Yes.

Q. And did investors invest in the company during that period of time?

A. Yes.

Q. Now, what has been the increase in stock prices attributable to the implementation of an FAC in your last rate case?

A. I don't know.

Q. Do you know whether or not there has been an increase in stock price attributable to the adoption of the FAC in your last rate case?

A. I don't know.

Q. What has been the reduction in your borrowing costs due to the implementation of the FAC in the last case?

A. I don't know.

Q. Do you know whether there has been one?

A. I know that borrowing costs as we've decided in this case have indeed gone up since our last case, and that's why we're seeking that increase in this particular case, in large part due to the changes in the capital markets.

Absent that, my general belief is that our borrowing costs would be higher absent a fuel adjustment clause, but I don't have a study or an empirical number to provide to you.

Q. What do base your general belief on?

A. I base my general belief on that if rating agencies -- I can say that since our last rate case, that the rating agencies who do -- while people don't like what they hear from rating agencies, they do have an impact on our credit ratings. They have generally been favorable in terms of the fuel adjustment clause.

So when you think about not just credit ratings, which is a financial metric, you think about credit quality, and investors when they make decisions in terms of lending money to our company or other shareholders who make investments in terms of UE, credit quality matters. And there's no doubt, there's no doubt in my mind that the existence of an FAC meaningfully enhances the credit quality of an enterprise.

Q. As the Commission in this case considers whether to continue, discontinue or modify the FAC, don't you think it would have been good for UE to come in with a quantification of the benefits of the FAC either in terms of stock price or debt cost?

A. No, I don't think it was necessary, because at the end of the day what we are simply doing in the request for an FAC is following the consistent treatment that has been practiced here in Missouri for not just UE for other utilities, following a practice which is really consistent across the entire company for integrated utilities. And frankly, there's plenty of information in the record that shows the existence of a fuel adjustment

clause has been received warmly by investors.
Q. Now, you had some discussion about the Clean Slate program. Can you tell me what has been the -- and just to back up, the Clean Slate offering that you did, I believe it was earlier this year or late 2009 --
A. I believe it was in the fall 2009.
Q. Okay. That's not the first time you've done a program like that, is it?
A. No.
Q. From either this most recent one or others, has UE done a follow-up study to determine the impact on the ability of the customers who participate to become current and stay current on their utility bills?
A. You know, I know Mr. Mark addresses some aspects of that in his testimony, and so he's probably the best person to address that specific question to.
Q. Now, I believe, and I don't want to put words your mouth because they're probably not your words, but at least in the position statement UE talked about what it called worthwhile investments. Are you familiar with that, with the word worthwhile in that context?
A. If it's in the position statement, I'm sure I could read it and probably understand the context. Continue on with your statement and perhaps we can --
Q. My question -- and this sort of goes --

there was some discussion, and I'm sure you're familiar with this, from the interim case, about discretionary investments and necessary investments, and I was going to have you define each of those three terms in terms of the way the company approaches making investments in the system. What is a necessary investment, what is a worthwhile investment and what is a discretionary investment?

A. Well, let me say this. Certainly one way to think about the absolute minimum would be we have, as you know, minimum requirements across our system for reliability, and so those are non-discretionary. Things that are to comply with laws and regulations, those are simply non-discretionary. This is a very brood example, so to suggest that I'm going down to the level of detail, but just to give you a flavor.

Beyond that, we look at investments which are -- which are, I think basically everything beyond the minimum are discretionary. Right? It's either discretionary or non-discretionary. So those which are discretionary we then look across our system to try and make investments which we believe will serve our customers in the best way.

So what we're speaking about is that we -- we make several discretionary investments which we think are beneficial for customers. So when I think in -- so those are the two broad categories. We literally will rank order those types of investments in say energy delivery or generation or nuclear. We will go through. We have limited capital resources. So we will try and take those resources and allocate them the best way we can for -- to meet our customers' expectations.

Q. So from that perspective, an investment that would in the long term reduce the company's cost of service could be a discretionary investment?

A. I'm sorry. Say that again.

Q. An investment that is not absolutely necessary at the current time but that could over the long term reduce the company's cost to serve its customers could be a discretionary investment?

A. Yes.

Q. Now, I think in the context of that same discussion, you talked about suspending your underground program. Do you recall making that statement?

A. Yes.

Q. In that context, can you define suspend?

A. Well, I think basically we had a program for undergrounding whereby we were spending anywhere from approximately $100 million a year, and then at some stage it actually got reduced closer to 50 million. We had a slate of programs and undergrounding programs that we had identified that we thought were the most vulnerable areas. In fact, we did many of those areas.

We still have a list of undergrounding programs that we would like to do. That list is -- that work has been suspended, and we hope at some point in the future to -- we've done all the work or a lot of the work -- to actually have the necessary cash flows to make those investments and make those improvements on behalf of our customers.

Q. Is it correct as one of the witnesses testified at a local public hearing that essentially that slate of projects that were to be done is no longer even at UE headquarters, it's been farmed out to the regional centers where the regional operation managers are in charge of deciding whether or not to go forward with them?

A. No. I disagree with that. You can talk to Mr. Wakeman and Mr. Mark both. They oversee those programs at the end of the day, and, of course, they oversee all the operations of the regional districts, but those decisions ultimately rest with -- you can talk to Mr. Wakeman in terms of whether those programs go forward.

Q. Now, one of the things that you talked about, probably with several of the Commissioners, is the question of cash flows. How much does the PSC, how much

impact do they have on your cash flow?
A. A significant impact.
Q. Compared to UE's ability to impact your cash flow, how significant is the Commission's?
A. What do you mean, compared to our ability?
Q. Well, don't you spend something like $800,000 -- $800 million every year on miscellaneous operating expenses?
A. Miscellaneous -- are you referring maybe to the chart that you were talking about?
Q. Yes.
A. Well, you know, it was interesting. I looked at that, and I don't know if I called miscellaneous operating expenses.
Q. I think it's --
A. Other.
Q. -- other operating expenses.
A. Well, those other operating expenses aren't just for the paperclips and the staples that you referred to. They include our power plant maintenance. They including running the Callaway nuclear plant. They include tree trimming. They include things like insurance. They include things like benefits. They include things like storm costs. And so, yes, that's a big number that's part of that $800 million.

Q. And don't you have the ability to pick one insurer over another insurer at a different rate?

A. Absolutely.

Q. Isn't the Commission's ability to influence your cash flows as a result of the issues before it in this case limited to a range of perhaps $100 million at the outside?

A. Well, I think, Mr. Mills --

Q. The same Commission gives --

A. I'm just trying to make sure I understand.

Q. Let me rephrase if you don't understand. Say the Commission gives you the $320 million that you're asking for. That has some impact on your cash flow. If the Commission, for example, adopts the Staff position and gives you $155 million, that will impact your cash flow at the most by $200 million, correct?

A. Yes, and that is a very big number.

Q. But it pales in comparison to the amount of cash flow that you-all have control over, does it not?

A. Well, to be clear, you suggested that that $800 million is something that we can just sort of turn on and turn off, and that is just not true. I mean, to suggest that we --

Q. That was not my intention to suggest that.

A. Well, let me --

Q. You have control over many of the numbers that go into that, do you not?

A. We certainly have the -- we operate those power plants, and we operate them in a prudent fashion, and to the best of my knowledge no one's claimed that we haven't done that. And we have minimum reliability requirements that we don't blink at. That's part of that number.

And we are prudent in terms of making sure that we have insurance because I think you and others would say, well, if we had a big issue, we didn't pay for insurance, that would be a big problem. And so do we manage many of those costs? Absolutely. Do we correctly manage them? Yes. Does the Commission's impact in this case in terms of whether it's 100 million or $200 million have a big impact on our cash flows and our operations? Yes.

Q. Now, you've several times referred to the fact that you operate your power plants in an efficient manner, and let me sort of circle back to a question I asked you earlier. Can you tell me the productivity gains year over year at your steam production plants?

A. No. I don't know.

Q. Do you think you have productivity gains in your steam production plants year over year?

A. It depends upon how you measure it. The only thing I can say that I can measure -- Mr. Birk will be here, and he would probably be the best person to ask that. I can certainly cite that our equivalent availability is among the best in the country, which matters significantly.

Again, that may not be specific to the widget question you're asking. So maybe he'll have the ability to give you a better response on that. I just don't know.

Q. Do you think it would be important to know whether or not your productivity is increasing year to year at your power plants?

A. I think certainly productivity is a factor, and I would have assumed that all the parties to this case if they thought it was an important factor and they thought there were issues associated with it, they would have raised it. They've had five, six, seven, eight months to do so, and not only have they not raised it in this case, but I'm not familiar they raised it in the last case. So certainly it's an issue, and I assume it's not an issue because it hasn't been raised.

Q. And as someone who runs the company, is it not important to you to know if your productivity is increasing?

A. Sure. I mean, I think at the end of the day, we are absolutely focused on a lot of different metrics, safety. We're focused on equivalent availability. We're focused on operating costs. We're focused on managing our capital budgets. So yes, there are a host of metrics that we look at in connection with managing our business.

Q. Now, I think you've talked about in a number of contexts disincentives to make additional investments. Do you recall that? In particular I think you were referring to regulatory lag. Do you recall that?

