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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

June 1, 1999

Jefferson City, Missouri

Volume 4

In the Matter of the Application of Union)
Electric Company for an Order Authorizing:)
(1) Certain Merger Transactions Involving)Case No.
Union Electric Company; (2) The Transfer)EM-96-149
of Certain Assets, Real Estate, Leased)
Property, Easements and Contractual)
Agreements to Central Illinois Public)
Service Company; and (3) In Connection)
Therewith, Certain Other Related)
Transactions)
In the Matter of the Monitoring)Case No.
of the Experimental Alternative)EO-96-14
Regulation Plan of Union Electric Company.)

SHELLY A. REGISTER, Presiding,
REGULATORY LAW JUDGE.
SHEILA LUMPE, Chair
HAROLD CRUMPTON,
CONNIE MURRAY,
M. DIANNE DRAINER, Vice-Chair
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE, CSR
ASSOCIATED COURT REPORTERS, INC.

ASSOCIATED COURT REPORTERS, INC.
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2 FOR UNION ELECTRIC COMPANY:

3 JAMES J. COOK, Attorney at Law
4 P.O. Box 66149
5 St. Louis, Missouri 63166

6 ROBERT J. CYNKAR, Attorney at Law
7 CRAIG S. LERNER, Attorney at Law
8 COOPER, CARVIN & ROSENTHAL
9 1500 K Street, N.W., Suite 200
10 Washington, D.C. 20005

11 FOR THE DOE RUN RESOURCES CORPORATION:

12 ROBIN E. FULTON, Attorney at Law
13 135 E. Main
14 Fredericktown, Missouri 63645

15 FOR MISSOURI ENERGY GROUP, EMERSON ELECTRIC, ET AL.,:

16 ROBERT C. JOHNSON, Attorney at Law
17 720 Olive Street, Suite 2400
18 St. Louis, Missouri 63101

19 FOR MISSOURI INDUSTRIAL ENERGY CONSUMERS:

20 DIANA M. SCHMIDT, Attorney at Law
21 BRYAN CAVE, LLP
22 211 N. Broadway, Suite 3600
23 St. Louis, Missouri 63102

24 FOR MISSOURI PUBLIC SERVICE, A DIVISION OF
25 UTILICORP UNITED INC.:

DEAN L. COOPER, Attorney at Law
BRYDON, SWEARENGEN & ENGLAND
P.O. Box 456
Jefferson City, Missouri 65102

FOR RETIREMENT FACILITIES COALITION:

DALLAS M. FORREST, Attorney at Law
131 East High
Jefferson City, Missouri 65101

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1 FOR KANSAS CITY POWER & LIGHT COMPANY:

2 JAMES M. FISCHER, Attorney at Law
101 W. McCarty Street, Suite 215
3 Jefferson City, Missouri 65101

4 FOR LACLEDE GAS COMPANY:

5 MICHAEL C. PENDERGAST, Attorney at Law
720 Olive Street
6 St. Louis, Missouri 63101

7 FOR THE STATE OF MISSOURI:

8 RONALD MOLTENI, Assistant Attorney General
P.O. Box 899
9 Jefferson City, Missouri 65102

10 FOR OFFICE OF THE PUBLIC COUNSEL:

11 JOHN COFFMAN, Attorney at Law
P.O. Box 7800
12 Jefferson City, Missouri 65102

13 FOR STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

14 STEVEN DOTTHEIM, Attorney at Law
P.O. Box 360
15 Jefferson City, Missouri 65102

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1 (EXHIBIT NOS. 1 THROUGH 23 IN CASE NO.
2 EM-96-149; AND EXHIBIT NOS. 1 THROUGH 20 IN CASE NO.

3 EO-96-14 WERE MARKED FOR IDENTIFICATION.)

4 JUDGE REGISTER: Good morning, ladies and
5 gentlemen. I'm Judge Shelly Register, and we are here in
6 Case No. EO-96-14, in the matter of the monitoring of the
7 experimental alternative regulation plan of Union Electric
8 Company, being heard concurrently with Case No. EM-96-149 in
9 the matter of the application of Union Electric Company for
10 an order authorizing (1) certain merger transactions
11 involving Union Electric Company; (2) the transfer of
12 certain assets, real estate, leased property, easements and
13 contractual agreements to central Illinois Public Service
14 Company; and (3) in connection therewith, certain other
15 related transactions. These cases are not consolidated.

16 Would you please make your entries of
17 appearance, please. Mr. Cook, would you be like to begin?

18 MR. COOK: Certainly. James J. Cook, Post
19 Office Box 66149, St. Louis, Missouri, 63166 appearing on
20 behalf of Union Electric Company.

21 MR. CYNKAR: Robert Cynkar and Craig Lerner,
22 1500 K Street, Northwest, Washington D.C., 20005, appearing
23 on behalf of Union Electric.

24 JUDGE REGISTER: Is this Mr. Lerner on your
25 right?

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1 MR. CYNKAR: It is indeed, your Honor.

2 JUDGE REGISTER: And is Mr. Kirk going to be

3 present today?

4 MR. COOK: No.

5 JUDGE REGISTER: Mr. Dottheim?

6 MR. DOTTHEIM: Steven Dottheim, Post Office
7 Box 360, Jefferson City, Missouri, 65102, appearing on
8 behalf of the Staff of the Missouri Public Service
9 Commission.

10 JUDGE REGISTER: Mr. Coffman?

11 MR. COFFMAN: John B. Coffman, appearing on
12 behalf of the Office of the Public Counsel, P.O. Box 7800,
13 Jefferson City, Missouri, 65102.

14 JUDGE REGISTER: Thank you, Mr. Coffman.

15 Mr. Cooper?

16 MR. COOPER: Dean L. Cooper from the law firm
17 of Brydon, Swearingen and England, P.C., P.O. Box 456,
18 Jefferson City, Missouri, 65102, appearing on behalf of
19 Missouri Public Service, Division of UtiliCorp United, Inc.

20 JUDGE REGISTER: Thank you, Mr. Cooper.

21 Mr. Johnson?

22 MR. JOHNSON: Robert C. Johnson, attorney, and
23 Lisa C. Langenackard (phonetic spelling) who is a
24 second-year law student and a Rule 13 certified attorney
25 appearing on behalf of the Missouri Energy Group, Emerson

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1 Electric Company, et al. Our office address is 720 Olive
2 Street, Suite 2400, St. Louis, Missouri, 63101.

3 JUDGE REGISTER: Thank you, Mr. Johnson.

4 Ms. Schmidt?

5 MS. SCHMIDT: Appearing on behalf of Missouri
6 Industrial Energy Consumers, Diana M. Schmidt, Bryan Cave,
7 LLC, 211 North Broadway, Suite 3600, St. Louis, Missouri,
8 63102.

9 JUDGE REGISTER: Thank you, Ms. Schmidt.

10 Mr. Fulton?

11 MR. FULTON: Robin Fulton, appearing on behalf
12 of Doe Run Company, P.O. Box 151, Fredericktown, Missouri,
13 63645.

14 JUDGE REGISTER: Thank you.

15 Ms. Forrest?

16 MS. FORREST: Dallas M. Forrest, the law firm
17 of Galler, Gardner and Feather, 131 East High Street,
18 Jefferson City, Missouri, 65101, appearing on behalf of the
19 Retirement Facilities Coalition.

20 MR. FISCHER: James M. Fischer, 101 West
21 McCarty Street, Suite 215, Jefferson City, Missouri, 65101,
22 appearing on behalf of Kansas City Power and Light Company.

23 JUDGE REGISTER: Mr. Pendergast?

24 MR. PENDERGAST: Yes. Michael C. Pendergast,
25 appearing on behalf of Laclede Gas Company. My business

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1 address is 720 Olive Street, St. Louis, Missouri, 63101.

2 JUDGE REGISTER: I believe that -- is that
3 all?

4 MR. MOLTENI: Ronald Molteni, Office of the
5 Attorney General, P.O. Box 899, Jefferson City, Missouri,
6 65102, on behalf of the State of Missouri.

7 JUDGE REGISTER: Thank you, Mr. Molteni.
8 Anyone else?

9 I believe I still have marked as parties
10 Commenco American. And no one's here to represent them?
11 And I believe that I still have ASARCO, A-S-A-R-C-O,
12 Incorporated.

13 MR. FULTON: Judge, I represent -- I'm sorry.
14 Robin Fulton, I represent that company also.

15 JUDGE REGISTER: And they are still in this
16 case?

17 MR. FULTON: Yes, they are.

18 JUDGE REGISTER: Are they known by a different
19 name now?

20 MR. FULTON: They were sold out and I'm still
21 studying that issue. They may not be involved, but they are
22 in it at this point in time.

23 JUDGE REGISTER: Okay. We'll just put them
24 down for you, Mr. Fulton. Thank you very much.

25 Okay. Missouri Gas Energy, are they

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1 represented here? And Illinois Power Company? Mr. Cook --

2 MR. COOK: Yes, ma'am.

3 JUDGE REGISTER: -- under the merger, Illinois
4 Power Company was represented separately by Mr. DeFord. Are

5 they represented by you now or is that separate entirely?

6 MR. COOK: I'm sorry. Illinois Power is one
7 company and Central Illinois Public Service is another
8 entity.

9 JUDGE REGISTER: Thank you. That's what I
10 needed my clarification on. Okay. So we don't have anyone
11 here representing the Illinois Power Company either?

12 MR. COOK: No.

13 JUDGE REGISTER: Thank you. That's what I
14 needed to check. Too many names.

15 MR. COOK: We're working on that.

16 JUDGE REGISTER: We have at least one pending
17 motion with two replies to it. I want to take those up
18 first and then we'll do opening statements. Any other
19 preliminary or pending matters before opening statements?
20 The Commissioners should be ready to come in. They said
21 that their agenda this morning wasn't very full.

22 So let's go ahead and go to the pending
23 motion. UE's got a motion to strike surrebuttal testimony
24 of Robert E. Schallenberg and in the alternative, to admit
25 into the record the statement of Kenneth J. Rademan?

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1 MR. COOK: Correct. I would like to
2 preliminary, if I could, ask leave to amend the motion to
3 have it be in both dockets, although I think clearly the --
4 I'm not going to admit it's relevant to anything, but it's

5 clearly not relevant to the 149, but since it is listed as
6 being in 149, I would like it to apply in both sets of
7 testimony in both cases, please.

8 JUDGE REGISTER: And you'll see that an
9 official copy gets filed with the official records --

10 MR. COOK: Yes.

11 JUDGE REGISTER: -- with the appropriate
12 copies for the 149 case --

13 MR. COOK: Right.

14 JUDGE REGISTER: -- 96-149?

15 Does anyone have any objection to that
16 amendment?

17 And then I have Staff's initial Staff response
18 to Union Electric's motion to strike, etc. And I have
19 Public Counsel's reply to AmerenUE's motion to strike, etc.
20 Am I missing anything there?

21 MR. DOTTHEIM: Judge?

22 JUDGE REGISTER: Yes, Mr. Dottheim?

23 MR. DOTTHEIM: I think Mr. Cook may be able to
24 give us an update on Mr. Rademan's availability.

25 MR. COOK: Yes. Thank you. Excuse me.

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1 JUDGE REGISTER: Go ahead, Mr. Cook.

2 MR. COOK: Thank you. Mr. Rademan -- let me
3 back up a little bit somewhat in response to the items that
4 have been raised by both the Staff and Public Counsel. As

5 people with the Staff and the Commission may or may not
6 know, after Mr. Rademan left the Commission, he went back to
7 the farming business and takes care of two farms, and
8 literally works before sunup until after sundown every day,
9 and this is a very busy time of the year.

10 Obviously that's no one's particular fault,
11 neither his nor ours or the Staff's or the Commission's, but
12 that does significantly limit his availability for appearing
13 before the Commission.

14 He has graciously agreed to be available for
15 two hours in the evening -- next Tuesday or Wednesday
16 evenings for a deposition. And he is -- can come to
17 Jefferson City for that purpose.

18 Just to short circuit the discussion,
19 Mr. Dottheim asked whether or not there could perhaps be --
20 we could request the Commission to hold open the hearing on
21 this matter and perhaps hold an evening session of the
22 hearing.

23 And I've discussed that with Mr. Rademan and
24 he is, frankly, very concerned that particularly with the
25 Commissioners perhaps being present, it would be impossible

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1 to just stop them after two hours and say, I'm sorry, I've
2 got to go home and go to bed because I've got to get up at
3 four o'clock in the morning. And so he is not able to do
4 that. He will be available for deposition for the parties
5 that wish to depose him on one of those two evenings next

6 week.

7 JUDGE REGISTER: Mr. Dottheim?

8 MR. DOTTHEIM: Well, we would take the
9 opportunity to cross-examine Mr. Rademan even on a limited
10 time basis and would even suggest that if he's only
11 available for two hours and the Commissioners would want to
12 schedule an evening session to accommodate Mr. Rademan, we
13 would suggest that the Commissioners commence the
14 questioning and, hopefully, there would be some time
15 available for the Staff and maybe the other parties to ask
16 Mr. Rademan some questions before the two hours is up.

17 JUDGE REGISTER: Okay.

18 MR. COOK: Let me break in for just a moment
19 to suggest that although this discussion is relevant to the
20 issue, it is one that does not need to be reached, frankly,
21 if Mr. Schallenberg's testimony is stricken as we have
22 required -- as we have requested.

23 So that is the simplest and what we believe to
24 be the most appropriate way to handle the response to our
25 motion. And that is only if that is not possible -- the

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1 ruling goes against us on that would we request that
2 Mr. Rademan's testimony or statement be admitted.

3 JUDGE REGISTER: Do you want to make any
4 further argument on your motion to strike the surrebuttal
5 testimony of Mr. Schallenberg at this time?

6 MR. COOK: No. I think the motion is

7 adequately set out.

8 JUDGE REGISTER: Mr. Coffman?

9 MR. COFFMAN: Yes. Just in addition to what I
10 filed in my motion, I just believe that at this late point
11 in the hearing without the benefit of prepared testimony as
12 other parties have had filed, it's just highly irregular and
13 somewhat prejudicial to allow a statement of a party that
14 would not be available for full cross-examination.

15 And I just continue to state my objection to
16 admitting it unless there would be full cross-examination
17 allowed by all parties and the Commissioners, and also that
18 we would be allowed to enter a late witness as well as,
19 Mr. Russ Trippensee, for the purpose of rebutting the
20 statements that Mr. Rademan makes in his statement.

21 MR. COOK: If I could respond to that briefly?
22 The Company was put in this position because of the
23 testimony of Mr. Schallenberg that came only in surrebuttal
24 and the Company, under the procedure that had been set up,
25 had no opportunity to respond.

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1 So to a certain extent, that was surprise
2 testimony as well that came very late in the proceedings.
3 And this is the -- we needed to scramble at that point to
4 find some way to respond to this prejudicial testimony that
5 we felt was also highly improper and that it was hearsay and
6 irrelevant. And we've done the best we can just given the

7 limited amount of time that was available.

8 JUDGE REGISTER: Mr. Dottheim?

9 MR. DOTTHEIM: Yes. I do have a further
10 response. I indicate that Staff's response was initial
11 response. If one goes to Mr. Schallenberg's testimony, and
12 of course, we assert that the Staff's positions are not in
13 violation of the Stipulation and Agreement in ER-95-411 so
14 we did not see a need to put in Mr. Schallenberg's testimony
15 as direct, but a need to do so in response to the rebuttal
16 testimony of the Company.

17 If one would go to Mr. Schallenberg's
18 testimony, for example, in part to the question of
19 irrelevancy, he does excerpt from the on-the-record
20 conference on July 19, 1995, where I, in representing the
21 Staff of the Commission, made direct reference to the
22 rigorous monitoring that would occur as part of this
23 Stipulation and Agreement being similar to monitoring the
24 Southwestern Bell experimental alternative regulation plan.
25 And the Company or any other party had full opportunity to

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1 dispute that at the time and that did not occur.

2 Also, the deposition of Mr. Schallenberg, some
3 pages were excerpted and attached to the Company's pleading
4 in the deposition of Mr. Stephen M. Rackers. And I could -
5 I don't have copies, but I could have copies made and have
6 it marked as an exhibit.

7 There is reference by Mr. Rackers to

8 Mr. Schallenberg having reviewed drafts of language in
9 Case No. ER-95-411 on behalf of the Staff. There were also
10 internal staff documents that were provided to the Company
11 in response to a Union Electric Data Request that amongst
12 various people who are shown as being copied, including
13 Mr. Rademan, Mr. Schallenberg is shown as being cc'd the
14 document.

15 As far as the hearsay argument, the Staff
16 believes that is not accurate and there's no specificity in
17 the pleading. At the same time the Staff could raise, and
18 maybe should, the hearsay arguments with regards to
19 Mr. Brandt's, Mr. Baxter's and Mr. Night -- Mr. McKnight's
20 testimony where Mr. Brandt's testimony, amongst other
21 things, he relates a November 10 meeting at which he was not
22 present, on page 23 of his testimony.

23 Mr. Baxter in his testimony relates to a
24 survey that was conducted, which was not conducted by him or
25 under his supervision. And under Section 536.070.11 that

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1 testimony is not proper for admission into evidence. Also,
2 too, Mr. Baxter testifies at page 48 about what the parties
3 recognized during negotiations of the ER-95-411 Stipulation
4 and Agreement.

5 And at that time Mr. Baxter was not in the
6 employ of Union Electric Company. And from his testimony it
7 seemed to indicate being not in the employ of Union Electric

8 Company, he was not present for those negotiations.

9 And finally, Mr. McKnight's testimony he has
10 referenced therein to the intent of the parties respecting
11 the ER-95-411 Stipulation and Agreement, and there is no
12 indication whatsoever that Mr. McKnight was involved in that
13 process.

14 So the Staff would like to accommodate the
15 Company. The Staff is interested in providing the
16 Commission as much information as possible as opposed to
17 moving to strike testimony. So despite what Mr. Coffman or
18 somebody else might suggest, the Staff would even be
19 willing, as I've indicated, to attempt to work around the
20 two hours of availability of Mr. Rademan for the evening of
21 either June 8th or June 9th.

22 JUDGE REGISTER: Mr. Coffman, anything else?

23 MR. COFFMAN: Yeah. I'd just like to point
24 out that there are other parties to this case besides the
25 utility company and the Staff and the Commission. The rate

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1 credits are of great interest to the rate payers that I
2 represent and the other large customers too, I'm sure.

3 And without outright, you know, opposing the
4 idea of offering a last-minute witness, we would just
5 suggest that if there's going to be a variance from the
6 Commission's rules regarding prepared testimony and the
7 Commission's orders in that regard, that all of the parties
8 be -- or that everyone be treated equally and fairly, that

9 everyone's testimony be subject to cross-examination and
10 that all parties be given a fair opportunity to
11 cross-examine.

12 I'm somewhat concerned that two hours may not
13 be enough for all parties to cross-examine him, but that's
14 the gist of my concern that -- that this testimony be
15 treated in a different way than other prepared testimony.

16 JUDGE REGISTER: Do the Intervenors have any
17 comment in this?

18 MS. SCHMIDT: No.

19 MR. FULTON: No, your Honor.

20 MR. JOHNSON: No.

21 JUDGE REGISTER: Okay. Mr. Cook?

22 MR. COOK: If I may respond, thank you.
23 Clearly, if I can go back to the several points that
24 Mr. Dottheim raised, clearly the reference that was made, I
25 believe, by Mr. Rackers or Mr. Schallenberg, one, to --

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1 well, Mr. Dottheim said in the stipulation presentation
2 somebody who's -- not required their testimony to put that
3 in the record because that is part of the Commission's
4 record and you don't need those witnesses to do that.

5 To the extent that there were references in
6 the depositions of Mr. Rackers to Mr. Schallenberg's
7 testimony, that, of course, was done afterwards. It was
8 responding to Mr. Schallenberg's testimony. And to the

9 extent that was going to go in, it was appropriate to
10 question Mr. Rackers about that. It really has nothing to
11 do with whether the testimony of Mr. Schallenberg is
12 relevant or proper in other manners.

13 Concerning references to internal memos that
14 were copied to Mr. Schallenberg, again, I think the depo is
15 clear from -- that we've indicated in the motion that
16 Mr. Schallenberg may have been copied on things, but he
17 testified in his deposition that he was not involved in that
18 negotiation or those discussions. He just may have seen
19 some of the documents, which makes it irrelevant what he
20 thinks about that period of time.

21 To the extent that Mr. Brandt or Mr. Baxter or
22 Mr. McKnight testify to similar type of things that
23 Mr. Schallenberg's testifying to, one, Mr. Brandt clearly
24 was personally involved, and so to the extent that any of
25 his personal recollections or references to his personal

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1 negotiations -- that has got nothing to do with Mr.
2 Schallenberg's non-involvement.

3 To the extent that Mr. Brandt or Baxter or
4 McKnight talk about things that are, in fact, irrelevant, I
5 suspect that to the -- in a similar manner that we believe
6 Mr. Schallenberg's is irrelevant, certainly if
7 Mr. Schallenberg's testimony is stricken, then those
8 portions of the other testimony would probably need to be
9 stricken as well, but we'd have to look at each one of those

10 individually, I think.

11 There is a distinction, it seems to me, in the
12 testimony of particularly Mr. Baxter and Mr. McKnight when
13 they testify as to how they believe the company should
14 interpret -- or how the Commission should interpret the
15 stipulation based on a variety of things, as opposed to
16 someone's attempt to testify about what the parties believed
17 at the time of the negotiations. Those are two separate
18 issues. And Mr. Brandt may talk about both, but he can talk
19 about both because he was involved in those negotiations,
20 Mr. Schallenberg was not.

21 So the bottom line is, it seems to me that the
22 simplest way to this and the most appropriate way from an
23 evidentiary standpoint is to strike Mr. Schallenberg's
24 testimony and then the rest of the problems go away. And
25 I'm not saying that just to make the problems go away. I

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1 believe that's the more appropriate way to handle it.

2 JUDGE REGISTER: I'm going to take this motion
3 under advisement, and I will rule on that before we begin
4 opening statements.

