

1 STATE OF MISSOURI
2
3 PUBLIC SERVICE COMMISSION
4
5 TRANSCRIPT OF PROCEEDINGS
6
7 Public Hearing
8
9 September 13, 1999
10 Jefferson City, Missouri
11 Volume 1
12
13 In the Matter of 4 CSR 240-20.015) Case No.
14 Proposed Rule - Electric Utilities) EX-99-442
15 Affiliate Transactions.)
16)
17 In the Matter of 4 CSR 240-80.015) Case No.
18 Proposed Rule - Steam Heating) HX-99-443
19 Utilities Affiliate Transactions.)
20)
21 In the Matter of 4 CSR 240-40.015) Case No.
22 Proposed Rule - Gas Utilities) GX-99-444
23 Affiliate Transactions.)
24)
25 In the Matter of 4 CSR 240-40.016) Case No.
Proposed Rule - Gas Utilities,) GX-99-445
Marketing Affiliate Transactions.)

KEVIN THORNBURG, Presiding,
Regulatory Law Judge.

SHEILA LUMPE, Chairperson,
M. DIANNE DRAINER, Vice-Chair,
HAROLD CRUMPTON,
CONNIE MURRAY,
ROBERT G. SCHEMENAUER,
COMMISSIONERS.

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1 JUDGE THORNBURG: Good morning. My name
2 is Keith Thornburg. I'm the Regulatory Law Judge
3 assigned to this rule-making proceeding. Today is
4 September 13th, 1999, and we're convening for the
5 rulemaking hearing for the proposed rule applicable
6 to affiliate transactions in the steam heating
7 utility industry.

8 The style of the proceeding is in the
9 matter of the Missouri Public Service Commission's
10 proposed rule regarding affiliate transactions for
11 steam heating utilities, Case No. HX-99-443. The
12 proposed rule number is 4 CSR 240-80.015.

13 I'd like to first point out that this is a
14 public hearing regarding proposed rulemakings.
15 We're here today to take comments from the public
16 regarding proposed rules. The attorneys may appear
17 today in a representative capacity, and if you are
18 appearing in a representative capacity, I will ask
19 that you complete the written Entry of Appearance
20 form and that you also re-identify yourself or your
21 client or clients on the record.

22 We will be -- you will make a brief
23 opening statement if you desire, and later in the
24 hearing you may also offer comments that might
25 include fact issues or argument. I will, if

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1 possible, call on you in the same order for
2 comments as I do for opening statements.

3 The Commissioners and I may question you.
4 At the time you are called for comments, you may
5 present any witnesses that have accompanied you
6 today for this hearing. Any person who wishes to
7 appear and offer comments but is not acting as an
8 attorney in a representative capacity will be sworn
9 in, including attorneys who are appearing solely as
10 a witness. If someone is here today and wishes to
11 speak, he or she should sign in on the witness list
12 that I have up here in the front of the hearing
13 room.

14 Because this is a rulemaking proceeding,
15 objections of the testimony of witnesses will not
16 be taken or ruled on, and all of the questioning
17 will be from the Bench. The order of the opening
18 statements and the witnesses today will be
19 proponents first and opponents second. I have
20 prepared a list of participants from the
21 preregistration opponents and proponents, and I'll
22 work down that list before I call on anybody that
23 just appeared and signed in for the first time
24 today.

25 Some participants have indicated that they

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1 may request that their comments may be incorporated
2 in the -- for the electric utility affiliate
3 transactions, Case No. EX-99-442, or in the gas
4 utility affiliate or in the gas utility marketing
5 affiliate transactions for Case Nos.
6 GX-99-444 and GX-99-445. If this is the case, then
7 the witness or the attorney should indicate the
8 cases where this is desired, and I'll ask the court
9 reporter to reproduce that testimony as an exhibit
10 to the transcript for that particular rulemaking
11 where you want the testimony reproduced. It's my
12 preference to do this for comments by witnesses,
13 I'd prefer not to do that for opening statements
14 unless that presents a hardship for anyone.

15 After the witness has initially appeared
16 and presented its comments and answered questions,
17 it's possible that the Commissioners or I may ask
18 questions of that witness later in the hearing if
19 they're still present. Those later comments won't
20 be automatically incorporated as an exhibit. So if
21 there are comments or testimony today that aren't
22 made an exhibit after the transcripts are prepared
23 and if you want any of those comments considered in
24 another proceeding, you'll need to identify those
25 comments and make a written request to the

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1 Commission. In the request you can designate the
2 page number and the lines that you want reproduced,
3 or if it's not lengthy, you can just present that
4 in your request and reproduce it.

5 I'd like to take on the record entries of
6 appearance by attorneys that are appearing here
7 today. If you've already filled out the written
8 Entry of Appearance, all you need to do is state
9 your name and the party you are representing. I'll
10 start with Staff.

11 MS. SHEMWELL: Lera Shemwell representing
12 the Staff of the Missouri Public Service
13 Commission.

14 JUDGE THORNBURG: Public Counsel?

15 MR. COFFMAN: John B. Coffman and Douglas
16 E. Micheel on behalf the office of the Public
17 Counsel.

18 JUDGE THORNBURG: Okay. Any other
19 proponents today?

20 Opponents attorneys?

21 MR. FAGAN: Shawn Fagan on behalf of the
22 Ameren Corporation and the Union Electric Company.

23 MR. NIEHOFF: William Niehoff, Ameren
24 Corporation.

25 MR. DUFFY: Gary Duffy, St. Joseph Light

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1 and Power Company.

2 MR. KEEVIL: Jeff Kevil Trigen-Kansas City
3 Energy Corporation.

4 JUDGE THORNBURG: Are there any
5 questions?

6 Okay. We'll take a brief recess probably
7 for about -- we'll start at 20 after 10:00. I'll
8 bring the Commissioners in. So that will give you
9 time if you want to get a cup of coffee or anything
10 and we'll go back on the record at 10:20.

11 (Off the record.)

12 JUDGE THORNBURG: We adjourned briefly,
13 and have there been any other attorneys that
14 haven't signed in that wish to appear today?

15 Any other witnesses that haven't signed
16 in?

17 Okay.

18 As I indicated earlier, we'll start with
19 opening statements, and we'll go proponents first
20 opponents second, and then after that we'll go
21 through a round of comments. Everyone will get a
22 second shot at that time.

23 I'll begin by calling Lera Shemwell with
24 the Public Service Commission's Staff.

25 MS. SHEMWELL: Good morning. May it

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1 please the Commission. I'm Lera Shemwell
2 representing the Staff of the Missouri Public
3 Service Commission. Staff supports the proposed
4 rule as a reasonable and measured approach to the
5 changing operations of monopoly utilities.

6 As our regulated utilities continue to
7 expand, once limited operations, into unregulated
8 areas, the problems of cost shifting from the
9 affiliates to the regulated monopoly increases.
10 Other states have adopted the affiliate
11 transactions rules for their states. Some are more
12 stringent than our proposed rule, and others are
13 quite similar. We've attached those -- or reviews
14 of those to our comments.

15 The rules that are proposed by the Staff
16 are also consistent with NARUC'S recently issued
17 guidelines. They adopted guidelines for cost
18 allocations and affiliate transactions after they
19 received input from a variety of groups, including
20 EEI, the American Gas Association, the SEC, the
21 FERC and Rural Electric Associations, as well as a
22 variety of State public utility commissions.

23 The jurisdiction of the Commission to make
24 this rule has been challenged. The Commission is a
25 statutorily created entity and has only powers

1 granted by statute. The Commission is charged with
2 regulating monopoly utilities to assure just and
3 reasonable rates.

4 Trigen's assumptions that the Commission
5 does not have jurisdiction are simply an error. As
6 forthcoming in Staff's initial comments,
7 Section 393.140, Subsection 12, as well as the case
8 law, noted the initial comments, demonstrates the
9 Commission's jurisdiction.

10 It says generally that businesses that are
11 substantially kept separate from the utility
12 operations are not subject to Commission
13 regulation -- are oversight. Subdivision 12 states
14 that it shall not restrict or limit the power of
15 the Commission to inquire into and prescribe
16 apportionment of a number of things, including
17 earnings and expenses fairly and justly among the
18 other corporations and the utility. The Commission
19 must have adequate information to apportion
20 expenses and earnings fairly as required by the
21 statute.

22 Staff would respectfully suggest to the
23 Commission that in addition not only has the
24 statutory authority to inquire into these
25 apportionments, but since you are charged with

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1 assuring just and reasonable rates, you have the
2 duty to do so.

3 Others have questioned the need for this
4 rule. Monopoly utilities are now engaged in many
5 more operations than in the past -- affiliated
6 entities and have an incentive therefore to
7 maximize the profits of these affiliates by
8 shifting costs to the regulated entity.

9 There's nothing to prevent such activity
10 unless the monopoly utility is required to keep
11 adequate records and to make such records available
12 to the Staff of the Commission who can then submit
13 their findings to the Commission.