A. Yes. It either was in the conversation -- I certainly point that out several times in my interim rates testimony.

Q. Is the disincentive to AmerenUE or to Ameren Corporation?

A. I would say the disincentive is to both, but especially -- well, I run AmerenUE. I can speak for AmerenUE.

Q. And so for a discretionary investment that you decide not to make in AmerenUE's system, where do you invest that money?

A. Well, I think, simply put, it's an investment that's not made.

Q. Well, if it's a discretionary investment, that means you either can make it or you don't make it.

A. Well, I mean, often then what we will do -- as I said, we have limited financial resources, and so what we will do is apply that resource. As you know, cash is fungible, and so we'll apply it to another place within our business, because keep in mind, Mr. Mills, I think you know this, we generate negative free cash flow, and so we don't generate enough cash from our rates to cover our operating expenses and our capital expenditures. So everything we do we borrow.

So if we don't make that investment here, it's probably because we're putting the money over here to serve customers in a different fashion. That's what we do.

Q. So it's not your testimony that you're investing outside of the company when you choose not to make a discretionary investment?

A. No. I think we use our money -- we use every dime we can for our operations.

Q. Now, you've talked a couple of times about the importance of remaining in the mainstream in terms of return on equity awards.

A. Yes.

Q. If every utility commission around the country shared that emphasis on the importance of remaining in the mainstream, would ROEs ever change?

A. Well, certainly a mainstream isn't a pinpoint number, and so I think it is certainly a relevant fact to look at what mainstream ROEs are. So yes, I think you could have differences among other commissions, but have it -- to have recommendations and policies which are within the lowest 10th percentile, that is meaningfully different.

Q. And finally, and this may have simply been a mistake, but I think you agreed with a question from Commissioner Davis about Wisconsin truing up future test years. How do you true up a future test year?

A. If it was a future test year, I didn't -- if I agreed to that, I was thinking more it was a future test year, and I'm not sure how you true up a future test year. A future test year is a future test year.

Q. So a future test year --

A. I guess, if I could qualify, and I really don't know if this is how it works in Wisconsin, but I guess it is possible, and we're talking about theoretical exercise now, that if you started with what you thought your future costs would be and you have a six-month rate case process, it could be four months hence that the parties to a case would update their expectation of their future costs. So that would be a true-up, would it not?

So it's possible.

Q. Perhaps. Do you know that they do that or you're just speculating that they could do that?

A. I'm speculating that they could do that. I was responding to your question.

MR. MILLS: Okay. Thank you. No further questions.

JUDGE WOODRUFF: All right. Before we move on to further recross, we've been going for two hours and ten minutes now. It's time to take a lunch break. Before we do that, Commissioner -- you may have noticed that Commissioner Jarrett is not here today. He did ask me to announce that he's not here because he's attending a conference sponsored by the Center for Public Utilities at the College of Business at New Mexico State University in Santa Fe, New Mexico, titled Current Issues 2010. So I made that announcement for him.

We will come back at let's say 2:30.

(A BREAK WAS TAKEN.)

JUDGE WOODRUFF: Let's come to order, please. Welcome back from lunch. I hope it was healthy and productive. Mr. Baxter is back on the stand, and we will resume with his recross. I believe Staff wished to recross.

MR. WILLIAMS: Thank you, Judge.

RECROSS-EXAMINATION BY MR. WILLIAMS:

Q. Good afternoon, Mr. Baxter.

A. Good afternoon.

Q. Do you recall when Commissioner Davis asked you about increasing coal and transportation costs and you agreed that they are increasing for AmerenUE?

A. Yes.

Q. How often do those costs increase?

A. Fairly frequently.

Q. Is it an annual event or does it happen more frequently?

A. It certainly can be an annual event, and at times it can even be more frequently than that.

Q. Well, are you familiar at all with AmerenUE's coal contracts?

A. Yes.

Q. Don't the vast majority, say 90 percent plus, have an escalator clause that they increase on January 1 of each year?

A. Generally most of them do increase on the first of every year.

Q. And then in response to Commissioner Kenney, you said that AmerenUE had deferred some environmental expenditures from I guess current or that you were going to engage in in the period, I don't know if

it's 2009 to 2014 or 2010 to 2014, but do you recall that?
A. Yes.
Q. What environmental expenditures were you referring to?
A. I think the specifics Mr. Birk will be able to provide you with some more of those, but just to be clear, we -- in our original 2009 five year plan, we had identified environmental expenditures over the next five years, and later in 2009 those are the dollars that I've identified, really '10 through '13. And specifically some of those projects that we've moved out include certainly some engineering costs that are necessary for those, and I believe and if you ask Mr. Birk in that plan we had anticipated doing some work at some of our power plants in terms of scrubbers and the like.
Q. And what kind of costs are you talking about whenever you're associated with these environmental projects? Are you talking about tens of millions of dollars, hundreds of millions of dollars?
A. I think in total it's certainly tens of millions, and I think depending upon certainly the nature of the scrubber project, that's certainly in the hundreds of millions of dollars.
Q. And are these projects that would be taking place at your coal-fired plants?

A. Yes.
Q. And is the uncertainty on greenhouse gas emissions a factor that the company would take into consideration in deciding to defer such projects?
A. I think there are several factors that we would look into in terms of dealing with those projects. Certainly one related to the issues with trying to manage our customers' costs, issues associated with excessive regulatory lag, and then certainly the overall environmental picture, whether it be greenhouse gases or other federal and perhaps state regulations would be a factor to consider.
Q. Would they be equal weight factors or would one maybe be a heavier factor than another?
A. I don't know if there's -- I think all those factors come into play. I don't know if there is a specific weighting I could put on them right here.
MR. WILLIAMS: No further questions.
JUDGE WOODRUFF: Thank you. MIEC wish to recross?
MS. VUYLSTEKE: No, questions. Thank you.
JUDGE WOODRUFF: Okay. Redirect?
MR. BYRNE: Thank you, your Honor. Is it okay if I stay here?
JUDGE WOODRUFF: That's okay.

REDIRECT EXAMINATION BY MR. BYRNE:

Q. Mr. Baxter, earlier in your cross-examination you were asked about the components of the $320 million position that the company is at now, and I think at that time you didn't know what was fuel and what was non-fuel?

A. That's correct.

Q. Were you able to check on that over lunch and can you tell the Commission what the components of that $320 million?

A. Yes. Based upon the reconciliation or the attachment that was referred to I think by Chairman Clayton, the fuel number based upon this analysis is approximately 196 million, and the non-fuel number is approximately 125 million. Again, Mr. Byrne, keep in mind that this is just at this snap point -- snapshot picture in time. These numbers, too, will be updated through the true-up period through January 31st.

Q. Mr. Baxter, in response to one of Mr. Williams' questions, I think you said that the company had invested approximately $650 million in infrastructure investment since the cutoff date from the last case, which I believe was in September of 2008. Do you recall --

A. I do.

Q. -- that line of questioning?

A. Uh-huh.

Q. I guess my question is, has the company recovered any of the cost associated with that investment up 'til now?

A. No. The simply answer is no. And in fact, as some of the positions were discussed a little bit earlier, as I thought about the $650 million that we've already expended and the fact that there's, I believe Mr. Williams said the Staff's current position in terms of their non-fuel recommendation was virtually zero, I was, in fact, quite surprised given the fact that we invested 650 million in energy infrastructure which are already serving customers today.

Q. How do you think the Commission Staff gets to a zero rate increase when we've invested $650 million?

A. Well, I think it goes directly to the issues which were raised by Mr. Lowery in his opening statements and the issues that I raised in my testimony, and I think it is done by taking very aggressive outside of mainstream positions on ROE, No. 1.

Secondly, it is done by taking -- and again, this not just goes to the Staff, but frankly all the parties who are participating in the case. It goes to taking out of the mainstream positions for depreciation. It goes to -- it is driven by the reduction in power plant maintenance expenditures and vegetation management expenditures.

And so I just gave you our non-fuel recommendation of $125 million, and I understand Staff is at zero. Just those three or four issues that I referred to in total for all the parties are approximately 100 to $125 million of not just issues, but of real cash that have a meaningful impact on our company and the cash flows.

And so those are indeed big, big issues, and those are indeed the issues that are before the Commission and indeed the issues that we believe that we feel that the Commission should look at not just our proposals but trying to take a mainstream constructive approach in setting the regulatory policies in the future.

Q. You mentioned in this answer that you just had and in answer to questions that were asked on cross-examination about cash flows being a problem for the company in addition to earnings. Do you recall that discussion?

A. Yes.

Q. And I guess I was wondering if you could give the Commission an idea of the magnitude of the negative free cash flows that the company is experiencing?

A. Yes. Well, the magnitude certainly over the last three years is in excess of $1 billion. It's approximately $1.3 billion, and that's despite the fact that we've had two rate cases during this time period. And so the issues not only of the last three years of negative free cash flow are important, but that's why the cash flows that we're asking for in this case in connection with the issues I just spoke about are so critical.

Q. Is that -- your existing level of negative free cash flows, is that sustainable over the long run?

A. Well, no, it's certainly not sustainable over the long run, nor is our ability to make the investments that we want to make as part of our current plan sustainable if the aggressive positions that are being put forth by the parties in terms of ROE, depreciation and the other issues that I mentioned are ultimately adopted. We simply will not be able to continue to make those levels of expenditures. It's just not sustainable.