5 One question, Mr. Coffman. If the Commission
6 were to decide to reconvene next week in the evening at some
7 time, would Mr. Trippensee also be available at that time?

8 MR. COFFMAN: I believe so. Excuse me.

9 Either the 8th or the 9th?

10 JUDGE REGISTER: Was that Tuesday and
11 Wednesday, is that right, Mr. Dottheim?

12 MR. DOTTHEIM: Yes. I believe so.

13 MR. COOK: That's right.

14 MR. DOTTHEIM: And, again, the Commission has
15 a local public hearing on the evening of the 9th in
16 Maryville.

17 JUDGE REGISTER: Okay.

18 MR. DOTTHEIM: And I don't know whether any of
19 the Commissioners plan to be in attendance, but that would
20 normally be the case, so the 8th may wind up being a better
21 day or evening for the Commissioners.

22 JUDGE REGISTER: Are there any other
23 preliminary matters that we need to resolve?
24 Mr. Pendergast?

25 MR. PENDERGAST: Yes. We're parties to

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1 EM-96-149 primarily because we were parties to the
2 underlying merger proceeding. And it's now my
3 understanding, and counsel can correct me if I'm wrong, that
4 all of the issues in that particular case have now been
5 resolved with the disposition of the weather normalization
6 issue.

7 And it's my understanding that that issue,
8 like most settlements, has been resolved in a way where no
9 parties acquiesce in any particular principal or method of
10 weather normalization, certainly not purporting to bind any

11 party to a particular principal or method of weather
12 normalization.

13 If that's the case, then I think while we may
14 stay as an interested observer for some of these issues,
15 that we'd request permission to be excused.

16 JUDGE REGISTER: Is Mr. Pendergast's statement
17 accurate in terms of these settlements that parties have
18 reached?

19 MR. DOTTHEIM: Yes. From the Staff's
20 perspective.

21 MR. COOK: Also from the company, yes.

22 MR. FISCHER: Your Honor, Kansas City Power
23 and Light also had a limited participation in this matter,
24 and we won't have a opening statement. We would ask to be
25 excused from the hearing.

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1 JUDGE REGISTER: And are any of the other
2 intervenors in the same position? Mr. Molteni?

3 MR. MOLTENI: Your Honor, the State, again, is
4 an observer in these proceedings and would ask to be
5 excused, although I will, as often as I can, be here during
6 the course of the week. I would also ask that we be allowed
7 the ability to reserve the right to brief any issues in this
8 hearing that might arise.

9 MR. COOPER: Your Honor, as I mentioned to you
10 before we went on the record this morning, Missouri Public

11 Service is in the same situation. And much like
12 Mr. Molteni, we will likely be in and out for certain issues
13 but we would request to be excused from those periods where
14 we're not able to attend, and would do so with the
15 understanding that to the extent witnesses take the stand
16 during those periods we would waive cross-examination.

17 JUDGE REGISTER: Mr. Fischer, Mr. Pendergast,
18 you also waive cross-examination of the witnesses that would
19 be presented -- and, Mr. Molteni?

20 MR. MOLTENI: Yes, ma'am.

21 JUDGE REGISTER: And you also would like to
22 have briefs filed if you choose to do so?

23 MR. FISCHER: Thank you, your Honor.

24 JUDGE REGISTER: That's no problem. The
25 Commission is of the opinion that we're not approving

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1 absence. That, of course, is your own choice. And we will
2 continue with the proceeding, and you're welcome to come and
3 go as the issues address the issues that you are concerned
4 by.

5 You might want to make sure that Mr. Coffman
6 and Mr. Dottheim and Mr. Cook are aware of what issues that
7 you might be interested in so that if something does come
8 up, they can advise you if we move faster or something
9 changes. But that's fine.

10 Do the parties -- Mr. Dottheim?

11 MR. DOTTHEIM: As a further housekeeping

12 matter, I think I may have indicated earlier, and it may
13 have been off the record, that some issues in addition to
14 weather normalization have settled.

15 JUDGE REGISTER: Thank you. That was going to
16 be my next question. Please proceed.

17 MR. DOTTHEIM: As far as the Staff is
18 concerned, and I'll leave Mr. Cook to respond for the
19 Company, on the second day of the hearings, Wednesday,
20 tomorrow, issues six and seven, Current Tax Deductions for
21 Allowance Refund Used During Construction, and seven,
22 Deferred Taxes, have settled.

23 And we will have some language that is -- when
24 I say "we will have some language," both the Company and the
25 Staff will provide some language respecting how those two

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1 issues have been settled.

2 MR. COOK: That's correct, your Honor.

3 JUDGE REGISTER: Mr. Coffman, any objections
4 there?

5 MR. COFFMAN: Yes. Two of my issues have
6 settled since we filed these -- or since the list of issues
7 was filed. I'm sure Mr. Cook will correct me if I misstate
8 it, but it's my understanding that issue No. 3, Property
9 Taxes on Plant Held for Future Use has been settled to the
10 degree that AmerenUE has agreed to treat the property tax on
11 plant held for future use in the same manner as the property

12 itself. And that is both of these items will be eliminated
13 from the earnings calculation.

14 And it's my understanding that this would
15 apply to this sharing period at issue this week and also on
16 a going-forward basis; is that correct?

17 MR. COOK: Are you finished with that one?

18 MR. COFFMAN: Yes.

19 MR. COOK: Yeah. That's correct.

20 JUDGE REGISTER: Thank you, Mr. Cook.

21 Mr. Coffman?

22 MR. COFFMAN: The other issue that has settled
23 would be Roman Numeral IX, Lobbying Expense. AmerenUE has
24 agreed for purposes of this case to an additional adjustment
25 of \$450,000, which I believe should generally ensure that

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1 the earnings calculation is not charged to customers in
2 AmerenUE's lobbying activities.

3 MR. COOK: The stipulation that we entered
4 into in this case indicates that lobbying expenses would not
5 be counted in UE's calculation. And the Company has agreed
6 that the adjustment to the earnings calculation should be
7 \$450,000 to remove the lobbying expenses.

8 JUDGE REGISTER: Are there any other issues
9 that we need to -- okay. So that leaves us remaining with
10 issue, one, on Case No. ER-95-411 Stipulation and Agreement;
11 two, territorial agreements; four, year 2000 costs; five,
12 other computer costs; eight, merger and acquisition costs;

13 ten, decommissioning fund deposits; and eleven, injury and
14 damages cost --

15 MR. COOK: Correct.

16 JUDGE REGISTER: -- or other expenses?

17 MR. COOK: That is correct.

18 JUDGE REGISTER: Are there any other
19 preliminary issues? Mr. Cook?

20 MR. COOK: Your Honor, in previous cases --
21 and I don't recall that we've done it at the prehearing
22 here -- you had indicated a list of I guess an -- not the
23 order of cross-examination, but the order of how many times
24 around we go and who goes next. Could you do that for us
25 again, please?

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1 JUDGE REGISTER: Order of cross is by party as
2 designated by you on your list.

3 MR. COOK: Correct.

4 JUDGE REGISTER: But then I have the general
5 examination as direct, cross, examination from the Bench,
6 recross, redirect.

7 And then opening statements, does anybody
8 think they're going to need more than 10, 15 minutes?

9 MR. COOK: Yes.

10 JUDGE REGISTER: How long do you think you'll
11 need?

12 MR. CYNKAR: An hour.

13 JUDGE REGISTER: That's a long time.
14 MR. COOK: Yes, ma'am. It's a big case.
15 JUDGE REGISTER: Staff, how long do you think
16 you're going to need?
17 MR. DOTTHEIM: I would think 10, 15 minutes.
18 JUDGE REGISTER: Mr. Coffman?
19 MR. COFFMAN: I believe 15 would do it for me.
20 JUDGE REGISTER: Intervenors?
21 MR. FULTON: Thirty seconds.
22 JUDGE REGISTER: You win the prize today.
23 MR. FULTON: That's for all three.
24 MR. COOK: We'll take his half hour.
25 JUDGE REGISTER: Seriously, are any

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1 Intervenors wanting to make an opening statement?
2 MR. JOHNSON: No.
3 JUDGE REGISTER: Mr. Johnson?
4 MR. JOHNSON: No. No opening statement.
5 JUDGE REGISTER: Okay. Well, the Intervenors
6 may have cut you-all some slack.
7 MR. COOK: We'll take their time. What order
8 are we going in that, please?
9 JUDGE REGISTER: I had Company, Staff, OPC,
10 unless the parties -- actually, the direct testimony is
11 filed by Staff and OPC.
12 MR. COOK: I would prefer that they went
13 first, if they don't mind.

14 JUDGE REGISTER: Staff, OPC, Company.

15 MR. DOTTHEIM: I don't mind, but in that
16 Mr. Cynkar has indicated an hour and I've indicated it may
17 not even be 15 minutes for the Staff, I'm wondering whether
18 I might have an opportunity to respond.

19 JUDGE REGISTER: Any objection to that?

20 MR. COOK: Highly irregular, but no.

21 MR. DOTTHEIM: And I don't know that I will
22 need to.

23 MR. COOK: That's fine.

24 JUDGE REGISTER: Mr. Coffman?

25 MR. COFFMAN: I suppose I'm agreeable to that

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1 arrangement, but I'd just like to make it clear that Public
2 Counsel has not conceded that it should bear the burden of
3 proof in this case, and that, for us, is still an issue that
4 we're going to brief and discuss. In agreeing to that, as
5 long as we aren't conceding to the burden of proof, that's
6 fine.

7 MR. COOK: I'm sorry. I didn't catch that.
8 Did you say that you had not agreed to the question of who
9 has the burden of proof in this case?

10 MR. COFFMAN: That's correct.

11 MR. COOK: It would seem to me Mr. Coffman has
12 just -- how then can you complain about me having the last
13 filing of testimony then?

14 MR. COFFMAN: Well, with regard to
15 Mr. Rademan's statement, the objection is that it -- I mean,
16 that it didn't comply with the prepared statement and is
17 apparently not subject to cross-examination or full
18 cross-examination.

19 MR. COOK: Well, my point is that apparently
20 Mr. Coffman wants the best of both worlds and that he has
21 the burden of proof for purposes of the ordering of filing,
22 but not for the actual burden.

23 MR. COFFMAN: Your Honor, if I might clarify,
24 the order in which we did testimony, that is Staff and
25 Public Counsel doing direct and Company rebuttal, was not

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1 necessarily Public Counsel's proposal. We agreed with Staff
2 that the most appropriate manner would be for all three
3 parties to do direct, rebuttal, and surrebuttal. But it
4 happened to be the way it fell out, what the Commission
5 approved. But Mr. Rademan's statement was not part of any
6 of those prepared filings.

7 JUDGE REGISTER: Let me just give it some
8 consideration and we'll -- I know we'll need to take a break
9 anyway. I can tell you, Mr. Cook, that if you-all can pare
10 your opening statement down to the bare minimum, that will
11 be preferable. A long opening statement is not necessarily
12 going to substitute for the admission of evidence and the
13 Commissioners will want to get to the evidence.

14 MR. COOK: Okay. Thank you.

15 JUDGE REGISTER: Okay. Order of witnesses
16 will be taken in the list of -- as designated on the list of
17 scheduled issues, and the order of cross-examination is also
18 listed in the list of issues filed.

19 Are there any other issues that need to be
20 taken up? Okay. Then we will take -- we'll go off the
21 record at this time.

22 (Off the record.)

23 JUDGE REGISTER: Before we start opening
24 statements, on UE's motion to strike surrebuttal testimony
25 of Robert E. Schallenberg, I'm going to deny your motion to

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1 strike, Mr. Cook.

2 But as the Staff indicated their willingness
3 to make sure that there is a full and complete record, we
4 will admit this statement of Kenneth Rademan and give it the
5 value that it is due. I'd like for that to be submitted
6 with the deposition cross-examination if you could do that.
7 Would that be acceptable?

8 MR. COOK: Yes.

9 JUDGE REGISTER: And then leave it to the
10 parties to arrange for the cross-examination of Mr. Rademan
11 this week. I'll leave the record open so that that
12 deposition will be filed along with the statement in that
13 deposition.

14 I am concerned that two hours is not

15 sufficient. In order for Mr. Rademan's testimony to be
16 admitted, he must be available for the entire time that
17 cross-examination is necessary. And if any of the parties
18 are not finished after two hours and he chooses to limit his
19 testimony to two hours, then his testimony will be stricken.

20 MR. COOK: Very well. May I ask one
21 clarifying question?

22 JUDGE REGISTER: Certainly.

23 MR. COOK: You said we would arrange for that
24 this week. You mean you will make the arrangements this
25 week and it will be next week though?

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1 JUDGE REGISTER: I'm sorry. Thank you. Yes.
2 I'll leave it to the parties to make the arrangements for
3 the deposition for next week.

4 MR. COOK: Thank you very much.

5 JUDGE REGISTER: Thank you. Mr. Coffman,
6 you're welcome to file a statement by Mr. Trippensee and
7 also make arrangements for his cross-examination deposition
8 at the same time or whatever is agreeable to the parties
9 next week. And we will consider his statement in the same
10 light as Mr. Rademan's. We'll give it the weight that it's
11 due.

12 And I believe that takes care of all the
13 requests with that motion and the responses to that motion;
14 is that correct?

15 MR. COOK: I believe so. Thank you, your

16 Honor.

17 JUDGE REGISTER: Now, we will have Staff begin
18 with opening statements and OPC will go second, UE will be
19 third. And depending on where we're at with that -- I will
20 ask you, Mr. Cook, to have your opening statements be as
21 brief as possible, include the facts, hit the facts and
22 let's move on.

23 The Commission is interested in hearing the
24 evidence. And I understand in opening statements you'll be
25 summarizing that evidence and what you expect to be offering

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1 here, but I'd like to see that kept as brief as possible.

2 Then if there are no other preliminary issues
3 to be addressed at this point, I will ask you to proceed,
4 Mr. Dottheim.

5 MR. DOTTHEIM: Thank you. Good morning. May
6 it please the Commission.

7 What is at issue here is an experiment, an
8 experiment in alternative regulation. Alternative
9 regulation, as an experiment even, does not have a long
10 history in Missouri. And what history it does have is
11 inextricably tied to the Southwestern Bell experience as the
12 first alternative regulation plan in the state. Union
13 Electric Company ER-95-411 plan is the second experimental
14 alternative regulation plan in the state.

15 What little history there is may be deceptive.
16 And that is, this is the first time that a dispute or
17 disputes has been necessary to be brought to the Commission
18 for determination. That is not necessarily a bad thing.

19 Parties previously in the Southwestern Bell
20 experience and also in the Union Electric Company experience
21 have been able to resolve matters, but that doesn't mean
22 that the parties haven't come close to calling upon the
23 Commission to decide various disputes. That is evident from
24 Mr. Schallenberg's testimony, which relates to Southwestern
25 Bell.

1 And the Commissioners will recall the
2 situation last year in the second year of the alternative
3 regulation plan when the parties, the Company, and the Staff
4 almost brought to the Commission for determination the
5 decommissioning trust funds issue, which is now before the
6 Commission in this proceeding, and also an issue involving
7 UE's electric cost of service, according to the Staff, not
8 reflecting an appropriate allocation of expenses and
9 investment to UE's non-utility subsidiary operation.

10 Ultimately, that disagreement, difference in
11 views was resolved and the Commission was not called upon to
12 intervene.

13 In some respects, as I indicated, having the
14 parties before the Commission today may not be all bad. It
15 may be fortuitous. And that is for a number of reasons.
16 There are two other alternative regulation plans pending
17 before the Commission.

18 I won't go into detail, but I will just
19 mention those cases; and one is the Western Resources Kansas
20 City Power and Light merger case, and the other is the
21 St. Joseph Light and Power rate increase case.

22 Again, the Commission may well benefit in
23 those cases from what they will be asked to endure in this
24 case regarding the presently existing disputes between Union
25 Electric Company, the Staff and the Office of Public

1 Counsel.

2 The proceedings this week may also be
3 fortuitous in that although the most recent legislative
4 session has concluded, there, of course, will be another and
5 another after that. And it would not be unlikely for there
6 to be proposed legislation, with or without electric
7 restructuring, addressing alternative electric regulations.

8 So, again, the proceedings this week, although
9 trying for all concerned and it's not that everyone doesn't
10 have enough work, but everything considered, it may be
11 fortuitous.

12 There have been two different approaches taken
13 by the Staff and the Company in this case. Undoubtedly, the
14 Company would dispute this, but the Staff believes that at
15 every turn it has sought to provide information to the
16 Commission and at every turn the Company has sought to deny
17 information to the Commission.

18 Whether that be the previous motions to strike
19 portions of Staff's testimony, Staff witnesses Westerfield,
20 Rackers' and Gruner's and then most recently
21 Mr. Schallenberg's testimony, and the proposal on the part
22 of the company to present Mr. Kenneth J. Rademan as a
23 witness without the necessity of testifying.

24 Further, I would note that in the Staff's
25 effort to create as clear a record as possible and provide

1 the Commission as much information as possible, the Staff
2 had previously suggested simultaneous direct, rebuttal and
3 surrebuttal. That, of course, is not the situation that was
4 ordered by the Commission. The Staff understands.

5 But, again, there's been a major effort on the
6 part of the Staff not to delay these proceedings, but at the
7 same time to provide Union Electric Company as much or
8 arguably more due process and opportunity than it may truly
9 be due.

10 Again, what the parties are engaged in is an
11 experiment. And it will continue for another three years,
12 barring events that are covered in the Stipulation and
13 Agreement for the EM-96-149 case. It should not be expected
14 that there will not be another situation in the future where
15 the parties may need to come to the Commission for a
16 determination of issues.

17 What the parties are engaged in is an
18 experiment. Difficulties should be anticipated. And the
19 Commission to date until this proceeding has been very
20 fortunate in that no disputes have ultimately had to be
21 presented to it for determination, but at the same time that
22 situation has probably created a false impression respecting
23 the alternative regulation plans that have been in effect.
24 Thank you.

25 JUDGE REGISTER: Thank you, Mr. Dottheim.

1 Mr. Coffman?

2 MR. COFFMAN: Thank you. May it please the
3 Commission.

4 As Mr. Dottheim explained, this matter has
5 come to us based upon the third year of the three-year
6 revenue sharing procedure laid out in Case No. ER-95-411,
7 that is the Stipulation and Agreement to that case. And
8 also pursuant to the rate reduction procedure laid out in
9 the Stipulation and Agreement approved in the merger case,
10 EM-96-149.

11 The Commission's determination of this third
12 year sharing credit for the first alternative regulation
13 plan was initiated, as laid out, by the Company's earnings
14 report, which is filed pursuant to the procedure, and the
15 proposed calculations that are included in it.

16 On November 24th of last year, pursuant to
17 paragraph 3F, Roman Numeral X, Public Counsel provided
18 notice to the Commission the areas of disagreement that it
19 had regarding the manner in which Company had calculated its
20 earnings report. Some of these issues have since settled
21 and some we will be trying this week.

22 We're sorry to report that the experimental
23 alternative regulation plan agreed upon in 1995 has not been
24 as easy to implement as we had originally hoped. As an
25 experiment, I suppose it has worked. It has worked to teach

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1 us what aspects of these plans might work and those aspects

2 which are more difficult to implement. We've also learned
3 aspects of this plan which really should have been spelled
4 out more clearly in the agreement and have led to different
5 interpretations.

6 It's our understanding that under this plan
7 the normal rate case process, which usually involves a
8 complete audit, say, every three years approximately, was to
9 be replaced with a process that would allow monitoring under
10 a few ground rules and be spread out over a longer period of
11 time with review each year.

12 So instead of having to reconstruct a proper
13 cost of service from the ground up for this particular
14 company, regular monitoring reports are allowed -- allowed
15 our auditors to focus on those items that experienced a
16 significant variance from year to year.

17 This is the manner I understand of which the
18 Southwestern plan -- Southwestern Bell plan operated and
19 this Southwestern Bell plan, of course, was largely the
20 inspiration for the plan that we're reviewing today.

21 During the review of each sharing year, Public
22 Counsel would conduct a much less thorough audit than it
23 would have under normal rate-making, but since it had just
24 reviewed information from the year prior and understanding
25 they could focus primarily on unique items and matters that

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1 had not been anticipated in the original stipulation or

2 ruled on by the Commission previously, we didn't anticipate
3 some of the problems that we have experienced.

4 As far as discovery has gone pursuant to these
5 years, our office has encountered some significant delays
6 and resistance to what we thought were normal discovery
7 requests. And in one instance in this case we were
8 surprised to learn that some information that we sought had
9 actually been deleted by the Company and was not available
10 for our review.

11 Apart from this disappointment, then, of
12 course, there's the disappointment that the sharing credits
13 have not been realized by the rate payers as swiftly as we
14 had hoped.

15 The second year credits were realized about a
16 year after the period upon which it was based had concluded.
17 And, of course, we're now just having a hearing on the third
18 sharing period. It's been about, I guess, 11 months since
19 that sharing period was concluded.

20 In this regard, I would sincerely thank the
21 Commission for what it has done to expedite this process,
22 this hearing, and for what is truly a busy docket for all of
23 us this year.

24 The permanent rate reduction, which is to be
25 based on a calculation of the first three years of the plan,

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1 was expected by the signatories to the merger stipulation to
2 have already occurred by September of 1998. And there is a

3 provision on page 6 of the merger stipulation that says the
4 additional excess revenues that would be collected from
5 September until the date that the Commission decides this
6 case will be credited to customers; however, there was no
7 provision for interest to be calculated on those additional
8 excess earnings. And AmerenUE benefits from accessing these
9 excess earnings until a rate reduction is ultimately decided
10 by the Commission.

11 As the parties have wrestled with their
12 various accounting differences, Company has challenged the
13 legal interpretations of the Staff and Public Counsel with
14 regard to the experimental alternative regulation plan.
15 Earlier in the case the Commission's aware of Company's
16 argument regarding the manipulation definition and
17 application.

18 And we believe the Commission properly
19 rejected their arguments insofar as Staff and Public Counsel
20 being able to make proposed adjustments and simply challenge
21 the Company's proposed earnings and calculations and
22 bringing them to the Commission for resolution.