14 Adequate cost allocation, other costs to
15 affiliate entities is essential to ensure that the
16 captive rate payer does not subsidize the
17 affiliate. This will benefit the consumers by
18 preventing the utility affiliate from having unfair
19 advantage in the utilities' uniquely gained status
20 as a regulated monopoly. This rule is reasonable.

21 Staff met extensively prior to and during
22 the development of the proposed rule. You will
23 hear some interested persons urging a more
24 stringent rule and others a more moderate approach,
25 and still others urging no rule whatsoever.

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1 This rule is a sensible approach that
2 balances the interests of both the utilities and
3 consumers. The variances allow flexibility.
4 There's flexibility in determination of the fair
5 market value, and the rule is not burdensome
6 because utilities should be already keeping many of
7 these records, and it encourages a sound business
8 practice of obtaining goods and services at the
9 most reasonable prices.

10 Staff urges the Commission to adopt the
11 proposed rule. Thank you.

12 JUDGE THORNBURG: Thank you.

13 MR. COFFMAN: Thank you.

14 May it please the Commission. Good
15 morning. As you may know, the Office of the Public
16 Counsel did not file any comments in this steam
17 rulemaking, although we have expended quite a bit
18 of time and effort in the electric and natural gas
19 rulemaking cases.

20 You shouldn't interpret this fact as
21 indifference in this case. We are here to support
22 the Commission's proposed rule as far as steam goes
23 and simply have focused our energies to those
24 rulemakings where we believe the impact on the
25 public is more significant, and we traditionally

1 focus our representation on the residential and
2 small business rate payers of which there are no
3 steam customers of that kind currently.

4 We also would like to point out that there
5 would be significant value if the Commission were
6 to enact rules that were substantially similar
7 between the three industries that we're talking
8 about, steam, electric and natural gas. There will
9 either be some better ease of enforcement and less
10 confusion to the degree that consistent principles
11 would apply. The very important principles
12 involved here transcend the technology or the
13 delivery of these particular type of utility
14 services.

15 And, again, we will be here the next
16 couple of days to provide significant comments with
17 our two witnesses. That's all I have for now.
18 Thank you.

19 JUDGE THORNBURG: Thank you.

20 Are there any other proponents here today
21 wishing to present an opening statement?

22 Start down the list of opponents.

23 Mr. Shawn Fagan, do you have an opening
24 statement?

25 MR. FAGAN: Good morning. My name is

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1 Shawn Fagan. I'm here on behalf of Ameren
2 Corporation and Union Electric Company. My opening
3 statements this morning is very brief. Basically
4 we will be submitting comments -- we've already
5 submitted written comments to all four rulemakings,
6 and we will be submitting oral comments tomorrow,
7 speaking with respect to some legal issues, and Dr.
8 John Landon will be speaking with respect to
9 economic issues and to the rules more generally.

10 We'd like my comments tomorrow and
11 Dr. Landon's comments to be incorporated into the
12 record of all four rulemaking proceedings, and
13 we'll reserve any further comments until tomorrow.
14 Thank you.

15 JUDGE THORNBURG: Okay. And at the time
16 you present those comments tomorrow, we'll need you
17 to re-identify that on those records just to make
18 sure we're clear on the testimony and the comments
19 to be preserved.

20 MR. FAGAN: Certainly we'll do that.
21 Thank you.

22 JUDGE THORNBURG: Mr. Keevil.

23 MR. KEEVIL: Good morning. I'm Jeff
24 Keevil representing Trigen-Kansas City Energy
25 Corporation today. Trigen has filed both initial

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1 and reply comments in this case as to why this
2 proposed rule should not be adopted, so I have no
3 additional comments of that nature to make here
4 today but would simply refer the Commission to the
5 written comments of Trigen which have been
6 previously filed.

7 What I do have to say here today is in the
8 nature of a legal objection as to the procedure
9 employed in this case. As you will recall, Trigen
10 and numerous other utilities filed a motion to
11 adopt contested case procedures in this proceeding,
12 which among other things sought the opportunity for
13 cross-examination.

14 You will also recall that that motion was
15 denied by the Commission. While we still believe
16 our arguments and positions set forth in the motion
17 are correct and we still stand by the motion, I'm
18 not here today to reargue that motion, since it has
19 been denied by the Commission, and application for
20 rehearing currently pending on it. However, since
21 by virtue of the Commission's denial of that
22 motion, the utilities affected by this proposed
23 rule are not allowed the opportunity for
24 cross-examination of those who may speak in favor
25 of the proposed rule.

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1 I would object to the swearing in or
2 affirming in of any purported witnesses in this
3 proceeding and would make that a standing objection
4 as to any witnesses who may be sworn or affirmed in
5 this case. Also since the notice of proposed
6 rulemaking required that those who wish to make
7 comments today to request in writing at least seven
8 days in advance the opportunity to make oral
9 comments, I would also object to allowing anyone to
10 make oral comments who did not file a request to do
11 so seven days in advance.

12 As to the first objection, the basic point
13 that I'm trying to make there, and I believe the
14 other utilities are trying to make also, is that
15 you simply cannot take testimony under oath without
16 allowing the testimony for parties who oppose
17 whatever it is being testified to the opportunity
18 for cross-examination. Thank you.

19 JUDGE THORNBURG: Mr. Keevil, did your
20 written arguments present any information on the
21 swearing-in issue?

22 MR. KEEVIL: The written arguments -- the
23 comments that were filed by Trigen had the rest of
24 the substance of the rule. The motion, the Joint
25 Motion to Adopt contested case procedures, which

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1 was joined by Trigen, I believe, Laclede Gas,
2 Missouri Gas Energy, addressed what I'm talking
3 about here today.

4 JUDGE THORNBURG: Did you address the
5 swearing-in issue also?

6 MR. KEEVIL: No, because at that time we
7 were hoping to have the opportunity for
8 cross-examination, so we didn't get to this. Since
9 we were denied the opportunity for cross in the
10 denial of that motion, that then, as a result,
11 leads us to this predicament here today where we
12 don't believe you can take testimony under oath and
13 deny cross-examination.

14 JUDGE THORNBURG: Thank you.
15 Mr. Duffy.

16 MR. DUFFY: My name is Gary Duffy. I'm
17 here today on behalf of St. Joseph Light and Power
18 Company which has a small industrial steam system.
19 In the interest of brevity, I'm just going to echo
20 Mr. Keevil's comments and would ask that there be a
21 standing objection to the swearing in of any
22 witnesses, because we also believe that that will
23 constitute the taking of evidence, and that's an
24 inconsistency with your previous ruling that we
25 would not have contested case procedures. Thank

1 you.

2 JUDGE THORNBURG: Thank you.

3 Are there any other attorneys representing
4 parties today that are in opposition to the
5 proposed rules that would like to offer an opening
6 statement?

7 Okay. At this point we'll be taking
8 comments, and I'll work down the list of those
9 folks that signed in today, and we'll essentially
10 follow the same order as opening statements.

11 Ms. Shemwell, do you have comments you'd
12 like to offer today?

13 MS. SHEMWELL: Yes, Judge. We'd like to
14 offer Mr. Robert Schallenberg to make comments, and
15 if the Commission finds it appropriate or helpful,
16 that his comments be incorporated by reference into
17 the electric and gas and gas marketing hearing.

18 JUDGE THORNBURG: Okay.

19 Mr. Schallenberg, will you come forward?

20 (Witness sworn.)

21 JUDGE THORNBURG: I'd like to note for the
22 court reporter that the comments and questioning
23 for this witness be incorporated into the records
24 as exhibits, as I indicated in the opening, and
25 we'll do that. We'll attach those comments.

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1 Mr. Schallenberg, I'll let you offer your
2 comments. It's a rulemaking proceeding, so it's a
3 little less strict procedure than what maybe you
4 are used to. I will ask that you introduce
5 yourself again for the court reporter so that we
6 have that information in the record.

7 THE WITNESS: My name is Robert E.
8 Schallenberg.

9 In terms of my comments, I don't think I
10 have anything to offer, other than what the Staff's
11 already said. I'm available to answer whatever
12 questions the Commission wants to ask.

13 JUDGE THORNBURG: Okay. Let's start with
14 questioning then.

15 Commissioner Drainer?

16 COMMISSIONER DRAINER: I have no
17 questions.

18 JUDGE THORNBURG: Commissioner Crumpton?

19 COMMISSIONER CRUMPTON: No questions.

20 JUDGE THORNBURG: Commissioner Murray?

21 COMMISSIONER MURRAY: Yes.

22 QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Good morning Mr. Schallenberg.

24 A. Good morning.

25 Q. Why do we need this rule for steam heating

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1 corporations?

2 A. I would say that the primary need for this
3 rule would be, is to support the agencies'
4 responsibilities to ensure that the rates set were
5 just and reasonable, and since we use a cost of
6 service standard, the cost to provide service, you
7 need data to evaluate the cost.