Q. One of the cross-examiners, I think it was Mr. Mills, was asking you about productivity gains. Do you recall that line of questions?

A. Yes.

Q. Let me ask you this. Has AmerenUE achieved any productivity gains in recent years?

A. Well, yes. Mr. Mills was asking a number of different questions, and I certainly was able to cite our safety related items because those were reflected on the chart, and we talked a little bit about --

Q. When you say safety, that's --

A. The system -- yes, the reliability. Excuse me. That's the frequency of outages. And then the other metric we talked about was equivalent availability. That's just how available and really how efficient our power plants are.

And, you know, a metric I was able to check in over at lunch is that in the 1994 to '99 time period, our equivalent availability of our power plants was right around 77 percent. Today that number is closer to 89 percent. And so clearly that's not just a productivity but an efficiency gain which yields to the benefit of our ratepayers.

I think there are other metrics. Again, I think Mr. Mills was getting to a cost per widget, and I wasn't able to respond to that, but I do know that if you go back in to the 1980 time period, we're able to look and see our employees at Union Electric, there were around 7,500 employees roughly. Today if you looked at our employees at Union Electric and you think about the allocated business and corporate services cost to make sure we're comparing apples to apples, it's probably somewhere around 5,000 to 5,500.

And there's no doubt that during that period of time, not only have we increase the output of our power plants, certainly Callaway was added at that point in time, but there's no doubt that our customer growth has been meaningful during that time period as well. So on an over all productivity basis, on an employee basis, there's no doubt that we've had meaningful productivity gains.

Q. Commissioner Kenney asked you some questions about the relationship of getting trackers and return on equity. Do you remember that line of questions?

A. Yes.

Q. I think his point was that if you get some trackers, if you've got the storm tracker, for example, or if the vegetation management and infrastructure tracker were continued, those would reduce the company's risk compared to what they otherwise would have been, and I guess you're -- my recollection is your response was that our expert, our ROE expert, Dr. Morin, took those factors into account in his recommendation. Do you recall that?

A. Yes.

Q. And I guess my question to you is, do you have any idea on your own why that would be, why it would be that having a tracker like a storm cost tracker shouldn't lower our return on equity?

A. I can certainly try and offer my opinion, and certainly Dr. Morin will be the best one to address it, but Commissioner, I probably wasn't very clear in terms of my response. I mean, obviously the existence of storm trackers and vegetation in addition to those trackers, they certainly help address regulatory lag. But I think it's important that you step back and you look at the overall framework in Missouri and compare that to the overall framework which -- the frameworks with which other utilities operate.

And so while we may add some of these incremental trackers, I think it's important to keep in mind that, I think as Commissioner Davis was pointing out, other states have many of those other mechanisms that are pretty meaningful that we do not have in Missouri, things like CWIP in rate base, things like a shorter time period for the adjudication of a rate case, things like projected test year versus historical.

So when you look at the totality of those, and I think as Dr. Morin considered those issues, and I know he raised it I think in his testimony, the totality of those issues, while in Missouri those trackers are important, they make progress, it doesn't necessarily mean that they're mainstream, and when you consider the ROE, that is indeed an important factor.

Q. I think, Mr. Baxter, you had a discussion with Commissioner Davis about the risk of owning our own generation plants versus wires only utility risk. Do you recall that line of questions?

A. Yes.

Q. And I guess what types of generation plants does AmerenUE mostly have?

A. Well, certainly it's predominantly coal-fired, as Mr. Williams and I were just talking about, and it's about 85 percent. I would say then about 10ish percent, 10 to 15 percent or maybe 10 to 12 percent is nuclear and the rest is gas and hydro.

Q. What are some of the risks that are associated with coal-fired plants?

A. Well, certainly they're -- there are environmental regulations which we have to comply with today. I think Mr. Williams and I were just talking about the existing regulations in terms of the Clean Air Act that we have to make sure that we comply within, and you know, complying with those regulations isn't just something that's done lightly. Putting a new scrubber on a unit and doing a project that's hundreds and hundreds of million of dollars and managing that, that's a big deal.

That's a big deal. We're in the middle of one, so I can speak directly to that. And so that's just a risk in general.

But then, of course, we all know that the issue associated with climate is fresh on the minds of many policymakers in Washington but certainly here. So clearly the -- the issues associated with running coal-fired plants are very challenging, much less the issues that you have to deal with in running a nuclear power plant.

Q. Okay. In response to I think it was Mr. Mills' question, you -- he asked you when the company was planning to file its next rate case, and I think you said in 2010. Do you recall that --

A. Yes.

Q. -- line of question and answer?

I guess let me ask you, why are you relatively certain that the company's going to have to file a rate case in 2010?

A. Certainly Mr. Mills I think brought up one of the -- one of the key drivers is the fact that the Sioux scrubber which we plan on having completed later this year, early next year, you know, we're going to need to get that plant into rate base, and that's obviously a significant driver to our overall financial condition to get that in rate base and get cash flows associated with that.

Q. You were asked some questions about Dollar More. Do you recall that?

A. Yes.

Q. And I guess can you explain how does the company support Dollar More?

A. Well, you know, I think Commissioner Gunn raised some questions on Dollar More, and Commissioner Gunn, I think I misspoke. I didn't give you accurate information. I said that we matched dollar for dollar what the -- the dollars that were provided by customers, and that's not the case. In fact, we provide the administrative cost, and we make some corporate contributions from time to time to that, but I misspoke when I said that we match that dollar for dollar. That's not true.

Mr. Mark again, the one thing I did say which was correct was Mr. Mark knew more about those matters than I do, and he's absolutely the person to talk to. So I apologize.

Q. Mr. Mills asked you some questions about did our stock price go up when we got the fuel adjustment clause. Do you remember that question and answer?

A. Yes. Yes.

Q. And I guess my question is, what would have happened to AmerenUE's earnings had we not gotten the fuel adjustment clause in our last rate case?
A. Our earnings would be lower.
Q. They would be lower than the bar chart that shows 6 or 7 percent actual earnings?
A. Certainly that gap between earned versus allowed would be more significant.
Q. And what would have happened to cash flows had we not gotten an ROE?
A. Certainly cash flows would have deteriorated as well.
Q. And what would have happened to our credit quality if we had not gotten a fuel adjustment clause?
A. Well, that too would have deteriorated.
Q. And do you think all of that would have increased or decreased Ameren corporation's stock price?
A. I think that all those factors together certainly have a downward effect on our stock price.
Q. Okay. Mr. Mills asked you about the other operating expenses slice of his pie chart. Do you remember that, which I think is $800 million?
A. Yes.
Q. And I guess he suggested that AmerenUE could control that $800 million. Do you recall that line

of questioning?

A. Yes.

Q. I mean, is there any -- do you have much control over that $800 million?

A. We certainly -- I'm sorry. We certainly have the -- we manage it, but to say we control all those costs is -- is -- is just simply not true. I think I pointed out to Mr. Mills that -- that many of those expenditures are requirements, and so the reliability, our environmental capital expenditures that we have to do to make minimum requirements, we will absolutely do those.

But beyond that, you know, you still have to do certain minimum things to run your power plants safely and to maintain your energy delivery system in a safe manner. And so to suggest that we can automatically take those down 30, 40 percent in a heartbeat, that's -- that's -- that's not suggesting that Mr. Mills said that, just to be clear, but to suggest that, you know, we have that unfettered ability is -- is just not true.

Q. I think, Mr. Baxter, in response to a question from Commissioner Kenney you referred to excessive regulatory lag. Do you recall that?

A. I do.

Q. And I guess I was just wondering, from your perspective, how do you know regulatory lag is excessive?

A. I know, Mr. Byrne, we talked a little bit about this during the interim rates, and while I would like to provide a crystal clear definition, I think it's often very difficult to do that. But I think there's no doubt that when you look at some key financial metrics as well as some operational metrics, that we're dealing with excessive regulatory lag here in Missouri.

There's no doubt when you see the difference between earned versus allowed return on equity over the last 12 months that's in excess of 3 to 4 percent or 3 to 4 percent despite the fact we just had a rate case, that's certainly an indicator.

I think just as much of an indicator is over the last 31 or 32 months we've only had two months where we've been able to exceed that allowed return on equity, and it certainly had a meaningful downward trend over the last 12 months. So that's just one indicator.

I think the other indicator is the thing we talked about quite a bit here, and that's the negative free cash flow. I mean, despite the fact we have had, again, two rate cases adjudicated here in the last several years, the need for capital investment continues, and -- and consequently, the -- the negative free cash flow continues to move upward, and we need to have rates that are going to address that as well as regulatory policies to address that.

So significant levels of negative free cash flow is another indicator. And lastly, certainly we talked a little bit about the need, Commissioner Kenney, you and I talked about some of the projects that we've had to defer and in some respects eliminate, but generally defer.

When you're taking some of those good projects -- and I encourage you to ask Mr. Wakeman and Mr. Birk about some more of the specifics. I gave you some high level ones, but when you look at some of those projects, those are good projects, those that -- and when you put at least those three factors together, I think is a strong indicator that we're dealing with excessive regulatory lag and it's in the best interests, I believe, of all of our stakeholders, our customers and frankly the State of Missouri that we -- that we mitigate that excessive regulatory lag so we can make the necessary investment in the energy infrastructure, meet our customers' expectations, our stakeholders' expectations consistent with sound energy policy. And, frankly, those levels of investments I believe will drive jobs and help our overall economy in the state of Missouri.