23 We believe that if you take AmerenUE's
24 interpretation of the stip. to its logical extreme, no
25 reasonable accounting differences may be raised, and it

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1 would be necessarily -- necessary to simply accept the
2 Company's proposed calculations in its earnings report on

3 face value, unless we could somehow miraculously find some
4 intentional shenanigans, some sort of evidence of intent to
5 hide something or to intentionally mislead.

6 Public Counsel respectfully disagrees with the
7 Company's interpretation of the Stipulation and Agreement.
8 We think that the signatories certainly understood that
9 there would be reasonable disagreements about accounting and
10 that naturally no matter how explicitly you try to draft a
11 document, that there might be some disagreements that would
12 have to be brought to the Commission.

13 The stipulation document clearly provides for
14 discovery. The parties have clearly reserved in that
15 document the right to verify the accuracy and the
16 proprietary of Company's earning calculation and to bring
17 these disagreements to you for a determination. We do not
18 believe that the Commission contracted away its ability to
19 review such matters, such as the matters that we're going to
20 be litigated this week.

21 Paragraph 6 of the regulatory plan stipulation
22 clearly states that that stipulation does not in any manner
23 impinge or restrict the Commission's statutory obligations.
24 And one of these obligations, I believe, is the obligation
25 to ensure just and reasonable rates. And that obligation is

1 cited by the Commission in its order which approved the
2 stipulation.

3 Another disagreement that has arose regards
4 the -- regarding the implementation of this alternative
5 regulation plan involves who must legally bare the burden of
6 proof when these disagreements are brought to the
7 Commission.

8 Public Counsel contends that the Commission
9 bore the burden of proof in the two cases from which these
10 two stipulations originated. It has never been asserted
11 that UE did not have the burden of proof in those two cases.
12 Nothing in either stipulation shifts the burden of proof.

13 No complaint case has been filed by either
14 Public Counsel or Staff pursuant to the stipulation. The
15 Company has complete and unique access to all information
16 which is relevant to a determination on these issues.

17 And, finally, the filing which is required to
18 commence the review of each sharing period pursuant to the
19 stipulation is a filing that is required by the Company, the
20 earnings report. And this is the initial proposal to which
21 Staff and Public Counsel are required to respond by noticing
22 up areas of disagreement.

23 So for these reasons and other legal arguments
24 that we may brief, the Company should properly bear the
25 burden of proof regarding the issues that we're trying this

2 I'm happy to report that we have settled a
3 couple of the issues that Public Counsel has raised that
4 were listed in the list of issues, the Property Tax on Plant
5 Held for Future Use, and Lobbying Expense. We believe that
6 these settlements are in the public interest and should
7 ensure that inappropriate calculations are not charged to
8 rate payers.

9 This week Public Counsel will offer the
10 testimony of its accountant, Ted Robertson, regarding four
11 of the issues. Both computer issues involve accounting
12 questions which have been the subject of much debate and
13 discussion in the accounting world over the last few years.

14 Public Counsel testimony will show that for
15 all of the computer projects at issue, the accounting
16 treatment that is proper and that is consistent with past
17 Commission cases is the capitalization of these costs and an
18 amortization of the cost over the useful operating lives of
19 the respective computer systems.

20 We are in agreement with the Staff that recent
21 Commission cases support the 10-year amortization of these
22 costs. Y2K is one of those issues. Testimony will show
23 that during the sharing period, Company incurred over a
24 million dollars in external and internal costs related to
25 Y2K mitigation efforts which extended the service lives of

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1 those existing long-lived assets.

2 Regarding other computer costs, there are
3 three software projects. One is a power plant maintenance
4 system, one is a human resources system, and one is called
5 a CCS, the customer service system. They all provided for
6 the creation of long-lived assets. And during the sharing
7 period these projects totalled over \$10.8 million.

8 The CCS by itself accounts for the lion's
9 share of these costs, \$8.8 million of those costs. And this
10 system was not even in service during the sharing period and
11 is still not certain what customer classes that it will
12 ultimately serve, and our testimony will focus on that.

13 Merger and acquisition costs is the third
14 issue we will provide testimony on. Public Counsel reaches
15 the same position as Staff with regard to this issue. We
16 believe that pursuant to the clear language of the
17 stipulation from Em-96-149 and from the Commission's own
18 order in that case, that a pro rata portion of the 10-year
19 amortization of the actual merger and acquisition costs is
20 the correct amount to expense.

21 We also concur with the agreement included in
22 the Staff's statement of position that the UE name change
23 advertising costs should be rolled into this issue.

24 Finally, the decommissioning fund accounts,
25 because of delay in payments to the Callaway nuclear plant

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1 decommissioning fund, the Company had in its possession
2 during the sharing period a considerable cost-free source of

3 cash.

4 The money intended for the fund and any
5 interest on it was not intended to be a source of operating
6 capital. And, in fact, rate payers are likely to be
7 required to make up the resulting trust fund shortfall at
8 some point.

9 Public Counsel agrees in general theory with
10 the Staff on this issue and reaches almost the exact same
11 adjustment figure, but there are a few differences in our
12 approach. Staff and Public Counsel apply different interest
13 rates to the late payment balances. Staff uses the AFUDC
14 rate. Public Counsel uses the expected rate for the trust
15 fund itself, which is 9.25 percent.

16 Public Counsel also includes in its
17 calculation one additional late payment that occurred during
18 the sharing period, also three additional months on some
19 payments. And these differences in approach actually result
20 in small dollar differences in the recommended adjustment.

21 Mr. Robertson will also correct his work
22 papers with regard to the date of the four longest delayed
23 payments. We will be circulating that to the parties. It
24 amounts to a \$49,000 reduction in our adjustment.

25 As far as this issue goes, Public Counsel's

1 primary recommendation is to make the trust fund whole by
2 ordering Company to simply make an additional payment to the
3 trust fund itself so that rate payers aren't expected to
4 make up the shortfall, or in the alternative, to order a
5 refund to rate payers the earnings in question since it's
6 the rate payers who might ultimately be responsible for the
7 shortfall.

8 That consists of the issues that Public
9 Counsel will be testifying on, and I thank you very much.

10 JUDGE REGISTER: Thank you.

11 Mr. Cynkar?

12 MR. CYNKAR: Commissioners, Judge Register,
13 may it please the Commission.

14 My name is Bob Cynkar. I'm a lawyer from
15 Washington D.C. And I first want to thank the Commission
16 for the courtesy of allowing both myself and my colleague,
17 Mr. Lerner, to appear before you on behalf of Union Electric
18 today.

19 Earlier on in the morning I dropped the news
20 that my opening was going to be a little more extensive than
21 my two colleagues from Public Counsel and from the Staff.
22 And I will make it as brief as I can, but one of the reasons
23 why I felt it was so important to do that is because,
24 frankly, of what Mr. Dottheim said.

25 What you're confronting today is a very

1 important experiment. And in hearing the evidence, I think
2 it's important for us to give you a little bit more of a
3 preview and understand perhaps the structure in a way you
4 can understand that evidence and really what's separating
5 the parties here.

6 And I think the first thing that I would
7 suggest that the evidence is going to show to this
8 Commission is that four years ago a group of very thoughtful
9 people, and by that I include thoughtful people at Public
10 Counsel, at Staff, at UE and the Commission itself, got
11 together and proposed a new way of addressing an old
12 problem.

13 And that new way is what is at stake here.
14 And I think understanding that will help you understand why
15 the parties take different positions and where those issues
16 are.

17 In addition, I think unfortunately in some of
18 the prehearing skirmishing that goes on, that various of the
19 parties may have misconceptions of different positions. And
20 I hope that in addition to having my opening, I'll give you
21 some value and understanding of what's coming in terms of
22 clearing up some of that underbrush as we go into this, that
23 that will be helpful to you too.

24 Now, that old problem, of course, is the
25 problem of how you price electric power. You folks are

1 professionals in this. I'm the new kid on the block in some
2 respects, so I'm sure you're well aware of the challenges of
3 doing that. Particularly in relying on formulas and
4 computer runs to identify what revenue requirements are and
5 the like.

6 You don't have the advantage of the
7 marketplace, obviously, in terms of identifying what prices
8 should be. And that, of course, is the revolution that is
9 slowly moving across the country that I know this Commission
10 is very well aware of.

11 And that is many states, many jurisdictions
12 are slowly coming to the recognition that do we really have
13 to price and distribute power through a regulated monopoly?
14 And many states are saying no.

15 Now, Missouri obviously has been fortunate
16 with very good residential rates, and so some of the
17 practical impulse that you've seen in some neighboring
18 states doesn't exist here in that push. But nevertheless,
19 many people -- and I know I've heard many of you expound on
20 a move towards restructuring in the future, and that's
21 coming.

22 And I think that what you see in the context
23 of the EARP here is an experiment in that new developing
24 paradigm. Now, paradigm's a very popular word, but I think
25 it really applies here because what you see in the different

1 issues separating the parties is the tug of an old paradigm
2 and the pull of a new paradigm. And the Commission in the
3 EARP, because you don't have the power obviously to order
4 restructuring, moved towards that new paradigm.

5 Now, at the risk of reminding ourselves of
6 classes too long ago, I want to remind you that that concept
7 of a paradigm is a way of looking at things, but it's not
8 just the perspective of you sitting there looking at
9 Mr. Coffman and me here. It means a real different
10 understanding of reality.

11 If you remember your high school science
12 class, it comes from the world of science, particularly the
13 world of Kafrinicas (phonetic spelling). If you recall,
14 when folks in the middle ages and the renaissance began to
15 understand that the planets didn't revolve around the Earth,
16 but the Earth revolved around the sun with other planets,
17 that was a new paradigm, a new way of understanding reality.

18 And the folks who were holding onto the old
19 way, weren't bad, weren't mean spirited, but they were
20 trapped in that old way of thinking and so they were missing
21 that new reality. And that's what I think we see here in
22 the context of EARP.

23 Now, as I said, the evidence will show quite
24 clearly that the EARP is not a move into full-blown
25 competition and restructuring. You couldn't do that. But

1 what I would suggest is what the Commission did is very --
2 used the powers you had quite flexibly and with the
3 agreement of the parties to abandon a traditional
4 rate-making approach in the context of this kind of rate
5 setting, abandon the effort to pinpoint what the price of
6 electricity should be based on all sorts of historical
7 economic data and approach the whole question of
8 overearning -- of the utility overearning in a new way,
9 still addressing that problem but in a new way. And on top
10 of that, accomplished it all through voluntary agreement and
11 not long proceedings before you.

12 Now, first of all, the key, I think, at what
13 the evidence will show -- and just for your reference, I'm
14 going to be using a couple blow-ups here to make life a
15 little easier for those of us who need reading glasses. But
16 Exhibit No. 13, the appendices to Mr. Brandt's rebuttal
17 testimony -- and we have both behind tab A and B the first
18 EARP, along with the Commission's order, and B is the second
19 one. So I will be telling you where some things are that
20 I'm going to be referring to in here, but just for your
21 reference.

22 But the sharing grid is really, I think what
23 the evidence will show, the key sort of dynamic aspect of
24 what the EARP does and really what we're talking about here.
25 And I hope if all my colleagues can see, I apologize for

1 this.

2 In a sense, this goes to the overearnings
3 question in a very new way, because instead of having a
4 situation where you have a track record, where you have a
5 history of performance and you look back and see if revenues
6 and cost of service match and whether the utility's
7 overearning, what essentially I would suggest the evidence
8 is going to show, that this EARP in a sense says we're going
9 to make a judgment up front of a kind of levels of
10 appropriate earnings, of overearnings.

11 And so that up to a certain return on equity
12 UE -- we say that's fine. They get to keep all those
13 earnings. The next level up we say there's a 50/50 share
14 between the customer and UE. And I think the evidence will
15 show that that's kind of judgment about what earning is
16 appropriate. And then finally above 14 percent you get
17 100 percent goes to the consumer.

18 And there's no rate increases and no complaint
19 cases while the EARP is working, while this process is
20 working. Just plug in the earnings and you get a level of
21 sharing and a level of determination about what is an
22 appropriate level for the company to keep.

23 And this was echoed in front of the Commission
24 when these -- when the EARP was presented to you-all. In
25 fact, Mr. Dottheim, I think very helpfully, made this point

1 very well in front of you.

2 And he said, and I'm quoting from page 10 of
3 that transcript, he said, quote, With the experimental
4 alternative regulation plan, if it is argued that the
5 30 million rate reduction is too small -- and if you recall,
6 at the beginning of the EARP, UE took an immediate permanent
7 30 million rate reduction and right at the beginning a \$30
8 million credit, then this kicked in, so that's what
9 Mr. Dottheim was referring to.

10 He continues, That should ultimately show
11 up -- meaning that if the rate reduction was too small --
12 should ultimately show up in the earnings of Union Electric
13 Company. And with the settlement that has been reached,
14 there's a possibility of obtaining further reductions in
15 rates in the form of credits if UE earns above 12.61 percent
16 return on common equity. So you see that notion of
17 addressing the overearnings idea through this grid.

18 Now, at the same time I think it would be a
19 mistake, and the evidence you will hear will suggest it's a
20 mistake, to just view this as an immediate question of
21 numbers, of immediate rates because the implications of this
22 not only in terms of sort of a middle-ground transition
23 device into that new paradigm of a restructured market, but
24 more broadly the impact on a utility that has been operating
25 in the regulatory monopolistic world for so long, it -- this

1 kind of a plan begins to help change that sort of cost plus
2 mentality that bogs down the folks in utilities so that they
3 often may not do the kind of job they could do for the
4 public.

5 And by allowing sharing, you will hear
6 evidence that it was very explicit to the Commission and
7 certainly among the parties that this created an incentive,
8 the same kind of market incentive that you see when a
9 company is able to keep the earnings it achieves. And after
10 the fact no one goes back and says you can't keep all those
11 earnings, of course, except for the tax man who hits us all.

12 Now, what you achieved as a result of this,
13 one interesting observation, apropos this broader
14 understanding of the impact of this, was also presented to
15 the Commission, and I just want to briefly mention it
16 because I think it helps you understand really the broad
17 impact of this.

18 On page 65 of the transcript from July 19,
19 1995, Mr. Brandt quoted some commentary from Standard and
20 Poors on what the Commission had achieved. And it said,
21 quote, This is a positive development since under the
22 sharing plan UE will be rewarded for efficient operations.
23 Moreover, lower tariffs will help enhance UE's already
24 favorable competitive standing.

25 As with past rate reductions, Standard and

1 Poors believes that UE will be successful in mitigating the
2 lower revenues through aggressive cost controls,
3 re-engineering processes, increased productivity and
4 extraordinary nuclear performance, closed quote.

5 Now, so the world understood that broader
6 significance, I think the evidence will show. And what the
7 Commission achieved is, I think, illustrated when you just
8 look back at what has happened for the last couple years.

9 First of all, if you recall, I said right up
10 front there was a \$30 million permanent rate reduction, and
11 that is this blue/green color right here. That's \$30
12 million all the way across. You have the first \$30 million
13 and then for each year it's the same.

14 The second bar here is the cumulative total of
15 these benefits as you go along. So here at the beginning of
16 the first sharing period you got the 30 permanent credit --
17 or permanent rate reduction rather, you got that \$30 million
18 credit at the beginning that I said.

19 And then as a result of earnings during that
20 year, you got another credit on top of that. So at the end
21 of the first year you have \$104 million benefit going to
22 customers.

23 In '97 you have -- again, the permanent rate
24 reduction continues and you have the credit of 18 million.
25 So the total is up to 152, and the same for the third year.

1 So by the end of three years you have -- this is assuming
2 the proposals in terms of credit for the last term of the
3 EARP. It does not have in it the calculation of the
4 permanent rate reduction, which kicks in after the first
5 three years. So at the end of this period, consumers in
6 Missouri have benefited to the tune of \$206 million.

7 Now, if you look back -- and I'm not going to
8 quote all the statements in the record from July of '95. I
9 will certainly cite them to you in our briefs so you can be
10 directed to them, but if you try to figure out how would
11 consumers -- if you didn't do this, how would consumers be
12 that better off after three years?

13 You could order up front a 70 -- let's say a
14 \$70 million permanent rate reduction right up, here then
15 you'd have 70, 70, 70 and it comes to 210. But I ask you --
16 and indeed it was very well recognized in the proceedings
17 and in this Commission's order adopting that, if you
18 proposed such a huge rate reduction and there has at least
19 in the recent history of this company not been such a
20 compelled rate reduction of that size, outside of the fact
21 that you'd have to have a fuller audit and then, let's say,
22 you have 11 months after that, at best you would be ordering
23 that, let's say, 18 months down the line.

24 And then I can assure you at that -- for a
25 compelled rate reduction of that amount we'd have an appeal

1 to the courts. You may be over here (indicating) before
2 that first \$70 million rate reduction really took effect.

3 And so the -- I think the real genius of all
4 this is what you were able to deliver to customers in a very
5 sort amount of time and indeed what all the parties were
6 able to, because this benefited everyone. It was a win/win
7 proposition.

8 Now, I think in -- one other point that I
9 would just make in passing, not everything in a company is a
10 function of simple dollars and cents. And I think when you
11 talk about productivity, there are other measures too. And
12 I just want to mention one in passing.

13 And this is all from the records of the
14 company. These are just demonstrative exhibits. But you
15 see during the period of the EARP, at least measuring
16 productivity by the number of customers served by employees
17 of UE, you see productivity going up, an increase in
18 23 percent of the amount of customers being served by UE
19 employees.

20 So even the broader consideration of the
21 company providing service that goes beyond numbers I think
22 is borne out in the evidence that this was a good thing and
23 has done a good job.

24 Now, having talked about it in general terms,
25 I think perhaps the most important thing I can point out to

1 you today, certainly right now in terms of what you're going
2 to see is how this has to work, because the issues that
3 separate us all go to those end results and how we achieve
4 those results.

5 Excuse me. Allergy medication works well, but
6 it also dries you out when you're talking, so I apologize.

7 And I think the best statement we have seen of
8 what's the key for alternative rate plans is this statement,
9 which says, quote, Sliding scale incentive regulation should
10 be thought of as a surrogate for traditional regulation in
11 that it can be lead to rate changes or the issuance of rate
12 credits to customers without the time and personnel needs of
13 a full-blown traditional rate case, and ideally without the
14 same degree of an adversarial relationship between the
15 parties.

16 This requires two things: Up front agreement
17 on how earnings should be calculated for the purposes of
18 determining whether customer sharing is called for; and a
19 high degree of cooperation on discovery, and the quote goes
20 on, because of the narrow time frames, people have to have
21 access to paper.

22 But those two things we think -- we certainly
23 agree with. And, of course, this is the rebuttal testimony
24 of Mr. Oligschlaeger in the matter of Missouri Public
25 Service in October of '97. It was also quoted by the

1 Commission in your Report and Order of that case on
2 March 6th, 1998, on pages 98 and 99.

3 Now, let me address the second point first,
4 the high degree of cooperation. The high degree of
5 cooperation is really set out in the notion of monitoring.
6 And in the context of the UE alternative rate plan, that's
7 set out in the monitoring provisions on pages 6 to 7 of the
8 first EARP.

9 And those pages just -- it's Attachment A, the
10 first part of that attachment is the Commission's order and
11 then the pages start numbering again at the EARP. And
12 that's section 3E. And there you see monitoring, you see
13 the agreement of the parties that reports and data will be
14 supplied, but moreover, you see the agreement of the parties
15 that the parties can follow-up with data requests, meetings
16 and interviews.

17 So the notion is that people have to have
18 access to information and the list of nine items or the
19 reports that have to be submitted and lots of data requests
20 have been submitted in the course of the EARP and people
21 have had meetings and discussions.

22 And I certainly don't want to say that the
23 evidence will show that that's all worked perfectly when
24 you're talking about a company the size of UE and the range
25 of issues that can come up. If it worked perfectly, I would

1 be shocked and I probably wouldn't be in the law business
2 because then everyone would be an angel.

3 But the reality is, is that that is one of the
4 two building blocks, and that is information being provided
5 and available to people. And in the UE EARP, that's
6 monitoring. The normal natural common sense understanding
7 of the word "monitoring." Providing information, answering
8 questions, talking.

9 Now, the second part, which I think is
10 really -- gets you focused even more on the kind of issues
11 you're going to hear about is the evidence with respect to
12 that up front agreement. And I think that that has been
13 where some of the misunderstanding has happened in the
14 context of this case.

15 And the first part of the agreement that
16 addresses this up front agreement notion is right here
17 (indicating). And it is sections 3Fi and 3Fii. It's page 8
18 of the EARP. And it's fairly straight forward.

19 The return on common equity -- again, the
20 grid, if you recall, is set up by return on the common
21 equity. So this is page 8. Are you with me, Commissioner?
22 You look troubled. I don't want to move on if there --

23 COMMISSIONER CRUMPTON: No, no. It's sitting
24 right here.

25 MR. CYNKAR: Good. The return on common

1 equity for determination of sharing will be calculated by
2 using the methodology set out in Attachment C,
3 reconciliation procedure appended hereto. Straight forward.
4 Returns calculated by using methodology we set out in the
5 reconciliation procedure.

6 Now, beyond that though it says Staff, OPC and
7 UE have conferred and determined what items, based on prior
8 Commission orders, should be excluded from the calculation
9 of UE's return on equity. These items are identified in
10 Attachment C.

11 Now, that's important for a couple reasons, I
12 think. One, first of all, is people were serious about this
13 reconciliation procedure. They spent months negotiating
14 this. And this also illustrates that we are in a different
15 world in terms of what's going on.

16 This is not -- we're not talking about test
17 years, we're not talking about normalizing things and so
18 forth. We have people agreeing of what the calculations
19 should be, the methodology that should be followed to get to
20 the earnings that are plugged into the grid.

21 Now, that obviously is the intro. And the
22 reality -- now, unfortunately the reconciliation procedure,
23 which is Attachment C to the first EARP, is two pages long
24 and we couldn't blow it up much more than this. Luckily,
25 this won't be a vision test so I'm not going to ask you to

1 read this. I'm just going to use this more as a point of
2 reference.