8 Q. And I believe in the opening statement of
9 Ms. Shemwell she said that regulated monopolies are
10 engaging in more affiliate activities. Can you
11 cite some examples of steam heating corporations in
12 Missouri engaging in more affiliate activities?

13 A. Trigen is a very large corporation that
14 actually owns -- I know they -- I know they have
15 the Kansas City, and I believe they have the
16 St. Louis heating operations. That entire
17 operation is mostly, I believe, non-regulated. So
18 most of the costs that would come to those two
19 areas would come from a common cost or a
20 non-regulated base.

21 Q. What has changed, or what is changing? Is
22 that -- I believe her statement was engaging more
23 and more in affiliate activities. What is that --

24 A. The emphasis is that now in order to
25 generate higher and higher earnings, in order to

1 get appreciation in terms of stock price, there's
2 more and more pressure to generate earnings growth,
3 and earnings growth can be generated at a higher
4 percentage in non-regulated business. Also --
5 earnings growth can also be generated by cost
6 shifting and moving costs from one operation to the
7 other.

8 Q. But earnings growth can be generated in
9 the legitimate manner too; is that correct?

10 A. I mean -- yes.

11 Q. And through affiliate -- through savings
12 associated with affiliate activities, could it not?

13 A. It could -- I mean, affiliate transactions
14 can be -- can be beneficial, yes.

15 Q. Okay. If you would look at the rule, the
16 proposed rule under the standards portion, and I'd
17 like to ask you some questions regarding how this
18 would actually work.

19 A. I'll --

20 Q. If --

21 A. I'll have to get it.

22 Q. Okay. You can get a copy from your
23 counsel.

24 A. Okay.

25 Q. Referencing the standards Section 2, and

1 basically I just want you to go through some kind
2 of a scenario with me and see how it would work.
3 If a regulated corporation compensates an affiliate
4 entity for goods or services at fair market value,
5 does it follow that the affiliate entity can likely
6 sell those same goods or services elsewhere at the
7 same price?

8 A. I would say generally, yes.

9 Q. Because it's fair market value. Correct?

10 A. Yes. Except the differential there is --
11 when I said yes, is, fair market value is
12 determined by the relative need of the purchaser,
13 and it's possible that the affiliate may have a
14 greater need than the general market does.

15 Q. I'm talking about the regulated entity
16 purchasing from the affiliate.

17 A. If you are saying -- again, it gets back
18 to -- if the specific need of the regulated entity
19 is such that the affiliate is the only one that can
20 meet that need, than the fair market value, there's
21 not a lot of other alternatives out there. But
22 generally speaking, if you assume that there's not
23 a uniqueness to the transaction, it would be about
24 the same.

25 Q. Okay. Now, if the fully distributed costs

1 to the regulated corporation to provide those same
2 goods and services to itself is less than the fair
3 market value, it would be a violation of this rule
4 for the regulated corporation to pay the affiliate
5 fair market value; is that correct?

6 A. It's intended not to encourage that. The
7 reason I hesitate is whether we actually precluded
8 the transaction or said that that's all you can
9 record as the cost of the transaction, and --

10 Q. Well, if you read 2(a)1 --

11 A. Excuse me. It would preclude the
12 transaction.

13 Q. So it could not purchase -- it could not
14 pay fair market value to the affiliate if the fully
15 distributed costs were less than for fair market
16 value. Correct?

17 A. That's correct.

18 Q. So does it follow, then, that where a
19 regulated corporation could provide the same goods
20 or services to itself at less than fair market
21 value, it has no choice but to either do that or to
22 buy in the marketplace from a non-affiliate?

23 A. Yes. In fact the fully distributed was
24 less than market value and bought from a non-- I
25 mean, a non-affiliate, it would be subject also to

1 a prudence question in a rate-making proceeding.

2 Because, yes, you would be, as you could have
3 reduced your costs by doing it yourself.

4 Q. What if the good or service that we're
5 talking about is not one that's, say, for example,
6 it's not readily available elsewhere in the market
7 and it's also not easily provided by the regulated
8 corporation to itself?

9 A. Okay. Those could be factors in terms of
10 timing. For example, if something that was an
11 emergency or something that was needed that the
12 regulated company would have a time delay of doing
13 it for itself, and because of that time delay some
14 inner-transition period would be needed and it
15 would have to buy it from the regular -- excuse
16 me -- from the affiliate company, the company would
17 have to -- if it had to meet that need, would have
18 to do that, and then it would be under that waiver
19 position in that rule to show the variant sections.

20 Q. Okay. So then what would the company do,
21 the regulated company?

22 A. Well, if that was the only alternative in
23 order to meet its requirements, especially in the
24 area of safety, it would go ahead and buy the
25 service or commit to the service at whatever price

1 it had to pay that it can justify until it could
2 make arrangements to provide the service in-house.
3 As soon as it could provide the service in-house,
4 it would discontinue paying the higher rate to its
5 affiliate.

6 Q. How would it get approval from the
7 Commission to do that?

8 A. Under the variance, the company would go
9 ahead and do the action and would submit notice to
10 us, and then the Commission would then be alerted
11 to the transaction as taken place contrary to the
12 rules, and then the Commission would decide whether
13 the action was justified or not.

14 Q. How would the Commission decide that?
15 Would there be a special hearing for that decision?

16 A. I guess it could depend on the amount of
17 dispute, whether the action was justified. I mean,
18 if, for example, it was one that was viewed by the
19 Staff and other parties to be a legitimate course
20 of action given the facts and circumstances at the
21 time, I mean, unless the Commission noticed
22 something unique that the other parties had, I
23 don't know that it would require a contested
24 proceeding.

25 Now, if, for example, the Staff or OPC or

1 another party believed that the facts and
2 circumstances did not justify the company's action,
3 then it's likely you would have a contested
4 proceeding, and that would go to the Commission and
5 take longer.

6 Q. So you think there's a possibility that
7 there might be some uncontested variances?

8 A. I would be sure of that, and I say that
9 from the experience of what I've seen in the
10 telephone industry.

11 Q. Okay. If you'll look at Section 2(a)2 of
12 the rule, how would you determine the fully
13 distributed cost of -- let's see -- the fully
14 distributed cost of a trained employee?

15 A. How is that determined?

16 Q. Uh-huh.

17 A. You would go through the amount -- it's in
18 an overhead calculation where you take the amount
19 of dollars you spent for training, which -- to the
20 extent that you engage in internal training. There
21 would be loadings for training manuals and
22 development, training room facilities that you
23 maintain, training program evaluation, that would
24 be loaded on to direct training cost and then
25 assigned to the employee in addition to their

1 salary and benefits.

2 Q. What if the employee has been there for
3 15 years and has had training the entire time of
4 the employment, do you add all of those 15 years
5 worth of training to determine the full distributed
6 cost of that employee?

7 A. In the fully distributed cost method, you
8 have to go through and consider all of the
9 components of cost, but you may make the decision
10 that because -- say if that 15 years was related to
11 training to weld a pipe or something like that,
12 that, in essence, was not related in any way to
13 anything other than a regulated operation. You
14 would assign that training under fully distributed
15 cost methodology 100 percent to the regulated
16 business and none to the other.

17 Now, if it was training that, in essence,
18 was common, that had been cumulative and had a
19 cumulative value going on, then you would consider
20 a sharing allocation of that cost to be loaded on
21 at some fair, or what you consider to be a
22 reasonable approach -- an allocation factor for
23 that.

24 Q. Sounds like it's pretty involved
25 calculations in looking at employees pretty

1 carefully in terms of what kind of training they've
2 had over their employment. Would you agree?

3 A. I mean, it takes some effort. I won't
4 deny it takes effort. I don't know -- I see it
5 done all of the time, so I don't -- I guess I say
6 since I see it so much, I don't know it's as
7 unusual as someone who hasn't seen it.

8 Q. And how would you determine the fully
9 distributed cost of information?

10 A. That would be the cost to produce and
11 maintain.

12 Q. To produce and maintain.

13 A. For example, if it comes from an employee,
14 you could tie that to salary. To the extent that
15 it's a data-gathering process that was being
16 somewhat automated and somewhat manual, you'd have
17 to pick up -- like computer processing time, which
18 would be a unit by the number of units used, and it
19 would have to include some portion of manual
20 processing, which would include some allocation of
21 salary.

22 Q. If you'd look at 2(b), which prohibits
23 preferential service information or -- let's see a
24 moment. I better read it. Not to provide any
25 preferential service information or treatment to an

1 affiliated entity. But then if you go to the
2 definition, preferential service includes
3 confirmation treatment or actions. Do you see any
4 inconsistency there between the definition and
5 Setting Rule 2(b) as it's stated?

6 A. If your question is the fact that the
7 definition has actions in it and 2(b) does not,
8 that would be a difference.

9 Q. And my question is, Preferential service
10 means information or treatment, and 2(b) says
11 preferential service, comma, information or
12 treatment. It's including what's already in the
13 definition of preferential service, which I don't
14 know why you need to repeat that?

