

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 HEARING

5 October 10, 2001
6 Jefferson City, Missouri
7 Volume 2
8

9 In the Matter of the)
Application of Union Electric)
10 Company (d/b/a AmerenUE) for) Case No. EO-2001-684
an Order Authorizing it to)
11 Withdraw from the Midwest ISO)
to Participate in the Alliance)
12 RTO)

13

14

15 BEFORE:

16 LEWIS R. MILLS, JR., Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.
17 KELVIN SIMMONS, Chair
CONNIE MURRAY,
18 SHEILA LUMPE,
STEVE GAW,
19 COMMISSIONERS.

20

21 REPORTED BY:

22 KRISTAL R. MURPHY, CSR, RPR, CCR
ASSOCIATED COURT REPORTERS
23 714 West High Street
Post Office Box 1308
24 JEFFERSON CITY, MISSOURI 65102
(573) 636-7551
25

1 APPEARANCES:

2

3 DAVID B. HENNEN, Attorney at Law
4 JAMES J. COOK, Attorney at Law
5 P.O. Box 66149
6 1901 Chouteau Avenue
7 St. Louis, Missouri 63103
8 314.554.4673

9 FOR: Union Electric Company d/b/a AmerenUE.

10 LISA LANGENECKERT, Attorney at Law
11 Law Office of Robert Johnson
12 720 Olive Street, 2400 Floor
13 St. Louis, Missouri 63101
14 573.634.3422

15 FOR: Missouri Energy Group.

16 DIANE VUYLSTEKE, Attorney at Law
17 Bryan Cave, LLP
18 One Metropolitan Square
19 211 North Broadway, Suite 3600
20 St. Louis, Missouri 63102-2750
21 314.259.2543

22 FOR: Missouri Industrial Energy Consumers.

23 DUNCAN E. KINCHELOE, Attorney at Law
24 2407 West Ash
25 Columbia, Missouri 65203-0045
573.445.3279

FOR: Missouri Joint Municipal Electric Utility
Commission.

JOHN COFFMAN, Deputy Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102
573.751.5559

FOR: Office of Public Counsel and the Public.

23

24

25

1 APPEARANCES:

2

3 DENNIS L. FREY, Associate Counsel
STEVEN DOTTHEIM, Chief Deputy Counsel
4 P.O. Box 360
Jefferson City, Missouri 65102
5 573.751.6434

6 FOR: Staff of the Missouri Public Service
Commission.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S
2 (Written Entries of Appearance filed.)
3 (EXHIBIT NOS. 1 THROUGH 6HC WERE MARKED FOR
4 IDENTIFICATION BY THE COURT REPORTER.)
5 JUDGE MILLS: We're on the record in Case
6 No. EO-2001-684 in the matter of the application of
7 Union Electric Company, d/b/a AmerenUE, for an order
8 authorizing it to withdraw from the Midwest ISO to
9 participate in the Alliance RTO.
10 Let's take entries of appearance in the same
11 order that we'll be taking -- in the same order that
12 we'll be taking witnesses, beginning with AmerenUE.
13 MR. HENNEN: Your Honor, my name is David B.
14 Hennen, appearing on behalf of Union Electric Company
15 in this proceeding.
16 JUDGE MILLS: Thank you.
17 And for the Staff?
18 MR. FREY: Thank you, your Honor.
19 Representing the Staff of the Missouri
20 Public Service Commission, Dennis L. Frey and Steven
21 Dottheim, Post Office Box 360, Jefferson City,
22 Missouri, 65102.
23 JUDGE MILLS: For Public Counsel?
24 MR. COFFMAN: John B. Coffman appearing on
25 behalf of the Office of the Public Counsel, P.O.

1 Box 7800, Jefferson City, Missouri, 65102.

2 JUDGE MILLS: Thank you.

3 For the Missouri Industrial Energy
4 Consumers?

5 MS. VUYLSTEKE: Diana Vuylsteke, Bryan Cave,
6 211 North Broadway, Suite 3600, St. Louis, Missouri,
7 63102.

8 JUDGE MILLS: For the Missouri Energy Group?

9 MS. LANGENECKERT: Lisa Langeneckert, Law
10 Office of Robert Johnson, 720 Olive, 2400 Floor,
11 St. Louis, Missouri, 63101.

12 JUDGE MILLS: And for the Missouri Joint
13 Municipal Electric Utility Commission?

14 MR. KINCHELOE: For the Joint Municipal
15 Electric Utility Commission, Duncan Kincheloe,
16 2407 West Ash, Columbia, Missouri, 65203.

17 JUDGE MILLS: We have pending a few motions
18 filed on September 25th on behalf of AmerenUE, a
19 Motion to Make Late Filing of Surrebuttal Testimony;
20 on September 28th on behalf of the Staff of the
21 Commission a Motion to File Out of Time the List of
22 Issues, Order of Witnesses, and Order of
23 Cross-examination; then on October 12th, Motions for
24 Leave to File Positions Statements out of time on
25 behalf of the Office of Public Counsel, the MIEC, the

1 MJMEUC, and I believe those are the three on that date
2 to late-file position statements. And then, finally,
3 on October 5th we have a motion from the Doe Run
4 Resources Corporation to withdraw from this
5 proceeding.

6 All six of those motions are granted.

7 Is there anything further we need to take up
8 on the record before I get the Commissioners and we
9 proceed with opening statements?

10 (No response.)

11 JUDGE MILLS: Seeing nothing, we're off the
12 record.

13 (A RECESS WAS TAKEN.)

14 JUDGE MILLS: Let's go back on the record.

15 Before we went off the record, we took care
16 of entries of appearance and a few outstanding
17 motions.

18 We're ready to begin with opening
19 statements, beginning with AmerenUE.

20 MR. HENNEN: May it please the Commission?

21 AmerenUE is before you today to request your
22 approval to withdraw from the Midwest ISO in order to
23 participate in the Alliance RTO. Before discussing
24 the principal issues in this case, I would like to
25 begin by providing you a basic overview of why

1 regional transmission organizations and independent
2 system operators are necessary to facilitate the
3 competitive generation markets.

4 As all of you probably know, the Federal
5 Energy Regulatory Commission, or FERC, has issued a
6 number of orders over the past five or so years that
7 have gradually moved the electric industry in the
8 direction of making generation more competitive. In
9 mid-1996, the FERC took the first step in this effort
10 by issuing Order No. 888 which required all
11 transmission owners subject to FERC jurisdiction to
12 provide non-discriminatory access to their
13 transmission system pursuant to a FERC-approved open
14 access transmission tariff, or OATT.

15 Thus, if the generator in Commonwealth
16 Edison's service area wanted to sell its generation to
17 a wholesale customer in AmerenUE's service area,
18 Commonwealth Edison and AmerenUE each had to permit
19 the generator to use their respective transmission
20 systems. However, in order for the generator to use
21 each of these transmission systems, the generator had
22 to pay each transmission provider its FERC-approved
23 transmission charge.

24 As you might imagine, the more individual
25 transmission systems that a generator had to cross to

1 reach the load, the more transmission charges the
2 generator would have to pay to deliver its energy.
3 The payment of these multiple transmission system
4 charges is commonly known as pancake transmission
5 rates.

6 Thus, to make generation more competitive,
7 this pancaking of transmission rates had to be
8 eliminated so that the transmission charges for
9 generators competing to serve the same load was the
10 same.

11 In an effort to accomplish this in December
12 of 1999, FERC issued Order No. 2000. Order
13 No. 2000 required all transmission owning facilities
14 to join regional transmission organizations of their
15 choice. One of the key characteristics of a regional
16 transmission organization, or RTO as they are commonly
17 called, is that it had to design its open access
18 transmission tariff, or OATT, so that the pancake
19 transmission rates were eliminated within the RTO. In
20 other words, all of the generators located in the
21 regional transmission organization had to be able to
22 deliver energy to a particular load in the same RTO
23 for the same transmission service rate.

24 So using the generator and ComEd service
25 territory as an example, if that generator and the

1 AmerenUE generator were in the same RTO, they both
2 would pay the RTO the same transmission service rate
3 to provide energy to a wholesale load in AmerenUE's
4 service area. This is equalization of the
5 transmission charge that makes all generation in the
6 RTO more competitive.

7 Now, an independent system operator in a
8 regional transmission organization can be in the case
9 of the midwest independent system operator one in the
10 same. The term independent system operator was the
11 term FERC used in Order No. 888 to describe what it
12 defined later in Order No. 2000 as a regional
13 transmission organization. Thus, for this proceeding,
14 the terms regional transmission organization and
15 independent system operator are for the most part one
16 in the same.

17 So with that general overview as a backdrop,
18 I would like to begin to define the issues that exist
19 in this proceeding.

20 As I mentioned earlier, AmerenUE is
21 requesting the Commission's approval to withdraw from
22 the Midwest ISO. AmerenUE joined the Midwest ISO in
23 March of 1998 to comply with an order issued by this
24 Commission in the merger case of Union Electric and
25 Central Illinois Public Service Company. This

1 Commission required AmerenUE to join an independent
2 system operator to mitigate the possibility of market
3 power that may have existed as a result of UE's merger
4 with CIPS.

5 As you might imagine, in March of 1998,
6 which was well before FERC's issuance of Order
7 No. 2000, there were not a lot of independent system
8 operator organizations from which Ameren could choose.
9 In fact, at that time, the Midwest ISO was really the
10 only choice for Ameren. Moreover, since Order No. 88
11 had only been around for about a year, the wholesale
12 generation market was not at all developed, nor was
13 there any way to know how the transactional patterns
14 of the wholesale energy market would develop either.