3 This sets out what is, I think, and I think
4 the evidence will show, a fairly detailed understanding of
5 these calculations and how it's supposed to proceed. And in
6 the sense from your perspective it is a reverse cost of
7 service kind of thinking.

8 So the folks who drafted this up were familiar
9 with the traditional cost of service calculation, and
10 instead of working from each individual cost up to sort of
11 the end result, it works the other way around.

12 And what it starts out with -- it starts out
13 with the companies -- Missouri operating income and so forth
14 is calculated based on operating revenues, expenses and
15 average rate base. So that's the information that is
16 already on the company's regulatory books and records.

17 And what that means is that that is the
18 accounting that is done according to the uniform system of
19 accounts, which is except for some smaller differences,
20 really essentially generally accepted accounting principals.

21 But it also includes much of the principals
22 and precedents of this Commission. For example, I think the
23 most common one is the whole above the line, below the line
24 issue. And that's included in there. So things that should
25 be below the line are not to be here (indicating) at the

1 beginning.

2 And I think that's important to understand
3 this -- and as we walk through, I'll refer back to it, but
4 then what all the parties did is then they have --
5 subsequently you will see adjustments that are adjusted
6 starting with this (indicating). And the only thing I would
7 point out in some of those adjustments are a couple things.

8 First of all, you notice under C the first
9 item is normalize the expense of refueling Callaway.
10 Normalization because, again, this was not supposed to be a
11 test year, this is the calculation for that year, was not
12 assumed except where the parties agree to it.

13 Similarly, you see a couple items down,
14 eliminate \$250,000 good will advertising. The parties went
15 down into quite detail in negotiating this. And the notion
16 is, is that you apply all this and you get at the end of the
17 day to a number which is the earnings, which you plug in.

18 Now, there will be many items in terms of
19 accounting treatment for costs and so forth that are just
20 from the books and records of the company. There won't have
21 been any adjustments, some will be adjusted. It is our
22 view, and what I think the evidence will show, and what the
23 parties intended and what this agreement shows, is that if
24 the company complied with this arrangement, the earnings --
25 their calculation would not be subject to other challenge.

1 Now, as I will explain in a moment, it is not
2 true that parties can't say you didn't do this right. You
3 know, this says this, you should do A plus B and you did B
4 plus C, fellow. And the reality is, is that we have seen in
5 this very case parties have brought to our attention that we
6 goofed up at various points and many of the settlements of
7 issues in this case come from that very process working.

8 The lobbying expenses question, which Public
9 Counsel brought up, was one of those issues. We were
10 recording much of that erroneously above the line when it
11 should have been below the line. They were right. It
12 worked that way.

13 Now, it's also helpful to remember here, and I
14 think in terms of some of the evidence and briefing you may
15 get, that if there's no -- if there's no issue here of an
16 adjustment, if whatever you're talking about is just
17 something that's on the books and records and the parties
18 did not adjust it, when we say we have accounted for it
19 according to our traditional accounting methodology, all
20 we're saying is that, hey, there's no further adjustments,
21 we said we'd start with our regulatory books and records and
22 unless you say we've done it wrong, you know, what's the
23 problem?

24 We're not saying that somehow GAP or the union
25 system of accounts or anything else overrides the discretion

1 of this Commission, rather that the Company has to keep its
2 books and records according to the uniform system of
3 accounts and according to this Commission's principals as I
4 just mentioned. And if there are no other adjustments, if
5 we do that, we're living according to this agreement.

6 Now, I think the real dispute becomes -- is
7 focused on what ultimately undermines the second important
8 point of an up front agreement on how these earnings are to
9 be calculated and the language in the agreement that the
10 parties have a dispute over and its meaning, and this is an
11 issue that's squarely before you for your consideration.

12 Our view of this agreement, and I think what
13 the evidence is going to show, is that there's several
14 different ways in which disputes over how this is working
15 can get to you. One has been alluded to already and that's
16 the notion of manipulation, which is not at all an issue in
17 this case. And the other is errors or disagreements on, for
18 example, how accounting principals are supposed to work for
19 any of these things, or finally a new category of cost.

20 And I'm going to go through those a little bit
21 more to highlight for you what the evidence is going to show
22 and what those categories mean. But at bottom what they
23 mean is that this is, we believe, and certainly is like a
24 contract.

25 And that in this context this Commission is

1 functioning like a court. If you have a contract with
2 someone to buy their Ford, they can certainly raise the
3 issue, I also have the right to buy your Chevy, but you can
4 say our deal didn't allow you to buy my other car.

5 And the evidence will show that that's exactly
6 what happens here. Parties can say they're not living by
7 the contract, they're doing it wrong, or it's involved
8 something we never even considered in this contract. And
9 you, as a court, can say -- can rule on that. Anyone can
10 bring that issue before you.

11 Now, let's talk about the evidence and the
12 central dispute here. And I don't have too much longer to
13 go. And, Judge Register, I think I'm even under my halfway
14 mark. So I think I'm doing well. We'll get to lunch
15 shortly.

16 JUDGE REGISTER: Wonderful.

17 MR. CYNKAR: There are several different
18 provisions that you're going to hear about, and these are
19 the three key ones really. These are 3F 6, 7 and 8. And
20 this appears -- 6 appears on page 9 in the EARP. And this
21 is where you get the issue of manipulation.

22 And what you see there is the origin of our
23 understanding that manipulation is based on deliberate
24 cooking the books. I mean, that's what we've said and
25 that's what we believe what this means here.

1 And we think, and the evidence will show, that
2 this flows right from the language of the agreement, because
3 you see that what this provision says is -- it talks about
4 operating results being manipulated not just unconnected to
5 anything else, but to reduce the amounts to be shared with
6 customers or to misrepresent actual earnings or expenses.

7 So if UE did something to let's say raise
8 expenses just because they wanted to lower the credit, that
9 would be manipulation. If they had a normal cost that had
10 normal business justification, that wouldn't be manipulation
11 even if it was a cost that was in there and, therefore,
12 reduced their overall earnings.

13 Number 7 is the broader question, which
14 actually in many of the Staff witnesses you'll hear is in a
15 sense sort of the fall-back justification for their notion
16 that they can propose adjustments that are not listed in the
17 reconciliation procedure. And that's where we separate.

18 And basically the Staff here says that -- this
19 provision says that the parties can bring issues which can't
20 be resolved by them which are related to the operation or
21 implementation of the plan.

22 Now, the Staff's position, as I think the
23 evidence shows, is that that allows them to propose any
24 adjustment to the earnings calculation that they feel
25 necessary even if it is not in the provision -- in the

1 reconciliation agreement. Even if the reconciliation
2 procedures propose something different, they have the
3 ability to come back and essentially change the terms of the
4 deal.

5 Now, I would submit, and I think the evidence
6 will show, that that's not a sensible reading of this
7 language, because the language says, These are disputes
8 relating to the operation or implementation of the plan.

9 And if you want to know, for example, what the
10 requirements are of monitoring, this doesn't tell you. To
11 know what the operation or implementation of the plan is
12 with respect to monitoring, you have to turn to the section
13 that deals with monitoring and sees what the requirements
14 are that the parties agree to.

15 Similarly, with the earnings calculation in
16 the reconciliation procedure, if you wanted to say -- to
17 give one of the contracting parties the right to amend the
18 plan, that's what you'd say. These are issues under the
19 plan, the operation of the plan as we agreed to it, not
20 giving one party a unilateral right to come before the
21 Commission and say, we want to change the terms of the deal.

22 Now, I think the other point that's -- the way
23 this is written it also addresses manipulation again, has
24 examples of the kinds of things -- all of which, I think,
25 are examples of what I said, operation or implementation of

1 the plan. All of these examples here are example of exactly
2 that.

3 But one interesting thing that I think you're
4 going to hear some evidence about and will be a natural
5 question for you is this language concerning an allegation
6 of manipulation could include significant variations in the
7 level of expenses associated with any category of cost where
8 no reasonable explanation has been provided.

9 This is another key part that divides the
10 parties in terms of what that can mean. We do not believe
11 that the sentence gives any contracting party again the
12 right to change the terms of how we're supposed to calculate
13 our earnings under the reconciliation procedure. That would
14 be a pretty huge, and I would suggest, silly power for any
15 person who's cutting a deal with someone to say, And I give
16 you the right to come back and change this deal unilaterally
17 any time you want in the future.

18 What this means, I think, is fairly logical
19 and that is this: Clearly, when you have a sharing grid
20 system with addressing overearnings at the end of the
21 process -- actually, both at the beginning and the end,
22 you've made the judgment about what are earnings levels, you
23 have the earnings, you plug it in.

24 By definition, you're going to have situations
25 where costs will go up or down. There may be significance

1 variations of cost. If a company's doing well, for example,
2 it will often take on additional projects to modernize
3 equipment. And, indeed, you're going to hear about that in
4 this case because computer software is an example of that.
5 That's smart business -- being a smart business person.

6 There is significant variations that could
7 come up in all sorts of different ways that are not
8 manipulation, but it's just what the costs were, the effects
9 of weather, you all are very familiar with that I know,
10 effects of fuel cost, all sorts of things.

11 But if UE follows the agreement in calculating
12 those so it's not manipulating, it's not shifting those
13 costs or playing with them for purposes of the credit and
14 the sharing grid, that's fine. That's what happens in the
15 marketplace in competitive business.

16 But the protection is this notion of where no
17 reasonable explanation has been provided. So, for example,
18 if at the end of a sharing period UE decides to pay all
19 hundred of its top managers huge bonuses, those are
20 obviously additional costs.

21 Now, first of all, because of the monitoring
22 provisions of the agreement, the parties are going to know
23 about it and it can't be hidden. Now, the question is, is
24 that manipulation? In other words, at the end of the period
25 they think they're above 100 percent sharing so they just

1 want to rack up costs? It's possible.

2 And the question is, what is the reasonable
3 explanation? If the reasonable explanation is simply that
4 we've done very well and if you look at competitive
5 businesses where we're trying to draw talent, this is
6 justified, and if that makes sense, that's a reasonable
7 business explanation.

8 But if -- of course, the way I put it, sort of
9 transparently silly if there's no reasonable explanation for
10 suddenly giving huge bonuses to all these folks or suddenly
11 buying a company jet or anything else you could think of,
12 this is a protection. And I would suggest that that works.

13 Finally, is No. 8 -- and this is the new
14 category of costs provision. And I would point out a couple
15 different things about this and then talk a little bit about
16 how this fits together and how it's supposed to work.

17 First of all, I think there are two things to
18 remember about this provision. One is the word "category"
19 and one is the word "included" -- I'm sorry -- "included
20 previously in any rate-making proceeding."

21 So the notion is that we can present issues --
22 we, the signatories, can present issues over any category of
23 cost that we've used in our earnings calculation that have
24 not been included previously in any rate-making proceeding.

25 Now, category is important because we're not

1 talking about individual costs. We're talking about groups
2 of costs. So, for example, there can be transportation
3 expenses, fuel costs, so forth and because you have a new
4 type of that, that doesn't make it a new category of cost.
5 The parties obviously contemplated there were going to be
6 costs coming down the road.

7 And, indeed, one of the key issues here is
8 that with respect to our computer expenses, the computer
9 expenses, our computer maintenance expenses just like other
10 computer maintenance expenses, they are every bit as
11 important and costly as the ones involved in this case. So
12 they're not a new category of costs.

13 But the real kicker, I think, and what the
14 evidence will show is the question of being included
15 previously in any rate-making proceeding. And our
16 understanding of this language here, which I think is
17 frankly the most faithful to this text, is simply that it
18 doesn't say addressed by the Commission.

19 In any proceeding that you have over rates,
20 you all can only address a certain number of issues, many of
21 which have to be brought to you by the parties anyway. But
22 in terms of the costs that are involved in the cost of
23 service calculation for a utility the size of UE, there is a
24 slew of them. And the parties, because of discovery and
25 data requests and monitoring, can examine those to their

1 hearts' content and bring before the Commission issues like
2 that.

3 But what the parties meant here -- if they
4 just limited it to issues expressly ruled on or addressed by
5 the Commission, that would be a very narrow category of
6 cases, so that almost any cost would not have been addressed
7 explicitly -- a huge number of costs would not have been
8 addressed by the Commission before.

9 Here what the common sense of this is that if
10 we've had these expenses before and they have been in
11 rate-making proceedings, included -- not necessarily
12 addressed or ruled on, but included so parties could see in
13 the past how we've handled it, no one raised a dispute to
14 the Commission so the Commission didn't rule on it before,
15 but that was all open to the parties when they cut this
16 deal.

17 And that's why you see the reconciliation
18 procedure is so detailed because the parties had all that
19 and could make judgments up front as far as what to be
20 included so that there was an up front agreement.

21 If this is taken to mean explicitly addressed
22 or if a category of cost is watered down to just a new cost,
23 this is a huge loophole, and you really don't have an
24 operating up front agreement among the parties to make the
25 sharing grid work.

1 Now, this is sort of a summary of what I just
2 said because I know -- I tend to think visually so I make
3 little charts for myself, and I thought this might be
4 helpful. Actually my colleague, Mr. Lerner, was the
5 architect of this.

6 Operation or implementation of a plan includes
7 many different things. It's not just calculating the
8 earnings. It includes the monitoring provisions, that's 3E.
9 That's what we went over. The filing of the earnings
10 report, the response to the filing of the earnings -- all
11 sorts of things are involved in the operation or
12 implementation of the plan.

13 I think the evidence will show that underneath
14 the filing of the earnings report you have two categories.
15 One is the category we were just talking about, new
16 categories of costs. What we believe is -- and what is
17 faithful to the reading of this is very small. The stuff
18 that the parties could not possibly know about so they
19 couldn't sit down at the table and bargain about, something
20 that's totally new to everyone. The vast majority are
21 categories of cost that have previously been around.

22 And then you have the reconciliation procedure
23 to calculate the earnings that go in the earnings report.
24 You have two broad areas, manipulation as a way of bringing
25 disputes to the Commission, or errors, which includes a

1 whole range of different things, not only errors in the
2 sense of arithmetic calculations but you didn't use the
3 right accounting principal, a whole range of reasons to say
4 you weren't faithful to the deal, but none of this says you
5 can add to the deal. And that's really the common sense of
6 where we're coming from.

7 Now, I would suggest that when you hear the
8 evidence, what you're going to see is the Staff is operating
9 out of that old paradigm, because what you're going to see
10 is their response to most of these costs. And I think the
11 genesis of them because we don't have -- everyone's clear we
12 don't have manipulation, so no one's accusing us of cooking
13 the books. The issues where they said we were wrong have
14 fallen out and we've agreed.

15 So you essentially have costs where the
16 numbers have gone up during the third sharing period. And
17 what I would suggest, and as I've got -- I want to emphasize
18 I don't think this is a function of bad faith. This is a
19 way of looking at something. But what you see in the
20 proposed adjustments here are folks who are used to the
21 process that you all live with saying costs have gone up.
22 Well, shouldn't we exercise our judgment to spread those out
23 over several years for folks and so forth?

24 And the answer is, that kind of normalization
25 which is usual in the way you address test years and so

1 forth, is not the paradigm here. It's not the paradigm of
2 the competitive marketplace that I would suggest holds a lot
3 of promise and it certainly is not faithful to the deal
4 here. It is not that kind of up front agreement. No one
5 gave the Staff the power to suggest amendments to the
6 contract. And that is the key issue right here.

7 Now, you will hear about several different
8 areas of specific dispute of how all this translates. In
9 territorial agreements, which I'm not going to really
10 actually go over our position there because I think they've
11 been very well articulated in the written materials, but all
12 of this dispute over these competing paradigms come into
13 place in how you address territorial agreements, Y2K and the
14 other computer issues are, as I said, a function of this
15 question of accounting under the reconciliation procedure.

16 And in the computer world, what the evidence
17 will show and it -- in some respects it's common sensical.
18 If you have your own computer, you know that technology goes
19 out of date pretty darn quick. Particularly if you have
20 kids who are getting the latest games, you realize suddenly
21 your computer is slower than you thought it was last year.
22 It just rolls on.

23 And so under the accounting principals -- and
24 there was no adjustment for computers set out by the
25 parties. So we're back at our books and we have to comply

1 with the uniform system of accounts and GAP. And up until
2 the beginning of this year, the accounting profession said
3 you can either expense those or capitalize those. Soft --
4 computer software costs, not computer hardware costs.

5 And UE has always expensed them. And the
6 notion is that even though they can be big expenses, they
7 are expenses that you have to get new iteration of Windows
8 this and various applications are upgraded periodically.
9 And so it was -- the logic of it was simply it's more like
10 an expense than a capital account -- capital investment.

11 Over the years, the accounting profession has
12 been studying this. And as computers and computer systems
13 have gotten bigger and more complex, what the accounting
14 world in something called SOP 981, which you'll hear quite a
15 bit about, I think, said as of January 1 of this year, the
16 accounting world should capitalize the costs of computers.
17 And that's fine. And we are complying with that outside of
18 the context of this contract.

19 Now, as far as doing it in this contract, how
20 you would do it in this contract is like all contracting
21 parties do it. They would sit down and say, listen the
22 accounting world says that we should do this. Does it make
23 sense? How would it affect rate payers?

24 Because you'll recall when you capitalize
25 something, in the context of this, you can expense computer

1 costs and -- or capitalize them. If you don't expense them,
2 you get more of a credit. So that's a very short-term view.
3 But if you capitalize them, you're putting them into rate
4 base so you've got a longer term hit on customers.

5 So I think what the evidence will show is that
6 the accounting profession has said, it's better to
7 capitalize. UE can sit down with all the contracting
8 parties and agree as of when the accounting profession said
9 to start, which was January of '99, to do it that way as
10 long as it makes sense for broader rate payer implications
11 given the whole rate base issue.

12 The other thing I should point out what the
13 accounting profession did -- and periodically they make
14 changes like this -- they will commonly say, you've got to
15 go back and make adjustments because of this. They
16 explicitly said, don't do this -- don't do that. Don't
17 capitalize all things that you've expensed before. So
18 January 1 of this year was the starting year and certainly
19 the signatories to this deal can participate in that.

20 The other costs -- the other issues here
21 involve merger and acquisitions costs, the decommissioning
22 fund deposits that you've heard much about, and injuries and
23 damages.

24 Two thoughts in closing, and then I will
25 perhaps mercifully sit down, and that is this: I started

1 out by saying what was at stake was this new way of dealing
2 with an old problem. And I don't want to sound syrupy here
3 and so forth, but perhaps because I am not a regular utility
4 practitioner, I can perhaps can see the novelty and
5 creativeness in something that you've done in the normal
6 scope of things. And I must with all respect urge the
7 Commission to understand the significance.

8 If you accept the Staff's recommendations
9 here, in our view, you are breaking a deal that you were
10 part of. By adopting it, you became part of it. And I
11 think in terms of the transition to restructuring and to so
12 many ways in which much is accomplished here, that bond of
13 trust and faithfulness to an agreement is something that no
14 one wants to sacrifice.

15 I also as our briefs -- our brief after this
16 hearing is over will tell you, is that that would also
17 violate our constitutional rights, which we are certainly
18 prepared to defend.

19 But, finally, I would point to two iterations
20 of what this Commission is about and what this EARP is about
21 that I think make a lot of sense. Your mission statement on
22 the web apropos, I think a review of that confirms that what
23 you did here was a really good thing. That you have not
24 only ensured that Missourians will receive safe and reliable
25 utility service at just, reasonable and affordable rates.

1 Everyone knows that mantra. We used to say that all the
2 time.

3 But also supporting economic development
4 through either traditional rate of return regulation or
5 competition as required by law. Establish standards so that
6 competition will maintain or improve the quality of services
7 provided to Missourians. I will suggest to you that that's
8 what this evidence shows.

9 And, finally, I think in a very common
10 sensical way, I have to quote -- it's just too good of a
11 quote for me to sit down without quoting to you, and that's
12 Commissioner Crumpton's observation in July of 1995, in
13 which you said, quote, Okay. I just want to make sure that
14 we are dealing from the same sheet of music. Four years
15 from now I don't want you screaming and hollering that, you
16 know, they took too much money. And I don't want Staff to
17 come in and demand that you refund something that you have
18 really earned through this agreement. I just want to make
19 sure that we're all in agreement on that.

20 We thought we were in agreement on that, and I
21 hope that the Commission concurs in that. Thank you.

22 JUDGE REGISTER: We will take a break at this
23 time. Let's reconvene at 1:30.

24 (A RECESS WAS TAKEN.)

25 MR. MOLTENI: May it please the Commission.

1 I just want to pick up on something Mr. Cynkar
2 said. He noted that we in Missouri don't have the advantage
3 of a competitive marketplace, and that's true to a large
4 degree. We don't have a competitive marketplace in electric
5 service yet, nor do we have all the protections that a fully
6 competitive market offers consumers.

7 That means consumers need regulatory
8 protection from industries that have monopoly power. And
9 there's only one agency that has the power to protect
10 AmerenUE's customers from AmerenUE's monopoly power and all
11 the natural instincts and behavior that come with it, and
12 that agency is the Public Service Commission.

13 So until we do have the advantage of the
14 marketplace, meaning that no customer is captive to any
15 company, customers need this Commission's protections. So I
16 strongly urge you to reject any notion to the extent that
17 AmerenUE or anyone suggests that this Commission has
18 contracted away or advocated its authority to protect
19 consumers. Thank you.

20 JUDGE REGISTER: Thank you, Mr. Molteni.

21 Mr. Fulton?

22 MR. FULTON: Thank you. Commissioners, your
23 Honor, I heard three words during the course of the opening
24 statements that I didn't think I'd ever hear in the context
25 of a UE case, "fortuitous," as in the context of

1 unfortunately being -- this case being here; "paradigm" in
2 the context of the opposing view points; and "competition"
3 in the context of UE being in favor of competition.