15 A. And I can't -- I can't explain to you the
16 need for the duplication either.

17 Q. Okay. What is an unfair advantage, and
18 how would you define that?

19 A. I would find that to be one of which
20 something is provided to one group, one entity, one
21 person that wasn't available to other individuals
22 or other groups that had similar interests.

23 Q. And what makes it unfair?

24 A. The fact that the decision was made to
25 restrict the access to the advantage.

1 Q. But I thought you said affiliate
2 transactions could be -- if an affiliate
3 transaction involves economies of scope and scale
4 and therefore provides some economic advantage to
5 the regulated entity, why is that unfair on its
6 face, or is it unfair on its face?

7 A. I think you have to go and look at the
8 next level as to where is the economy as a scope
9 and scale generated from? Is it generated from a
10 relationship, or is it generated from the regulated
11 business? Most of the transactions that we
12 encounter are generated from regulated business,
13 not from the transaction itself.

14 And so to the extent that there is economy
15 of scope and scale, there's a value to that. To
16 the extent that value is captured and a majority of
17 the rates we set, any value captured is used to
18 reduce cost. If there's anything done to minimize
19 the capture of that value, that would be what would
20 be unfair.

21 Q. To minimize the capture of the value. If
22 the rate payers were not harmed, would there be
23 anything unfair about the utility using economies
24 of scope and scale?

25 A. I mean, not from a rate payer protection

1 issue. You would have to look at that to the
2 extent that you are looking at the competitive
3 market implications.

4 Q. Could the rate payers be helped by the
5 utilities use of economies of scope and scale? Is
6 that possible?

7 A. It's possible.

8 Q. Okay. On 2(b), again, I wanted to ask you
9 the -- who is referred to there by the reference to
10 another party? It's prohibiting preferential
11 treatment to an affiliated entity over another
12 party.

13 A. That would be a non-affiliated party.

14 Q. That would be any -- actually anyone
15 else. Right?

16 A. Yes. The thought there is, it's hard to
17 deny something to one and the other if there is any
18 other that wants it.

19 Q. 2(c), the reference there to affiliate --
20 well, I guess it's not in this rule. It's in one
21 of the rules where the reference is to affiliated
22 transactions, but the definition section contained
23 affiliate. It's either in electric or gas, I
24 guess, where it stated affiliated in this section,
25 and I was going to ask you why the difference, but

1 maybe it was just a typo.

2 A. It could be. We can look at that when
3 that day comes.

4 Q. On 2(d), how is a regulated corporation
5 supposed to gather information about the
6 availability of other non-affiliated entities
7 providing the same service?

8 A. The question, if I understand it, how
9 would a regulated company know about other
10 non-affiliated companies that were providing the
11 same --

12 Q. The rule requires that if the customer
13 requests information --

14 A. Oh, okay.

15 Q. -- that the regulated company shall
16 provide information regarding the availability of
17 other non-affiliated entities that provide the same
18 goods or services, and I'm wondering, how is the
19 regulated corporation to go about compiling that
20 information and having it available?

21 A. When I've seen this done, I don't know --
22 I mean, they do keep it, but normally it's a
23 referral to information sources that provides you a
24 list. When I saw it done in the telephone
25 industry, it was a referral to the yellow pages.

1 To the extent that you are interested in a
2 non-regulated product, they would refer the
3 customer or make the customer aware that they could
4 find a listing of alternative sources in the yellow
5 pages.

6 Q. So your interpretation of this rule is
7 that it could be something very generic, just you
8 can find a list in the yellow pages?

9 A. That's one way I've seen it done. The
10 other way I've seen it done is that the regulated
11 entity with the service center actually made known
12 that it would provide a referral service for a fee,
13 and to the extent that people signed up, they will
14 give you a listing of the companies they had
15 received references from.

16 Q. And would the affiliated entity then also
17 have to pay the same referral service?

18 A. Yes. And I would also -- I was going to
19 also mention that there is a time when that's
20 actually bid, and they do exclusive referral to
21 whoever the highest bidder is. I've seen that too.

22 Q. Would this rule allow that?

23 A. I would say -- I'm not aware that it
24 wouldn't, but we haven't seen that yet.

25 Q. Under 2(d), it seems that they would be

1 required to give information about other entities
2 that provide the same service.

3 A. I'm sorry. I answered your question as,
4 Because I have to provide information that there
5 are other providers out there, I don't see that as
6 precluding that I couldn't refer you to the highest
7 bidder and make you aware of that at the same time.

8 Q. What if the highest bidder is your
9 affiliate?

10 A. I have seen that done, I mean, with both.
11 We have a company that's affiliated with us that
12 provides whatever the customer is asking for. That
13 company is not -- is not part of our regulated line
14 of business. You are not required to buy from that
15 company. This is their name, address or whatever,
16 but you have alternative sources through in that
17 case, he was referred to the yellow pages under
18 whatever the product was.

19 Q. But regardless, it would still have to say
20 you have alternative sources --

21 A. Yes.

22 Q. -- and refer them to something generic
23 like the yellow pages?

24 A. Yes. I think it's a customer information
25 thing, yes.

1 Q. So you don't interpret this to require the
2 corporation have any obligation to provide an
3 exhaustive list?

4 A. Not at all. In fact, that would be very
5 difficult to do and maintain.

6 Q. Okay. I guess the question as I read it
7 was, If the corporation provides a list that is not
8 exhaustive, either inadvertently or for some other
9 reasons, what kind of liability do they have to
10 those that they don't mention?

11 A. It doesn't.

12 Q. For -- as I read the rule that Ameren
13 submitted, the proposal rule that Ameren submitted,
14 their Proposed Section 2, I don't understand why
15 that would not be an adequate rule and why the
16 cost -- they have set out as 2(g) in their proposed
17 rule. I don't know if you have that before you.

18 MS. SHEMWELL: I may.

19 COMMISSIONER MURRAY: That's attached to
20 the comments.

21 MS. SHEMWELL: Initial?

22 COMMISSIONER MURRAY: Yes.

23 JUDGE THORNBURG: Ms. Shemwell, if that
24 proposal was in the written comments, it will be
25 part of this record, but I don't know how clear it

1 will be for the transcript today. So if we get
2 into extensive questioning, you may want to offer
3 that at the end of the hearing today.

4 MS. SHEMWELL: Would you prefer that the
5 witness read it?

6 JUDGE THORNBURG: Or you could read it
7 into the record. Either way.

8 BY COMMISSIONER MURRAY:

9 Q. If you reference their standards section
10 and particularly 2(g) and costs associated with the
11 transfer of goods and services, that would allow --
12 at cost or fair market value is the wording. And
13 then as specified and allocated pursuant to either
14 a -- to a Commission's approved services agreement,
15 and it goes on to reference a services agreement
16 that has been approved by the Securities and
17 Exchange Commission under the Public Utility
18 Holding Company Act, being a -- would be deemed to
19 satisfy that provision.

20 And I would like to know, one, why that
21 would not be a good proposal and why it would not,
22 in your opinion, be a good idea to reference what
23 has been used by the Securities and Exchange
24 Commission and have some consistency?

25 A. I don't see that our rule would exclude --

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1 to the extent that you can choose whether you want
2 to do it at price or fair market value, I would say
3 ours is that we would not allow them the option to
4 pick the one that may be disadvantageous to the
5 consumer. And to the extent that it's approved by
6 the Securities and Exchange Commission and the
7 Public Utilities Holding Act, I don't know that all
8 of the companies covered by our rules would have
9 that available. But to the extent that a company
10 would have it available, that would be part of the
11 support that it could offer to support how it was
12 in compliance.

13 Q. But as I understand the rule, the proposed
14 rule that we have here, it has to be -- cost has to
15 be fully distributed cost?

16 A. Yes.

17 Q. And it allows for no flexibility in
18 determining whether it should be fair market value
19 or incremental costs or --

20 A. It doesn't allow -- it doesn't allow for
21 the difference in the cost difference. It does
22 have a fair market -- it does have a market value
23 criteria in addition to cost. And the reason for
24 that is that in fully distributed cost methodology,
25 you would be required to look at all elements of

1 cost. One of the difficulties you run into in
2 terms of doing this, is that when you get into
3 incremental cost, the concept, it's very difficult
4 to measure, especially in a utility that has so
5 much common cost.

6 Q. Isn't employee distributed cost very
7 difficult to measure also?

8 A. Well, it makes you look at it and come up
9 with an allocator, but you don't -- you can use --
10 the benefit of the employee distributed cost is to
11 the extent that you have a cost that can go either
12 way, can be incremental or it can be allocated, you
13 have the option under fully distributed costs to
14 say -- it's a term of measurement. It's easier to
15 allocate based on a time study or some kind of unit
16 of work measure than it is to actually get down and
17 do a detailed study to look at the actual
18 incremental costs that's involved there.
19 Incremental costs is very difficult and very costly
20 to do correctly.