15 Between March of 1998 when AmerenUE joined
16 the Midwest ISO and mid-2000 several critical things
17 occurred that were detrimental -- extremely
18 detrimental to AmerenUE's continued participation in
19 the Midwest ISO.

20 First of all, by mid-2000, the wholesale
21 energy market trading patterns had matured to the
22 point where definitive energy trading patterns had
23 developed. As a result, Ameren's transmission system
24 which is the combination of UE's and CIPS'
25 transmission assets, had become the crossroads of an

1 enormous amount of energy trading.

2 In fact, at the time of our withdrawal
3 request from the Midwest ISO, the amount of
4 transactions on the Ameren transmission system nearly
5 equaled the amount of transactions on all of the other
6 twelve Midwest ISO systems combined. Even though
7 Ameren's transmission system would facilitate
8 50 percent of the Midwest ISO transactions, the
9 Midwest ISO tariff design and revenue allocation
10 approach would only provide Ameren with about 13
11 percent of the revenues.

12 This revenue allocation from the Midwest ISO
13 would result in an approximately \$60 million decline
14 in transmission revenues that Ameren was receiving
15 from open access users of its transmission system.
16 This decline in open access transmission revenues
17 would eventually result in more of Ameren's
18 transmission revenue requirement being allocated to
19 Ameren's bundled retail customers.

20 Moreover, because Ameren's transmission
21 system was the crossroads for the developing energy
22 trading patterns, Ameren was concerned about the
23 amount of transmission system upgrades that it could
24 be required to do to its transmission system. And
25 because of FERC's transmission pricing policies, the

1 enormous cost of these system upgrades would have to
2 be rolled into Ameren's own zonal transmission rate,
3 even if the upgrades were constructed to facilitate
4 transactions through and out of Ameren's transmission
5 system.

6 By the way, under the Midwest ISO tariff
7 design, these huge upgrade costs would be exclusively
8 paid by a load directly connected to Ameren's system,
9 which means, for the most part, these costs would be
10 exclusively paid by AmerenUE's and AmerenCIPS' bundled
11 retail customers.

12 But that was not the only problem with the
13 Midwest ISO when we requested to withdraw. In late
14 2000 Illinois Power and Commonwealth Edison announced
15 that they were going to invoke one of the withdrawal
16 provisions available to them in the Midwest ISO
17 agreement and withdraw from the organization.
18 Furthermore, at this same time, it was becoming
19 apparent to all of the members of the Midwest ISO,
20 including those that had announced their intentions to
21 withdraw, that the midwest ISO was in serious
22 financial trouble. The Midwest ISO was quickly
23 running out of money, and because of the announced
24 departures of the two major members, the Midwest ISO
25 could not acquire additional funding.

1 So by late 2000, this is the scene that
2 AmerenUE was facing. It could stick with the Midwest
3 ISO, or it was going to incur open access transmission
4 revenue losses of approximately \$60 million per year.
5 It could stick with the Midwest ISO even though the
6 developing energy trading patterns in the midwest
7 could require Ameren to construct significant upgrades
8 to its system, the cost of which under the Midwest ISO
9 tariff design could only be passed on to its own
10 bundled retail customers, even if the upgrades were
11 facilitating transactions of others. So in November
12 of 2000, Ameren notified the Midwest ISO that it was
13 withdrawing.

14 The announced withdrawals of Illinois Power,
15 Commonwealth Edison, and Ameren also had another
16 effect. The remaining members of the Midwest ISO were
17 no longer electrically connected together. The
18 remaining Midwest ISO transmission owners realized
19 that being electrically isolated from one another
20 would prevent FERC from approving the Midwest ISO as a
21 valid RTO. The remaining Midwest ISO members also
22 realized that the Midwest ISO was on the verge of
23 bankruptcy.

24 So within about two months after Ameren
25 announced its intentions to withdraw, all of the other

1 transmission owners in the Midwest ISO also announced
2 they were withdrawing and filed their request to
3 withdraw at FERC. Thus, on January 1st, 2001, for all
4 practical purposes, the Midwest ISO was dead.

5 FERC realized something had to be done soon,
6 or their goal of developing RTOs in the country may be
7 severely set back by the failure of the Midwest ISO.
8 So on January 24th, 2001, the FERC issued an order
9 calling for a settlement conference in which the
10 Midwest ISO companies, the Alliance RTO companies, the
11 market participants, and state regulators were
12 encouraged to participate to see if all of the parties
13 could come to agreement on the future of regional
14 transmission organizations in the midwest.

15 So from February 1st, 2001 to February 23rd,
16 2001, the Alliance RTO companies, the Midwest ISO
17 companies, numerous market participants, and state
18 regulators, including representatives of the Missouri
19 Public Service Commission and the Missouri Office of
20 Public Counsel, met and negotiated in good faith to
21 come up with a solution that was in the best interest
22 of the public.

23 Everyone who participated in this proceeding
24 had a fair opportunity to express their ultimate
25 desire for resolution during the eleven long days of

1 intense negotiation. As the Chief Settlement Judge
2 stated in his certification of the settlement
3 agreement that was finally reached, and I quote, "The
4 settlement agreement permits the entire midwest region
5 to operate as a seamless market and at the same time
6 carry forward the ISO features critical to some
7 members of the Midwest ISO and permit others to enjoy
8 the different business model developed by the
9 Alliance. The settlement will meet the energy needs
10 of the public in this large geographic area. It
11 accomplishes the same result that a single regional
12 transmission organization for the area would produce,
13 while meeting the different business preferences of
14 the participants. The Chief Judge believes this
15 settlement is the very best solution that can be
16 accomplished between the parties to this proceeding.
17 And at least at this point in time, it is fair,
18 reasonable, and in the public interest."

19 Solely on the basis that none of the
20 participants to this settlement proceeding opposed the
21 settlement that was reached, including this Commission
22 and the Office of the Public Counsel, Ameren agreed to
23 the terms of the settlement and paid its proportion of
24 the \$60 million exit fee to the Midwest ISO in
25 exchange for the ability to withdraw from the Midwest

1 ISO to participate in the Alliance RTO.

2 The \$60 million payment made by Ameren and
3 the other departing companies provided the necessary
4 funding to keep the Midwest ISO alive and functioning.

5 Now, some of the parties in this proceeding
6 want to relitigate whether the settlement agreement
7 authorizing Ameren's withdrawal from the Midwest ISO
8 is in the public interest. The irony is that they
9 want AmerenUE to compare the Alliance RTO structure
10 with the Midwest ISO structure that exists today.

11 Moreover, they want to ignore the fact that
12 the only reason the Midwest ISO structure still exists
13 today is because Ameren in good faith entered into the
14 settlement agreement. They want to ignore the fact
15 that the only reason Ameren entered into the
16 settlement agreement is because this Commission and
17 the Office of Public Counsel, while having every
18 opportunity, did not voice any operation (sic) to
19 Ameren doing so.

20 Even though Ameren's decision to withdraw
21 from the Midwest ISO had already been determined to be
22 in the public interest, Ameren's confident that it
23 will again demonstrate to this Commission that its
24 decision to withdraw from the Midwest ISO, a decision
25 that led -- directly led to the formation of the

1 Midwest ISO/Alliance RTO Super-Region was the right
2 decision for Ameren and its customers.

3 Thank you.

4 JUDGE MILLS: Thank you.

5 For the Staff?

6 MR. FREY: Thank you, your Honor.

7 May it please the Commission?

8 A little background as to why we're here.

9 This case really has its roots in the
10 November 1995 merger application of AmerenUE before
11 this Commission. In February of '97 the Commission
12 approved the application on the condition that the
13 company participate in an ISO, or I-S-O, that would
14 eliminate the pancake transmission rates.

15 On January 15th, AmerenUE and a number of
16 other transmission owners filed applications with the
17 FERC requesting permission to transfer control to the
18 Midwest ISO. About two months later the company
19 sought this Commission's permission for authorization
20 to participate in the Midwest ISO or the -- also known
21 as the MISO.

22 FERC approval of the application came in
23 September of 1998. The FERC conditionally approved
24 the establishment of MISO but only after it was
25 determined that it was functionally operational. The

1 Commission approval came in May of 1999 in Case
2 No. EO-98-413.

3 Also approved in that case was a Stipulation
4 and Agreement which, among other things, provided that
5 AmerenUE, if it sought to withdraw from the MISO,
6 would, ". . .file a notice of withdrawal with the
7 Commission and with any other applicable regulatory
8 agency and such withdrawal shall become effective when
9 the Commission and such other agencies approve or
10 accept such notice or otherwise allow it to become
11 effective."

12 This Commission has not approved or accepted
13 that withdrawal or done anything intending to allow it
14 to become effective without a decision in this
15 proceeding.

16 Then came the proposal for the Alliance
17 Regional Transmission Organization. The following
18 month, June 1999, a group of electric utilities, the
19 Alliance companies, filed with the FERC requesting
20 approval for the creation of the so-called Alliance
21 RTO, or ARTO.

22 On December 20th the FERC issued an order
23 conditionally authorizing the ARTO and directing the
24 Alliance companies to make compliance filings in
25 connection with various aspects of their proposals.

1 Also on that date FERC issued Order 2000
2 which set out the RTO characteristics and RTO
3 functions that must be demonstrated, complied with as
4 a condition to granting of FERC approval. Order 2000
5 also required that RTOs including the Alliance RTO be
6 operational by December 15th of this year.