MR. BYRNE: Thank you, Mr. Baxter.

JUDGE WOODRUFF: Thank you, Mr. Baxter.

You can step down.

THE WITNESS: Thank you, Judge.

JUDGE WOODRUFF: The next witness on this issue, then, is Mr. Rackers for the Staff. Good afternoon, Mr. Rackers.

THE WITNESS: Good afternoon.

(Witness sworn.)

JUDGE WOODRUFF: You may be seated. And you may inquire.

STEPHEN RACKERS testified as follows:

DIRECT EXAMINATION BY MR. WILLIAMS:

Q. Good afternoon, Mr. Rackers.

A. Good afternoon.

Q. Would you please state your name.

A. Stephen M. Rackers.

Q. And by whom are you employed and in what capacity?

A. Missouri Public Service Commission as a regulatory auditor.

Q. Mr. Rackers, have you prepared prefiled testimony in this case?

A. Yes, I have.

Q. And was a portion of that testimony in narrative format and a portion of it in question and answer format?

A. Yes.

Q. And was the portion that's in narrative format a part of the Staff's report, revenue requirement, cost of service that was filed December 18th --

A. Yes, it is.

Q. -- of last year?

Were there included with that report some appendices, affidavits?

A. That's correct.

Q. And was there also a correction filed in the case to that report and erratum?

A. Yes.

Q. And did you file in question and answer format what's been marked as -- or labeled direct testimony, rebuttal testimony and surrebuttal testimony?

A. Yes.

Q. Those have been marked, the question and answer format have been marked as Exhibits 201, 202 and 203 respectively. Do you have any changes that you would like to make at this time to any of the testimony you presented in question and answer format?

A. No, I do not.

Q. And as corrected by the errata and some revised affidavits that were later filed, to the portions of the -- well, first of all, in the Staff report, is there an affidavit that you signed that reflects the portions of the Staff report for which you're taking primary responsibility?

A. Yes.

Q. And aside from the erratum that was later filed, are there any corrections to the Staff report on those sections for which you're responsible that you'd like to make now?

A. No.

Q. And is -- are the portions of the Staff report which have been premarked for identification as Exhibit No. 200 and Exhibit Nos. 201, 202 and 203, as corrected by the erratum, your testimony here today?

A. Yes, it is.

MR. WILLIAMS: I'd like to offer those portions of the Staff report for which Mr. Rackers has indicated he's responsible as reflected in his affidavit attached thereto and exhibits -- question and answer direct, rebuttal and surrebuttal testimony which are Exhibits 201, 202 and 203, the Staff Report which would be portions of Exhibit 200.

JUDGE WOODRUFF: Portions of 200, 201, 202 and 203 have been offered. Are there any objections to their receipt?

(No receipt.)

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

(EXHIBIT NOS. PORTIONS OF 200, 201, 202 AND 203 WERE RECEIVED INTO EVIDENCE.)

MR. WILLIAMS: Tender the witness for examination.

JUDGE WOODRUFF: Okay. For cross-examination, there's a number of parties who aren't here. I'll just run down the list. If anybody's here let me know. Laclede, KCPL. MJMEUC?

MR. HEALY: No questions.

JUDGE WOODRUFF: Missouri Retailers, Charter, Muni Group, ACORN, Unions, NRDC, DNR, MEG. AARP?

MR. COFFMAN: No questions.

JUDGE WOODRUFF: MEUA is not here. Public Counsel?

MR. MILLS: No questions.

JUDGE WOODRUFF: MIEC?

MS. VUYLSTEKE: No questions. Thank you.

JUDGE WOODRUFF: Ameren?

MR. BYRNE: I have a few.

CROSS-EXAMINATION BY MR. BYRNE:

Q. Good afternoon, Mr. Rackers.

A. Good afternoon.

Q. My understanding of your role in this case for the Staff is you are the lead auditor for the Staff; is that true?

A. That's correct.

Q. And as I understand it, but correct me if I'm wrong, you're sort of the chief sponsor of the Staff's report on the company's revenue requirement; would that be correct?

A. That's correct.

Q. And I guess you're the chief sponsor of the company's ultimate revenue requirement that gets developed in this case after true-up as well; is that fair to say?

A. That's correct.

Q. And you're also in charge of developing the reconciliation that got filed in this case with all the parties' positions on it?

A. Yes. I certainly had input from the company and other parties in that.

Q. Sure. And my understanding is you've also got -- you're also sponsoring some specific testimony on trackers; is that right?

A. That's correct.

Q. Okay. Which is for later in the hearing. Can you briefly tell me how the Staff goes about developing a revenue requirement for an electric company like AmerenUE?

A. I think I cover that in my direct testimony, beginning on page 5, Staff starts with the selection of a test year and makes adjustments to the test year based on various situations and various aspects of the case. In this case, we did not do an update of the test year, but we -- we are going to do a true-up, and that's currently in progress.

Q. Okay.

A. Another significant portion is the determination of the rate of return that's applied to the company's investments.

Q. And Mr. Murray does that; is that correct?

A. That's correct.

Q. You don't assist with that determination, do you?

A. I do not.

Q. Okay. Keep going if you don't mind.

A. Sure. One of the components is regarding the test year. That's revenues and expenses, depreciation, taxes. Staff makes adjustments to those items based on various -- various situations and various information that we analyze. We also determine the rate base, which is the investment the company is allowed to earn on, and those various components will be put together as you will to determine the revenue requirement in the case.

Q. Would it be fair to say, Mr. Rackers, that, from the Staff's perspective, the development of a revenue requirement for a public utility is largely an auditing and accounting exercise?

A. No, I wouldn't agree with that at all.

Q. Okay. What other considerations go into it?

A. Well, certainly we mentioned rate of return. That's a very significant portion. I don't consider that to be a -- necessarily an auditing or an accounting function.

Q. Fair enough. Aside from that, though, is it largely an auditing or accounting function or not?

A. Well, I guess it depends on how you characterize the development of depreciation expense, but that's also a very significant component, and certainly it is in this case.

Q. Okay. Fair enough. So you're saying, then, excluding those two things, excluding return on equity -- is it just return on equity or is it the overall return that you would exclude? I guess -- I guess it's really the overall return?

A. Correct.

Q. Excluding the development of the overall return and excluding the development of depreciation rates, would you agree that the rest of it, the other steps are largely an auditing and accounting function?

A. You're just talking about the development of the revenue requirement itself?

Q. Yes.

A. Well, that's a little tough, Mr. -- sir, because you -- I mean, there's a lot of different parties and Staff participants in the case, and certainly many of those individuals are not auditors and accountants. We have engineers and economists. We run a production cost model that is -- is not an accounting function. We take the results of that and input it into the revenue requirement to determine -- I mean, sorry, into our accounting schedules to determine the revenue requirement.

But there's -- there's a lot of participation on a lot of different levels and a lot of different disciplines. So I think it's probably not correct to say it's just an accounting and an auditing function.

Q. Would it be fair to say it's a numbers driven process?

A. I think the results are determined, you know, by numbers, but certainly there's a lot of theory and a lot of analysis that goes into it.

Q. Let me ask you this, and I guess I'm asking because this is the policy section of the testimony, but is it -- is it staff's perspective that the Commission, it's the Commission's role to set policy and not so much the Staff's role to set policy in these rate cases?
A. I think that we are certainly guided by past Commission decisions.
Q. Let me ask the question the way I wrote it yesterday, which might get me -- make it clearer. Would it be fair to say that any policy considerations that have to be taken into account are more within the Commission's purview than the Staff's?
A. I guess you're talking about the end result of regulation in the state of Missouri; is that what you mean by policy?
Q. Well, policy considerations that might inform the decision. Isn't that more within the Commission's purview than the Staff's?
A. In general, I would agree with that, yes.
Q. And I mean, I guess I'm not sure that you guys have an overall policy piece of testimony in your filing. Do you?
A. No.
Q. Unlike Mr. Baxter filed a piece of testimony that's entitled policy, I didn't see any policy

testimony from the Staff; is that right?
A. That's correct.
Q. Okay. And would you agree with me that it would be appropriate for the Commission to make a decision in this case that supports the policy considerations that the Commission thinks is important?
A. Yes.
Q. Let me ask you if you took some things into account when you were calculating your revenue requirement. And maybe this isn't just for AmerenUE, but in general when you calculate a revenue requirement for a utility, do you take into account that the utility has to have enough cash flow in order to make investments in its system?
A. I think that that's a test or one of the items that Mr. Murray examines as part of the analysis he goes through in determining return on equity.
Q. So if the Staff took that into account in this case, it would have been Mr. Murray that took it into account?
A. Well, I -- I -- I think he -- I think that's an analysis that he would have performed to see if the cash flow that's going to be generated by our -- by the rate of return that he's proposing and the rate base that Staff has put together, that that -- that the cash

flow is within a certain metric or what have you of the kind of company that UE's rated as.

Q. Okay. But no other -- no other Staff witness would have taken that into account? I mean, if I need to ask questions about it, I ask Mr. Murray; is that true?