21 Q. Is incremental cost and avoided cost the
22 same thing?

23 A. Can be, depending on your definition, but
24 I've seen it used differently.

25 Q. Would there not be an advantage to

1 allowing some flexibility for -- on a case-by-case
2 basis that in some instances it might be more
3 appropriate to use fully-distributed costs and
4 other instances it might be more appropriate to use
5 avoided or incremental costs so that you could have
6 some flexibility in the rule?

7 A. We believe we did that to the variance
8 proceeding. What we did was try to come up with a
9 standard that would be the baseline for everyone to
10 use without having the justification to deviate.
11 But to the extent that the facts and the
12 circumstances at the time justify the deviation,
13 you can do it, if it's justified.

14 Q. Okay. Can we go to Part 3 of the rule,
15 and 3(c)? I'd like to ask you how a company would
16 comply with -- just take me through what that would
17 involve.

18 A. It would go through and, in essence,
19 identify its total cost. It would identify the
20 different categories of how it broke down those
21 costs, so that what you do is, you look at those
22 categories and relate it to total and see if it
23 balanced.

24 Q. (C)1, must demonstrate that it considered
25 all costs incurred to complete the transaction.

1 How would it demonstrate it?

2 A. First, it would be, you start with what
3 the total cost of the entity, what your total cost
4 is to do business, and from that you would identify
5 what costs were related to the transaction, what
6 costs were not. You would have a filtering process
7 that would show, here's our total cost to do
8 business. Here's the cost that we have related to
9 the transaction, and that process would provide you
10 the process that we started with all of our costs,
11 and this is the items that we used or identified to
12 be related to the transaction.

13 Q. Now, in -- with the way the rule is
14 written, correct me if I'm wrong, but if they have
15 \$100 transaction between the regulated entity and
16 its affiliate, this process has to be followed; is
17 that correct? I mean, there's no floor?

18 A. That's true. There is no floor.

19 Q. So a \$5 transaction would come under this,
20 any amount?

21 A. Yeah. When you could sell something for
22 \$5 and it was worth a million and have a big loss,
23 yeah, that's true. The fact that you could
24 determine a low value for it and avoid the
25 consequences, the law doesn't allow you to do that.

1 Q. So every transaction --

2 A. Well, it's not necessarily done on a
3 transactional basis. Most companies, to the extent
4 that they have an item that they do on a regular
5 basis, they do that by looking at the process in
6 total and identifying the relevant information in
7 total and get a per unit cost.

8 Q. But if you had something unusual, for
9 example, where one of the entities had changed copy
10 machines or something and they needed a totally
11 different kind of paper or something that went with
12 that copy machine and they could sell it to the
13 other one, could afford to sell it to the other one
14 at a discount just so they could get rid of it,
15 that particular transaction would have to be shown
16 through this process, right, as to --

17 A. We do it. I mean, like, for example, if
18 we were going to change the copier, we collect the
19 cost data and even the agency would do that. I
20 guess to the extent that the copier was known to be
21 worthless, I mean, you had pictures of it, it
22 didn't work and stuff, I guess you could avoid it
23 under the variance. I mean, we would go through
24 and look at the value. In fact, I'm trying to
25 understand why you wouldn't want to know that

1 information before you would agree to sell it or
2 make the transaction, but --

3 Q. I want to know all of the costs incurred.

4 Section 3(d), when the -- when do you
5 anticipate that the corporation would come to the
6 Commission with a CAM proposal? How do you see
7 that playing out?

8 A. I would see that being filed with a
9 proposal. I would see that the final version of
10 the CAM from the companies would come about a year
11 after the rule was in effect, but there would be
12 initial submittals as to the concepts and the
13 identification of the data. I would probably
14 say -- probably -- probably five months afterwards.

15 Q. So do you see a full evidentiary hearing
16 for each regulated corporation for their CAM
17 proposal?

18 A. Would I foresee that?

19 Q. Uh-huh.

20 A. No.

21 Q. You would see it submitted and Staff and
22 OPC reviewing it and coming up with some agreement
23 to submit to the Commission? Is that how you
24 would --

25 A. I would see it being similar to what you

1 do with your annual reports now. There would be
2 some discussion in implementation of the CAMs.

3 Q. The Commission has to approve them though?

4 A. Yes.

5 Q. So I guess what I'm asking you is, once
6 it's submitted, do you see more as a stipulated
7 proposal presented to the Commission for approval?

8 A. Right. I would see it as, they would say,
9 This is how they intend to comply with the rule.
10 The CAM is evidence of it. If it was something
11 that was just -- I mean, the only thing I could see
12 that would come to the Commission would be is if
13 the company's compliance procedures as evidenced in
14 the CAM were felt by a party to be just opposite or
15 not consistent with the requirements of the rule.

16 Q. Okay. And do you see -- do you foresee
17 any problem with the parties agreeing to an
18 electronic format that would be used?

19 A. If you say, Do I foresee any problem, I
20 would say, I am sure there would be problems. If
21 you say, Will we come to an agreement, I have yet
22 to encounter one of those in the transfer of data.

23 Q. Yet to encounter one of what?

24 A. A disagreement in terms of the transfer of
25 data in electronic format that's been elevated to

1 where the parties just couldn't accept the
2 position. But, you know, given that we're moving
3 more and more into that area, I mean, the frequency
4 of that transfer and the volume is getting greater
5 and greater, I don't want to tell you that -- you
6 know, that I can't foresee there wouldn't be a
7 disagreement between the parties related to that
8 topic.

9 Q. Okay. Would you look at 4(a)2 -- I'm
10 sorry -- 4(b)1 and tell me how that differs from
11 4(a)6?

12 A. As I -- as I read it, 6 is just an
13 identification as to which basis is used, and --
14 excuse me. That was 4(a)6 -- is identification of
15 the basis that I'm going to record this transaction
16 under fair market value or fair market price. I'm
17 going to record this transaction under fully
18 distributed cost. 4(b)1 would be their
19 requirements to support having the underlying
20 records to identify that. Yes, I actually do that.

21 Q. For some reason I'm losing what my
22 question was really focused on there, but does
23 Staff anticipate disputes over what constitutes
24 sufficient detail?

25 A. I would -- I would say yes to the extent

1 that there will be initial disagreements. Yes.

2 Q. To the extent that there will be -- the
3 parties will come before the Commission and bring
4 disputes for hearings before the Commission?

5 A. I would look at that as being very rare.

6 Q. Very what?

7 A. Very rare. I could see that the Staff and
8 the companies will have disagreements from the very
9 inceptions of how these transactions should be
10 treated. But the exchange that takes place between
11 us and the companies, you move towards resolution
12 of a high percentage of those items. So in seeing
13 this, I would view we would go through the same
14 thing, but I don't want to tell you I can't see any
15 probability that there wouldn't be a dispute in the
16 coming years. I mean, you get them from the other
17 things we do here, so that is probable. There is a
18 probability to it. I don't know what it is.

19 Q. I am getting close to the end of my
20 questions, and since most of these rules are the
21 same, most of my questions for you are probably
22 going to be asked today.

23 A. Okay.

24 Q. On page -- excuse me just a minute --
25 Ameren's Proposed Rule 4 and 5 differs somewhat

1 from the proposed rule of the Staff, and
2 specifically one thing that I wanted to ask you
3 about in Ameren's rule, they have Subsection C
4 there. Do you see that?

5 A. Is that 4(c)?

6 Q. 4(c), yes.

7 A. Yes.

8 Q. Would a provision such as that in our rule
9 allow for more uniformity and more efficiency in
10 the companies being able to provide information to
11 the Commission?

12 A. I don't know that I would say that it
13 would need to be in the rule, because I don't know
14 that all of the companies that the rule would
15 affect would be able to avail themselves.

16 Q. Well, it just says, Will be deemed
17 satisfactory. It doesn't require its use.

18 A. I would say that that would be an
19 implementation issue that would come up to you, or
20 if it wasn't -- if it wasn't satisfactory through
21 the process at the time the rule was implemented.
22 I look at this as being something that Ameren would
23 probably want to propose as a standard to meet its
24 requirements under the rule.

25 Q. What is -- are you familiar with what is

1 required to be on Form U5S and U1360 pursuant to
2 the Public Utility Holding Company Act?

3 A. I saw the U5S Form about seven or eight
4 years ago. I haven't seen it since, so I don't --
5 so I couldn't tell you that those reports would be
6 or would not be satisfactory to the -- I don't
7 know. I mean, we can look that up, but I can't
8 tell you today about that.

9 Q. Do you see some value in allowing some
10 sort of uniformity, though, in reporting
11 requirements?

12 A. I see -- the answer is, yes, I see value
13 in trying to use as much of the present company's
14 information-gathering systems as possible to be in
15 compliance with the rule.

16 Q. And I notice in their proposed rule that
17 power -- rather 5 -- Subsections 5 through 8 that
18 are in Staff's proposed rule are omitted there.
19 Can you tell me why 5.5 is necessary?

20 A. That would identify the transfer of
21 employees from the regulated to the non-regulated
22 as, I guess, a monitoring, to see if we were
23 running into a problem with the regulated company
24 training.