7 On January 16th, following announcements by
8 Illinois Power Company and Commonwealth Edison that
9 they were withdrawing from the Midwest ISO, Ameren
10 Service -- Ameren Services Company acting on behalf of
11 AmerenUE and AmerenCIPS filed with the FERC an
12 unconditional notice to withdraw from the MISO.

13 Ameren's entry into the so-called ARTO was
14 conditional on receipt of FERC approval as well as any
15 other required regulatory approvals. During most of
16 the month of February of this year, the Alliance
17 companies, pursuant to a FERC order, participated in
18 settlement discussions with the Midwest ISO,
19 transmission owning members of the MISO, energy
20 marketers, and other interested parties, and the talks
21 produced a settlement agreement which received FERC
22 approval on May 8th.

23 Among other things, the settlement agreement
24 recognizes the existence of two RTOs, both the MISO
25 and the ARTO, and calls for the development of a super

1 regional transmission rate that eliminates pancaking
2 of transmission rates across the MISO and ARTO
3 systems.

4 It also created -- the settlement agreement
5 also created the Inter-RTO Cooperation Agreement, the
6 so-called IRCA, under which MISO and ARTO agreed to
7 work together toward a seamless energy market.

8 Additionally, the agreement -- the
9 settlement agreement approved the withdrawal of
10 AmerenUE from the MISO and required AmerenUE to pay
11 MISO \$12.5 million for the compensation of the
12 Company's withdrawal. On May 15th, AmerenUE tendered
13 payment.

14 This brings us to the instant case. On
15 June 11th, almost five months after filing with the
16 FERC, AmerenUE filed an application with this
17 Commission for an order authorizing it to withdraw
18 from the MISO in order to participate in the Alliance
19 RTO. Of course, that's why we're here today.

20 The Intervenors currently in this case,
21 namely the Missouri Energy Consumers -- excuse me,
22 Missouri Industrial Energy Consumers and the Missouri
23 Energy Group and the Missouri Joint Municipal Electric
24 Utility Commission all have taken a position along
25 with the Office of the Public Counsel opposing the

1 Company's request at least at this time.

2 In the event however that the Commission
3 decides to approve the subject application, most of
4 the other parties have recommended such approval carry
5 a number of specific conditions. The Staff either
6 supports or is not opposed to these conditions.

7 The Staff's position is presented in the
8 testimony of its witness, Dr. Michael Proctor. In
9 essence, the Staff is saying that if the Commission
10 wishes to base its decision in this case on the
11 performance history of the Alliance companies with
12 regard to getting ARTO up and running in accordance
13 with the directives and parameters articulated by the
14 FERC, the Staff would recommend that the Company's
15 request for permission to withdraw from MISO in order
16 to participate in the ARTO be denied.

17 In Staff's view, there is no question that
18 the track record of the Alliance thus far has been
19 poor. There has been a failure to establish an
20 independent board of directors along with a
21 stakeholder advisory committee. Moreover, ARTO is
22 just now getting a managing member on board.

23 In addition, the chances that FERC will
24 approve ARTO as operational by December 15th of this
25 year appear to be slim at best. In Staff's opinion,

1 the entire effort to structure the Alliance RTO has
2 been driven by the desire -- driven in part by the
3 desire of the Alliance companies to maintain control.
4 Indeed, the selection of the for-profit as opposed to
5 the not-for-profit business model serves to facilitate
6 that underlying imperative.

7 The process, therefore, has not been one
8 that one would describe as customer or stakeholder
9 friendly, at least insofar, that is, of stakeholders
10 with-- without transmission assets or -- without
11 transmission assets.

12 If, on the other hand, the Commission
13 decides to give National Grid USA or some similar
14 managing member of ARTO an opportunity to rectify the
15 deficiencies in the current situation, then the Staff
16 would recommend approval of the Company's request,
17 albeit subject to a number of conditions, each of
18 which is detailed under Issue 2 of the List of Issues
19 which was filed by Staff on behalf of all of the
20 parties on September 28th.

21 Among other things, Staff's indicated
22 conditions reflect its concern that ARTO be able to
23 demonstrate by the FERC-imposed deadline of
24 December 15th that it has brought stakeholders into
25 the process; that is, other stakeholders, those not

1 associated with transmission assets, that it has
2 brought stakeholders into the process through the
3 establishments of a FERC-approved board of directors
4 and permanent independent stakeholder advisory board,
5 and that has implemented the Inter-RTO Cooperative
6 Agreement with the MISO and is providing non-pancaked
7 transmission rates within the ARTO within the ARTO
8 Super-Region.

9 In addition to the uncertainty of the ARTO
10 implementation is the uncertainty of where the FERC is
11 going with respect to the midwest region. The Staff
12 would note that two days after it completed its
13 testimony -- its Surrebuttal/Cross-Surrebuttal
14 Testimony filing in this case, the FERC issued a news
15 release announcing that this next week it would be
16 looking at RTOs, including the midwest RTOs, and that
17 it would indicate early -- in early November which
18 ones are to be approved.

19 Accordingly, what we do here may be for
20 naught. Nevertheless, we have at this point no choice
21 but to proceed.

22 In the List of Issues filed September 28th,
23 the Staff did suggest as a condition to approval a
24 follow-up hearing to allow for the receipt by the
25 Commission of any late-developing evidence that might

1 prove material to its decision. Staff's primary
2 interest in proposing this addition to the procedural
3 schedule is to address the question whether the ARTO
4 will be operational by December 15th.

5 As a practical matter, the Commission might
6 consider the Staff's proposed date for the filing of
7 any testimony, namely December 5th, to be too late
8 inasmuch as it is ten days before the -- before
9 December 15th, which is the latest likely effective
10 date of a Commission order of approval. Thus, the
11 Commission may wish to specify a date earlier than
12 December 5th for such a filing.

13 Regardless of whether the additional dates
14 for following-up submission and hearing of evidence
15 are established, the Staff would expect in any event
16 that FERC action in the coming weeks bears directly on
17 this proceeding. The parties will promptly inform the
18 Commission and take whatever other action is
19 necessary.

20 The Staff is also concerned about the
21 linkage between a for-profit RTO and the incentives
22 that the FERC has indicated in Order 2000 will be
23 given to Transco through performance-based
24 rate-making. The concern is that performance criteria
25 will be proposed and perhaps approved by the FERC that

1 would give the ARTO the incentive to take a position
2 in the electricity. This is unacceptable, and the
3 Staff recommends that in such event, Ameren leave the
4 ARTO.

5 This case has also raised some legal issues
6 which presumably will for the most part be deferred
7 until the briefing process. Perhaps the most crucial
8 in terms of its long-term consequences is the issue
9 whether this Commission has actually conceded that
10 AmerenUE's withdrawal is in the public interest by
11 failing to object to such finding already made by FERC
12 in a case to which this Commission was a party.
13 AmerenUE, which raised the issue, stands alone in
14 choosing to argue the affirmative. The Staff and the
15 other parties take the Commission that the
16 Commission's actions in the FERC case import no such
17 concession.

18 Staff maintains that this argument of
19 AmerenUE is not in keeping with its commitment to seek
20 Commission approval to withdraw from the MISO. As I
21 noted earlier, this commitment was set out in the
22 Stipulation and Agreement in Case No. EO-98-413.

23 That's all I have. Thank you.

24 JUDGE MILLS: Thank you.

25 For the Office of Public Counsel?

1 MR. COFFMAN: Thank you.

2 Good morning, and may it please the
3 Commission?

4 I think I would also like to point out some
5 of the relevant history here at the Commission leading
6 up to this case. Some of you may remember the '96
7 case. This was the proposed merger between Union
8 Electric Company and Central Illinois Power, and in
9 that case Union Electric Company acknowledged that
10 combining the transmission assets of these two large
11 electric companies was a major synergy of the proposed
12 merger.

13 And several parties in that case pointed out
14 the market power dangers of combining these
15 transmission assets. They pointed out that a
16 vertically integrated utility combining transmission
17 assets in such a way would create extremely
18 troublesome market powers.

19 And while most of the issues in that merger
20 case were settled, the market power issues were
21 litigated. And if I might quote what this Commission
22 said with regard to market -- this Commission
23 acknowledged the potential for market power problems
24 and imposed a condition directly related to mitigating
25 that identified detriment.

1 "The participation by UE and Ameren in an
2 ISO is a prudent necessary condition to assure that
3 the merger is not detrimental to the public interest."

4 So this Commission has taken a position that
5 this AmerenUE regulated entity should be a member of
6 an ISO or an RTO.

7 And in the Report and Order the Commission
8 recognized that this condition contained two important
9 elements: Number one, that this be an independent
10 RTO, and, secondly, that Ameren make a filing with the
11 Commission with a plan regarding joining this RTO that
12 ". . .should be developed in cooperation with Staff
13 and Public Counsel."

14 So even before the merger was -- was
15 consummated, this Commission understood that it had an
16 important role to play in reviewing and approving
17 appropriate RTO membership, and that the public's
18 representatives before this body should be consulted
19 regarding whether any RTO proposal was in the public
20 interest.

21 That merger condition led to Case
22 No. EO-98-413, which has been mentioned, in which
23 AmerenUE proposed to join the Midwest ISO. In
24 resolution of that case, and in cooperation with Staff
25 and Public Counsel, a Stipulation and Agreement was

1 developed including certain provisions designed to
2 protect the public with regard to AmerenUE's ARTO
3 membership. And contained in that was a paragraph,
4 Paragraph 11, which was intended to ensure that the
5 Commission would continue to review and either approve
6 or deny any change in the status. Paragraph 11
7 requires AmerenUE to seek Commission approval if it
8 ever wanted to withdraw from the Midwest ISO.