A. I didn't take it into account.

Q. And do you know of anybody else besides Mr. Murray who took it into account?

A. No.

Q. And would you agree that it's important for a utility to be able to access capital markets and get debt and equity capital at a reasonable cost?

A. Yes.

Q. Would you agree that AmerenUE competes for debt and equity capital with other utilities?

A. I don't know.

Q. When developing a recommendation for a utility, does the Staff take into account the reaction of the capital markets if their proposal would be adopted?

A. Again, I think that's something that Mr. Murray may look at as part of his analysis. To what degree, I don't know.

Q. So I should -- again, I should ask Mr. Murray about that? There's no other witness for the

Staff that you know that would have taken that into account?
A. Correct.
Q. Let me ask you this. Do you think it's appropriate for the Commission to take that into consideration when they make a decision in this case, what the reaction of capital markets would be?
A. No.
Q. Okay. How about when the --
A. And I say that because I don't think the Commission can know what the reaction's going to be.
Q. Okay. Fair enough. Did -- when the Staff developed its revenue requirement in this case, did you take into account AmerenUE's incentive to invest in its system?
A. No.
Q. Would you agree with me that that's an appropriate thing for the Commission to take into account when it issues an Order in this case?
A. I guess from my point of view, the company has an obligation to invest the necessary funds to provide safe and adequate service to its customers, so I assume that they will follow that obligation.
Q. I guess what I'm talking about is investment above and beyond their -- the company's minimum

obligation. Did you take into account what incentives would, you know, would apply to the company if your recommendation was adopted?

A. I don't take that into account, but I don't -- I guess I'm expecting the company to --

Q. You answered my question. You don't take it into account. That was my only question.

Did the Staff take into account what other states are awarding in terms of depreciation rates for their electric utilities when it determined the depreciation rates it would recommend for AmerenUE?

A. You should probably ask our depreciation witness that question.

Q. Okay. You don't know whether he took that into account or not?

A. As far as I know, he did not, but you should clarify that with him.

Q. Would that be Mr. Rice?

A. Yes.

Q. Did the Staff take into account that the other states in the United States use the life span method in depreciating plants when it determined that it would not use the life span method to depreciate power plants?

A. You'd have had to ask Mr. Rice that question.

Q. You don't know if he took that into account?

A. I do not.

Q. Do you think that's an appropriate consideration for the Commission to take into account when they decide this case?

A. No.

Q. When you developed your revenue requirement for this case, did you take into account the fact that AmerenUE has consistently been unable to earn anywhere close to its authorized ROE for the last year?

A. No.

Q. Do you think that's an appropriate consideration for the Commission to take into account in deciding this case?

A. No.

Q. Mr. Rackers, would you agree with me that excessive regulatory lag is a bad thing?

I thought that was an easier question than it's turning out to be.

A. Well, I don't necessarily think regulatory lag is a bad thing. So when you say excessive, I mean, you put a qualifier on it that I'm not sure I truly understand or can define.

Q. Okay. So are you saying you don't think excessive regulatory lag is a bad thing or you don't understand the question?

A. Well, I'm not sure that -- you put the qualifier excessive on it. I do not see regulatory lag, and by that I mean the time between when costs either up or down are reflected in the company's cost of service, I don't see that as a bad thing.

Q. Okay. Fair enough. Did you -- did the Staff take into account the amount of regulatory lag that AmerenUE is facing when it developed its revenue requirement recommendation in this case?

A. Let me just clarify what I -- my previous answer. I said costs. It could be reductions in cost, too.

Q. Sure.

A. Go ahead. Ask your question again.

Q. Just to follow up on that, it really -- we're not in a -- we're not in a cost declining environment, are we?

A. In general, I would agree with you.

Q. Okay. So -- I'm sorry. Were you going to say something else?

A. No.

Q. Okay. So I'm not sure what your answer was to my last question, which was, did you take into account the level of regulatory lag that AmerenUE is facing when you developed your revenue requirement?

A. No.

Q. Did you take into account the fact that AmerenUE has had negative free cash flow in excess of $1 billion over the last -- over the last, I think it's the last 12 months in developing your revenue requirement for this case?

A. No.

MR. BYRNE: I think that's all the questions I have. Thank you, Mr. Rackers.

JUDGE WOODRUFF: Thank you. We'll come up for questions from the bench. Commissioner Davis, any questions?

QUESTIONS BY COMMISSIONER DAVIS:

Q. Good afternoon, Mr. Rackers.

A. Good afternoon.

Q. Mr. Rackers, what's today?

A. Monday.

Q. What's the date?

A. March 15th.

Q. March 15th. Is it payday?

A. I think it is.

Q. It is. It's a good day, isn't it?

A. Yes.

Q. Okay. You get paid twice a month, correct?
A. Yes.
Q. Do you think it's reasonable to expect that you get paid twice a month?
A. I got along for a long time just getting once a month. I made it out okay.
Q. You made it out okay once a month. So do you think it's reasonable for state employees to expect to get paid once or twice a month?
A. Yes.
Q. If I were to recommend that the Commission stop paying you and the rest of the PSC employees every two weeks and that we pay you the same annual amount annually once a year at the end of the year, would you be okay with that?
A. No.
Q. Why not?
A. I'd have a -- I'd have a problem meeting my monthly expenses.
Q. And do you think your opinion on that issue is ever likely to change?
A. No.
Q. You consider yourself a reasonable representative of state employees everywhere?
A. That's a pretty big universe, so probably

not.

Q. But do you think on that issue you would be?

A. Perhaps.

Q. Is it fair to say that the present value of the Commission paying you twice a month on an annual basis is worth more than if we paid you all at once at the end of the year?

A. Yes.

Q. Okay. Now, in setting AmerenUE's rate of return, the PSC Staff relies on the actual capital structure of the parent company, Ameren, doesn't it, actual consolidated?

A. I'm not sure that's true.

Q. What capital structure is Mr. Murray using?

A. I don't know that I can answer your question specifically, but I'm not sure that it's Ameren's consolidated capital structure.

Q. It's not a hypothetical, is it?

A. Well, I think the -- I think if you go through a certain process, you can distill down to a regulated capital structure. Again, I told you I wasn't sure.

Q. You're just not sure? Okay. But you have no reason to doubt that Mr. Murray is using the holding

company's actual capital structure in this case, do you?
A. No.
Q. Ameren pays a quarterly dividend, doesn't it?
A. I believe that's true.
Q. Okay. Is it reasonable that each and every AmerenUE investor expects those dividends that are being paid quarterly to continue being paid quarterly?
A. I think that would probably depend -- this is a personal response. I think that would probably depend on why you invested in the stock, if you invested to get a return or a paycheck or a dividend check periodically, or if you invested in the stock expecting stock growth and that's the way you'd want it to earn a return on your investment.
Q. Do you think it's more likely that investors buy stock in AmerenUE for the dividend as opposed to thinking that AmerenUE is going to be -- or Ameren is going to be the next Google?
A. I would agree with that.
Q. Okay. Do you have a rudimentary knowledge of the DCF model? Do you have any understanding of it at all?
A. I would not feel comfortable in responding to questions, and I would ask you to direct those to

Mr. Murray.
Q. Okay. Is it fair to assume that the price of the stock, that inherent in that price of stock is all of the information available about the stock that's -- that's known?
A. Yes.
Q. Okay. So if it's -- if it's known that dividends are paid quarterly, wouldn't it make more sense to use a model that would incorporate quarterly dividend payments instead of an annual dividend payment at the end of the year?
A. I'm sorry, Mr. Commissioner, I'm really not here to testify on rate of return or the proper methodology, and I would suggest that you should better ask those questions of Mr. Murray.
Q. Well, you're here for policy. Isn't that a policy issue?
A. I have never testified on rate of return or performed a -- such analysis.
Q. I understand. But are you here to testify on policy or are you not?
A. I'm here to more testify on how Staff put its revenue requirement together and the various documents that I participated in the development of.
Q. So you're here to testify on how Staff put

its revenue requirement together but you can't answer the question; is that fair?

A. I can't answer that specific question.

Q. Okay. All right. To the best of your knowledge, is David Murray's testimony and the cost of service report accurate?

A. Yes.

Q. So then Schedule 31 would be correct, would it not?

A. Schedule 31?

Q. 31. Do you have a copy of the cost of service report?

A. I do.

Q. Do you want to turn to Schedule 31?

MR. WILLIAMS: May I?

COMMISSIONER DAVIS: Sure.

THE WITNESS: Thank you.

BY COMMISSIONER DAVIS:

Q. And Mr. Murray -- I'm sorry. Mr. Murray. Mr. Rackers, what does Schedule 31 indicate?

A. The rate of inflation.

Q. Okay. Can you take just a moment to look at the chart? Based on that chart, can you tell me if the value of a dollar in 2006, say January 2006, is the same today? Has that value remained constant?

A. I would say the value of a dollar is less today than it was then.

Q. Okay. Now, Mr. Rackers, are you familiar with Ms. Grissum's testimony on coal plant maintenance in this case?

A. Yes.

Q. She takes a three-year average for coal plant maintenance, does she not?

A. Yes.

Q. Okay. There's no accounting for inflation in her numbers, is there?

A. No.

Q. Okay. Mr. Rackers, are you familiar with Mr. Rice's testimony in this case?

A. I've read it.

Q. You've read it. To the best of your knowledge, is that his impartial testimony?

A. Yes.

Q. Isn't Mr. Rice following the methodology proposed by Staff in the ER-2007-0002 case and in the previous 2004 Empire case?