4 Having said that, the one thing that we really
5 didn't hear about, other than as alluded to by OPC, was the
6 interest of the consumers of electric rates. We talked a
7 lot of UE's -- heard a lot about UE's rights, heard a lot
8 about the Staff's rights to investigate. We didn't hear a
9 lot about the interests of the consumers awaiting these
10 refunds, these credits while UE, Staff and OPC fight this
11 battle.

12 It's an unfortunate state of affairs that
13 while the general status of these rate cases at least, is it
14 balancing the interest of the consumers and of the utility,
15 the rate payers and the utility. In this context because of
16 the way that this case has come forward, the rate payers'
17 interests are basically being shunted aside and left behind
18 until an adjudication process like this takes place.

19 And we don't think that's appropriate and
20 we're going to be asking some questions about this during
21 the course of this testimony.

22 JUDGE REGISTER: Thank you, Mr. Fulton.

23 Mr. Coffman?

24 MR. COFFMAN: Yes. Just a couple brief
25 points. With regard to the notion of competition, it wasn't

1 our understanding that the experimental alternative
2 regulatory plan was any sort of transition towards
3 competition as far as I think anyone recognized.

4 We don't have competition, competitive
5 pressures are not putting -- bearing upon Union Electric to
6 the extent that they would be protecting consumers at this
7 point. Perhaps the anticipation of competition is driving
8 cost cutting.

9 The chart that was shown about productivity
10 increases, which by the way, I don't believe has been
11 offered in prepared testimony or offered as an exhibit, but
12 I think that that showed you that that there has been a
13 trend towards productivity preceding this plan. And I think
14 that that kind of productivity is not necessarily related to
15 this plan.

16 The other main point I would like to point out
17 is that the flow chart, that was the last chart shown you, I
18 think is missing a particular piece there. And that is
19 paragraph 3F Roman Numeral VII, which is very important. It
20 was important to our negotiations when we entered into it.

21 And it is where we reserve the right to bring
22 issues that are not resolved as to the operation and
23 implementation of the plan. This paragraph states that
24 examples include disagreements as to the mechanics of
25 calculating the monitoring report.

1 This plan is something of a hybrid, something
2 of an experiment, but it does recognize that we will be
3 reviewing costs and that that is part of -- we won't be
4 doing complete audits, but that's part of what this hybrid
5 deal involves. We would never have agreed to it if that was
6 not part of the agreement.

7 We have this sharing agreement, as was shown
8 you. That sharing grid is based on the level of earnings.
9 To determine those earnings, you have to review the
10 Company's books and records. And we believe we reserve the
11 right to review those.

12 And the reconciliation procedure does not
13 contemplate every disagreement that might occur as far as
14 accounting goes, and the reconciliation procedure itself
15 states that parties will have the right to bring
16 disagreements about accounting to the Commission. That's
17 all I have. Thank you.

18 JUDGE REGISTER: Thank you, Mr. Coffman.

19 Then we're ready to proceed. According to the
20 list of witnesses, we'll start with Mr. Brandt for UE; is
21 that correct?

22 MR. COOK: That's correct.

23 JUDGE REGISTER: Before we proceed with this
24 witness, did the parties want to offer and admit the
25 exhibits in Case No. EM-96-149 since that matter is

1 resolved, that case is resolved?

2 MR. CYNKAR: Your Honor, I think the mergers
3 and acquisitions issues from that case -- that's still alive
4 in that case. And we may have an objection to part of
5 Mr. Rackers' testimony, which he offered in both cases. So
6 outside of those two points, that's fine.

7 JUDGE REGISTER: If you want to wait and do
8 that at the end, that's fine as well, the offering of the
9 exhibits for EM-96-149. Do you want to do that now or wait
10 until the end?

11 MR. DOTTHEIM: Why don't we do that now?

12 JUDGE REGISTER: Do that now?

13 MR. DOTTHEIM: If that doesn't create any
14 problem.

15 JUDGE REGISTER: It should not, because the
16 issues that are issued in this hearing have been identified
17 as those under EO-96-14.

18 MR. DOTTHEIM: Mr. Cynkar, did you indicate
19 that it was Mr. Rackers' direct or surrebuttal?

20 MR. CYNKAR: Surrebuttal.

21 MR. DOTTHEIM: Surrebuttal. And it was the
22 mergers and acquisitions would be the other Staff testimony
23 that --

24 MR. CYNKAR: Yes.

25 MR. DOTTHEIM: -- the Staff would --

1 MR. CYNKAR: I mean, you can actually admit
2 the merger and acquisition testimony. I just was responding
3 to Judge Register's observation that that case has been
4 closed, and I think that still is a live issue, so we have
5 no objection to that testimony.

6 MR. DOTTHEIM: All right. Staff would offer
7 in Case Number EM-96-149 Exhibit No. 1, 3, 4, 5, 6-HC, 6-NP,
8 7, 8, 9, 18, 19, 20, 21, 22 and 23.

9 JUDGE REGISTER: And if there are no
10 objections to that offer, those exhibits will be admitted
11 into the record.

12 (EXHIBIT NOS. 1 THROUGH 7 AND 18 THROUGH 23
13 WERE RECEIVED INTO EVIDENCE.)

14 JUDGE REGISTER: Mr. Coffman?

15 MR. COFFMAN: I would like to offer
16 Exhibits 10 and 11 into the record of EM-96-149.

17 JUDGE REGISTER: And if there are no
18 objections to those exhibits being admitted to the record,
19 they are hereby admitted.

20 (EXHIBIT NOS. 10 AND 11 WERE RECEIVED INTO
21 EVIDENCE.)

22 MR. COOK: And Company would like to offer
23 Exhibits 12, 13, 14, 15, 16, and 17 into evidence at this
24 time.

25 JUDGE REGISTER: And if there are no

1 objections to the admission of those exhibits, they will
2 also be received into the record at this time.

3 (EXHIBIT NOS. 12 THROUGH 17 WERE RECEIVED INTO
4 EVIDENCE.)

5 JUDGE REGISTER: Okay. That will take care of
6 those exhibits. Thank you.

7 (Witness sworn.)

8 JUDGE REGISTER: Thank you, sir. Please state
9 your name and spell it for the court reporter, please.

10 THE WITNESS: Donald E. Brandt, B-r-a-n-d-t.

11 JUDGE REGISTER: Please proceed, Mr. Cynkar.

12 DONALD E. BRANDT testified as follows:

13 DIRECT EXAMINATION BY MR. CYNKAR:

14 Q. Mr. Brandt, I'd direct your attention to what
15 has been marked as Exhibits 12 and 13 in this case. Do you
16 recognize those documents?

17 A. Yes, I do.

18 Q. What are they?

19 A. It's my rebuttal testimony and the exhibits.

20 Q. And was that testimony prepared by you or
21 under your supervision?

22 A. Yes, it was.

23 Q. Now, do you have any corrections or additions
24 to make at this point?

25 A. I have one typographical error to correct on

1 page 24, line 8, the date 1999 should be 1998.

2 Q. And that is the total of all of your
3 corrections?

4 A. Yes, it is.

5 Q. And with that correction, are both of these
6 documents accurate?

7 A. Yes, they are.

8 MR. CYNKAR: I move both 12 and 13 into
9 evidence, your Honor.

10 JUDGE REGISTER: I just have one question
11 before you do that. Mr. Brandt, I did note earlier that
12 appendix A has got the Report and Order from ER-95-411. And
13 I noted that the Stipulation and Agreement attached to that
14 there is an Attachment A and an Attachment C, but no
15 Attachment B. Is that the correct --

16 THE WITNESS: Off the top of my head, I can't
17 answer that.

18 JUDGE REGISTER: I actually have a full set of
19 the original Stipulation and Agreement that was filed. I
20 had my secretary go back and get it. So you intended this
21 to be a full copy of that; is that correct?

22 MR. COOK: I'm trying to recall if there was a
23 reason Attachment B was left out, and I don't remember what
24 it was.

25 JUDGE REGISTER: It is --

1 MR. COOK: Tariff sheets.

2 JUDGE REGISTER: -- tariff sheets.

3 MR. COOK: Yes. Out of a slight concern for
4 the amount of paper that's being filed, we felt that that
5 was not going to be helpful at all for anyone and it would
6 not be needed because it had to do with the rates that went
7 into effect at the time so that was left out.

8 JUDGE REGISTER: I just wanted to make a note
9 of that, that the attached Exhibit B is not in there, but is
10 in the original file if someone wants to look at it.

11 MR. COOK: Yes. And the intent was it would
12 be complete except for those. Thank you.

13 JUDGE REGISTER: Are there any objections to
14 the admission of 12 and 13 into the record at this time?

15 Hearing no objection, Exhibit 12 and 13 are
16 admitted into the record.

17 (EXHIBIT NOS. 12 AND 13 WERE RECEIVED INTO
18 EVIDENCE.)

19 JUDGE REGISTER: We're ready for
20 cross-examination, Mr. Cynkar? Are there Intervenors -- any
21 of the Intervenors have questions for Mr. Brandt?

22 MS. SCHMIDT: No questions.

23 MR. JOHNSON: I have none.

24 MR. FULTON: No, your Honor. I have no
25 questions for Mr. Brandt.

1 JUDGE REGISTER: Okay. Then the next examiner
2 is Staff.

3 MR. DOTTHEIM: May we go off the record a
4 moment?

5 JUDGE REGISTER: Yes.

6 (Off the record.)

7 CROSS-EXAMINATION BY MR. DOTTHEIM:

8 Q. Afternoon, Mr. Brandt.

9 A. Afternoon.

10 Q. Mr. Brandt, if I could refer you to your
11 rebuttal testimony that's been marked as Exhibit 13 and if I
12 could direct you to page 3, lines 6 to 11, where you reach
13 certain conclusions about actions of the Commission --
14 certain actions that you assert will constitute a breach
15 contract and impair the contractual obligations established
16 by the agreement and they would affect an uncompensated
17 taking of the Company's property rights and they would deny
18 Company's right to due process of law.

19 Are those legal conclusions on your part?

20 A. They're conclusions of a businessman after
21 consulting with counsel.

22 Q. And counsel being Company counsel?

23 A. Yes.

24 Q. I'd like to direct you to page 4 of your
25 rebuttal testimony, lines 15 and 16, where you mention

1 that -- you state that UE surrendered the right to file a
2 rate case except in the most extreme circumstances.

3 Do you know whether by the Stipulation and
4 Agreement in Case No. ER-95-411, did the Staff surrender the
5 right to file an excess earnings complaint case against
6 Union Electric Company for a three-year period?

7 A. I believe they did.

8 Q. If I could next direct you to page 5, lines 4
9 through 6, where you make reference to UE turning to other
10 unregulated lines of business to generate a comparable level
11 of profits for its shareholders.

12 What unregulated lines of business would UE
13 have turned to the absence of the Stipulation and Agreement
14 in ER-95-411?

15 A. Well, it could have been any one of hundreds.
16 I can't speculate what it would have been. The opportunity
17 presented us with the Stipulation and Agreement and the
18 earnings sharing plan in this deal that the returns for our
19 shareholders in a regulated business appeared attractive.
20 So we forgave pursuing that line of the unregulated business
21 and what kind of profits we could have generated in that
22 case.

23 We thought that these kind of returns -- and
24 if we exercised some good management judgment and got our
25 employees on board and searched out the efficiencies, that

1 we could produce returns into the sharing grid. And history
2 has proven me correct in that regard and we produced --

3 Q. Thank you. You've answered my question. If
4 you can answer my question yes or no --

5 A. That one I could not have answered it yes or
6 no.

7 MR. DOTTHEIM: Well, I'd ask the Bench to
8 instruct the witness if he can answer the question yes or
9 no, to do so; if he needs to explain it thereafter, of
10 course, he can do so.

11 JUDGE REGISTER: Of course, Mr. Brandt, your
12 attorney can cross --

13 THE WITNESS: I understand.

14 JUDGE REGISTER: -- in redirect later too. So
15 if you need to explain something, you can follow-up later.

16 BY MR. DOTTHEIM:

17 Q. Did the Company develop any business plans or
18 documentation respecting these unregulated lines of business
19 that UE would have had to turn to in the absence of the
20 Stipulation and Agreement in ER-95-411?

21 A. What do you mean by "business plans
22 documentation"?

23 Q. Business plans as far as actually looking into
24 and projecting -- getting into unregulated lines of
25 business, specific unregulated lines of business, any

1 development plans?

2 A. Within the terminology of "business plans and
3 documentation," interpreting that loosely, yes.

4 Q. And could you identify what specifically would
5 be -- what those unregulated lines of business would be?

6 A. One that I can recall is telecommunications.

7 Q. Again, looking at lines 3 and 4 where you say
8 the Company would have not short-changed its core power
9 business, what do you mean by the statement that the Company
10 would not have short-changed its core power business in the
11 absence of the EARP?

12 A. We would not have ignored our core power
13 business, the electric business, to pursue those
14 opportunities.

15 Q. If I could direct you still on page 5, line 8,
16 where you express disappointment about the \$24 million of
17 credits not having been paid yet to customers.

18 There has been a resolution of the weather
19 normalization methodology for purposes of determining the
20 rate reduction out of the first three years, has there not?

21 A. It is my understanding there has been.

22 Q. Would UE be willing to effectuate a third-year
23 credit based upon UE's \$24 million calculation and a rate
24 reduction based upon the first two years of the plan
25 utilizing the weather normalization methodology that has

1 been agreed to by the Company and the Staff and effectuate a
2 rate reduction and payment of credits to UE's customers at
3 this time?

4 A. No, we would not.

5 Q. UE is not willing to effectuate the rate
6 reduction and make a sharing credits of payment until there
7 is final resolution of the outstanding issues in this case?

8 A. Union Electric is willing to abide by the
9 terms of the contract and the agreement, and that's not
10 required under the contract or agreement.

11 Q. When would that be required? Would that be
12 after all final appeals? Assuming -- excuse me -- assuming
13 that Union Electric Company did not prevail on the
14 outstanding issues or all of the outstanding issues an
15 appealed the Commission's decision, would Union Electric
16 Company not make a sharing credits payment or a rate
17 reduction until all judicial relief had been exhausted?

18 A. You're -- I think you're asking me for a legal
19 conclusion. I'm not certain. I'd have to confer with
20 counsel as to what our rights and obligations were. We
21 would comply with the terms of the contract, the agreement
22 and applicable law.

23 Q. I thought in the same vein I was asking you
24 for your perspective as a businessman as to what action
25 Union Electric Company would take.

1 A. I've not had a discussion with our lawyer in
2 detail as to what our course of action would be. I cannot
3 answer that question from a businessman's perspective.

4 Q. Still on page 5, if I could refer you to lines
5 18 to 20, do you recall whether the Staff in the course of
6 the determination of the second-year sharing credits
7 proposed any adjustments from UE's perspective which would
8 have had the effect of repudiating the Staff's commitments
9 under the ER-95-411 Stipulation and Agreement?

10 A. Well, in a very minor way, yes.

11 Q. Do you recall the adjustments that the Staff
12 proposed --

13 A. No, I don't.

14 Q. -- after the second-year sharing credits?
15 Do you recall that --

16 A. I do recall one adjustment was relative to
17 non-utility operations, and I don't recall if that was Staff
18 or Public Counsel or both.

19 Q. That was Staff. Do you recall whether -- do
20 you recall that adjustment well enough to state whether you
21 would consider that adjustment to be a repudiation of the
22 Staff's commitments under the ER-95-411 Stipulation and
23 Agreement?

24 A. I thought the adjustment was baseless. And in
25 that regard, I don't think it was provided for under the

1 agreement, but it was \$200,000. And I am a businessman and
2 I wouldn't come up here and conduct a trial for \$200,000.

3 Q. The \$200,000 that you're referring to was what
4 ultimately was settled upon by the Company and Staff?

5 A. That's my understanding.

6 Q. There was more in dispute than the \$200,000
7 that was settled upon; is that correct?

8 A. I believe so, yes.

9 Q. Okay. Was another adjustment by the Staff
10 proposed during the second-year sharing credits, the
11 decommissioning cost funds adjustment that also is present
12 in the third-year sharing credits?

13 A. I don't recall that specifically.

14 Q. Okay. Is it Union Electric Company's position
15 that every adjustment that the Staff proposed for the
16 third-year sharing period was an improper adjustment under
17 the ER-95-411 Stipulation and Agreement?

18 A. No, that's not my position.

19 Q. I'd like to refer you to page 14 of your
20 rebuttal testimony, lines 21 to 23, and to the top of
21 page 15, lines 1 and 2. Is it UE's position that unless
22 otherwise specifically stated in the reconciliation
23 procedure document, parties cannot propose an adjustment to
24 UE's booked earnings if UE can show that the item in
25 question was booked in accordance with established

1 accounting practices and GAP?

2 A. And in addition to those two requirements --
3 yes, to that, but also we have an obligation to supply
4 reasonable explanation for any variations.

5 Q. Was UE's position on this matter communicated
6 to the Staff and the other parties in the context of Case
7 No. ER-95-411?

8 A. I think the contract speaks for itself, and it
9 is very clear to me.

10 Q. You made reference to the contract speaking
11 for itself. What document are you referring to when you
12 make reference to the contract?

13 A. The stipulation -- in the appendices to my
14 testimony, and I don't know if that was Exhibit 12 or 13,
15 but basically the Report and Order of the Commission dated
16 July 21st, 1995, and the attached Stipulation and Agreement
17 and the appendices and exhibits thereto.

18 I wouldn't include the Commission's order as
19 part of that contract, but I won't get into the legalese as
20 to what happens to an order afterwards, whether that's part
21 of it or not, but --

22 Q. If I could refer you -- ask you to turn back
23 at this point to page 6, lines 17 through 19, could you
24 identify -- have you had a chance to take a look at those
25 lines?

1 A. Yes, I have.

2 Q. I'm sorry. Could you identify for me where in
3 the ER-95-411 Stipulation and Agreement does it state that
4 UE's established accounting practices and GAP are the
5 primary basis for calculating each year's earnings report?

6 A. Well, rather than find it on the contract, I
7 know it's on the one exhibit Mr. Cynkar used.

8 JUDGE REGISTER: Let the record reflect that
9 the witness is referring to what was earlier deduced in the
10 opening statements as Attachment C, the reconciliation
11 procedure.

12 THE WITNESS: Correct. The reconciliation
13 procedure. And basically the company's Missouri Electric
14 operating income and common equity return will be based upon
15 year ending June 30 operating revenues, expenses and the
16 average rate base. And that comes from the Company's books
17 and records. I think Mr. Cynkar touched on that's the
18 starting point for the whole calculation.

19 BY MR. DOTTHEIM:

20 Q. Do the words "established accounting
21 practices" appear anywhere in the ER-95-411 Stipulation and
22 Agreement?

23 A. I couldn't say whether they're there or not.
24 I couldn't point to them, but the point is that you start
25 from the Company's books and records and we spell out all

1 the adjustments down to \$250,000 worth of advertising to the
2 Company's books and records and --

3 Q. But it's your testimony that you're not aware
4 whether the words "established accounting practices" appear
5 anywhere in the ER-95-411 Stipulation and Agreement?

6 A. I could not find them right now. I don't know
7 if they're in there or not, those precise words.

8 Q. Can you site to any document that shows that
9 the Staff accepted UE's established accounting practices and
10 GAP as a primary basis for calculating each year's earning
11 report?

12 A. Excuse me? Can I site to what?

13 Q. Any document where the Staff accepted UE's
14 established accounting practices and GAP as the primary
15 basis for calculating each year's earnings report for UE.

16 A. I don't know if you'd call it a document per
17 se, but I'd go back to every rate case, complaint case,
18 practically any other Commission proceedings in the 16 years
19 I've been with the Company. And generally a revenue
20 requirement calculation starts from the Company's books and
21 records and the standard type rate case adjustments. And I
22 think the stipulation speaks to that, make these adjustments
23 and they're laid out here.

24 Q. But then in an audit the Staff, for example,
25 makes adjustments to the Company's books and records?

1 A. Yes. In a typical rate case audit, they make
2 adjustments. And this reconciliation procedure typifies
3 the -- pretty much I thought was all encompassing of the
4 typical adjustments that the Staff has made and that the
5 Commission's affirmed over the years.

6 Q. What is UE's definition of established
7 accounting practice?

8 A. An accounting practice that's acceptable under
9 the uniform system of accounts, generally accepted
10 accounting principals and that's been consistently applied
11 for some period of time.

12 Q. And those are UE's established accounting
13 practices?

14 A. What is Union Electric's --

15 Q. What you just identified, the uniform system
16 of accounts. What are Union Electric Company's established
17 accounting practices?

18 A. They are what they are. I mean --

19 Q. And could you be more specific than that?

20 A. I don't think so. If I had an accounting
21 textbook, I guess I could go through every single financial
22 accounting standard that applies, but basically it's
23 everything we have been doing that's been acceptable under
24 GAP and the uniform system of accounts and that we've been
25 doing for some period of time.

1 Q. What would be the period of time?

2 A. At least several years.

3 Q. Would a possible definition of established
4 accounting practice be an accounting practice that was in
5 effect for UE at the time the ER-95-411 Stipulation and
6 Agreement was adopted?

7 A. I don't think I could answer that without
8 going back and studying what was in effect before and after
9 that particular date and time.

10 Q. Would a possible definition of established
11 accounting practice be an accounting practice that was in
12 effect for UE for some period of time prior to the adoption
13 of the ER-95-411 Stipulation and Agreement?

14 A. There are -- there might have been things that
15 were in -- established before and got changed prior to that
16 date. And it's kind of an open-ended question without
17 having a time frame and a point in time established.

18 Q. Would a possible definition of established
19 accounting practice be an accounting practice that was based
20 on a prior Commission rate-making decision in a litigated UE
21 rate proceeding?

22 A. Could you run that past me one more time?

23 Q. Yes. Is a possible definition of established
24 accounting practices, as you define it, an accounting
25 practice that was based on a prior Commission rate-making

1 decision in a litigated UE rate proceeding?

2 A. Well, again, it would depend on if it was a
3 one-time adjustment or an ongoing expense-type of adjustment
4 picking a cost -- particular cost and normalizing a one-time
5 event. We do that for cost-of-service purposes, but it
6 wouldn't be on -- I wouldn't call that an established
7 accounting practice.