9 Of course, that leads us to this case.

10 Although Public Counsel urged AmerenUE to
11 file this case sooner, we do not believe it was filed
12 on a timely basis. As the time line laid out earlier
13 indicates, notice to FERC and other parties had been
14 made as early as, I believe, November and then
15 January. This case was not filed until two months
16 later.

17 With regard to the IRCA, or the I-R-C-A, the
18 Inter-RTO Cooperation Agreement, that was part of a
19 settlement agreement in which I believe this
20 Commission and the Office of Public Counsel
21 intervened. We had intervened in order to monitor
22 these important events.

23 We do not have DC counsel and did not travel
24 to the District of Columbia for settlement
25 discussions. We did not sign the settlement

1 agreement, but we did -- we did voice strong
2 opposition, and decided to wait until this case before
3 the Commission to address how it might relate to
4 Missouri consumers.

5 But although the -- it is debatable whether
6 the Alliance RTO will actually be prepared for
7 operation by December 15th, any statement that we are
8 now in an urgent situation and need an expedited
9 decision by the Commission can only be the result of
10 what we believe is not a timely filing by AmerenUE.

11 The standard of review in this case, we
12 believe that under the obligation that AmerenUE
13 committed itself to in the 413 case the Commission
14 needs to look at this switch in RTOs as to whether it
15 is in the public interest. Secondly, there is the
16 statutory obligation that AmerenUE would have
17 otherwise under Section 393.190 to seek Commission
18 approval.

19 And, of course, you understand that under
20 certain court interpretations that standard has been
21 mentioned as not detrimental to the public interest,
22 and I know that's difficult to discuss a standard in
23 the negative, but I just think it's important to
24 realize that although the standard under the statute
25 may not be detrimental to the public interest, the

1 burden does not shift. The Applicant still carries
2 the burden of proof to prove that there would be no
3 detriment.

4 How should the Commission analyze the public
5 interest or the detriment to the public interest in
6 this case? Well, assuming that the Commission still
7 believes that RTO participation is mandatory, there
8 are really only two options. And when you compare the
9 Midwest ISO against the Alliance RTO and consider the
10 public interest, it really isn't a very close call at
11 all.

12 The testimony provided by the opposing
13 parties is really quite in-depth in this case and
14 provides a stark contrast between the two. I believe
15 perhaps all of the experts here today are in agreement
16 that even absent electric deregulation Missouri
17 consumers are going to become increasingly dependent
18 on competitive wholesale markets for -- for their --
19 for reasonable rates. And we contend that an
20 independent ISO or RTO is essential to developing
21 these competitive wholesale markets.

22 The FERC in its infamous Order 2000 has
23 stated that independence is the bedrock of an RTO,
24 whether it is a Transco or a not-for-profit, and has
25 stated that RTOs must be independent in reality and

1 perception. Clearly, this independence is a very key
2 principle that the Commission should consider. The
3 opposing parties here today have serious doubts about
4 the Alliance RTO's independence today and its ability
5 to ever achieve that level of independence.

6 There are several detriments that will be
7 testified to today and are in the prefiled testimony.
8 For the Office of Public Counsel, we have Mr. Ryan
9 Kind who has been participating in RTO issues in
10 Missouri and nationally.

11 He and other witnesses will point out that
12 there has not been true independent oversight over the
13 initial practices and policies of the Alliance RTO as
14 they have continued to postpone setting up an
15 independent entity to manage its formation. The --
16 while the Midwest ISO's not-for-profit structure has
17 facilitated the timely creation of such an independent
18 board, the RTO -- that is, the Alliance RTO has
19 continued to delay the creation as it seeks to put its
20 for-profit structure in place. As this delay has
21 continued, the Alliance RTO has continued to make
22 business decisions affecting market structure, even
23 though the Alliance RTO is composed of transmission
24 owners whose main business interests are in
25 competitive generation and are power marketing

1 affiliates.

2 Numerous public utility commissions and
3 other stakeholders have decried the Alliance's broken
4 promises, its non-compliance with numerous FERC
5 directives, and with the lack of any meaningful
6 stakeholder process. These detriments are in stark
7 contrast to the current Midwest ISO.

8 As the Alliance RTO continues to make
9 unilateral decisions that will have long and far-
10 reaching impact on competitive wholesale markets,
11 these decisions will be difficult and costly to
12 reverse even if some measure of independence is
13 ultimately achieved.

14 Many of Ameren's stated rationales for
15 withdrawing from the Midwest ISO are conditioned on
16 certain utilities requesting permission to withdraw
17 from the -- from the Midwest ISO, and we do not
18 believe that would have been a forgone conclusion.

19 Ameren also claims that potential retention
20 of transmission revenues is a benefit to consumers
21 that would result from Alliance membership. We
22 believe there are several barriers that make this
23 unlikely or uncertain. One is Ameren's current
24 transmission rate filings at FERC. Another is the
25 numerous legal and constitutional arguments that

1 Ameren has filed in its Answer to this Commission
2 Staff earnings complaint rate case. That's not to
3 mention numerous other legislative and regulatory
4 changes that are shifting at the national and state
5 level.

6 I invite you to review Mr. Kind's
7 attachments. These are proprietary documents which
8 are attached to his testimony and provide many
9 internal documents that we believe explain some of the
10 more primary reasons for AmerenUE's decision to make
11 this change. We believe that the change is driven by
12 shareholder interest and interest favoring its
13 unregulated affiliate generation and power marketing
14 affiliates.

15 Ameren suggests that this Commission should
16 simply defer its authority to the -- to the FERC with
17 regard to what RTO membership it enters. And with all
18 due respect to FERC, FERC's interest is national, and
19 one has only to look at recent events in California to
20 understand that FERC sometimes fails to protect
21 consumers in certain regions. And we respectfully ask
22 that the Missouri Commission carefully review this
23 proposal to switch RTOs and keep Missouri consumers in
24 mind.

25 As we stated, the proposal here in Ameren's

1 application would be profoundly detrimental and far
2 reaching in its impact. It would be detrimental to
3 Missouri's current regulated rates and to the
4 development of any competitive wholesale markets in
5 the midwest. In Public Counsel's opinion, these
6 detriments simply cannot be cured.

7 However, if the Commission is bound and
8 determined to approve this proposal under some
9 conditions, we have proposed conditions. Let me be
10 clear: We do not believe that this would be in the
11 public interest even with these conditions, but if I
12 might just mention some of them that we believe to
13 some measure would mitigate the detriments.

14 We believe that no approval should be
15 granted without sufficient compliance with FERC Order
16 2000 prior to any Alliance RTO start-up; sufficient
17 compliance with the Inter-RTO Cooperation Agreement;
18 and an approval from FERC that the Alliance RTO has
19 met other outstanding issues, including the proposal
20 of an acceptable business plan for achieving
21 independence, the development of independent marketing
22 monitoring, and the revision of its proposal for a
23 stakeholder process among others.

24 Staff has joined Public Counsel in these
25 conditions, many of which are similar to its

1 conditions but we believe are somewhat different. We
2 would also ask the Commission to insist that all
3 Missouri ratepayers be held harmless from any adverse
4 rate effects that would result from the transfer of
5 its transmission assets to the Alliance RTO or some
6 other entity at market value.

7 The Commission should also insist that
8 AmerenUE not agree to -- not transfer ownership of its
9 transmission assets without Commission approval
10 regardless of any future changes in state law. We
11 believe that that can be made a condition if the
12 Commission believes that otherwise the proposal would
13 be detrimental to the public interest, and Staff does
14 join in this proposed condition.

15 We also ask that at this time the Commission
16 state that it would not be prudent to permit the
17 \$18 million exit fee that Ameren made to the Midwest
18 ISO -- that it would not be prudent to include that in
19 rates.

20 Again, we respectfully ask that the
21 Commission consider Missouri's consumers and review
22 this application and deny the proposed transfer to the
23 Alliance RTO.

24 Thank you.

25 JUDGE MILLS: Thank you.

1 Missouri Industrial Energy Consumers?

2 MS. VUYLSTEKE: May it please the
3 Commission?

4 The evidence in this case will show that
5 Ameren's request to withdraw from the MISO and join
6 the ARTO should be denied. Ameren has not
7 demonstrated that its application is in the public
8 interest. It does not benefit ratepayers, and it has
9 not shown in any other way that it benefits the public
10 interest. In fact, Ameren's request is detrimental to
11 ratepayers.

12 The evidence shows that the ARTO has failed
13 to meet the FERC's requirements for independence and a
14 number of other important conditions established by
15 the FERC. Moreover, Ameren has violated the
16 Commission's order in Case No. 98-413 and the parties'
17 settlement agreement in that case by failing to obtain
18 the Commission's approval prior to withdrawing from
19 the MISO.

20 This withdrawal resulted in a \$12.5 million
21 exit fee, and we urge that the Commission in this case
22 hold that no part of that fee should be collected from
23 ratepayers.

24 We also request that the Commission deny
25 Ameren's application at this time, and that Ameren

1 should not be allowed to transfer its assets to the
2 ARTO until the FERC has approved it. If the FERC has
3 not approved the ARTO by December 31st, 2001, then we
4 urge the Commission to require Ameren to rejoin the
5 MISO.

6 Thank you.

7 JUDGE MILLS: Thank you.

8 For the Missouri Energy Group?

9 MS. LANGENECKERT: The Missouri Energy Group
10 is going to make -- excuse me. May it please the
11 Court?

12 My name is Lisa Langeneckert.

13 The Missouri Energy Group is going to waive
14 any opening statement. I think everything has pretty
15 much been covered.