A. Yes, I believe he is.

Q. So he's just following the PSC Staff position in those previous cases, correct?

A. I think he's guided by the Commission's decisions in those cases also.

Q. Mr. Rackers, can you help me? When are Staff witnesses guided by Commission decisions in previous cases and when are they not? Does it only apply to the auditing staff, the engineers?

A. I don't think it just applies to the engineers and the auditing staff.

Q. You don't think it applies?

A. I do not.

Q. Well, would it apply to Mr. Murray?

A. Yes.

Q. Okay. Then why -- why would Mr. Murray be free to not follow the Commission precedence but Mr. Rice and other witnesses be obligated to?

A. I didn't say they were obligated to. I said they were guided by.

Q. They were guided?

A. And I don't -- to the best of my knowledge, the Commission has never come out and -- in an Order and told Mr. Murray or any Staff person that there was a certain way to present return on equity or specifically -- well, perhaps some issues, but most issues.

The fact that you did not accept his recommendation in full or chose another method to determine return on equity does not require him to make his recommendation a certain way in another case.

Q. Okay. So in your terms, you're guided but not bound?

A. Correct.

Q. Correct? Now, is Mr. Rice free to file his impartial testimony?

A. What do -- I'm not sure I understand what you mean by free.

Q. Is he -- is he free to -- if he doesn't agree with, you know, the depreciation practices as pronounced by the Commission in the 2007 case, is he free to go a different route?

A. Yes.

Q. He is. Now, if Mr. Rice or another employee chose to do so, is there anything that would prohibit you or Mr. Schallenberg from not filing his testimony and getting someone else who would file it the way you wanted it to be filed?

A. Well, myself and Mr. Schallenberg may exert some oversight over the individual. If there's good reason for the recommendations and the positions that he's taking, I would expect that person to be allowed to be file that testimony.

Q. All right. Earlier when Mr. Byrne was asking you questions on cross-examination, you stated that the company had an obligation to spend capital to maintain safe and adequate service. Is that like saying the State should fund the Department of Corrections one hotdog short of a riot? I mean, adequate's a pretty low bar. Would you agree with that?

A. No, I probably wouldn't. I didn't really understand your -- the hotdog statement.

Q. Okay. So -- adequate. What does adequate mean to you?

A. It would mean the amount of investment necessary to provide safe and adequate service to ratepayers.

Q. Okay. Safe means no one gets electrocuted; is that fair?

A. That would be one aspect of safety.

Q. What are the other aspects of safety?

A. Well, there has to be a certain amount of reliability that's there. Certainly you don't want a system that falls apart easily.

Q. Okay. So it's okay if it falls apart, just not easily?

A. No, that's not what I meant.

Q. That's what you said.

A. That's not what I meant.

Q. Okay. So what do you mean?

A. I mean it's important to have a system that provides safe service that is reliable, a service that a ratepayer can count on to be there.
Q. Okay. So adequate means reliable?
A. That's one, yes.
Q. Okay. How reliable?
A. I'm sorry. I don't have a good answer for you. I don't have a metric that I can -- that I can say 99 percent, 90 percent or something like that.
Q. Okay. You stated earlier that -- on questioning from Mr. Byrne that this Commission should not consider the company's inability to earn anywhere near its allowed return on equity in the last year, correct?
A. Yes.
Q. Something of that nature?
A. Something of that nature.
Q. Something of that nature. In the class cost of service report, you cite the Hope decision, do you not?
A. I'm sorry. Can you refer me to a page?
Q. Sure.
A. Did you say the Hope decision?
Q. Hope. Hope.
A. Again, that's part of Mr. Murray's testimony, and I would not feel comfortable discussing

that with you.

Q. Okay. Well, I mean, you felt comfortable to say that we should not consider the company's inability to earn anywhere near its allowed return in the last year, so --

A. And I said that from the standpoint of I don't know how you can correct that. The results of the last year are what they are. So I would think the Commission would want to set rates on a going-forward basis in -- to hopefully allow the company to earn its return on equity.

Q. Allow them the opportunity to?

A. Opportunity, excuse me, yes.

Q. It's a fair opportunity, is it not?

A. Correct.

Q. Okay. So you are somewhat familiar with Hope and Bluefield, then, aren't you?

A. I've never read it.

Q. You just think that they ought to have a fair opportunity. Mr. Byrne asked you about excessive regulatory lag?

A. Yes.

Q. Can you ever -- could you conceive of a set of circumstances where regulatory lag could become excessive?

A. It's a term that's been thrown around a lot in this case, but I do not have a good definition of excessive regulatory lag.
Q. Okay. So as long as they have the cash flow to maintain, quote, adequate service, reliable service that you're not able to define, that's sufficient, correct?
A. I think I'd add safe to that.
Q. Safe. Thank you.
COMMISSIONER DAVIS: Judge, no further questions.
JUDGE WOODRUFF: Commissioner Kenney?
COMMISSIONER KENNEY: Thank you, Mr. Rackers. I don't have any questions.
JUDGE WOODRUFF: Any recross based on questions from the Bench? Mr. Mills?
MR. MILLS: Just a few.
RECROSS-EXAMINATION BY MR. MILLS:
Q. Commissioner Davis asked you some questions about how often you get paid. Do you recall that?
A. Yes.
Q. How often does Union Electric get paid by its ratepayers?
A. Some payments come in every day.
Q. Are you -- does the Commission have

reliability rules?
A. Yes, I believe it does.
Q. Are you familiar with them?
A. Not very.
Q. Just in general, assuming that the reliability rules do, in fact, regulate reliability, would it be a reasonable assumption that if a company is in compliance with reliability rules, that is at least some indication that they're providing adequate service?
A. Yes.
Q. Now, how long have you worked at the Public Service Commission?
A. Approximately 30 years.
Q. So you're very aware of how regulation works in Missouri?
A. Yes.
Q. And how much lag there is in the process?
A. Yes.
Q. So when you're asked the question about whether or not the Staff takes into account regulatory lag in doing its Staff Report, isn't that an implicit understanding of regulatory lag and how it affects the ratemaking process built in?
MR. BYRNE: I'm going to object to the question. It's not based on questions from the Bench. It

was based on my cross-examination.

JUDGE WOODRUFF: Go ahead.

MR. MILLS: I believe there were questions from the Bench all about regulatory lag.

MR. DAVIS: I asked him a question about excessive regulatory lag.

JUDGE WOODRUFF: That's correct. I'll overrule the objection.

THE WITNESS: Would you ask me the question again?

BY MR. MILLS:

Q. Based on your experience and the fact that you're the lead auditor, is not the concept of regulatory lag and the amount of regulatory lag that's actually present in Missouri necessarily implicitly taken into account in the Staff Report?

A. Yes.

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

JUDGE WOODRUFF: Any other recross? Redirect?

MR. WILLIAMS: Thank you.

REDIRECT EXAMINATION BY MR. WILLIAMS:

Q. Mr. Rackers, you recall Mr. Byrne asked you about the process the Staff goes through in putting together a revenue requirement for AmerenUE?

A. Yes.
Q. Is that process also reflected in the accounting schedules that the staff's prefiled in this case?
A. Yes, it is.
Q. And are those accounting schedules true and accurate to the best of your knowledge, information and belief?
A. They are.
Q. They've been marked -- premarked as Exhibit No. 204. Is Exhibit No. 204 the Staff accounting schedules we've just been discussing?
A. Yes.
MR. WILLIAMS: I'd like to offer Exhibit No. 204 at this time.
JUDGE WOODRUFF: Exhibit No. 204, the Staff accounting schedules has been offered. Any objections to its receipt?
(No response.)
JUDGE WOODRUFF: Hearing none, it will be received.
(EXHIBIT NO. 204 WAS RECEIVED INTO EVIDENCE.)
BY MR. WILLIAMS:
Q. Do you recall when Mr. Byrne was asking you

about AmerenUE's incentive to invest in its system above its obligation to provide safe and adequate service?

A. Yes.

Q. And you indicated to him that that was something that the Staff didn't consider; is that not true?

A. That's what I said.

Q. And I believe you wanted to elaborate on your answer. Would you go ahead and elaborate now? And if you don't want to, that's fine, too.

A. I don't really recall what I was going to say at the time.

Q. Do you recall when Commissioner Davis asked you about getting paid annually rather than semimonthly?

A. Yes.

Q. Would you be okay with getting paid up front?

A. Absolutely

Q. On an annual basis?

A. Yes.

MR. WILLIAMS: No further questions.

JUDGE WOODRUFF: Thank you, Mr. Rackers. You can step down. And that completes the overview and policy issue. Before we move on to power plant maintenance we'll talk a short break and we'll come back at 3:45.

(A BREAK WAS TAKEN.)

JUDGE WOODRUFF: Let's come to order. All right. The next issue before us is power plant maintenance, and there was a motion filed concerning testimony in this -- on this issue, I believe, by Mr. Birk. AmerenUE filed a motion a couple days ago to file supplemental testimony of Mark Birk which they filed along with it. There was an opposition filed from a -- suggestions in opposition filed by the MIEC this morning, and then at lunchtime AmerenUE filed a response to that -- those suggestions over the lunch hour. I've seen the positions of both parties.