25 Q. The company would have to go through and

1 determine the fully distributed costs of each of
2 those employees; is that right?

3 A. Either that or make a showing of why that
4 would be not in the best interest under the
5 variance.

6 Q. No. 6, 5.6, would you explain that one?

7 A. That would be -- that would be the
8 oversight -- that's not a correct term. That would
9 be the requirement for the regulated company to
10 evaluate to the extent that it is providing access
11 to its regulated contracts or facilities to an
12 affiliate to look at the quality of service issue,
13 or reliability of service in 6.

14 Q. So that each transaction it had with an
15 affiliate -- are you saying transaction by
16 transaction or just --

17 A. If you are saying, Is it each individual
18 contact -- would it have to be done for each
19 individual contact, I would say no. It would have
20 to be done -- if there is a frequency of a certain
21 type of contract, you would set up the parameters
22 to work out -- to look at what are the conditions
23 of the parameters to be done for that type of
24 contract -- excuse me -- contact. To the extent
25 there are different types, you would have to do it

1 at least for each different type.

2 Q. By having that in the rule, you are not
3 trying to say that in order for there to be an
4 affiliate transaction, it must enhance reliability,
5 are you?

6 A. We're not making a requirement that they
7 have to improve it, but we are concerned about it
8 having a negative impact.

9 Q. So basically what you want shown here is
10 there's no negative impact from any services
11 provided by access to the affiliate to -- well, by
12 any affiliate transactions?

13 A. That, in essence, brings in -- because
14 most of the discussion has been about the cost and
15 the rate part. This, in essence, covers the
16 quality of the service being provided.

17 Q. And then No. 7, the availability of
18 customer information, you want the recordkeeping to
19 include detail, I assume, about availability of
20 customer information?

21 A. That -- excuse me. That, 7, is to ensure
22 that the company has developed -- we use the term
23 "policy," but a general direction that would be
24 given to its employees that you knew, in essence,
25 what to expect from the regulated entity,

1 especially in customer information. I would say
2 also in that policy, not only is it the direct
3 policy that these are your guidelines as to what
4 you should do, what you shouldn't do, you also look
5 for at the same time what's done to make sure
6 that's actually being done and what consequences
7 are -- what alternatives do you have when you find
8 it's not being done.

9 In fact, I recall -- one thing I use a lot
10 is that in the telephone industry, they have in
11 their code of conduct that the regulated entity is
12 not to engage in any action that would bring it
13 into noncompliance of the rule, and they also note
14 in their disciplinary procedures that an employee
15 that engages in that can be terminated.

16 Q. So their recordkeeping would involve
17 showing an internal policy regarding how they deal
18 with customer information?

19 A. How they are to deal. How they would
20 expect their employees to deal with it and how they
21 enforce it.

22 Q. And then No. 8, would you explain that
23 one?

24 A. That's the -- that's to cover the buying
25 of derivatives and in a relationship that may exist

1 between the regulated company and either the parent
2 or the affiliate. What you are concerned about
3 there is that the regulated entity may be engaging
4 in transactions not necessarily for the need of the
5 regulated entity, but would include transactions or
6 the scope of the transactions actually being for
7 the benefit of providing a service either for other
8 parts of the overall corporation, not just the
9 regulated needs. And to the extent that it was to
10 engage in those kind of activities, it would be
11 required to capture the basic data so you could
12 trace it back to its relative needs versus what the
13 organization's overall needs are.

14 Q. But it looks like these are ones obtained
15 by the parent of an affiliated entity?

16 A. Uh-huh.

17 Q. So you are saying that the regulated
18 entity must provide that information?

19 A. Or ensure that its kept, because the
20 regulated entity is the one that would know what
21 its relative needs were.

22 Q. That may be all. Just let me take a
23 minute.

24 Oh, I did want to ask, in some of the
25 proposed rules -- and I saw an Illinois rule that

1 was adopted for affiliate transactions, and I
2 believe in the proposed rule that Office of Public
3 Counsel has submitted in the other industries that
4 there is a section regarding corporate support.
5 And there's a definition provided, and I was trying
6 to figure out, does our -- does this rule prohibit
7 even the types of things that would be allowed
8 under -- for example, what is an Illinois rule
9 defined as corporate support, and you may not, off
10 the top of your head, remember an Illinois rule,
11 but I can read you that definition, and this is in
12 the Affiliate Transactions Rural Electric Utilities
13 for Illinois.

14 "Corporate support" means corporate
15 oversight and governance involving administrative
16 services (including travel administration,
17 security, printing, graphics, custodial services,
18 secretarial support, mail services and records
19 management), financial management services
20 (including accounting, treasury, internal audit,
21 tax and financial reporting and planning), data
22 processing, shareholder services, human resources,
23 employee benefits, regulatory affairs, legal
24 services, lobbying and non-marketing research and
25 development activities. Corporate support also

1 includes strategic planning, and then somewhere
2 else in the rule there are references to, I believe
3 they call them corporate support agreements, that
4 are approved by the Commission.

5 MS. SHEMWELL: Judge, perhaps I could hand
6 Mr. Schallenberg a copy of the rule.

7 JUDGE THORNBURG: Is this something that
8 was attached to any of the written comments
9 submitted earlier?

10 COMMISSIONER MURRAY: It may not have
11 been. It was referenced in an attachment probably
12 to an electric -- a comment to the electric rules,
13 and it was footnoted, and I had a copy of Illinois
14 rules because of this footnote that referenced
15 them, so it's probably not in the record.

16 JUDGE THORNBURG: If it will help make the
17 record clear, we can make a copy of that and attach
18 that as an exhibit to this transcript. The witness
19 will need to read that to answer the question.

20 Have you been able -- Mr. Schallenberg,
21 have you been able to follow that?

22 THE WITNESS: As I understand, would our
23 rule prohibit that type of activity?

24 BY COMMISSIONER MURRAY:

25 Q. Yes.

1 A. And the answer would be, No.

2 JUDGE THORNBURG: I think she read most of
3 that with the question, so I think we're complete
4 on that.

5 BY COMMISSIONER MURRAY:

6 Q. So that rules that reference a Commission-
7 approved services and affiliated or affiliated
8 interest agreement -- and I'm going to read from
9 this Illinois rule again. I'm reading Section
10 450.140(b) .

11 Part of that section references
12 Commission-approved services and facilities or
13 affiliated interest agreement that explicitly sets
14 for both the cost allocation guidelines and the
15 conventions to be applied to any transactions. And
16 my question there is, With our rule providing for
17 the cost accounting. I guess the CAM that the
18 company has to present to this Commission, would
19 that be similar to a Commission-approved services
20 and facilities or affiliated transactions
21 agreement?

22 A. The C-A-M or the CAM --

23 Q. Uh-huh.

24 A. -- would include -- if there's a services
25 agreement or facilities agreement, it would include

1 those as components to the extent that they exist.

2 Q. As components of the CAM that's presented
3 to us?

4 A. Right. And it would include any other
5 affiliated transaction that takes place. I don't
6 know that the difference -- some states actually
7 have the requirement that they are to approve
8 contracts like services contracts, and those
9 actually have to go to the Commission. And when
10 you read that, that gave me the impression that
11 Illinois may be one of the states that the
12 Commission actually has to approve the contract.
13 We don't do that here.

14 Q. Okay. And by having the CAM submitted for
15 approval under this rule, in your opinion, that
16 would be adequate to determine that the
17 transactions would be acceptable under the rule?

18 A. That would be how we would handle it, and
19 I think it's a preferred approach. It gives more
20 flexibility. To the extent that the company had an
21 agreement, such as the one in Illinois, and believe
22 that the Staff or OPC was interpreting this rule to
23 the extent that it would cause it to have to use a
24 different method, they would have the opportunity
25 to provide that to you if it wasn't resolved by the

1 parties. So you would get that issue here under
2 that scenario.

3 COMMISSIONER MURRAY: That's all of my
4 questions. Thank you for your patience.

5 THE WITNESS: Thank you.

6 JUDGE THORNBURG: Commissioner
7 Schemenauer?

8 QUESTIONS BY COMMISSIONER SCHEMENAUER:

9 Q. Just a question regarding inclusive or
10 exclusive application of this rule. The purpose of
11 this rule as I read it is intended to prevent
12 regulated utilities from subsidizing their
13 non-regulated operations. And in the case of
14 AmerenUE and St. Joseph Light and Power, the
15 heating divisions of those companies -- any
16 transactions they have with any other divisions
17 within those companies would not fall under these
18 rules, is that correct, since they're all
19 regulated?

20 A. This rule doesn't cover regulated to
21 regulated. It only covers regulated to
22 non-regulated.

23 Q. So any transactions those divisions have
24 within their other regulated activities would not
25 be subject to this rule?

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1 A. That's true. They're not covered -- we do
2 that already.