8 Q. Would a possible definition of established
9 accounting practices, as you use it, be an accounting
10 practice that was based on a prior Commission rate-making
11 decision in a non-UE litigated rate proceeding?

12 A. I'm sorry. If you could repeat that one more
13 time.

14 Q. Certainly. Could a possible definition of an
15 established accounting practice, as you use the term, be an
16 accounting practice that is based on a prior Commission
17 rate-making decision in a non-UE litigated rate proceeding?

18 A. You said non-UE?

19 Q. Yes.

20 A. No.

21 Q. Is a possible definition of established
22 accounting practice, as you use it, an accounting practice
23 that was never challenged by the Staff or other parties in
24 past UE rate proceedings?

25 A. Yes.

1 Q. Do the words general -- excuse me.

2 Do the words "generally accepted accounting
3 principals" or the acronym "GAP" appear anywhere in the
4 ER-95-411 Stipulation and Agreement?

5 A. Not that I am aware of.

6 Q. Is it your general understanding that the
7 Commission has not held itself to be bound by the
8 rate-making purposes by GAP?

9 A. That's my understanding.

10 Q. To the extent that adopting the Stipulation
11 and Agreement in Case No. ER-95-411 bound the Commission to
12 the acceptance of GAP for purposes of calculating credits
13 except under certain circumstances such as the
14 reconciliation procedure, would that constitute a change in
15 policy for the Commission?

16 MR. CYNKAR: Objection. I don't know if this
17 witness is competent to answer that question or not.

18 JUDGE REGISTER: Mr. Dottheim, do you have a
19 response?

20 MR. DOTTHEIM: Well, Mr. Brandt is the
21 Company's principal witness on the Stipulation and Agreement
22 ER-95-411. He asserts that he is the individual who
23 negotiated the agreement. And I think, as a consequence, he
24 would be the person to be asked that question.

25 MR. CYNKAR: I think part of my problem with

1 the question is it went into -- it was a broader question
2 with respect to change in Commission policy and so forth.
3 And I thought it was much broader than what the parties
4 contemplated in the agreement that Mr. Brandt negotiated.
5 Certainly he's competent to testify to that, but in terms of
6 broader policy implications, I'm not sure he's competent
7 to --

8 MR. DOTTHEIM: Well, Mr. Brandt just
9 previously testified that the Commission has not held itself
10 to be bound for rate-making purposes by the confines of GAP.
11 And, as a consequence, I think he's indicated in answering
12 that prior question and that he asserts he's the architect
13 of the ER-95-411 Stipulation and Agreement for the Company,
14 that he is the individual who is competent to answer that
15 question for the company.

16 JUDGE REGISTER: Let me ask Tracy to read the
17 question back for us.

18 THE COURT REPORTER: "Question: To the extent
19 that adopting the Stipulation and Agreement in Case No.
20 ER-95-411 bound the Commission to the acceptance of GAP for
21 purposes of calculating credits except under certain
22 circumstances such as the reconciliation procedure, would
23 that constitute a change in policy for the Commission?"

24 MR. CYNKAR: Maybe to hone my objection a
25 little bit, part of my problem with the question is that

1 because this is an experiment and from our perspective a
2 contract, it doesn't have broader implications beyond this.

3 So I think it's hard for someone to say what
4 the Commission is going to do in the future in terms of
5 policies and so forth. I think we've been clear in terms of
6 this arrangement itself that certain accounting practices
7 would govern how the earnings are calculated, but as far as
8 more broadly, I don't think either this witness or anyone
9 here could possibly know what may happen in the future as
10 far as an experiment like this. So that really is the
11 nature of my objection.

12 JUDGE REGISTER: I'm going to overrule your
13 objection, Mr. Cynkar, and let the witness answer the
14 question, if he can.

15 Mr. Brandt, do you remember that question?

16 THE WITNESS: Vaguely. And I don't think I
17 can answer that question specifically, but regarding the
18 Commission bound by GAP, that's not the intent of my
19 statement on lines 17 through 19 on page 6.

20 I make the point that the Company's accounting
21 practices that are established accounting practices and
22 general accepted accounting principals as applied for
23 financial and regulatory purposes.

24 And we're not saying that FASB, the Financial
25 Accounting Standards Board, or any other kind of accounting

1 standards-making body can dictate what you, the Commission,
2 are stuck with. We're saying at that point in time our
3 established accounting practices -- and much of GAP for
4 regulated industries is it founded in tracking what
5 regulation does. It can only go far in some instances, but
6 generally GAP tries to mirror what happens in the regulatory
7 process from recognizing cost and expenses, assets and
8 liabilities. So you have to look at both financial and
9 regulatory together.

10 And the case in the opening statement by
11 Mr. Cynkar, he brought up the case of the SOP, and I'm not
12 good at these acronyms and the numbers, but relative to
13 computer expenses where the Financial Accounting Standards
14 Board has said effective January 1, 1999, you'll no longer
15 expense computer software, you'll capitalize that.

16 JUDGE REGISTER: Let me stop you there,
17 Mr. Brandt. I appreciate and I understand you wanted to
18 explain where you were coming from there, but I do want you
19 to understand that on cross-examination you need to respond
20 to the questions that Mr. Dottheim gives you, and then your
21 counsel will have an opportunity to explain that.

22 And if you can -- if you can answer yes or no
23 to his question and it needs a fuller answer, then do, but
24 please answer yes or no if you can.

25 Mr. Dottheim, please proceed.

1 MR. DOTTHEIM: Well, I don't know that
2 Mr. Brandt has answered my question. He's made reference
3 back to a citation on page 6 that I referred to some time
4 ago and not directly in regards to the question I had asked
5 him.

6 JUDGE REGISTER: I think I understood his
7 answer to the last question to be he didn't know.

8 BY MR. DOTTHEIM:

9 Q. Is that your answer, Mr. Brandt?

10 A. I think I said something along the lines of I
11 don't think I can answer that question precisely, but this
12 might help you.

13 JUDGE REGISTER: If you want to restate it or
14 go another direction, Mr. Dottheim, try that.

15 BY MR. DOTTHEIM:

16 Q. Well, we may come back to that. Mr. Brandt,
17 if I could refer you to page 5 of your rebuttal testimony,
18 line 16, where you make reference, I believe, to the EARP
19 under the Case No. ER-95-411 Stipulation and Agreement as a
20 new, efficient regulatory plan. And on page 7 on line 9 you
21 made reference to the EARP, I believe, as an innovative
22 plan.

23 Did the EARP, the Experimental Alternative
24 Regulation Plan, in Case No. ER-95-411 the Stipulation and
25 Agreement, have a predecessor before the Commission, not

1 necessarily --

2 A. I lost you with all that ER stuff.

3 Q. Okay. You prefer I just refer to it as the
4 EARP?

5 A. That would work real good.

6 Q. Okay.

7 A. You'd probably save us a lot of time here too.

8 Q. All right. Did Union Electric Company EARP --
9 the first EARP, the one which --

10 A. I understand what you're talking about.

11 Q. Okay. All right. Did it have a predecessor,
12 and not necessarily a Union Electric Company predecessor, at
13 the Commission?

14 A. Not that I know of.

15 Q. Are you familiar whether the Commission has
16 ever adopted an incentive regulation experiment for
17 Southwestern Bell?

18 A. Yes.

19 Q. Okay. Would you characterize that as a new,
20 innovative regulatory plan?

21 A. I'm not familiar with anything of that plan
22 other than the sharing grid that was in that plan.

23 Q. You're not familiar with the monitoring
24 procedures or the reconciliation procedure from the
25 Southwestern Bell incentive regulation experiment?

1 A. No.

2 Q. Mr. Brandt, I'm going to hand to you a
3 document. It's a Company response to Staff Data Request
4 No. 106 in Case No. EO-96-14. And the copy I'm going to
5 hand to you has a cover letter on top from Mr. Cook to
6 Mr. Rackers with me showing being cc'd. And I'm going to
7 hand to you what is shown as my copy.

8 And the Data Request asks on page 8, lines 22
9 to 23, in Mr. Donald E. Brandt's rebuttal testimony
10 Mr. Brandt states that in January 1995, the Company
11 submitted a proposal to the Staff. Please provide a copy of
12 the document referred to by Mr. Brandt on page 8, lines 22
13 to 23 of his rebuttal testimony.

14 JUDGE REGISTER: What Data Request was that,
15 Mr. Dottheim?

16 MR. DOTTHEIM: Pardon?

17 JUDGE REGISTER: What Data Request?

18 MR. DOTTHEIM: That was Staff Data Request
19 No. 106.

20 JUDGE REGISTER: Thank you.

21 BY MR. DOTTHEIM:

22 Q. And I would note that the date on the Staff
23 Data Request is April 9, 1999.

24 Mr. Brandt, do you recognize the document
25 that's attached to the Staff Data Request?

1 A. Yes.

2 Q. And I'd like to refer you to page 8 of your
3 rebuttal testimony, lines 22 and 23, where you make
4 reference to in January of 1995, the Company submitted a
5 proposal to the Staff. Is the document that's attached to
6 the Staff Data Request No. 106 the document which you refer
7 to in your rebuttal testimony at page 8, lines 22 and 23?

8 A. That is correct.

9 Q. The cover letter is signed by you. It appears
10 to be on your letterhead stationary and it's to Mr. Ken
11 Rademan; is that correct?

12 A. That's a cover letter addressed to Mr. Ken
13 Rademan on my stationary, and I have signed it.

14 Q. Did you prepare the document that is attached
15 to the cover letter?

16 A. I prepared -- let me see what all's attached.
17 I basically wrote everything from the cover letter through
18 page 10. Attachment A was prepared by people under my
19 direction and control as was Attachment B in Schedule 1.

20 Q. Attachment B, which is titled Reconciliation
21 Procedure, was prepared under your direction and control?

22 A. Yes.

23 Q. Let me refer you to page 3 of the document,
24 and the document is marked confidential. I think I can make
25 use of the document without divulging anything that's in

1 there of a confidential nature.

2 MR. DOTTHEIM: We could go off the record and
3 I could indicate to counsel for the Union Electric Company
4 what in particular I would like to ask Mr. Brandt questions
5 in regards to.

6 MR. COOK: Your Honor, if we could go off the
7 record for a just a minute.

8 JUDGE REGISTER: Tracy, we need to go off the
9 record.

10 (Off the record.)

11 (EXHIBIT NO. 21 IN CASE NO. EO-96-14 WAS
12 MARKED FOR IDENTIFICATION.)

13 BY MR. DOTTHEIM:

14 Q. Mr. Brandt, you have what has been marked as
15 Exhibit 21. It's the Company's response to Staff Data
16 Request No. 106, dated January 27, 1995, cover letter from
17 you to Ken Rademan, which is attached, a document that's
18 entitled, UE slash Customer Share and Savings Plan for Union
19 Electric Company?

20 A. Yes, I do.

21 Q. You have that document? You wanted to qualify
22 that document in some manner at this point?

23 A. Just one area. There's an Attachment A, a
24 1995 through 1999 budget. And this was forward-looking at
25 the time, which was January of 1995. And obviously the

1 historical years '95 through '98, the actual results varied
2 from those and I'd also say relative to 1999. No one should
3 attempt to rely on those numbers because it's going on a
4 five-year old forecast, but that's -- that's the only
5 caution I'd make on this exhibit.

6 Q. And even though the document is marked as
7 confidential, the company doesn't consider it confidential
8 any longer?

9 A. No.

10 Q. And if I could direct you to page 3, the first
11 sentence under the heading Share the Savings Proposal, would
12 you please read into the record what that sentence states?

13 A. We have developed a proposal, paren, loosely
14 based in concept on the Southwestern Bell plan, closed
15 paren, that would provide for the sharing of earnings in
16 excess of a 12.95 percent return on equity, period.

17 MR. DOTTHEIM: At this time I'd like to have
18 this marked as Exhibit No. 22.

19 JUDGE REGISTER: We marked 21. Did you offer
20 it?

21 MR. DOTTHEIM: I'm sorry. No, I haven't. At
22 this time I'd like to offer Exhibit 21.

23 MR. CYNKAR: No objection.

24 JUDGE REGISTER: Hearing no objections, it is
25 admitted into the record.

1 (EXHIBIT NO. 21 WAS RECEIVED INTO EVIDENCE.)

2 JUDGE REGISTER: Go ahead, Mr. Dottheim.

3 MR. DOTTHEIM: At this time I'd like to have
4 marked as Exhibit 22 a copy of the Commission's order of
5 March 15th, 1991, in Case No. TO-90-1. The caption of the
6 case is in the matter of an incentive plan for Southwestern
7 Bell Telephone Company. It's a Commission order granting
8 interventions and approving joint recommendation.

9 And I had intended to have it as two
10 documents, but unfortunately it was copied together. On top
11 of it is an erratum from four days later, March 19, 1991,
12 correcting the sharing grid that appears in the Commission's
13 order in Case No. TO-90-1.

14 (EXHIBIT NO. 22 IN CASE NO. EO-96-14 WAS
15 MARKED FOR IDENTIFICATION.)

16 JUDGE REGISTER: That will be marked as the
17 order and erratum in Case No. TO-90-1; the erratum dated
18 March 19, '91; and the order itself being issued March 15th,
19 1991; and all of its attachments.

20 Please proceed, Mr. Dottheim.

21 BY MR. DOTTHEIM:

22 Q. Mr. Brandt, to your recollection, have you
23 ever seen a copy of this Commission order previously?

24 A. No.

25 Q. Okay. Mr. Brandt, I'd like to refer you to

1 Attachment A to the Commission's order of March 15, 1991.
2 And the Attachment A is entitled, Joint Recommendation to
3 Approve Revised Incentive Regulation Experiment for
4 Southwestern Bell Telephone Company.

5 And I'd like to direct you to page 9 of 21,
6 item D on that page, first sentence which states,
7 Southwestern Bell will comply with the monitoring procedures
8 set forth in Attachment 3. Elsewhere in that document,
9 which is Attachment A, there are additional references to
10 Attachment 3 being the monitoring procedures.

11 Page 10 of 21, if I could direct you to
12 paragraph G, lines 4 and 5, which make reference to the
13 monitoring procedures stated in Attachment 3.

14 A. Mine doesn't have any line item on it. You
15 said lines 4 and 5?

16 Q. I'm sorry. Page 10 or 21.

17 A. 10 of 21, paragraph G, but I don't have any
18 lines -- you mean line 4 and 5?

19 Q. I'm sorry. Yes.

20 A. Okay.

21 Q. I'm sorry. Lines 4 and 5 where there's a --

22 A. Starting --

23 Q. -- reference to --

24 A. -- with 4A?

25 Q. Yes.

1 A. Okay.

2 Q. Yes, sir. And then there's, And the
3 monitoring procedures stated in Attachment 3. And I'd like
4 to direct you to Attachment A in the bottom right-hand
5 corner, page 32 of 75.

6 A. Okay. I'm on 32 of 75.

7 Q. Okay. Up at the top of that page in the upper
8 right-hand corner is the word "attachment" and the No. 3, is
9 there not?

10 A. It says Attachment 3.

11 Q. And to the left of that it says, Monitoring
12 Procedures, does it not?

13 A. It does.

14 Q. I'd like to direct you now to -- if you'd stay
15 on that page, I'd like to direct you to Attachment B of
16 what's been marked as Exhibit 21.

17 A. What's that one? I'm trying to hold three
18 different pages here and I guess there's going to be a
19 question soon, but --

20 Q. I'm sorry. That is Staff Data Request
21 No. 106.

22 A. Okay.

23 Q. And your January 27, 1995, cover letter and
24 Attachment.

25 JUDGE REGISTER: What page in that are we

1 looking at, Mr. Dottheim?

2 MR. DOTTHEIM: It is identified as
3 Attachment B.

4 JUDGE REGISTER: Okay.

5 MR. DOTTHEIM: -- reconciliation procedure.
6 The first page does not have a page number on it. The
7 second page does have a page No. 2 on it. It appears that
8 Attachment B is a -- first page has no number and the second
9 page is 2.

10 BY MR. DOTTHEIM:

11 Q. Mr. Brandt, if you would accept, subject to
12 check, that Exhibit 22 starting at page 32 of 75,
13 Attachment A, which is nominated at the --

14 A. Hold on.

15 Q. I'm sorry.

16 A. What's exhibit --

17 Q. I'm sorry.

18 A. If you just call them what they are, it will
19 really help me, because I lost where all my fingers are at
20 anywhere.

21 Q. I'm sorry. I'm referring to the
22 Commission's --

23 A. The Commission order. I got the Commission
24 order and my letter in front of me.

25 Q. Yes. Those are the two documents.

1 A. Yeah.

2 Q. And if you would accept, subject to check,
3 that the document that's Case No. TO-90-1, the Commission
4 order, that page 32 of 75, going to page 36 are the
5 monitoring procedures in the Case No. TO-90-1 incentive plan
6 for Southwestern Bell Telephone Company --

7 MR. CYNKAR: Your Honor, if it would be
8 helpful, I think the document speaks for itself. We don't
9 have any objection to this document being offered and
10 accepted into evidence.

11 THE WITNESS: I've never seen it before, so if
12 you say so, I'll take your word for it.

13 MR. DOTTHEIM:

14 Q. If I could refer you to page 32.

15 A. Okay.

16 Q. Okay. And I'd like to refer you to the
17 monitoring procedures, the paragraph that has the No. 1 off
18 to the left, the third sentence. The third sentence states,
19 A final earnings report and proposed sharing report will be
20 submitted to the Commission within 105 days after the end of
21 the period.

22 And I'd like to refer you to your document,
23 the Attachment B reconciliation procedure, the paragraph
24 that has a No. 1 off to the left, the second sentence which
25 states, An earnings report will be submitted to the

1 Commission and to all parties to this agreement by 105 days
2 after the end of each plan year.

3 The words are not exact, but the two sentences
4 track each other, do they not?

5 A. I don't know if they track. They're similar.

6 Q. Okay. I'd like to refer you to the next
7 sentence in the paragraph for both documents. In the Case
8 No. TO-90-1 document the next sentence is, The monitoring
9 report will be similar to Schedule 1.

10 And in your document the reconciliation
11 procedure, Attachment B, the sentence is, The earnings
12 report will be similar to the attached Schedule 1.

13 That's correct, is it not? I read those
14 accurately?

15 A. What you read -- you read it correctly.

16 Q. And the two sentences, they're not exact, but
17 they track each other?

18 A. They're reasonably similar.

19 Q. I'd like to refer you to page 2.

20 JUDGE REGISTER: Of what?

21 MR. DOTTHEIM: It's the TO-90-1 document.

22 JUDGE REGISTER: The order?

23 MR. DOTTHEIM: Yes. The order, the
24 Attachment A, page 33 of 75.

25 JUDGE REGISTER: That's good. Thank you.

1 BY MR. DOTTHEIM:

2 Q. And I'd like to refer you to paragraph E, the
3 first sentence.

4 A. What page was that?

5 Q. I'm sorry.

6 JUDGE REGISTER: The next page. 32 of 75 and
7 then 33 out of 75.

8 THE WITNESS: I'm on 33 of 75. Okay. Which
9 paragraph?

10 BY MR. DOTTHEIM:

11 Q. The paragraph E, that first sentence that's a
12 paragraph in itself. And I'd like to refer you to your
13 document, the Attachment B reconciliation procedure, refer
14 you to paragraph 2C.

15 Paragraph E on page 33 of 75 states, The
16 Company agrees to exclude from the cost of service items
17 which have been traditionally excluded in SWBT rate-making
18 proceedings, e.g., lobbying expense, corporate aircraft
19 expense, contributions to charitably organizations and
20 institutional advertising costs.

21 And the sentence on your document, paragraph
22 2C states, Company will omit items from the cost of service
23 which have been traditionally excluded in UE rate
24 proceedings, paren, e.g., lobbying expense, charitable
25 contributions, good will advertising, etc., closed paren,

1 period.

2 One sentence references Southwestern Bell, the
3 other sentence references UE. They're not identical, but
4 they track each other fairly closely, do they not?

5 A. Except for they got a corporate aircraft, it
6 appears, and we don't. Sometimes that's a big deal.

7 JUDGE REGISTER: Mr. Brandt, they do track
8 each other, just to clarify the record?

9 THE WITNESS: Reasonably similar.

10 JUDGE REGISTER: Thank you.

11 BY MR. DOTTHEIM:

12 Q. I'd next like to refer you to again page 33 of
13 75, and it's paragraph F, the first sentence, and on your
14 document it would be paragraph 2D.

15 And on page 33 of 75 the sentence reads,
16 Company earnings then will be adjusted to normalize the
17 effects of any sharing credits for the prior year that are
18 embedded in the earnings.

19 And on your document the sentence in 2D is,
20 Net operating income will be normalized for the effect of
21 any prior year sharing credits.

22 Have I read those accurately?

23 A. Yes.

24 Q. And, again, the two sentences are not
25 identical, but they track each other, they're fairly close?

1 A. Reasonably similar. I wouldn't use the word
2 "track," but --

3 Q. All right. There are just two other sentences
4 I'd like to ask you about. And, again, on page 33 of 75 in
5 the Southwestern Bell document, paragraph G, the first
6 sentence, and then if we would turn to the second page of
7 the reconciliation procedure in your document.

8 A. So we're on 33 and then the second page of the
9 reconciliation procedure?

10 Q. Yes.

11 A. All right.

12 Q. Item 2G, the first sentence, the sentence in
13 the Southwestern Bell document reads, The earnings levels
14 upon which sharing is based are those as described in items
15 2B through 2F, period.

16 And the sentence in your document reads, The
17 earnings level upon which sharing is based are those
18 described in items 2A through 2F above.

19 Did I read those accurately?

20 A. Yes, you did.

21 Q. And, again, the words are not exact, but
22 they're fairly close?

23 A. Yes, they are fairly close.

24 Q. And one other sentence. I'd like to refer you
25 now to page 34. The fourth paragraph on the page the first

1 sentence, and then I'd like to refer you back to your own
2 document, the second sentence in paragraph 2G.