Is there anyone else who wants to weigh in on this controversy? Anything else Ameren or MIEC want to add before I make a ruling?

MR. LOWERY: Well, your honor, I mean, I don't know whether there's anything you'd like us to add. I think probably we've stated our position both in our motion and in our response. I think that the bottom line is, is that with one very minor exception, all of the information that Mr. Meyer used to approach this was from an entirely different methodology with an entirely different recommendation was available well in advance of him filing his rebuttal testimony, and the bottom line is that ten days before the hearing an entirely different methodology and recommendation has been put forth, and the company had absolutely no opportunity to respond to that.

Other parties have had two opportunities to rebut the test year amount that was included in the case on July 24th both on December 18 and February 11th, and I think the equities and good causes surely in these circumstances would indicate the company ought to have an opportunity to respond to that.

JUDGE WOODRUFF: Ms. Vuylsteke, I've seen your written response. Is there anything else you want to add?

MR. ROAM: Judge, only that Mr. Meyer's surrebuttal testimony was a response, merely a response to AmerenUE's rebuttal testimony. As I understand the rules, AmerenUE is required to prove its case in chief in its direct testimony and doesn't get two and three bites at the apple to prove its case. So I think that it's either -- I think it's unfair to allow them to file additional direct testimony that should have been filed in its case in chief.

And in the event the Commission rules that -- that denies the motion to strike, MIEC seeks leave to at least respond to the additional information filed by AmerenUE on Friday on the eve of this procedure.

MR. LOWERY: Judge, if I might just very briefly. With all due respect to Mr. Roam's understanding of what needs to be filed in a direct case in a rate case, as I'm sure the Bench is aware, there are thousands of expenses that are included in a test year. The company files a historic based test year when it files its case, and if there is some normalization or some variance from that, the company may explain it.

But the purpose of having a direct case by the other filings which Mr. -- by the other parties, is Mr. Roam's client was able to file is to respond to that direct case and then the other parties get another bite at the apple on rebuttal testimony.

It is, as I said in the response that I filed earlier today, utter nonsense to argue that the company has to file testimony on every test year expense that is in its revenue requirement.

MR. ROAM: With all due respect, when a party asks for a $30 million increase in its maintenance cost and offers no explanation or evidence to support that request, it's not nonsense to ask that party to file some -- some modicum of evidence that would support its -- its stance. Thus, it's not nonsense to ask that -- AmerenUE to carry its burden in this case.

JUDGE WOODRUFF: I'm not going to

characterize anything as nonsense or indicate that either party has done anything wrong in this case because I don't think they have. But it appears that the MIEC witness did change its position in his surrebuttal testimony, and unless we allow AmerenUE an opportunity to respond, the Commission is going to be -- have less knowledge than they would otherwise, so -- if the company is allowed to respond, and in general, the Commission wants to have more knowledge rather than less.

What's actually in front of me at this point is a motion for leave to file the supplemental testimony. That motion will be granted. I will certainly allow MIEC an opportunity when Mr. -- when their witness, which would be Mr. Meyer testifies, if they wish to ask him additional questions during direct in response to what AmerenUE has filed as their supplemental, I'll allow that. So that's my ruling.

MR. LOWERY: Your Honor, I assume that your indication that you'll allow those questions will be subject to any proper objection at that time?

JUDGE WOODRUFF: Certainly.

MR. LOWERY: Thank you.

JUDGE WOODRUFF: With that having been ruled upon, then, we can move to Mr. Birk's -- well, actually we need to have mini openings for power plant maintenance.

MR. LOWERY: I assume you'd like the company to go first, your Honor?

JUDGE WOODRUFF: Yes.

MR. LOWERY: Thank you. This is going to be brief, so I'm just going to sit right here if that pleases the Commission.

JUDGE WOODRUFF: That's fine.

MR. LOWERY: I spoke about this issue a little bit this morning. I want to talk a little bit more in detail about it now to put it in context for the testimony that you're going to hear. The power plant maintenance issue, as I mentioned this morning, relates to expenses the company incurs to maintain its four large coal-fired power plants. We're not talking about any of the other power plants in the company's system.

An AmerenUE witness, Mark Birk, who manages this very high performing fleet, will be here to testify in just a few minutes on this issue, and as I indicated this morning, I very much encourage you to ask Mr. Birk what it takes to maintain these power plants and what is involved in scheduled outages and overall outages and the kinds of things that the company must engage in to keep that equivalent availability of the fleet high as the company has done.

The bottom line is that MIEC and to an even greater extent the Staff are proposing to both normalize an expense that should not be and need not be normalized. Their are adjustments if adopted would reduce the revenues the company receives, and the company needs to do maintenance on these power plants by the -- by between 13 and a half million and 16.8 million depending on which position you want to talk about.

The evidence in this case will show that what the Staff did was use a three-year average going back as far as April of 2006, four years ago, to normalize this expense, but the evidence will be clear that during this three-year time period, the company was taking fewer scheduled maintenance outages than normal. There were no major turbine overhauls at all during this period of time, and a major turbine overhaul, as Mr. Birk will discuss, involves a great deal of expense. And, in fact, there was no major turbine overhauls at all on the two largest power plants in AmerenUE's system from which two-thirds of the coal-fired energy that is produced by the company comes.

This was because the company was in the middle of a transition -- of transitioning to larger intervals between outages, and also because in 2009, because of the global financial crisis, the company had to defer some outages that it didn't want to do at that time because of cash concerns. The evidence therefore indicates that the Staff is using out of date dollars over an abnormal period to normalize the test year expense that does not need to be normalized.

The goal of the test year is to set expense and revenue levels so that they can match what can be reasonably expected when rates are going to be in effect in the future. The test year power level power plant maintenance does this. Staff's recommendation does not.

MIEC took a totally different approach than Staff, but still proposes to normalize the expense in a manner that will effectively amount to a cost disallowance. MIEC used data during much of the same period that the Staff used but went back somewhat farther with some of their data back to 2004 with some of it, but entirely failed to account for the obvious fact that a dollar in 2010 is not worth as much as a dollar in 2004 or '05 or '06 and so on.

Accounting for that one flaw in MIEC's analysis would make their recommendation within 5 percent of the test year amount, which indicates the test year amount simply does not need to be normalized. The company's budget for 2010 is also very close to that test year amount.

So we've got a number of data points to

suggest that the test year amount is an appropriate amount, and normally, unless we have a good reason, we don't, quote, normalize an expense. For those reasons, normalization is not appropriate in this case and the test year amount of expense should be included in the company's revenue requirement. Thank you.

JUDGE WOODRUFF: For Staff then?

MR. RITCHIE: May it please the Commission? I just have a very brief opening.

The issue before the Commission is what level of plant maintenance expense for the coal-fired generating units is appropriate for recognition in Ameren's revenue requirement. Staff has recommended normalization of the non-labor maintenance expense for AmerenUE's coal-fired plant based on a three-year average of non-labor expenses incurred from April 2006 to March 31st, 2009, and so a three-year normalization. Thank you.

JUDGE WOODRUFF: Public Counsel?

MR. MILLS: I have no mini opening, your Honor.

JUDGE WOODRUFF: For MIEC?

MR. ROAM: I'll also be brief. The task before the Commission now is to determine the normalized level of steam production maintenance expense for AmerenUE. Going forward I'll just call it maintenance expense or plant maintenance expense.

Ameren has requested that the normal level be set at an abnormally low number -- or I'm sorry, at an abnormally high number, and that number is based on a test year that exhibited the highest historical level of maintenance expense incurred by Ameren in at least the last ten years.

On the other hand, the MIEC has performed an analysis which demonstrates that the normalized level of maintenance expense is $104.6 million. This level encompasses the intervals between planned or scheduled maintenance outages and also contemplates the years where Ameren has to incur only the costs of base maintenance.

By analogy, if we're going to set a budget for maintaining our cars based on Ameren's methodology, we would set our budget in a year that we change the brakes, tune the engine, replace the transmission and got a brand-new paint job. All of these expenses may be necessary, but they don't have be a done every year. A normalized rate like the one proposed by MIEC accounts for both these major expenses as well as accounting for the years where all we would have to do is change the oil and pump the gas.

To establish rates on the high level as proposed by AmerenUE would unfairly require ratepayers to pay rates which would exceed the normalized level of maintenance cost. In fact, the testimony demonstrates that if the Commission adopts AmerenUE's proposed level of $119 million, it runs the risk of overstating Ameren's expenses by $36 million or 43 percent of its true cost during the years when no units are scheduled for maintenance.

UE will attempt to persuade the Commission through Mr. Birk's rebuttal testimony that the ongoing level of maintenance expense is approximately $119 million. However, what Ameren's testimony in this case selectively excludes are the years when expense will be drastically below the $119 million requested by Ameren. For example, in the year 2013, based on Ameren's own planned outage schedule, its maintenance costs are likely to come in around $83 million, a far cry from the 119 it's requesting.

The MIEC's analysis on the other hand takes into account both the years where Ameren's maintenance costs may rise to as high as $122 million and drop to as low as 83. The evidence will show that $104.6 million is the normalized rate for Ameren's plant maintenance taking into account the years with multiple planned outages and the years where there are none or perhaps one.