3 Q. It's already done. So we're not
4 duplicating anything?

5 A. No.

6 COMMISSIONER SCHEMENAUER: Okay. That's
7 all I have. Thank you.

8 COMMISSIONER DRAINER: I have one
9 question.

10 JUDGE THORNBURG: Commissioner Drainer?

11 COMMISSIONER DRAINER: It's not for
12 Schallenberg. I have a question for Mr. Keevil.

13 JUDGE THORNBURG: Are you sure you don't
14 have anything for Mr. Schallenberg? Let's wrap
15 that up, because this portion of the testimony is
16 going to be produced in another record, and I'd
17 like to keep it altogether.

18 QUESTIONS BY JUDGE THORNBURG:

19 Q. Mr. Schallenberg, you participated in the
20 drafting process for this proposed rule?

21 A. Yes.

22 Q. On the costing standards in Subsection
23 2(a) where it sets out the fair market pricing and
24 included distributed cost pricing, is this -- in
25 your opinion, is this one of the most effective

1 ways to prevent cost subsidies in these types of
2 transactions using this type of costing?

3 A. I would say yes in terms of being known.
4 I would tell you the most effective way is not to
5 have the -- I mean, not to have the affiliation.
6 In my experience, when there's not the affiliation,
7 you don't have the forces at place or the
8 incentives for the concern to be there. But in my
9 experience, this is the approach that's used by
10 regulation to address that concern.

11 Q. And some states acted to prohibit the
12 affiliate regulated utilities from having
13 affiliates? Have some states gone that far?

14 A. I don't know that I can say they prohibit
15 affiliates. I can tell you there are rules and
16 regulations that state that in certain transactions
17 it has to be done by an affiliate. You can't
18 have -- the whole thing has to be separated and
19 clear and distinct for the regulated body.
20 Sometimes they allow you the discretion of how you
21 can do it. You can provide the non-regulated
22 service within a regulated corporation.

23 Sometimes the rule or regulation says you
24 can't even do that. It has to be a separate
25 affiliate, and it has certain requirements on how

1 that separate affiliate can deal with regulated
2 entities. And there are -- upon the break up of
3 AT&T, there are requirements that preclude -- there
4 are certain transactions they can't engage in.

5 Q. Were there less stringent pricing
6 mechanisms the Staff considered?

7 A. I would say yes. I mean, we've looked
8 at -- this actually comes from the telephone
9 industry and the Federal Communications Commission,
10 which the telephone industry, if you look at the
11 curves of industry, is farther up on the curve in
12 terms of volume and magnitude of affiliate
13 actions. We've looked at alternatives to that.

14 Q. So this type of pricing is used by the FCC
15 in their regulation of the federal communications
16 industry?

17 A. Yes. In fact, they're the ones that I
18 would say developed it, and that was about -- it's
19 over a decade ago.

20 JUDGE THORNBURG: Are there any other
21 questions from the Commission?

22 COMMISSIONER CRUMPTON: I just have one.

23 QUESTIONS BY COMMISSIONER CRUMPTON:

24 Q. Mr. Schallenburg, the rules that govern
25 the telecommunications industry have been

1 challenged in court, have they not?

2 A. Yes. In fact, this rule, the greater fair
3 market value and cost was challenged as well.

4 Q. And it was upheld?

5 A. Yes.

6 JUDGE THORNBURG: Commissioner Murray?

7 COMMISSIONER MURRAY: Yes. I neglected
8 one. Thank you.

9 QUESTIONS BY COMMISSIONER MURRAY:

10 Q. In the initial comments of Trigen, they
11 stated that the private entity cost fiscal note was
12 grossly underestimated. Can you -- are you
13 familiar with that, those comments and how Trigen
14 disputes the amounts of the calculations for the
15 fiscal note? Can you defend the fiscal note as
16 submitted?

17 A. I would say, Yes, I can defend it. Now, I
18 can't tell you I know how Trigen -- all the details
19 of how Trigen supports that number.

20 Q. In the assumptions on the fiscal note for
21 private entity costs, Assumption 5, estimate is
22 \$100,000 per steam heating utility, and then
23 Assumption 6, an estimate of \$75,000 is assumed for
24 all succeeding years. How were those estimates
25 arrived at?

1 A. We took the cost that we got from the
2 companies and looked at what we saw as being an
3 implementation cost to change the way they
4 presently collect information, and we came up with
5 a cost of \$100,000 for that. As I said earlier,
6 our view of the implementation of this rule is to
7 fully utilize all of the companies' existing
8 recordkeeping practices as possible.

9 So to the extent that they are following
10 reasonable or sound business practices, that would
11 be used to comply with the rule, and we only put in
12 \$100,000 to whatever modification you may have to
13 make into a computer processing or changing a
14 report. And we also assumed that even though our
15 utilities were multi-- some of our utilities were
16 multi-industry, that we would look at that, and
17 there would be one cost just to do it once.

18 So if you did gas and electric, we didn't
19 necessarily think you would have to do it once for
20 electric and once for gas. We just added it every
21 time. So we didn't know for sure at the time that
22 the Commission had the option to adopt a rule for
23 one industry and not the other, so every time we
24 issued we used the cost estimate. And the 75,000
25 is, in essence, what we considered to be a computer

1 support cost to take care of modifications.

2 Q. And when you estimated -- you said you
3 looked at -- took the cost the companies had
4 submitted. What companies submitted costs on the
5 heating rule, and how did you determine that from
6 what they had submitted? Did you add them up and
7 average them, or did you just discount -- did you
8 just disregard them totally and decide that it
9 wouldn't cost any more than 100,000?

10 A. I can't say we disregarded them. We got
11 estimates in the millions that -- so I can't say --
12 we didn't disregard them. We did not find them to
13 be good-faith efforts to actually try to be --
14 actually trying to address what the cost would be
15 to implement.

16 Q. So is \$100,000 just a nice round number
17 that you chose, or was there some basis for that
18 \$100,000?

19 A. Actually it was smaller, and we rounded up
20 to \$100,000.

21 Q. So you actually did some calculations for
22 each company and determined that on an average each
23 entity would be -- would have a cost of about
24 \$100,000?

25 A. We didn't have data to do company

1 specifics. As I said, it's our intent that if a
2 company already has sound business practices and
3 good information reporting, they'll have almost no
4 cost, so we put in some costs. For some reason I
5 can recall a number of 25 to \$50,000, and we
6 rounded it up to make the number as high within
7 reason as we could, and we assumed big company
8 costs for small companies.

9 Q. Did you assume any costs of disputes for
10 inter-- other interpretation of the rule?

11 A. No, that's not in there.

12 COMMISSIONER MURRAY: Thank you.

13 JUDGE THORNBURG: Commissioner
14 Schemenauer?

15 COMMISSIONER SCHEMENAUER: I don't think
16 so.

17 JUDGE THORNBURG: I want to note again for
18 the record that Mr. Schallenberg's testimony,
19 there's been a request by the Staff to attach that
20 as an exhibit in the related proceedings, and those
21 cases are EX-99-442, and GX-99-444 and GX-99-445.
22 And from the time of Mr. Schallenberg's testimony
23 to this point, we'll excerpt that as a copy
24 exhibit.

25 Thank you. You may step down.

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1 JUDGE THORNBURG: Ms. Shemwell, were there
2 any other commentators today for Staff?
3 MS. SHEMWELL: No, your Honor.
4 JUDGE THORNBURG: Mr. Coffman, do you have
5 any commentators.
6 MR. COFFMAN: No commentators today.
7 JUDGE THORNBURG: Are there any other
8 proponents wishing to comment at this point?
9 Call Ameren UE. Mr. Fagan, did you have
10 any comments or witnesses today for us?
11 You may proceed.
12 MR. FAGAN: Judge, Ameren would like to
13 reserve its comments for tomorrow. We'll present
14 both attorney comments and testimony of Dr. Landon,
15 and we'd like that to be incorporated in all four
16 records, and we'll make that statement at the time.
17 JUDGE THORNBURG: Okay. Would any of the
18 Commissioners have any questions at this point?
19 Commissioner Drainer?
20 COMMISSIONER DRAINER: No, I have no
21 questions.
22 JUDGE THORNBURG: Commissioner Crumpton?
23 COMMISSIONER CRUMPTON: No.
24 JUDGE THORNBURG: Commissioner Murray?
25 COMMISSIONER MURRAY: No.

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1 JUDGE THORNBURG: And you'll be here
2 tomorrow?
3 MR. FAGAN: Yes, sir. Thank you.
4 JUDGE THORNBURG: Mr. Keevil, did you have
5 any comments to offer us at this point?
6 MR. KEEVIL: No. As I indicated, Judge,
7 in my opening, I have no additional comments other
8 than that have been previously filed.
9 JUDGE THORNBURG: We might have a few
10 questions for you, and I'll ask the Commission at
11 this point.
12 Commissioner Drainer, did you have any
13 questions?
14 COMMISSIONER DRAINER: Yes, I have a
15 question, Mr. Keevil.
16 MR. KEEVIL: All right. I'll do my best
17 to answer it.
18 COMMISSIONER DRAINER: Okay. Would you
19 come up?
20 MR. KEEVIL: Come up there?
21 COMMISSIONER DRAINER: Sure. I'll allow
22 you to stretch your legs.
23 QUESTIONS BY COMMISSIONER DRAINER:
24 Q. Good morning. I'd like to ask you just a
25 couple questions about your initial comments --

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1 A. Okay.