3 The sentence in the Southwestern Bell document
4 is, SWBT, slash, Staff, slash, OPC reserve the right to
5 bring issues which cannot be resolved by the parties which
6 are related to the operation or implementation of the
7 incentive plan to the Commission for resolution.

8 And the sentence in your document is, UE,
9 slash, Staff, slash, OPC reserve the right to petition the
10 Commission for resolution of disputed issues relating to the
11 operation or implementation of this share the savings plan.

12 Have I read those accurately?

13 A. Yes.

14 Q. And, again, the two sentences are not
15 identical, but are very close?

16 A. Reasonably similar.

17 Q. Okay. Mr. Brandt, would you characterize the
18 closeness, the similarities of the sentences I just read
19 between the two documents as coincidence?

20 A. I don't know what to attribute it to. I
21 suspect the people I had do this -- I would have thought
22 they'd -- I know the individual who last gave it to me was a
23 Mr. Joseph Pfeiffer (phonetic spelling) who at the time was
24 our controller, and that was his job to stay abreast of
25 regulatory developments. He had rate regulation underneath

1 him.

2 And I'd be kind of disappointed if he went
3 back and did the whole thing from scratch if he had already
4 been familiar with some language that was tried and true.
5 It's pretty obvious that he did it in a page and a third as
6 opposed to -- I don't know how many pages of detail is in
7 here, but -- so I guess if you're asking is it likely he
8 might have referred to this, it would appear so, and that's
9 interesting.

10 Q. Thank you. If I could refer you back to your
11 testimony, again, your rebuttal testimony, page 7 --

12 JUDGE REGISTER: Before we move on,
13 Mr. Dottheim, are you offering Exhibit No. 22?

14 MR. DOTTHEIM: Yes. Excuse me. At this time
15 I would like to offer what's been marked as Exhibit 22, the
16 March 15, 1991, order of the Commission in Case No. TO-90-1,
17 and also the attached erratum.

18 JUDGE REGISTER: Any objections to the
19 admission of Exhibit 22 into the record?

20 MR. CYNKAR: No objection.

21 JUDGE REGISTER: Hearing none, Exhibit No. 22
22 will be admitted into the record.

23 (EXHIBIT NO. 22 WAS RECEIVED INTO EVIDENCE.)

24 JUDGE REGISTER: Please proceed, Mr. Dottheim.
25 We were going to the Exhibit 12 again. Right?

1 MR. DOTTHEIM: Yes.

2 JUDGE REGISTER: Before you proceed,
3 Mr. Dottheim, do you have very many questions or do we have
4 a natural break moment here?

5 MR. DOTTHEIM: This would be fine. I still
6 have a fair number of questions.

7 JUDGE REGISTER: Would you like a break at
8 this time? Let's take five -- take ten.

9 (Off the record.)

10 BY MR. DOTTHEIM:

11 Q. Mr. Brandt, I'd like to refer you again to
12 page 7, lines 19 to 20.

13 A. Of my testimony?

14 Q. Yes. I'm sorry.

15 A. That's okay. 19 and 20 --

16 Q. Of your rebuttal testimony.

17 A. -- on page 7?

18 Q. Page 7, lines 19 to 20, where you identify
19 electric rate cases filed by Union Electric Company and
20 litigated in 1981, '82 and '83. Could you tell me what you
21 mean by litigated?

22 A. Where we filed and adjudicated the request for
23 rate changes.

24 Q. Do you recall whether any of those cases
25 settled as opposed to going to hearing?

1 A. I think there were some settlements in those
2 years. I don't specifically recall which ones. I don't
3 have that information handy.

4 Q. I'd like to refer you to page 8 of your
5 rebuttal testimony, lines 4 and 5. And you make reference
6 to complaint cases filed by the Staff and Office of Public
7 Counsel against UE in early 1987, and you make reference to
8 a settlement being reached in December of 1987.

9 Do you recall whether those cases settled or
10 went to hearing by the Commission and were decided in
11 December of 1987?

12 A. I don't recall specifically.

13 Q. Do you recall whether you submitted testimony
14 in either of those two cases?

15 A. Which were the two? Was that the 1987 or '90
16 and '93?

17 Q. I'm sorry. The 1987, the complaint cases
18 filed by the Staff and the Office of Public Counsel.

19 A. I don't recall, but I'd be surprised if I
20 didn't submit testimony in some regard.

21 Q. You don't recall approximately how many Staff
22 accountants were involved in the Staff's complaint case
23 against Southwestern Bell -- excuse me. I'm sorry. I said
24 Southwestern Bell. I meant Union Electric Company.

25 Do you recall how many Staff accountants were

1 involved in that 1987 Staff complaint case against Union
2 Electric Company?

3 A. Union Electric or Commission Staff
4 accountants? They were all together.

5 Q. I'm sorry. Commission Staff accountants.

6 A. No.

7 Q. And you wouldn't recall how many Data Requests
8 were submitted by the Staff?

9 A. No.

10 Q. If I could refer you to lines 5 through 7,
11 again on 8, the 1990 and in '93 additional complaint cases,
12 were actual complaint cases filed by the Staff, do you
13 recall?

14 A. No, I do not.

15 Q. Okay. On again, page 8, line 8 you make
16 reference to the last matter resulted in a rate moratorium.
17 Which last matter are you referring to?

18 A. The settlement of the complaint case that was
19 referenced 1993.

20 Q. Okay. I'd like to refer you to page 9 of your
21 testimony, line 4, where you make reference to over the
22 course of the next three months some minor changes were made
23 from, I believe, March until June of 1995. Can you identify
24 what were the nature of the minor changes --

25 A. No, I can't.

1 Q. -- or what specifically were the minor
2 changes?

3 A. No, I can't. They weren't referenced in the
4 sharing grid. As far as I was concerned, from my position
5 we were settled as of early March. We had a meeting up here
6 on March 10th, 1995, and for all practical purposes I
7 thought we inked the -- we didn't officially sign it at that
8 point in time, but the rest was all what I'd call minor
9 legalese for two or three months.

10 Q. Do you recall who was involved in the meeting
11 in March of 1995?

12 A. March 10th, 1995?

13 Q. Yes.

14 A. My recollection -- well, I know I was there,
15 Bill Jawdice, who was general counsel of Union Electric; Ken
16 Rademan was there; Jay Moore; David Roack, I believe was
17 sitting in the back; I think Steve Rackers might have been
18 there; you, Mr. Dottheim were there; and I'm not sure on the
19 Public Counsel who or anybody was there, but if anyone from
20 OPC was there, it would have been either Mr. Trippensee
21 and/or Mr. Mills, to the best of my recollection. And I
22 believe Mr. Goldhammer (phonetic spellings) was there. I
23 don't represent that's a complete list, but those faces
24 stick in my mind.

25 Q. I'd like to direct you to page 10 of your

1 rebuttal testimony, lines 5 to 7. What is the basis for
2 your statement that from a practical standpoint given the
3 time period to adjudicate a rate case any concrete rate
4 relief would not be achieved for 18 to 24 months?

5 A. In other words, how I came to that?

6 Q. Yes, sir.

7 A. Well, it's simple. If our return on equity
8 dips below 10 percent, then and only then can we petition
9 the Commission for a rate increase. From a practical
10 perspective, the Commission acceptance and rare cost areas
11 like fuel costs has ever embraced a forecast test year, so
12 you're looking at a historical test year.

13 So in year one -- to get to 10 percent or
14 below a 10 percent return on equity, you've got to have a
15 12-month period that gets to that point in time. So let's
16 pretend that's calendar year 1998. You don't really get the
17 books closed until the end of January to get the numbers,
18 preparing all the exhibits and testimony, filing the minimum
19 filing requirements, etc. That takes another couple months
20 to file.

21 And then the Staff has to come back and get --
22 do an audit, which based on experience, has gone three
23 months to a year. And then try it, which can go up to
24 eleven months. So you could easily be through two years or
25 better.

1 Q. Is that the same time frame for an excess
2 earnings complaint case?

3 A. It could be.

4 Q. Could it be shorter?

5 A. It might be.

6 Q. And the eleven-month time frame you referred
7 to, is that the statutory period that's provided for -- for
8 rate increase cases?

9 A. That's my understanding, yes.

10 Q. I'd like to now direct you to page 14 of your
11 testimony, lines 6 through 8, where you make reference to
12 various adjustments that all parties agreed should be made
13 to revenues expenses and rate base for purposes of
14 calculating the earnings reports. Based upon your position
15 regarding the EARP, can the Staff propose a disallowance of
16 good will advertising in excess of \$250,000?

17 A. No.

18 Q. Is the Staff bound to a \$250,000 disallowance
19 of good will advertising regardless of how much UE might
20 spend on good will advertising?

21 A. No. You've still got the issue in there -- or
22 the two possible avenues; one, if we can't provide a
23 reasonable explanation for the variation or if it was --
24 well, actually three, we couldn't provide a reasonable
25 business explanation for the variation; two, there was an

1 error, just a plain error; or three, if it resulted in
2 manipulation.

3 Q. And does that apply to all items that are
4 specified in the reconciliation?

5 A. Does what apply?

6 Q. The three possibilities of challenging the
7 costs that are set out in the reconciliation?

8 A. Yes.

9 Q. I'd like to direct you to page 16 of your
10 rebuttal testimony, line 12, where you make reference to the
11 phrase "cooking the books." What does that phrase mean to
12 you as you've used it in your testimony?

13 A. That's my definition of manipulating the books
14 or manipulation. I know we went through -- I understand
15 that's not an issue in this case, but we went through
16 several months of it seemed like waltzing around that term.
17 And I heard some that I thought were pretty silly
18 explanations of what manipulation is.

19 In the accountant's lingo, cooking the books,
20 that's the inference I had from manipulation, it's somewhat
21 of a sinister or less than honorable connotation.

22 Q. Is it possible from your perspective -- and
23 you may have answered this, but is it possible from your
24 perspective that the word "manipulation" can be used to
25 describe conduct that doesn't have the intent of cooking the

1 books?

2 A. Not in the context of a contract like this. I
3 think it's just plain silly to assume -- yeah, you could
4 manipulate a lot of things. I guess if I shuffle these
5 papers, I'm manipulating them. But when you're talking
6 about accounting, when people -- as I mention in here, the
7 FCC sends you a letter that you manipulated something, it's
8 not a congratulatory letter.

9 Q. And does the term "manipulation" have an
10 implication of anything from your perspective other than
11 grave wrongdoing?

12 A. I don't necessarily think it's got to be
13 grave, but it's -- in the context of this agreement, what
14 we're here for today, I think it means something bad.

15 Q. I'd like to direct you to page 18 of your
16 testimony, in particular lines 15 through 21, where you
17 discuss Section 3F VIII of the EARP. Can you identify any
18 examples of costs that would be covered by that section of
19 the EARP new category of costs?

20 A. Since the implementation of the agreement, I
21 don't think we've had a new category of cost.

22 Q. Can you think of whether there's been a new
23 category of cost that you could identify within the time
24 frame of the last 10 years respecting the company?

25 A. No.

1 Q. In your experience in regulation, can you
2 think of any new category of cost that would meet that
3 definition in the EARP?

4 A. I haven't done an exhaustive study, but from
5 the best of my recollection, no. Bob Wyatts (phonetic
6 spelling) -- it's a difficult business, but it's relatively
7 simple. We've got labor and fuel and non-fuel expenses and
8 taxes and pensions and related things and hundreds and
9 hundreds of items, but they just don't change a whole lot.
10 I haven't seen a new category of cost -- I think that was
11 intended as a catch-all, you know, for anything that could
12 not have been foreseen at the -- at that point in time.

13 Q. I'd like to refer you to page 21 of your
14 testimony, lines 15 to 17, where you make reference to the
15 Staff's offensive insinuations in its original filings.
16 What specifically are you referring to by that statement?

17 JUDGE REGISTER: What page are you on,
18 Mr. Dottheim?

19 MR. DOTTHEIM: I'm sorry. I'm on page 21,
20 lines 15 through 17.

21 JUDGE REGISTER: I'm sorry.

22 THE WITNESS: Insinuations that there was
23 manipulation. And I think in some instances the twisted
24 definitions that were ascribed to manipulation.

25 BY MR. DOTTHEIM:

1 Q. Those definitions being what?

2 A. Well, I saw one filing that it had a copy of a
3 page from some State of Missouri document manipulation
4 system. That's my point. If you move things around, I
5 guess you can call it manipulation, but when you're talking
6 in here about the Staff or other parties coming to the
7 Commission in the event of manipulation, that's not just
8 because Union Electric produced numbers in the good,
9 old-fashioned, honest way, you know, bound by integrity and
10 ethics.

11 When you're talking about manipulation, you're
12 looking for somebody -- to use my vernacular -- that cooked
13 the books. And I think anyone who thinks different, that's
14 just silliness.

15 Q. Again, on page 21, I'd like to -- excuse me --
16 it's on page 23, line 15. You make reference and -- you
17 make reference there in to a November 10 meeting, and you
18 state that the Staff claimed, the Staff alleged, Staff
19 argued, in the Staff's view -- and you make various
20 statements. Were you in attendance at that meeting on
21 November 10th?

22 A. No, I was not. People who were under my
23 direction and control were.

24 Q. And can you identify specifically who you mean
25 by the Staff in those instances?

1 A. I don't recall specifically. I was told who
2 was there, but I don't recall the names of the individuals.

3 Q. Was it one or more individuals, or was it just
4 the Staff in general or --

5 A. It was more than one individual.

6 Q. I'd like to direct you to page 24 of your
7 rebuttal testimony. And you make reference to the Staff not
8 being able to comply with the elementary Commission rules,
9 do you not?

10 A. What line are you on?

11 Q. Page 24, lines 5 through 8.

12 A. Okay.

13 Q. Okay. And you indicate that the Staff could
14 not even comply with the elementary Commission rules, do you
15 not?

16 A. Yes.

17 Q. Okay. Do you know whether it was discussed at
18 the November 10 meeting that the Staff would seek an
19 extension of time to file its report in an effort to provide
20 more time for the Staff and UE to talk before the Staff
21 would file its report?

22 A. I believe you're correct in that statement.

23 Q. Do you know whether UE indicated or
24 representatives for UE indicated no objection or agreement
25 to the Staff requesting an extension of time to provide

1 additional time for the Staff and UE to continue to talk?

2 A. I don't believe we objected.

3 Q. Do you know whether that was, so to speak,
4 pre-arranged? That representatives of the Company indicated
5 that they would not object, even subject to additional time,
6 in order to continue discussions?

7 A. Excuse me? I lost you. If you could try that
8 again, please.

9 Q. Okay. Do you know whether the Company agreed
10 to additional time for the Staff and the Company to continue
11 talking about the sharing credits report?

12 A. I think we did agree to that.

13 Q. Okay. Mr. Brandt, under your interpretation
14 of the EARP, can the Staff propose to adjust UE's book
15 earnings on the grounds that a cost was imprudently
16 incurred?

17 A. No, they cannot.

18 Q. Then an allegation that UE has incurred cost
19 imprudently would not be equivalent to an allegation that UE
20 had manipulated earnings?

21 A. You're correct. Those two would not
22 necessarily be synonymous.

23 Q. And, again, the Staff did not propose to
24 adjust UE's book earnings on the grounds that a particular
25 cost was imprudently incurred?

1 A. The Staff could not propose an adjustment on
2 the basis of a cost was imprudently incurred.

3 Q. Okay. I'd like to direct you to page 31 of
4 your rebuttal testimony, lines 10 through 16, where you
5 address the Staff's territorial agreement adjustment.

6 Are you aware of any Commission rate-making
7 proceeding addressing the financial results of a territorial
8 agreement?

9 A. I don't know if you'd call it rate-making. I
10 know there were two proceedings relative to the two
11 territorial agreements referenced in this case, but that's
12 all I'm aware of.

13 Q. And you don't know offhand whether they were
14 rate-making proceedings or proceedings where authorization
15 for the territorial agreements was granted by the
16 Commission?

17 MR. CYNKAR: Calls for a legal conclusion that
18 the witness isn't competent to answer.

19 JUDGE REGISTER: Any response, Mr. Dottheim?

20 MR. DOTTHEIM: Yes. My response is I think if
21 he -- he cited, I believe in his testimony, the two cases.
22 And if he can recall what the Commission authorized in those
23 cases, I don't think it calls for any legal conclusion or
24 legal training or what have you.

25 JUDGE REGISTER: I'm going to overrule your

1 objection and let him testify if he knows what the
2 proceedings involved.

3 MR. CYNKAR: Your Honor, just so we could be
4 clear, if Mr. Dottheim could point us to the cases that he's
5 saying Mr. Brandt cited, because I'm not finding that.

6 JUDGE REGISTER: I don't think Mr. Brandt has
7 identified them specifically. Are you speaking --

8 MR. DOTTHEIM: Yes. I'm sorry. I misspoke as
9 far as identifying any specific cases by case number. I
10 think Mr. Brandt did in his prior answer indicate that there
11 were two cases of which he was aware.

12 JUDGE REGISTER: But he didn't know if they
13 were rate-making cases. Let me just follow-up. Mr. Brandt,
14 do you know what kind of cases those were?

15 THE WITNESS: No, I don't. In my testimony I
16 say Mr. Rackers acknowledge -- excuse me -- Mr. Rackers
17 acknowledges that the Commission has issued orders
18 specifically addressing the Black River and Macon Electric
19 territorial agreements. I haven't read the Commission
20 order.

21 JUDGE REGISTER: So those are the cases you're
22 talking about where those territorial agreements were
23 addressed?

24 THE WITNESS: That's correct.

25 JUDGE REGISTER: I think that's probably

1 responsive to your question, Mr. Dottheim, if you want to
2 ask your next question.

3 MR. DOTTHEIM: Yes.

4 BY MR. DOTTHEIM:

5 Q. Pardon me a moment. Mr. Brandt, you've read
6 Mr. Rackers' surrebuttal testimony in this case?

7 A. Yes.

8 Q. Do you per chance have a copy of that with
9 you?

10 A. Oh, I might.

11 JUDGE REGISTER: Mr. Rackers' surrebuttal
12 testimony is Exhibit No. 2; is that right?

13 MR. DOTTHEIM: I believe that's correct.

14 THE WITNESS: I've got one copy, the
15 surrebuttal testimony of Stephen M. Rackers, Case
16 No. EM-96-149. I didn't bring both of them with me.

17 BY MR. DOTTHEIM:

18 Q. I'd like you to direct you to what's been
19 marked as Exhibit 2 and direct you to Schedule 1-2,
20 paragraph A. That paragraph states, UE agrees that the
21 Staff has the right to re-examine the financial impacts of
22 the territorial agreement as part of the annual sharing
23 credits for UE's current experimental alternative regulatory
24 plan approved by the Commission on July 21, 1995.
25 Adjustments to book earnings based on more current data can

1 be proposed at that time, if necessary.

2 Did I read that accurately?

3 A. Yes.

4 Q. I'd like to refer you to page 5 of that
5 document Schedule 1-5.

6 A. What document?

7 Q. I'm sorry. It's again Exhibit 2, it's the --

8 A. Still on the Rackers' surrebuttal. Right?

9 Q. Yes, sir. The Stipulation and Agreement. And
10 I'm referring you back three pages to page 5.

11 JUDGE REGISTER: Also identified in the corner
12 there Schedule 1-5?

13 MR. DOTTHEIM: Yes.

14 THE WITNESS: The signature page?

15 BY MR. DOTTHEIM:

16 Q. Yes, sir.

17 A. Okay.

18 Q. And there's a signature line for Union
19 Electric Company, and there is a signature which has below
20 it the name Michael Barnes. Can you identify who Michael
21 Barnes is?

22 A. Michael Barnes is an attorney in the General
23 Counsel's Department at Ameren Corporation, Union Electric.

24 Q. Do you know whether he was authorized to
25 execute the Stipulation and Agreement on behalf of Union

1 Electric Company?

2 A. I suspect he was authorized.

3 Q. Do you know what the legal effect is of his
4 having executed that Stipulation and Agreement?

5 A. I couldn't begin to tell you what the legal
6 ramifications are.

7 Q. Do you know whether Union Electric Company
8 filed any response in opposition or otherwise made an
9 objection in the Black River cooperative case Staff's
10 recommendation reserving the right to examine the revenue
11 requirement effect of the territorial agreement in the
12 context of a future rate case or a sharing credit
13 calculation?

14 A. This is Macon, isn't it? You said Black
15 River.

16 Q. I'm referring to the other case now.

17 A. Okay. You lost me as soon as you --

18 Q. I'm sorry. No. I'm now referring to the
19 other case.

20 A. Okay.

21 Q. Would you like me to ask the question again?

22 A. Yes.

23 Q. Yes. Do you know whether UE filed any
24 response in opposition or otherwise made an objection in the
25 Black River Cooperative case to the Staff's recommendation

1 reserving the right to examine the revenue requirement
2 effect of the territorial agreement in the context of a
3 future rate case or a sharing credit calculation?

4 MR. CYNKAR: Your Honor, if I could just ask
5 the -- you a question, I don't know if Mr. Dottheim is
6 getting into the territorial agreements issue, which is a
7 separate one. And since we're going issue by issue,
8 Mr. Brandt will be available for that. And I just didn't
9 know -- are we supposed to be asking folks all the questions
10 on all the issues we're covering there?

11 MR. DOTTHEIM: No. And I -- again, there
12 are -- thank you Mr. Cynkar. There are, of course, some
13 areas that cross over. And it's not my intention to
14 improperly cross over into another area.

15 What I'm trying to guard against is to not ask
16 a question now when Mr. Brandt is on the stand testifying on
17 the EARP and what is the proper interpretation of the terms
18 of the EARP, and then to ask that question which relates to
19 a specific adjustment and be told that the question should
20 have been asked at the earlier stage in the proceedings and,
21 therefore, is being improperly asked and is being objected
22 to. It makes no difference to me.

23 MR. CYNKAR: It wasn't an improper question.
24 I was just curious about how we were doing it. That's all,
25 your Honor.