16 JUDGE MILLS: Thank you.

17 For the Joint -- Municipal Joint Utility
18 Commission?

19 MR. KINCHELOE: Thank you.

20 May it please the Commission?

21 I can be very brief.

22 First, I'd like to say I think it's
23 important that this hearing be conducted, that the
24 Applicant seek the authorization of this Commission
25 for its action requested, and that this Commission

1 evaluate and act on the application.

2 The Municipal Electric Commission has had
3 and does have a number of doubts. In many respects
4 we're critical of the merit of the entire Alliance RTO
5 undertaking as an alternative to a broader truly
6 independent and truly region-wide transmission
7 organization.

8 Our concerns are primarily in two
9 categories. One, the independent governance and
10 management of ARTO and the independence from its
11 organizing market participants. This is one of the
12 primary concerns, of course, of the FERC in its
13 development of regional transmission organizations
14 throughout the nation.

15 We have subsequent to our filings in this
16 case intervened in dockets at the FERC dealing with
17 this issue with respect to the ARTO.

18 As power customers in the region, our
19 Commission, the Municipal Electric Utility Commission,
20 needs to be concerned about this issue in our regional
21 markets regardless of -- of whether Ameren is a member
22 of the ARTO or regardless of what ruling the -- this
23 Commission would make in this proceeding, so we have
24 intervened in the federal proceedings on the ARTO
25 issues, and we've determined to pursue those issues

1 exclusively in those proceedings rather than pursue
2 them here in this proceeding.

3 Frankly, we are hopeful and based on recent
4 statements and actions out of the FERC that -- that
5 the Federal Energy Regulatory Commission will sort of
6 rescramble the egg of emerging transmission
7 organizations in this region and will come up with
8 something more palatable and truly region-wide.

9 And that region-wide aspect is the second
10 category of our concerns about the Alliance Regional
11 Transmission Organization. The geographic
12 configuration of the transmission organizations
13 merging in our region including our region --
14 including the Alliance RTO, the Midwest ISO, the
15 Southwest Power Pool, and, of course, the co-op-owned
16 transmission facilities in the state are a substantial
17 concern to us in terms of the multiplicity and the
18 resultant seams that exist and will exist apparently
19 if all of those plans develop along those lines.

20 The multiplicity of seams within the state,
21 within our market region, are -- interfere with the
22 proper functioning of wholesale markets. These issues
23 are largely invisible currently at least to retail
24 customers, but they have substantial impact on all
25 customers, and to the extent that there is any

1 advancement in retail restructuring of the state,
2 those -- those impacts will be more pronounced. We
3 are not convinced that the Super-Regional transmission
4 rates and the IRCA adequately resolve the seamless
5 issues in our region.

6 However, based on discussions concluded with
7 Ameren late yesterday afternoon and certain assurances
8 and agreements from Ameren relative to the Municipal
9 Electric Commission and our member cities having to do
10 with transmission service and the effect of seamless
11 issues and transition issues between Ameren and
12 administration by the ARTO, we have agreed not to
13 oppose this application further in this proceeding.

14 I don't expect to be cross-examining
15 witnesses and will not be introducing prefiled
16 testimony.

17 Thank you.

18 JUDGE MILLS: Mr. Kincheloe, before you
19 leave the stand, let me ask you a couple of questions
20 with respect to your position in the case.

21 Does the resolution you've reached with
22 AmerenUE mean that the positions that you filed and
23 your response to the List of Issues are no longer the
24 positions that you're taking in this case?

25 MR. KINCHELOE: There would need to be an

1 amendment to those positions, yes. Those positions
2 are not consistent with my statement here, yes.

3 JUDGE MILLS: Right. And along those lines,
4 will there be anything filed in writing in this case
5 memorializing or setting out the points of your
6 agreement with AmerenUE?

7 MR. KINCHELOE: That's not our intention,
8 although that would be a document we would not have
9 any objection to being fully available and expect that
10 it would be in some form.

11 We have not, frankly, formalized documents
12 here, but we would be -- we would expect to see
13 something, even in letter form would be adequate for
14 our purposes, from Ameren confirming our discussions,
15 and, in fact, that consideration -- an offer of
16 consideration of our action in this proceeding.

17 JUDGE MILLS: I'm not suggesting that it
18 needs to be filed. I'm just trying to see where the
19 record is going to go.

20 MR. KINCHELOE: No, I don't think it's
21 something that would be filed formally in the case,
22 but I want to emphasize that it's not something --
23 these are issues that have to do with specifics of
24 transmission service to our entity and its member
25 cities and there is certainly nothing that we would

1 expect to be private.

2 JUDGE MILLS: Thank you.

3 Okay. I believe that concludes opening
4 statements. The only other party was the Doe Run who
5 has withdrawn from the case.

6 Let's move on to our first witness,
7 AmerenUE's witness Whiteley.

8 JUDGE MILLS: Raise your right hand, please.

9 (Witness sworn.)

10 JUDGE MILLS: Thank you.

11 You may be seated.

12 THE WITNESS: Thank you.

13 JUDGE MILLS: Mr. Hennen, please go ahead.

14 MR. HENNEN: Your Honor, AmerenUE would like
15 to call David Whiteley to the stand as its witness.

16 DAVID A. WHITELEY testified as follows:

17 DIRECT EXAMINATION BY MR. HENNEN:

18 Q. Mr. Whiteley, please state your name for the
19 record.

20 A. David Whiteley. My business address is
21 1901 Chouteau Avenue in St. Louis, 63103.

22 Q. Mr. Whiteley, by whom are you employed?

23 A. Ameren Services.

24 Q. And what is your position with Ameren
25 Services Company?

1 A. My title is Senior Vice-president of Ameren
2 Services.

3 Q. And are you the same David A. Whiteley that
4 prepared the Direct and Surrebuttal Testimonies, which
5 was filed on your behalf with the Commission in this
6 proceeding?

7 A. I am.

8 Q. I now hand you a copy of a document marked
9 Exhibit No. 1. Is Exhibit No. 1 the Direct Testimony
10 that you provided in this proceeding?

11 A. I have it. Yes, it is.

12 Q. Would you like to make any corrections,
13 additions, or deletions to your responses in this
14 testimony?

15 A. No. I have no corrections or deletions.

16 Q. Are the answers you provided in your Direct
17 Testimony to the best of your knowledge accurate and
18 truthful?

19 A. They are.

20 Q. If you were asked these same questions under
21 oath today, would you answer these questions the same?

22 A. Yes, I would.

23 Q. I now hand you a copy of a document marked
24 Exhibit 2. Is Exhibit No. 2 the Surrebuttal Testimony
25 that you provided in this proceeding?

1 A. I have a copy.

2 Q. Is it the Surrebuttal Testimony you provided
3 in this proceeding?

4 A. Yes. Yes, it is.

5 Q. Would you like to make any corrections,
6 additions, or deletions to your responses in this
7 testimony?

8 A. No.

9 Q. Are the answers you provided in your
10 Surrebuttal Testimony to the best of your knowledge
11 accurate and truthful?

12 A. Yes, they are.

13 Q. If you were asked these same questions under
14 oath today, would you answer these questions the same?

15 A. Yes, I would.

16 MR. HENNEN: Your Honor, I would like to
17 move that Exhibit Nos. 1 and 2 be entered into the --
18 into evidence.

19 JUDGE MILLS: Are there any objections to
20 the admission of Exhibits 1 or 2?

21 (No response.)

22 JUDGE MILLS: Hearing none, they will be
23 admitted.

24 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
25 EVIDENCE.)

1 MR. HENNEN: Having no other questions, your
2 Honor, I would like to tender Mr. Whiteley for
3 cross-examination.

4 JUDGE MILLS: Thank you.

5 Cross-examination first is by the Staff.

6 MR. FREY: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. FREY:

8 Q. Good morning, Mr. Whiteley.

9 A. Good morning.

10 Q. Can you identify, sir, which utilities
11 currently comprise the Alliance companies?

12 A. At the present time, there are nine or ten
13 companies within the Alliance, depending on how you
14 account for Detroit Edison. The ten companies in the
15 Alliance are Virginia Power, Dominion Virginia Power,
16 American Electric Power, First Energy, Detroit Edison,
17 Consumers Energy, Dayton Power & Light, Northern
18 Indiana Public Service Company, Commonwealth Edison,
19 Illinois Power, and Ameren.

20 Q. And have all of these companies filed
21 transmission rates with the FERC reflecting settlement
22 agreement between MISO and ARTO?

23 A. Yes, they have as part of the Alliance rate
24 filing.

25 Q. Can you state, sir, how Ameren's

1 transmission rates compare with those of Commonwealth
2 Edison or AEP?

3 A. I don't recall the specific zonal rates for
4 Commonwealth Edison or AEP. I don't remember the
5 exact numbers.

6 Q. Would you say that those rates are higher
7 than those of AmerenUE?

8 A. I believe the zonal rates for Commonwealth
9 and AEP are higher than Ameren's zonal rate. But,
10 again, I don't recall the specific numbers that have
11 been filed.

12 Q. Would you -- would you be willing to say
13 that they are substantially higher?

14 A. Again, I don't recall the specific numbers.
15 I believe they are higher.

16 Q. Could you perhaps give an estimate of how
17 much higher they are?

18 A. You're asking me to speculate on numbers. I
19 believe they might be in the order of twice as large.
20 Ameren's rate is a very low rate, so it's not unusual
21 for transmission systems to have a rate that's twice
22 as large as ours.