As such, MIEC respectfully requests that the Commission adopt the normalized rate of $104.6 million to cover the costs of AmerenUE's plant maintenance. Thank you.

JUDGE WOODRUFF: Thank you.

All right, then. Let's go ahead and call the first witness under this issue, which would be Mr. Birk.

(Witness sworn.)

JUDGE WOODRUFF: Thank you very much. You may inquire.

MARK BIRK testified as follows:

DIRECT EXAMINATION BY MR. LOWERY:

Q. Would you please state your name for the record.

A. Mark Christopher Birk.

Q. Mr. Birk, did you cause to be prepared for filing in this docket Exhibits 102HC and NP, Exhibit 103 and Exhibit 158 which are direct, rebuttal and supplemental testimony filed by you?

A. Yes, I did.

Q. Mr. Birk, if I were to ask you the same questions as posed in those three pieces of testimony, would your answers be the same?

A. Yes, they would.

Q. So that testimony is true and correct to the best of your knowledge, information and belief; is that right?

A. Yes, it is.

MR. LOWERY: With that, your Honor, I'd offer Exhibits 102HC and NP, 103 and 158 and tender Mr. Birk for cross-examination.

JUDGE WOODRUFF: 102HC and NP 103 and 158 have been offered. Are there any objections to their receipt?

(No response.)

JUDGE WOODRUFF: Hearing none, they will be received.

(EXHIBIT NOS. 102HC AND NP 103 AND 158 WERE MARKED FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

JUDGE WOODRUFF: And cross-examination, looking around the room, looks like we'll begin with Public Counsel.

MR. MILLS: No questions.

JUDGE WOODRUFF: Staff?

CROSS-EXAMINATION BY MR. RITCHIE:

Q. Good afternoon, Mr. Birk.

A. Good afternoon.

Q. Now, is it true that some of the maintenance scheduled in 2009 was deferred?

A. Yes, that is correct.

Q. And what was the reason for that?
A. The reason that the maintenance was deferred in 2009 was because of the liquidity concerns that we had. The outages that were scheduled in 2009 had a -- a component of maintenance and a component of capital, and there was concerns about getting the necessary financing to be able to execute those outages.
Q. So were these liquidity concerns a result of the financial crisis, global financial crisis going on at the time?
A. The liquidity concerns were generally a result of the economic conditions and -- and of what was happening with the banking industry and such.
Q. Now, did you still receive incentive compensation during this time?
A. Can you clarify the question, please?
Q. Well, when you made the decision -- when the decision was made to defer some of these maintenance costs, was the company still able to provide you incentive compensation?
A. I still received incentive compensation for 2009, if that is your question.
Q. Yes, it is. Thank you.
So it's a company -- it's within the company's discretion to defer the maintenance?

A. It is within the company's discretion to defer based upon meeting the requirements necessary to maintain applicable units.
Q. Now, has the company's maintenance budget for 2010 been approved by the board of directors?
A. I believe it has, yes.
Q. Do you know when that occurred?
A. Normally that occurs in late February.
Q. What about 2011?
A. 2011's would not have been approved yet.
Q. And neither would 2012's?
A. That is correct.
Q. Now, the company still has the ability to make discretionary changes after approval by the board, correct?
A. Yes. Yes, we do.
Q. Now, would you agree that Staff's methodology consists of a normalized level of actual maintenance costs for 36 months that ended March 31, 2009?
A. I don't agree with that. That is not my understanding of how Staff did it.
Q. It's not your understanding they normalized maintenance costs over a three-year period ending 2009?
A. On second thought, I believe that is correct. I'm getting the way MIEC normalized it and the

way Staff normalized it confused. But yes, I believe that's correct for Staff.

MR. RITCHIE: Okay. I have no further questions.

JUDGE WOODRUFF: Any questions for MIEC?

MR. ROAM: Yes, Judge.

CROSS-EXAMINATION BY MR. ROAM:

Q. Good afternoon, Mr. Birk.

A. Good afternoon.

Q. Did I understand in your surrebuttal testimony that you stated that you did not perform any major outages in 2009?

A. That is correct.

Q. And those were planned outages?

A. Those would have been planned major overhauls.

Q. Okay. And those were deferred, is that what you said in your testimony?

A. Yes. The major overhauls were deferred, that is correct.

Q. And to when were those deferred?

A. Basically, the entire major overhaul schedule for 2009 was deferred until 2010.

Q. So the outages that would have happened in 2009 were deferred to 2010?

A. Yes, that is correct.
Q. And they were performed in 2010?
A. They have not all been performed. We are currently in an outage on Rush Island 2, which was a major overhaul, and we also performed a mini outage on Meramec Unit 2, and we have not performed the Sioux outages, but they are scheduled for the fall of 2010.
Q. So by the fall of 2010, all of the outages that were deferred from 2009 will have been performed?
A. That is the current plan.
Q. So that the level of expense in the year 2010-2011 -- well, let's say 2010 at least, the level of expense incurred is higher than it normally would have been if you had performed those outages in 2009; is that right? In other words, it cost a lot of money to perform one of these big outages, a major overhaul?
A. I don't understand the question. Are you saying that basically a dollar in 2010 is worth less than a dollar in 2009, and because we moved those outages a year out, that we would have had to escalate the cost associated with those?
Q. No. I'm asking you if you were going to do a major outage that cost $10 million in 2009 and you deferred that outage to 2010, then 2010, your overall costs are going to be $10 million more than they would

have been if you hadn't deferred that 2009 outage to 2010; isn't that right?

A. For that particular outage, that would be correct, yes.

Q. Right.

A. Yes.

Q. I want to show you -- also, very quickly, can you tell me, and maybe you did mention this and I might not have caught it, what -- exactly what units were deferred from 2009 to 2010?

A. We had Rush Island Unit 2 was deferred.

Q. All right.

A. And the Sioux outages were also deferred.

Q. Okay. I want to show you what appears to be AmerenUE's response to Staff's Data Request 294.

A. Okay.

JUDGE WOODRUFF: Are you going to mark this as an exhibit?

MR. ROAM: Yes, please.

BY MR. ROAM:

Q. Mr. Birk, do you recognize that?

A. Yes, I do.

Q. And is that Ameren's response to Staff's Data Request 294?

A. Yes, it is.

Q. And does that accurately reflect the outages that you described to me a few moments ago?

A. Yes. It indicates Rush Island Unit 2, and it indicates Sioux Unit 2.

Q. Okay.

A. And it also has the mini outage for Meramec 2 that I spoke of earlier.

Q. All right. And does that -- does that also reflect either the beginning or midpoint through the -- these longer outage intervals that you described on page 14 of your rebuttal testimony, these six plus, four plus -- would it help you if I directed you to that testimony?

MR. LOWERY: Your Honor, pardon me. I -- I -- sorry to interrupt, Mr. Roam, but Mr. Birk, some of this information's marked highly confidential. I just want to caution you if -- if this information that for security reasons or otherwise, some of the specifics shouldn't be in the public domain, and we need to address that.

THE WITNESS: Can we go through them without going through the specific dates and times? If not --

MR. ROAM: We'll probably have to go in-camera.

MS. VUYLSTEKE: Your Honor, I would suggest we go in-camera.

THE WITNESS: Then we need to go in-camera because -- because -- especially of energy trading issues.

JUDGE WOODRUFF: We have actually lost our stream anyway, and I'm replying to the help desk right now try to get it back on, but I'll tell them to make sure we're in-camera when it comes back up.

Mr. ROAM: I suppose I --

JUDGE WOODRUFF: We will need to have it marked, yes. Just a moment.

(EXHIBIT NO. 433 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE WOODRUFF: What number will this be, I didn't get the premarked numbered listing for MIEC.

MR. ROAM: 433.

JUDGE WOODRUFF: And Ms. Vuylsteke, if you could get me a copy of the numbers that you've already assigned, that you've already nominated.

MS. VUYLSTEKE: Sure. I will do that.

JUDGE WOODRUFF: You can just do that after we're done for the day. You said this is what number?

MR. ROAM: 433.

JUDGE WOODRUFF: And it would be HC.

MR. ROAM: Yes.

JUDGE WOODRUFF: At this point then we will go in-camera, if there's anyone in the room who needs to leave, please do so.

(REPORTER'S NOTE: At this point an in-camera session was held, which is contained in Volume 23, pages 1005 through 1029 of the transcript.)

JUDGE WOODRUFF: Well, it is now almost five o'clock, we're out of the in-camera session, and we will stop here for the day. When we come back, we'll come back with Mr. Birk with questions from the Bench tomorrow morning at 8:30.

COMMISSIONER DAVIS: Judge, can we go ahead and just ask questions? You're in charge, and if you say no, I'll be fine with it.

JUDGE WOODRUFF: Let's go ahead and stop for the day, and we'll resume at 8:30 tomorrow morning. Anything else anybody wants to bring up while we're still on the record for today?

(No response.)

JUDGE WOODRUFF: With that, we are done for the day.

WHEREUPON, the hearing of this case was recessed until March 16, 2010.

I N D E X

AMERENUE'S EVIDENCE:

EXHIBITS INDEX

C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified Shorthand Reporter with the firm of Midwest Litigation Services, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Given at my office in the City of Jefferson, County of Cole, State of Missouri.

____

Kellene K. Feddersen, RPR, CSR, CCR