1 JUDGE REGISTER: I think as long as he's
2 trying to relate it back to the EARP and how that
3 territorial agreement falls into that EARP, we can proceed
4 at this time. And then if, you know, your questions get
5 more specific than that, then they need --

6 MR. CYNKAR: And certainly just to make it
7 simpler, I don't intend to object to questions that haven't
8 been asked. If it's been asked and answered, I will object,
9 but new questions are perfectly fair game.

10 JUDGE REGISTER: Okay. Thank you, Mr. Cynkar.
11 Go ahead and proceed, Mr. Dottheim.

12 THE WITNESS: I could get some -- if it's
13 okay, I can try and answer it.

14 JUDGE REGISTER: If you remember the question,
15 you can answer it.

16 THE WITNESS: Well, believe it or not --

17 JUDGE REGISTER: Okay. Go ahead.

18 THE WITNESS: You tell me if this answers make
19 any sense. I did not -- I am not aware that the Staff
20 reserved any such -- effectively reserved any such right, so
21 I have no recollection of the company objecting to the Staff
22 reserving any such right.

23 BY MR. DOTTHEIM:

24 Q. But you did address the matter of Mr. Rackers'
25 statement in his direct testimony about reserving the right

1 to subsequently address the cost respecting the territorial
2 agreement?

3 A. I'm not sure I know what you mean by I
4 addressed him doing all that.

5 Q. Well, I'm referring to page 32 of your
6 testimony.

7 A. On lines 6 and 7?

8 Q. Well, yes. Start on line -- on line 1 going
9 to 6 and 7 where you ultimately say on lines 6 and 7, No
10 such reservation is included in the agreement or was in any
11 other way made a part of the contract here.

12 And to go to the prior sentence, in any event
13 the significance of this alleged reservation of right is
14 both unexplained and inexplicable.

15 A. Well, outside the terms of any kind of a
16 contract per se, just the Staff standing up in public or
17 here and say they reserve a right to examine the revenue
18 effect, if that's not part of the stipulation, I wouldn't
19 recognize it.

20 Q. And, again, do you know whether the company in
21 the Black River Cooperative docket Case No. EO-95-400 --

22 A. That doesn't help.

23 Q. -- objected to Mr. Rackers' testimony
24 reserving the right to subsequently address the rate-making
25 effect of the territorial agreement?

1 A. To my knowledge, Staff did not effectively
2 reserve that right so we wouldn't object to something that
3 did not exist. Beyond that, it would probably be in
4 legalese that I get lost in.

5 Q. I'm sorry. Are you saying to your knowledge
6 the Staff did not reserve that right?

7 A. Effectively reserve. Again, just -- if it's
8 not in the contract -- and I'll leave it up to our lawyers
9 to debate that with you, but --

10 Q. Would that also apply -- if I could return to
11 the Stipulation and Agreement that's attached to
12 Mr. Rackers' surrebuttal testimony --

13 A. I saw that after I filed these and it would
14 appear there's some reservation there, but the bottom line
15 is both of these things make sense, and it's a moot point.

16 Q. When you say "moot point," what do you mean by
17 "moot point"?

18 A. They both are good deals for customers and
19 it's silly to be even arguing the thing today. It's just
20 dumb.

21 Q. And you're not seeking to address the legal
22 effect of the Stipulation and Agreement that's attached?

23 A. No. I wouldn't do anything legal.

24 Q. Although you're providing testimony as to what
25 constitutes a contract, what constitutes a violation of a

1 contract, what constitutes a taking without just
2 compensation? You are submitting testimony on those
3 matters, are you not?

4 A. I am -- I am. I'm a businessman and I've been
5 briefed by competent legal counsel, and I think I've got a
6 pretty good judgment on those issues. These are just dumb
7 to bring up. Both of them make perfect sense. If we'd do
8 it over again -- it was a good deal. I'd suspect the
9 Commission would approve them again.

10 Why would we do something like this if it's
11 dumb and the -- where the Staff's coming back from using
12 1994 numbers and not even recognizing the current facts.
13 It's just silly to be debating these two things.

14 Q. Thank you. Mr. Brandt, I'd like to pose a
15 hypothetical situation for you. If you would assume a
16 situation occurs in a sharing period for which the Staff
17 could propose an adjustment under your interpretation of the
18 EARP, but for some reason the Staff does not propose an
19 adjustment for that applicable sharing period, if a like or
20 similar situation occurs in a subsequent sharing period, is
21 the Staff precluded from proposing an adjustment for this
22 subsequent situation because it had not proposed an
23 adjustment respecting the prior situation?

24 A. If I understand your question correct, is if
25 they effectively, for one reason or another, waive their

1 contractual -- what would be the word -- their contractual
2 rights in the first year, in the second year do they waive
3 them. And my answer to that would be, no, they do not waive
4 them in the second year. They have the right to exercise
5 their contractual rights in the second year.

6 Q. Thank you. I'd like to ask you something
7 about Mr. Cynkar's opening statement, I think an example he
8 gave. And in that situation he gave the example of the
9 company giving large bonuses to employees. And the
10 explanation for the large bonuses was, it was required to
11 retain employees in the competitive market for talent. And
12 I think the indication was from Mr. Cynkar that this would
13 be acceptable, this would not be manipulation.

14 In that example, is that situation something
15 that the Staff or the Office of Public Counsel could bring
16 to the Commission's -- to the Commission's attention? Is
17 that an item that could be properly raised by the Staff or
18 the Office of Public Counsel?

19 A. If we provided a reasonable explanation as to
20 why we did it, then my answer is no. Now, can I get into --
21 anybody can sue anybody for anything. Whether the
22 Commission, under the terms of the contract can grant
23 relief, I guess you can bring anything you want to them. We
24 can't prevent you from doing that as this is the -- with the
25 instant case. But in that one if I can provide -- or the

1 Company can provide a reasonable business explanation for
2 it, I don't believe there's an adjustment warranted.

3 Q. Or could the matter even be raised for the
4 Commission's determination?

5 A. I don't believe the Commission, under the
6 terms of the contract, could decide that issue.

7 Q. And the decider of whether an explanation is
8 reasonable or not is the Company?

9 A. Now we're getting into a little bit of law
10 there that -- but bottom -- I think yes. I say a reasonable
11 explanation. I guess you could go to court or wherever and
12 litigate what "reasonable explanation" meant, but --

13 Q. Would, in effect, that be, in essence, a
14 unilateral decision that the Company could make that the
15 Staff and the Office of Public Counsel could not question
16 them because the Commission -- because the Company had
17 decided that the explanation was reasonable?

18 MR. CYNKAR: Objection. I don't think that's
19 what the witness said. He was talking about going to court
20 or having a dispute over the meaning of reasonable
21 explanation just then.

22 MR. DOTTHEIM: I think the witness also
23 indicated that if, in the Company's opinion, the answer was
24 reasonable, then neither the Office of Public Counsel nor
25 the Staff or any party could raise that matter for

1 Commission determination.

2 JUDGE REGISTER: Is that what your testimony
3 was, Mr. Brandt?

4 THE WITNESS: At this point I'm not quite
5 sure, but let me try to restate where I was coming from. I
6 believe it's our obligation to provide a reasonable
7 explanation under the terms of the contract.

8 Now, who interprets whether that's reasonable
9 or not, I really don't know, but that's the extent of our
10 obligation, which I think is a very meaningful obligation.

11 BY MR. DOTTHEIM:

12 Q. Then under the explanation you've just
13 provided, can the Staff or the Office of Public Counsel or
14 some other party question whether the explanation is
15 reasonable and bring it to the Commission for determination?

16 A. I'm not sure who they'd bring that issue to,
17 the Commission or court or -- I just don't know.

18 Q. Okay. Pardon me a moment. Mr. Brandt, I'd
19 like to refer you to what's been marked as -- it's Exhibit
20 No. 13, it's the appendices to your rebuttal testimony. And
21 I'd like to refer you back to the Commission's Report and
22 Order -- excuse me -- the Commission's order granting and
23 approving joint recommendation in TO-90-1 in the matter of
24 an incentive plan for Southwestern Bell Telephone Company.

25 A. I thought we were in my appendices.

1 Q. Both -- both documents.

2 A. Oh, we're back to that again. Okay. Were we
3 someplace specific in Exhibit 13, my appendices? I'm not
4 trying to be difficult. I just --

5 Q. Not yet.

6 A. Okay. I've got 13 in front of me and I've
7 got -- that's the wrong one, the one that starts with the
8 erratum, the TO-90-1?

9 Q. Yes, sir.

10 A. Okay.

11 JUDGE REGISTER: Exhibit 22?

12 MR. DOTTHEIM: Yes.

13 JUDGE REGISTER: Exhibit 13 and Exhibit 22.

14 THE WITNESS: I'm glad I'm not the only one
15 with a problem here.

16 JUDGE REGISTER: There's just too much paper.

17 BY MR. DOTTHEIM:

18 Q. If I could direct you to page 32 of 75,
19 Attachment 3, the monitoring procedures in the Commission's
20 order in TO-90-1, which is Exhibit 22 --

21 A. Okay.

22 Q. -- and if I could direct you in what is
23 Tab A --

24 A. Tab A?

25 Q. -- which is --

1 A. Oh, we're back to 13. Okay.

2 Q. Yes. The Commission's Report and Order in
3 Case No. ER-95-411.

4 A. Okay.

5 Q. And if I could direct you to Attachment A,
6 page 8 of 23.

7 A. Okay. Page 8.

8 Q. And I'd like to direct you in Exhibit 22, page
9 32 of 75, the monitoring procedures, the second sentence on
10 the page.

11 A. 90 days after the end of the period?

12 Q. Yes, sir. Which says, 90 days after the end
13 of the period, a preliminary earnings report along with a
14 proposed sharing report will be submitted to the Staff and
15 OPC.

16 And I'd like to refer you again to page 8 of
17 23, Roman Numeral IV, the first sentence which states,
18 Within 90 days after the conclusion of a sharing period, a
19 preliminary earnings report along with a proposed sharing
20 report will be submitted by UE.

21 Again, the sentences are not identical, but
22 they are close to each other in content, are they not?

23 A. Yes. Just so we're clear though, unlike the
24 other ones you asked me about, this is the Report and Order
25 as opposed to my letter and sharing plan of January 27th of

1 '95. So a whole bunch of other people, including Staff,
2 Public Counsel, and all kind of Intervenors had input into
3 this wording.

4 Q. I appreciate that explanation. Thank you.
5 I'd like to direct you to page 33 of 75 in the Commission's
6 order in Case No. TO-90-1, and I'd like to refer you to
7 paragraph G, the third sentence. And I'd also like to refer
8 you in Exhibit 13, page 9 of 23, Roman Numeral small vi.

9 I'd like to direct you again to the third
10 sentence in paragraph G, page 33 of 75, which states, In
11 addition, if Staff, slash, OPC find evidence that operating
12 results have been manipulated to reduce amounts to be shared
13 with customers or to misrepresent actual earnings or
14 expenses, they may file a complaint with the Commission
15 requesting that a full investigation and hearing be
16 conducted regarding their complaint.

17 And the first sentence in Roman Numeral
18 small vi on page 9 of 23 Exhibit 13 states, If Staff, OPC or
19 other signatories find evidence that operating results have
20 been manipulated to reduce amounts to be shared with
21 customers or to misrepresent actual earnings or expenses,
22 Staff, OPC or other signatories may file a complaint with
23 the Commission requesting that a full investigation and
24 hearing be conducted regarding said complaint.

25 Have I read those two sentences accurately?

1 A. Yes.

2 Q. And they are not identical, but they are close
3 in content to each other, are they not?

4 A. Yes, they are.

5 Q. I next would like to direct you to page 34 of
6 75 in Case No. TO-90-1. And in Exhibit 13, Roman Numeral --
7 excuse me -- in Exhibit 13, page 9 of 23, Roman Numeral VII
8 and on page 34 of 75, the fourth paragraph in 2H states,
9 SWBT, slash, Staff, slash, OPC reserve the right to bring
10 issues which cannot be resolved by the parties which are
11 related to the operation or implementation of the incentive
12 plan to the Commission for resolution.

13 Examples include disagreements as to the
14 mechanics of calculating the monitoring report,
15 interpretations of the TC-89-14 order, alleged violations of
16 this agreement or alleged manipulations of earnings results.
17 Said allegation of manipulation could include significant
18 variations and a level of expenses associated with any
19 category of cost where no reasonable explanation has been
20 provided. The Commission will determine in the first
21 instance whether a question of manipulation exists and
22 should be heard.

23 And Exhibit 13, Roman Numeral small vii
24 states, UE, Staff, OPC and other signatories reserve the
25 right to bring issues which cannot be resolved by them an

1 which are related to the operation or implementation of the
2 plan to the Commission for resolution.

3 Examples include disagreements as to the
4 mechanics of calculating the monitoring report, alleged
5 violations of the Stipulation and Agreement, alleged
6 manipulations of earnings results or request for information
7 not previously maintained by UE.

8 An allegation or manipulation could include
9 significant variations in the level of expenses associated
10 with any category of cost where no reasonable explanation
11 has been provided. The Commission will determine in the
12 first instance whether a question of manipulation exists and
13 whether that question should be heard by it.

14 Did I read those two paragraphs accurately?

15 A. Yes.

16 Q. Again, the sentences are not literally
17 identical, but they are quite close in context?

18 A. Well, with the exception that the Bell order
19 has got that interpretations of the TC-89-14 order, I have
20 no idea what that is or what that means, but that could be a
21 very big difference or it could be insignificant, but with
22 that exception, they're pretty close.

23 Q. Okay. On page 34 -- excuse me -- page 34 of
24 75 in Exhibit 22 I'd like to refer you to the next
25 paragraph, and Exhibit 13 page 10 of 23, Roman Numeral VII.

1 And the first sentence in page 34 of 75 in Exhibit 22 reads,
2 Finally, Staff, slash, OPC has the right to present to the
3 Commission concerns over any category of cost that exceeds
4 \$300,000 that has been included in Company's monitoring
5 results and has not been included previously in any SWBT
6 rate-making proceedings.

7 On page 10 of 23, Roman numeral VII that
8 sentence states, Staff, OPC and other signatories have the
9 right to present to the Commission concerns over any
10 category of any cost that has been included in UE's
11 monitoring results and has not been included previously in
12 any rate-making proceeding. Have I read those two sentences
13 accurately?

14 A. Yes, you have.

15 Q. Okay. And again, these two sentences are not
16 word-for-word identical, but they are similar, are they not?

17 A. Yes. The Bell example has that \$3,000 [sic]
18 threshold and this order -- this being the Union Electric
19 order there's no \$300,000 threshold, but other than that,
20 they're pretty close.

21 Q. And one last sentence I'd like to ask you to
22 turn to page 36 of 75 in Exhibit 22, and also again page 10
23 of 23 in Exhibit 13, Roman Numeral small ix on page 36 of
24 75, second paragraph under E the sentence, Differences
25 between the parties should be brought to the Commission's

1 attention for guidance as early in the process as possible.

2 And, again, refer you to page 10 of 23 in
3 Exhibit 13, the one sentence under small Roman Numeral ix,
4 Differences among UE, Staff --

5 (HEARING INTERRUPTED.)

6 (A RECESS WAS TAKEN.)

7 BY MR. DOTTHEIM:

8 Q. Mr. Brandt, I think I was asking you about one
9 last sentence and I'm not sure --

10 JUDGE REGISTER: Do you want Tracy to read
11 back her last --

12 MR. DOTTHEIM: Sure.

13 THE COURT REPORTER: "Question: And one last
14 sentence I'd like to ask you to turn to page 36 of 75 in
15 Exhibit 22, and also again page 10 of 23 in Exhibit 13,
16 Roman Numeral small ix on page 36 of 75, second paragraph
17 under E the sentence, Differences between the parties should
18 be brought to the Commission's attention for guidance as
19 early in the process as possible.

20 And, again, refer you to page 10 of 23 in
21 Exhibit 13, the one sentence under small Roman Numeral ix,
22 Differences among UE, Staff" --

23 BY MR. DOTTHEIM:

24 Q. -- OPC and other signatories will be brought
25 to the Commission's attention for guidance as early in the

1 process as possible.

2 Have I read those two sentences accurately?

3 A. Yes, you have.

4 Q. And, again, these sentences, as with the
5 others, they're not identical, but they are close in
6 context?

7 A. Yes, they are.

8 Q. Just a few more questions. Mr. Brandt, I'd
9 like to return to the document that's been marked as Exhibit
10 21, the January 27, 1995, proposal from Union Electric
11 Company to the Staff.

12 And, again, I'd like to refer to page 3 where
13 you stated, We have developed a proposal, paren, loosely
14 based in concept on the Southwestern Bell plan, closed
15 paren.

16 I think you've indicated that you have not
17 read the Southwestern Bell incentive regulation experiment
18 plan?

19 A. That's correct. I am familiar with the
20 sharing grid that was in one of them that doesn't appear to
21 be -- the sharing grid that was in this Exhibit 22, but --

22 Q. If you're only familiar with the sharing grid
23 in the Southwestern Bell plan, how could you say that the
24 proposal that Union Electric Company developed is only
25 loosely based in concept on the Southwestern Bell plan?

1 A. Well, I think the basic concept that I was
2 putting forth, there's a sharing grid and there's -- the
3 only page I've ever seen out of a Southwestern Bell order
4 was page 139 of something that one of my people gave me,
5 wanted to see what the sharing grid looked like. And after
6 that, I fashioned it here.

7 Now, the fact that the reconciliation
8 process -- I mean, you go back to Schedule 1 in that, that's
9 just kind of a cost of service calculation that I bet if you
10 compare it to all X number utilities that this Commission
11 regulates, electric, water, sewer, gas and telephone,
12 they -- the rate base or cost of service calculation is
13 pretty similar.

14 As I mentioned, the fact that -- that
15 reconciliation -- I shouldn't say things without it in front
16 of me here -- that reconciliation procedure, a page and a
17 third of that, of which you compared two or three sentences
18 and they were similar to what was in the Bell plan, I would
19 have expected something of that sort to be in there. If one
20 of my folks was aware of it and copied it word for word, I
21 couldn't hold that against them. No big deal.

22 And relative to what was in the final
23 stipulation as approved, it's part of Exhibit 13, every time
24 we went through an iteration, and I think the most lengthy
25 verbiage was added by Staff in their proposal, and I

1 would -- now that you've compared the two that Staff got
2 that language -- some of that language from there, my people
3 sort of got it, it's sort of like, so what?

4 The basic premise is the sharing grid. After
5 that, from my perspective, it was all mechanics. And I
6 really in my position don't get into mechanics.

7 Q. Mr. Brandt, what is the basis for your belief
8 that the Staff shared your interpretation of the terms of
9 the EARP?

10 A. I think the contract -- the agreement speaks
11 for itself.

12 Q. Is there anyone on the Staff in particular who
13 you relied upon for having a common understanding of the
14 EARP?

15 A. I presume those who worked on it understood
16 what they were doing and would have read it and understood,
17 and I don't think there's anything in there that's
18 particularly rocket science.

19 Q. Do you have an explanation that you might
20 offer as to why so much of the Southwestern Bell plan is
21 also in the EARP?

22 A. I don't know about "so much" of it. I -- I've
23 never seen the thing before today. And we went through -- I
24 don't know -- four, five, six, seven, eight sentences.
25 Cursory review shows that ours, being the Union Electric,

1 looks like it's a heck of a lot shorter and more to the
2 point, but that's purely looking at the volume.

3 Q. Let me return to another area. Pardon me if
4 I've asked you this before, but did the parties to the EARP
5 agree on a specific definition for established accounting
6 practices?

7 A. No. Again, I think it kind of defines itself.

8 JUDGE REGISTER: Excuse me, Mr. Brandt. So
9 you don't know of any definition the parties agreed to for
10 established --

11 THE WITNESS: No. No. No other definition --

12 JUDGE REGISTER: -- accounting practices?

13 THE WITNESS: -- other than established
14 accounting practices, any of the established accounting
15 practices.

16 JUDGE REGISTER: But the question was, did you
17 know of any agreed definition?

18 THE WITNESS: No, I do not.

19 JUDGE REGISTER: Thank you.

20 BY MR. DOTTHEIM:

21 Q. Mr. Brandt, you wouldn't happen to have a copy
22 of schedules to the surrebuttal testimony of Arlene S.
23 Westerfield, would you?

24 A. Was that a separate --

25 Q. Yes.

1 A. -- bound -- no, I don't. That's back sitting
2 on my desk in the office.

3 Q. That's been marked as Exhibit 6-HC and 6-NP.
4 I'm going to hand to you a copy of the 6-HC version and ask
5 you to turn to Schedule 2. Ms. Westerfield in her testimony
6 identifies a presentation made by Union Electric Company
7 representatives at a technical conference held on December
8 16, 1998 sponsored by the Commission respecting year 2000
9 readiness disclosure. Have you ever seen that document
10 before?

11 A. No, I haven't.

12 Q. I'd like to ask you to turn to Schedule 2-16.

13 A. 2-16?

14 Q. Yes. And up at the top of the right-hand
15 portion of the page it says, Ameren's approach, what does
16 year 2000 compliance mean, question mark, then a bullet
17 point, year 2000 compliance components are capable of
18 correct identification, manipulation and calculation using
19 dates through the millennium. Transition into the 21st
20 century.

21 Does the term "manipulation" as it's used in
22 the context of that statement, What does year 2000
23 compliance mean, have the cook-the-books connotation that
24 you placed on the term "manipulation"?

25 A. No, it doesn't. It wasn't in the context of

1 the agreement that's the subject of this hearing though.

2 MR. DOTTHEIM: Thank you. I don't think I
3 have any further questions at this time.

4 JUDGE REGISTER: Okay. We are going to stop
5 at this time today and reconvene the hearing tomorrow with
6 Mr. Brandt still on the stand at 8:30 a.m.

7 Mr. Coffman will be next for
8 cross-examination. We'll go to the Bench after Mr. Coffman
9 and then back for recross and redirect. Okay. See you all
10 in the morning. Thank you so much for coming back.

11 (HEARING RECESSED UNTIL JUNE 2ND, 1999, AT
12 8:30 A.M.)

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