23 Q. Could you state, then, a comment on why
24 AmerenUE chose to join an organization or an entity
25 that includes two of the highest cost transmission

1 companies in the midwest?

2 First of all, let me ask you, would you say
3 that those companies have -- their transmission rates
4 are among the highest in the midwest?

5 A. Again, I -- without taking a look at the
6 specifics of everybody's zonal rates, I believe they
7 are higher than Ameren's, but I can't characterize
8 them with respect to everyone else in the midwest.

9 Q. As the Alliance Transco forms and
10 transmission assets of members are purchased by
11 National Grid USA, is it likely that a postage stamp
12 rate will replace the current license plate rates?

13 A. I don't know what the future rates may look
14 like. We have -- the Alliance has filed a rate
15 structure that's compatible with the settlement
16 agreement that was reached earlier this year, but what
17 the future rate structure might look like would be
18 speculative on my part.

19 Q. Did AmerenUE compare the present value of
20 revenues it would be able to keep under the ARTO rate
21 design to the present value of increased costs if ARTO
22 goes to a postage stamp rate?

23 A. I don't believe we looked at that particular
24 scenario where the ARTO was one postage stamp rate in
25 terms of our analysis of RTOs. We were looking at the

1 proposed rate structure for the Alliance as has
2 been -- essentially as it's been filed; it hasn't
3 really changed in concept, versus what the Midwest ISO
4 rate structure would be. I don't believe we looked at
5 hypothetical changes to the -- the ARTO, or the
6 Alliance tariff structure.

7 Q. So your answer would be essentially no.
8 Correct?

9 A. I don't believe we looked at that specific
10 comparison that you put forward.

11 Q. Okay. Thank you.

12 Do you consider AmerenUE a low-cost
13 transmission provider?

14 A. Yes, I do.

15 Q. And with Ameren being a low-cost
16 transmission provider within ARTO, could you -- could
17 you state why the Commission should not be concerned
18 with the possibility of a postage stamp rate in ARTO?

19 A. I don't believe the Commission should be
20 concerned about rates that may or may not be filed in
21 the future. Whatever rates are filed in the future
22 there are certainly going to be proceedings at FERC
23 that will establish what the appropriate rates are.
24 Whether or not one party files a rate that is not
25 appropriate isn't really something that I believe is

1 really pertinent. It's what the FERC would ultimately
2 approve is what would be the issue going forward.

3 Q. But isn't it fair to at least concede the
4 possibility that if Ameren's low costs are mixed in a
5 postage stamp rate with high costs of other
6 transmission rate companies that the result will be a
7 higher rate for Missouri consumers?

8 A. Given that hypothetical, yes. You put low
9 costs in with high costs, then the average has to come
10 up. I'm not agreeing that that's what the rate would
11 end up or that's what FERC would approve, but in your
12 hypothetical, of course, if you put low costs and high
13 costs together, they average out higher.

14 Q. But you would concede, would you not, that
15 there is at least a realistic possibility that that
16 might result?

17 A. It's possible that FERC would accept such a
18 rate.

19 Q. Excuse me.

20 Okay. Mr. Whiteley, I would like to refer
21 you to Direct Testimony on page 18, line 18.

22 Do you have a copy in front of you?

23 A. Yes, I do.

24 Q. And on that line I believe you make
25 reference to the term "dispose of."

1 What does the term to "dispose of" mean to
2 you here in your Direct Testimony?

3 A. Otherwise get rid of that part of the
4 business from Ameren -- Ameren's business structure.
5 "To sell or divest" are pretty obvious. I'm trying to
6 cover the waterfront of any other possibility, and if
7 there is any other possibility, I just wanted to
8 assure the Commission that we're not asking for any
9 permission at this time.

10 Q. Okay. So you don't have -- in using that
11 language, you don't have anything in particular in
12 mind?

13 A. No. I think it's pretty obvious. Sell and
14 divest are the ones that would be pertinent, but,
15 again, I'm trying to reassure that there is not some
16 other mechanism that we might be trying to somehow
17 hide.

18 Q. Let me ask you, then, what does the term
19 "divest" mean to you?

20 A. "Divest" would be to sell a particular
21 business or part of a business, and that could be --
22 you could divest into a wholly-owned subsidiary or you
23 could divest into another entity. That would be more
24 like a sale.

25 Q. Okay. Thank you.

1 In the provisioning of retail service to its
2 customers in Missouri, are AmerenUE's distribution
3 facilities necessary in the provision of that service,
4 would you say?

5 A. For service to retail customers? Yes, it
6 is.

7 Q. In the provision of retail electric service
8 to its customers in Missouri, are AmerenUE's
9 distribution facilities useful in the provision of
10 that service?

11 A. Yes, they are.

12 Q. Is it intended by AmerenUE that AmerenUE
13 recover in its rates charged to its Missouri retail
14 customers its distribution costs in providing retail
15 electric service to those customers?

16 A. You're asking for an answer that's not a
17 part of this case. You're asking me to come to a
18 conclusion about what we may or may not ask for in
19 terms of rate recovery from our distribution system,
20 so I'm a little confused with the question. Perhaps
21 you could restate it so that I could understand the
22 context.

23 Q. Well, I think perhaps if I just reask the
24 question.

25 Does AmerenUE intend to recover in its rates

1 charged to Missouri retail customers distribution
2 costs incurred in providing electric service to those
3 customers?

4 MR. HENNEN: Your Honor, I would like to
5 object to this line of questioning as beyond the scope
6 of his Direct Testimony.

7 JUDGE MILLS: Mr. Frey?

8 MR. FREY: I think it's a pretty
9 straightforward question, your Honor. We're talking
10 about a basic issue here as to whether or not the
11 Company intends to recover distribution costs in their
12 rates. I don't see that this is any kind of a wild or
13 inappropriate question.

14 MR. HENNEN: Your Honor, whether or not
15 Ameren seeks to recover any costs in its distribution
16 rates is beyond the scope of this proceeding. This
17 proceeding is about Ameren's transmission assets and
18 whether or not Ameren should be allowed to withdraw
19 from the Midwest ISO, not whether or not it's going to
20 recover certain distribution charges in another
21 proceeding outside of the scope of this proceeding.

22 JUDGE MILLS: Mr. Coffman?

23 MR. COFFMAN: If I might, the initial
24 objection that this question is beyond the scope of
25 Direct Testimony I think is answered by Missouri

1 statute. I believe the Missouri Administrative
2 Procedure Act permits cross-examination beyond the
3 scope of direct.

4 But I also believe this is a listed -- this
5 addresses an item that was in the List of Issues which
6 all parties agreed to.

7 JUDGE MILLS: Thank you.

8 I'm going to allow the question.

9 The objection is overruled.

10 THE WITNESS: Could you restate the question
11 for me, please?

12 BY MR. FREY:

13 Q. Yes. Does the Company intend to recover in
14 its rates charged to Missouri retail customers its
15 distribution costs in providing retail electric
16 service to those customers?

17 A. Yes, I believe it would.

18 Q. On AmerenUE's tariffs for retail electric
19 service in Missouri, is there a separate charge for
20 distribution service?

21 A. I do not know.

22 Q. Let me refer you to page 12 of your Direct
23 Testimony, lines 13 and 14.

24 A. I have it.

25 Q. And there you make reference, do you not, to

1 AmerenUE's retail customers' bundled rates?

2 A. Yes, I do.

3 Q. Does that help you to answer my previous
4 question as to the tariffs?

5 A. Specifically, I thought you were asking is
6 there a separate component that somehow shows up in
7 customers' bills essentially for that --

8 Q. I see.

9 A. -- for that particular service, and I don't
10 know the answer to that question.

11 Q. Okay.

12 A. What I'm trying to present in the testimony
13 in the lines that you've referenced is that there is a
14 credit that comes back essentially as a revenue stream
15 to the corporation that is revenue that's used to
16 offset other expenses in the corporation when you go
17 to calculate retail rates.

18 Q. Okay. Thank you.

19 Is distribution service provided then by
20 AmerenUE as part of bundled rates charged to its
21 retail customers in Missouri?

22 A. Yes, I believe so.

23 Q. In the provision of retail electric service
24 to its customers in Missouri, are AmerenUE's
25 transmission facilities necessary in the provision of

1 that service?

2 A. Yes, they are.

3 Q. Is it intended by AmerenUE that the Company
4 recover in its rates charged its Missouri retail
5 customers its transmission costs of providing retail
6 electric service to those customers?

7 A. Yes.

8 Q. On AmerenUE's tariffs for retail electric
9 service in Missouri, is there a separate charge for
10 transmission service?

11 A. Again, within the structure of the bill, I
12 don't know. I believe those costs are part of the
13 tariff that results in a bundled rate for retail
14 customers.

15 Q. Is transmission service provided by AmerenUE
16 as part of bundled rates charged to retail customers
17 in Missouri? Your answer would be yes; is that
18 correct?

19 A. I believe it is, yes.

20 Q. Okay. Do you know whether the Indiana
21 Utility Regulatory Commission participated in the FERC
22 MISO/ARTO settlement proceeding which commenced --
23 which started in February of this year, February 1st,
24 I believe?

25 A. I don't recall if the Indiana Commission

1 participated. I don't recall that party in specific.

2 Q. Okay. Would you turn, please, to page 6 of
3 the exhibit attached to your testimony?

4 A. I have it.

5 Q. Well, and perhaps we should start on page 5,
6 the last paragraph, the second sentence.

7 Let's identify the document first. This is
8 the Chief Judge's, at FERC, certification of the
9 settlement, is it not, dated April 6, 2001?