2 Q. -- I have about Trigen-Kansas City
3 Corporation.

4 With respect to -- and it was with respect
5 to the cost on page 2 --

6 A. Okay.

7 Q. -- of your initial comments.

8 It's your statement that Trigen gave a
9 first year and succeeding year costs to the
10 Commission of the \$243,009, and so, therefore, that
11 \$100,000 was too long?

12 A. If I could --

13 Q. Please do?

14 A. When I say "Commission" there, in the
15 proposed -- the notice of proposed rulemaking, it
16 refers to the Commission requested information from
17 the utilities subject to the rule, which was
18 actually Staff requesting that. So when Trigen
19 provided that estimate, it provided the estimate to
20 Staff, but I just used the same phraseology there
21 that the notice of proposed rulemaking did use. So
22 that's why it says Commission rather than Staff.

23 Q. Okay. So the Commission themselves would
24 not have received the information?

25 A. Right.

1 Q. It would have gone to Staff?

2 A. Right.

3 Q. And then let me ask, you were stating that
4 the three companies that -- that Trigen was the
5 only one that would have responded and given an
6 estimate?

7 A. Again, I based that on the Notice of
8 Proposed Rulemaking. It said that one of three
9 regulated heating companies responded. I know that
10 Trigen responded; therefore, that had to be Trigen,
11 but otherwise there was some miscommunication
12 somewhere among somebody.

13 Q. And then -- so did you then just take your
14 two numbers times three to come up with a total
15 estimated private entity cost of the 700--

16 A. Yes. That's exactly what I did, because
17 that appeared to be what Staff had done in the --
18 going from 100,000 to 300,000 in theirs.

19 Q. So you used the same amount?

20 A. Right, tried to.

21 Q. And then finally in their proposed rule,
22 there is the section that one can request a
23 variance. So if Trigen found that it was not in
24 their consumers and the public interest for them to
25 have to comply with parts of the rule, you could

1 file on their behalf for a variance?

2 A. My understanding was, from reading the
3 rule, that that applied to each affiliate
4 transaction, not -- it's like we couldn't really
5 come in and say, Okay. We think we should be
6 entirely forever exempt from this rule, it would be
7 each time a transaction were contemplated. You
8 could, if you felt that it would meet the variance
9 standard, come in for a variance on that particular
10 transaction. But as I understood it, it would
11 require a separate application of a variance each
12 time you contemplated a transaction.

13 Q. Okay. Help me with this then,
14 Mr. Keevil. If you look at Section 9, which is the
15 variances. Tell me why that you believe it's for
16 each transaction.

17 A. The understanding that I had is the rule
18 applies to each transaction or dealing with
19 affiliates. That's just the rule -- what the rule
20 does. And, therefore, to request a blanket overall
21 variance -- for one example, Commissioner, Sub 2 of
22 that, the regulated company may engage in an
23 affiliate transaction not in compliance with the
24 standards, when, to the best of its knowledge and
25 so on and so on.

1 I suppose -- if you are saying that under
2 9(a)1 a blanket-forever variance is permissible, I
3 have no personal objection to you doing that in the
4 rule, but I think if that's your intent there, I
5 think you should clarify that that would be
6 permitted.

7 Q. Okay.

8 A. I mean, like I say, if the Commission
9 wants to do that, provide for a blanket-forever
10 variance on a company-wide basis, I certainly would
11 not object to that and would simply request that
12 you clarify that's what is intended there in 9(a)1.

13 Q. I ask you that because in the rulemaking,
14 not all parties that could be affected by a rule is
15 necessarily going to give comments and -- so as in
16 the rulemaking procedures and as a rule here as
17 instituted, there could be a company that if they
18 could ask for a variance and show that it is cost
19 prohibited because of their size and that,
20 therefore, it was going to have a negative impact
21 on their customers, shouldn't there be -- I guess
22 I'm asking -- an umbrella that allows for that kind
23 of variance?

24 A. It makes sense to me to allow a company --
25 I know like -- for example, in the water and sewer

1 area, you have certain rules applicable to small
2 water and sewer companies that aren't applicable to
3 large water and sewer companies. So if you wish to
4 provide for a means of variance for certain, I'll
5 call it blanket-company-wide basis for some and not
6 for others, I think you can do that.

7 Q. Well, I mean, it concerns me in your
8 comments when you discuss the potential cost, and
9 if the company is a small -- has a small number of
10 activities or revenues that are being generated in
11 Missouri and the cost then prohibits, isn't it
12 important to have the opportunity and the option to
13 ask for a variance?

14 A. Yes. If how you read the rule is -- there
15 and there again, I would simply ask that in your
16 final review you clarify that. If you have to come
17 in on a transaction-by-transaction basis though,
18 that wouldn't help a small company.

19 Q. Sure.

20 A. But if it were a company-wide variance,
21 yes, I agree with your statement.

22 COMMISSIONER DRAINER: Thank you. I have
23 no other questions. I appreciate your answers.

24 JUDGE THORNBURG: Commissioner Murray?

25 COMMISSIONER MURRAY: No questions.

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1 JUDGE THORNBURG: Commissioner
2 Schemenauer?
3 COMMISSIONER SCHEMENAUER: No questions.
4 JUDGE THORNBURG: Thank you.
5 Mr. Duffy, did you have any questions or
6 comments at this time you'd like to offer?
7 MR. DUFFY: I had no comments planned, but
8 I do think Commissioner Drainer has brought up a
9 valid point.
10 I know some of your rules the Commission
11 makes very clear that no blanket variances will be
12 granted. What comes to mind is the -- oh,
13 integrated resource planning rules for electric
14 companies. My memory, which may be bad, I think it
15 said you couldn't get blanket variances from that
16 rule; you could only get transactional ones.
17 So I would echo what I thought I heard as
18 an agreement between the two of you that it would
19 be certainly advantageous if you could clarify what
20 you mean by permissible variances of this rule. In
21 other words, can you give a complete variance based
22 upon the size of the company, or is that not
23 permissible? So I would say that would be a good
24 thing to further explore.
25 JUDGE THORNBURG: Just a minute.

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1 Commissioner Drainer?

2 QUESTIONS BY COMMISSIONER DRAINER:

3 Q. Let me follow up.

4 If it weren't by size but on a
5 case-by-case basis, is the clarification that you
6 could get a company-wide variance? And I guess
7 what I'm looking to is Mr. Keevil mentioned
8 different size water companies, but in this case if
9 it was not related to size but just on a
10 case-by-case basis but it would be an overall
11 variance and not a transaction?

12 A. I'm not sure I understand your question.

13 Q. I guess what I was struggling with then
14 is, if --

15 A. I -- oh.

16 Q. I would be cautious to say a company of
17 the size of the customers or assets or revenues.

18 A. Right. I'm not advocating that you say,
19 If you have nine customers or more on a steam
20 system, you are exempt, or you are not exempt. All
21 I'm saying is, at least make the rule clear that a
22 company has the right to come in and say, Hey.
23 Because I'm so small I should be exempt, and
24 present that argument to you.

25 I agree with Mr. Keevil that I interpreted

1 the way the rule was written that there were no
2 blanket exemptions, that you could only come in on
3 a transactional basis. But, again, if you have an
4 intention to allow someone to come in and ask for a
5 blanket exemption, I think you should go ahead and
6 say that so everybody presumes -- so the people do
7 not presume it wasn't available.

8 Q. I shouldn't say case by case -- company by
9 company basis so a company could come in and
10 present its request for a variance from the rule?

11 A. Yes. I personally believe you should not
12 take any action to deter a simple request for a
13 variance.

14 Q. Right.

15 A. You ought to look at a request for
16 variance upon the facts presented to you and make
17 your own determination.

18 Q. And we should leave that door open?

19 A. I agree 100 percent you should leave that
20 door open.

21 COMMISSIONER DRAINER: Thank you. I
22 appreciate your answer.

23 JUDGE THORNBURG: Just a minute.

24 Commissioner Murray?

25 COMMISSIONER MURRAY: No.

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1 JUDGE THORNBURG: Commissioner
2 Schemenauer?
3 COMMISSIONER SCHEMENAUER: No.
4 JUDGE THORNBURG: Thank you.
5 Are there any other opponents here that
6 wish to make comments at this hearing?
7 I have made some reference that we've had
8 some materials being read in. If there's any
9 confusion there, we could have those materials
10 offered to supplement the record at a later date as
11 exhibits. I'd just ask that you make a written
12 request to do so if anyone needs to do that. I
13 think most of the material was read in, so I think
14 we're probably okay.
15 And that will adjourn the hearing today.
16 Thank you.
17 (THE HEARING WAS ADJOURNED.)
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