10 A. Yes, it is.

11 Q. Okay. Then in turning to page 5 of that
12 document, the last paragraph, second sentence, I
13 believe it begins by saying, "Among those
14 participating in person were. . ." and then it goes on
15 to list a whole bunch of parties.

16 And on page 6 in that big list, two, three,
17 four, five, six, seven, eight, nine -- nine lines up
18 from the bottom, at the beginning of the line, does it
19 not list the Indiana Utility Regulatory Commission as
20 a participant?

21 A. Yes, it does, among that entire list that's
22 culled out of the 90 participants.

23 Q. So you would accept, then, that they
24 participated in this -- in these settlement
25 conferences?

1 A. Yes, I would. They are on the list, so I
2 have no reason to not believe that it's accurate.

3 Q. Do you know whether Indiana Commissioner
4 David Ziegner participated in these settlement
5 proceedings commencing February 1st?

6 A. I did not recall until you pointed me to
7 this page. On page 5 his name is listed specifically
8 as participating.

9 Q. Okay. So you would again accept that he
10 participated in the --

11 A. I would.

12 Q. -- in the settlement conference?

13 A. Yes.

14 Q. Thank you.

15 Do you know, sir, whether there is a
16 proceeding before the Indiana Commission where the
17 Indiana/Michigan Power Company d/b/a American Electric
18 Power and Northern Indiana Public Service Company are
19 seeking the Indiana Commission's authorization to join
20 ARTO and PSI Energy, Incorporated and others are
21 seeking the Indiana Commission's authorization to join
22 MISO? Are you aware of that proceeding?

23 A. I'm aware of the -- the AEP and Northern
24 Indiana Public Service proceedings. I was not aware
25 of the PSI proceeding.

1 Q. For the entities that you're aware of, do
2 you know whether they have asserted that the Indiana
3 Commission is estopped from deciding whether they
4 should be authorized to join the ARTO on the basis
5 that the IURC participated in the FERC MISO/ARTO
6 settlement proceeding?

7 A. No, I don't know the details of those cases.

8 Q. Can you specify in a general manner the
9 transmission facilities that are transferred to the
10 control of ARTO by AmerenUE?

11 A. Generally, they would consist of what I
12 would call our networked transmission facilities of
13 higher voltage, generally 100 KV and above,
14 facilities, so transmission lines or substations that
15 have voltages 100,000 volts and above would typically
16 be the case. There are a few exceptions for
17 non-networked facilities; in other words, those
18 facilities that form the spiderweb of the grid.

19 But that's a reasonable general description
20 of the facilities that are transferred.

21 Q. Thank you.

22 Are there certain AmerenUE transmission
23 facilities that have not been transferred by the
24 Company to the control of ARTO?

25 A. I believe there are facilities that are

1 within the voltage class above 100 KV that have not
2 been listed for transfer and control to the ARTO,
3 those being radio facilities. I do not know the
4 specific names of those facilities, but I do believe
5 there are some facilities of that voltage class.

6 Q. Has AmerenUE already withdrawn from the
7 MISO?

8 A. We have issued our withdrawal notice and
9 received a letter in return from them that we have --
10 based on the settlement results that our withdrawal
11 has become effective and we're no longer members of
12 the Midwest ISO.

13 Q. And when did -- when did this occur? Do you
14 recall?

15 A. Well, the settlement occurred -- proceedings
16 occurred during February with the final FERC approval,
17 I believe, May 8th, if my memory is correct on the
18 specific date.

19 I don't recall the specific date on the
20 letter we received from the Midwest ISO stating that
21 our withdrawal was complete. I believe it was a few
22 days after we tendered payment in accordance with the
23 settlement.

24 Q. Would you say, then, that the withdrawal was
25 effected -- effectuated as a result of tender of

1 payment, or was there some other mechanism?

2 A. Well, the payment was in accordance with the
3 settlement proceeding, and so we were complying with
4 the settlement result by tendering our payment in
5 accordance with that settlement. The Midwest ISO
6 chose to send us that letter based on their
7 interpretation of the settlement and our payment.

8 Q. What -- let me just sort of reask, I guess:
9 What effectuated the Company's withdrawal from the
10 MISO?

11 A. I believe it's the FERC settlement.

12 MR. HENNEN: Your Honor, we object. That's
13 asking for a legal conclusion.

14 JUDGE MILLS: I don't believe it is. I
15 think it's asking for his opinion.

16 The objection is overruled.

17 THE WITNESS: I would state it is my belief
18 that the FERC settlement effectuated the FERC approval
19 of our withdrawal from MISO, and the payment was in
20 accordance with that settlement.

21 BY MR. FREY:

22 Q. Thank you.

23 Let me refer you to page 10, lines -- of
24 your Direct Testimony, page 10, lines 15 through 17,
25 and page 19, line 4.

1 A. I have page 19, line 4.

2 Page 10, what were the line numbers, please?

3 Q. Fifteen through 17?

4 A. Thank you.

5 I have it.

6 Q. You indicate that Ameren has already paid
7 the \$18 million to the MISO, which was its portion of
8 the 60 million paid to MISO by AmerenUE -- excuse
9 me -- by Ameren. Commonwealth Edison and Illinois
10 Power, it's part of the 60 million that these three
11 parties paid to satisfy the financial commitment made
12 in joining the MISO and to assure the financial
13 viability of MISO through the start-up.

14 Was that 18 million paid by AmerenUE on
15 May 15th of this year?

16 A. I don't recall the specific date. That's
17 the -- the timing sounds about right. It was after
18 the FERC approval of the settlement, and there was a
19 time line established in the settlement when that
20 payment had to be made. That sounds about right. I
21 don't have the specific date.

22 Q. Do you have a copy of the application filed
23 in this case by the Company?

24 A. No, I do not.

25 MR. FREY: May I approach the witness, your

1 Honor?

2 JUDGE MILLS: Yes, you may.

3 THE WITNESS: Yes. This indicates that

4 May 15th was the date of the payment of our

5 \$18 million portion of the total \$60 million payment

6 to the Midwest ISO.

7 BY MR. FREY:

8 Q. Thank you.

9 Let me refer you now to your Surrebuttal

10 Testimony, page 12, lines 2 through 6. And you

11 mention there the two experimental alternative

12 regulation plans that have been in effect for the last

13 six years, do you not?

14 A. Yes.

15 Q. Do you know where AmerenUE has taken the

16 \$12.5 million payment to MISO as an offset to the

17 sharing credits for the final sharing credit period

18 July 1, 2000 to June 30, 2001?

19 A. No, I don't know how the accounting

20 treatment for that payment has worked its way through.

21 Q. Back to your Direct Testimony, sir, page 18,

22 lines 13 through 15.

23 A. I have it.

24 Q. And you make reference there to the

25 Commission. Is it appropriate to say that in

1 referring to the Commission you mean the Missouri
2 Public Service Commission?

3 A. Yes. In that particular instance, I mean
4 the Missouri Public Service Commission.

5 Q. Okay. Thank you.

6 If AmerenUE decides to sell or divest all or
7 part of its transmission assets to the Alliance
8 Transco or to a third party, do you know whether
9 AmerenUE intends to argue to the Missouri
10 Commission -- that the Missouri Commission is
11 preempted by the Federal Power Act from requiring
12 AmerenUE from seeking the Missouri Commission's
13 approval?

14 A. We've not actually contemplated divestiture
15 or sale at this time, so I have not given any thought
16 to what arguments we may raise with the Commission,
17 legal or otherwise, to effectuate that divestiture
18 sale. I just haven't given it any thought.

19 Q. Do you know whether AmerenUE filed its
20 application in this case on June 11th because the
21 transfer of control of its transmission assets to ARTO
22 requires approval from the Commission?

23 A. We filed with the Missouri Commission
24 because of our Stipulation Agreement in the merger
25 case. There is also a need for us to get approval for

1 transfer of control of the assets, and I don't know
2 specifically which legal requirements we have for
3 which jurisdictions in terms of transferring assets.
4 This case -- our filing here was as a result of the
5 merger case.

6 Q. Okay. As I recall, you indicated that there
7 is a legal requirement that you seek authority for the
8 transfer of control of the assets. Are you speaking
9 of the Missouri jurisdiction?

10 A. Well, it's my understanding, yes, we have to
11 have that approval.

12 Q. And is it your understanding that that's a
13 statutory requirement or a regulatory?

14 A. I'm sorry. I'm not an attorney. I don't
15 know whether it's statutory or rule based. I just
16 don't know.

17 Q. Back to your Direct Testimony, page 18,
18 line 12, and page 20, lines 14 through 15.

19 A. I have it.

20 Q. You refer there to AmerenUE being a
21 non-divesting transmission owning member of the ARTO.

22 A. That's correct.

23 Q. Does AmerenUE have any -- does AmerenUE have
24 any present plans to revisit the decision -- the
25 decision to not divest all or part of its transmission

1 assets to the Alliance Transco or to a third party?

2 A. We will probably revisit that on a
3 continuing basis as any business would looking out for
4 the interest of its customers, its shareholders, and
5 its business in general going forward as just a normal
6 course of business.

7 Q. But you -- at this time you don't have plans
8 to revisit it at any particular time? Your testimony
9 is simply that you're always in that mode where you
10 might possibly revisit it at any time, but you don't
11 have any specific plans to do so at this time; is that
12 correct?

13 A. There is no effort presently underway.
14 Obviously, as part of our business planning process
15 that could start at any time or it could not start for
16 years. But we don't have anything at the present time
17 that we're doing.

18 Q. Okay. Thank you.

19 On your Surrebuttal, page 8, lines 12
20 through 13 -- do you have that, sir?

21 A. I do.

22 Q. Is your statement of commitment by
23 AmerenUE -- perhaps I should read the statement.
24 Maybe I can ask you to read it.

25 On page 8 at line 12, could you read the

1 statement beginning with the word "when"?

2 A. Yes, I can. "When a mistake is made by
3 ARTO, a for-profit entity, the costs associated with
4 the mistake will be absorbed by the ARTO
5 shareholders."

6 Q. Is your statement a commitment by AmerenUE
7 that when a mistake is made by ARTO, Missouri retail
8 ratepayers will be held harmless by AmerenUE?

9 A. No. I'm stating what I believe is a
10 difference between the not-for-profit model in a
11 situation where mistakes have been made versus a
12 for-profit model where there is an entity that is held
13 accountable both in terms of did they make a mistake
14 and then financially accountable for that mistake.

15 In the case of a not-for-profit ISO, there
16 is no profit. There is no entity to hold financially
17 accountable; whereas, in the ARTO situation, there are
18 ARTO stockholders and they would be accountable.

19 Q. Okay. So, really, would you agree with me
20 then that perhaps that statement is a little bit
21 strong; in other words, that perhaps it might better
22 have read would be subject to absorption by ARTO
23 shareholders?

24 A. I believe the statement stands on its own,
25 and I believe it is correct.

1 Q. Well, if it's going to be absorbed by ARTO
2 shareholders, is it not the case then that it will not
3 be absorbed by Missouri ratepayers?

4 A. It depends on who the ARTO shareholders
5 might be and how that might work itself back to a cost
6 on Ameren. And, again, I think the statement stands
7 on its own. You have an entity that if it makes a
8 mistake it's held financially accountable for that
9 mistake.

10 Q. Do you know what is the relative voting
11 strength of AmerenUE in the ARTO versus the relative
12 voting strength of AmerenUE in the MISO?

13 A. Our participation with respect to the ARTO
14 as a non-divesting owner is very similar to that under
15 the MISO. Our participation is through an operating
16 agreement, and from that standpoint, there is no
17 voting strength within the ARTO since we are not a --
18 or would not be a divesting owner of voting shares in
19 the Transco.

20 JUDGE MILLS: Mr. Frey, at this point we're
21 going to take a ten-minute recess. I hate to
22 interrupt you, but it's been about an hour and a half.

23 MR. FREY: Okay.

24 JUDGE MILLS: Let's go off the record for
25 ten minutes.

1 MR. FREY: Thank you, your Honor.

2 (A DISCUSSION WAS HELD OFF THE RECORD.)

3 JUDGE MILLS: Let's go back on the record.

4 We're continuing with cross-examination of
5 AmerenUE Witness Whiteley by Staff Counsel Frey.

6 Please go ahead, Mr. Frey.

7 MR. FREY: Thank you, your Honor.

8 BY MR. FREY:

9 Q. Mr. Whiteley, referring to -- again, to your
10 Direct Testimony, page 11, lines 12 through 15 --

11 A. I have it.

12 Q. Let me get there.

13 Could you read that statement, please?

14 A. The answer to the question begins on
15 line 11, and it says, "Yes, the settlement was a
16 'package deal.' AmerenUE's withdrawal from the
17 Midwest ISO is a non-separable part of that package
18 deal. Failure of the Commission to approve AmerenUE's
19 withdrawal from the Midwest ISO would destroy the
20 settlement reached by all parties, unquestionably
21 delay the start-up of both RTOs and cast uncertainty
22 on the future of RTOs in the midwest."

23 Q. I would just ask you, is the Missouri
24 Commission one of the parties that you're referring to
25 as having reached settlement?

1 A. No. The parties to the case -- the
2 settlement are explicit -- those that explicitly
3 signed, is my understanding.

4 MR. FREY: Okay. Thank you.

5 Your Honor, at this time I'd like to mark
6 some exhibits. We have four of them. I'd like to
7 take them one at a time, if I could.

8 JUDGE MILLS: Okay. Well, why don't we go
9 off the record and we'll mark them all at once just to
10 take care of them all at the same time.

11 Let's go off the record.

12 (EXHIBIT NOS. 7 THROUGH 10 WERE MARKED FOR
13 IDENTIFICATION BY THE COURT REPORTER.)

14 JUDGE MILLS: Let's go back on the record.

15 We're back on the record after having marked
16 Exhibits 7 through 10, all of which are documents that
17 have been filed with the FERC.

18 Please continue, Mr. Frey.

19 MR. FREY: Thank you, your Honor.

20 BY MR. FREY:

21 Q. Mr. Whiteley, do you have in your
22 possession what has been marked for purposes of
23 identification as Exhibit 7, the Alliance Company's
24 Order No. 2000 compliance filing dated January 16th,
25 2001, and it's filed in FERC Docket RT01-88-000?

1 A. I do.

2 MR. FREY: Your Honor, I would move to have
3 this document admitted into evidence at this time.

4 JUDGE MILLS: Exhibit 7 has been offered.

5 Are there any objections to its admission?

6 (No response.)

7 JUDGE MILLS: Hearing none, it will be
8 admitted.

9 (EXHIBIT NO. 7 WAS RECEIVED INTO EVIDENCE.)

10 BY MR. FREY:

11 Q. And, sir, do you have in your possession
12 what's been marked as Exhibit 8, which are the
13 comments of the Missouri Public Service Commission,
14 et al, filed March 30th with the FERC in Docket
15 No. ER01-123-000, et al?

16 A. I do.

17 Q. Could you turn, please, to page 2 of that
18 document?

19 Do you recognize that document, sir?

20 A. Yes. I've seen it before.

21 Q. Okay. Could you turn to page 2 of that
22 document, please?

23 A. Yes.

24 Q. Could you read, please, Footnote 1 at the
25 bottom of that page?

1 A. Footnote 1, "Consequently, the State
2 Commissions are not 'parties to the settlement' as
3 stated in the Commission's rehearing order of
4 March 26, 2001, in Docket No. ER01-123-001. Moreover,
5 with respect to the Commission's statement in that
6 same order that on March 21st, 2001 a formal
7 Stipulation and Agreement (Settlement) was filed with
8 the Commission that would resolve all of the issues in
9 this proceeding, the State Commissions respectfully
10 refer the Commission to Section 9.1 of the Settlement
11 Agreement which contains a more precise description of
12 those issues that were resolved in the above-captioned
13 proceedings."

14 Q. Thank you.

15 And on the next page, would you read the
16 footnote at the bottom of that page, as well, on
17 page 3?

18 A. Footnote 2 on page 3, "Several states chose
19 not to contest the settlement for another reason:
20 Their state statutes will require them to review and
21 approve or disapprove certain requests by their
22 jurisdictional utilities such as a request to recover
23 amounts paid to the MISO and to transfer control of
24 transmission assets to the Alliance. Also, one
25 utility, as part of obtaining State Commission

1 authorization to join the MISO, agreed to seek that
2 Commission's authorization to withdraw from the MISO.
3 By choosing not to contest this settlement, the State
4 Commissions should not be deemed to have prejudged
5 issues coming before them, and instead are reserving
6 judgments until such time as the matters come before
7 them in state proceedings."

8 MR. HENNEN: Thank you.

9 Your Honor, at this time I would move for
10 admission of Exhibit 8 into the record.

11 JUDGE MILLS: Exhibit 8 has been offered.

12 Are there any objections to the admission of
13 Exhibit 8?

14 (No response.)

15 JUDGE MILLS: Hearing none, it will be
16 admitted.

17 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

18 BY MR. FREY:

19 Q. And do you have before you, sir, what's
20 been marked as Exhibit 9, the August 31st, 2001
21 Alliance companies compliance filing transmittal
22 letter and Attachment F, Operating Protocol FERC
23 Docket No. RT01-88-006, et al?

24 A. I do.

25 MR. FREY: Okay. Your Honor, I would move

1 for admission of Exhibit 9 into the record.

2 JUDGE MILLS: Are there any objections to
3 the admission of Exhibit 9?

4 (No response.)

5 JUDGE MILLS: Hearing none, it is admitted.

6 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

7 MR. FREY: Thank you.

8 BY MR. FREY:

9 Q. And, finally, what's been marked as
10 Exhibit 10, the March 20th, 2001 Settlement Agreement
11 in FERC Docket No. RT01-88 and ER01-123, do you have
12 that before you, sir?

13 A. Yes, I do.

14 Q. Do you recognize that document?

15 A. Yes, I do.

16 MR. FREY: I would move for admission of
17 this exhibit, No. 10, into the record at this time, as
18 well, your Honor.

19 JUDGE MILLS: Exhibit 10 has been offered.

20 Are there any objections to its admission?

21 (No response.)

22 JUDGE MILLS: Hearing none, it will be
23 admitted.

24 (EXHIBIT NO. 10 WAS RECEIVED INTO EVIDENCE.)

25 MR. FREY: Thank you very much.

1 I have no further questions, your Honor.

2 JUDGE MILLS: Thank you.

3 MR. FREY: Thank you.

4 JUDGE MILLS: Public Counsel. Mr. Coffman?

5 MR. COFFMAN: Thank you.

6 CROSS-EXAMINATION BY MR. COFFMAN:

7 Q. I want to first clear up a couple of matters
8 that were kind of up in the air for me after listening
9 to Mr. Frey's cross-examination and your responses.

10 Mr. Whiteley, isn't it true that the Federal
11 Energy Regulatory Commission can hold either a
12 for-profit or a not-for-profit entity liable for
13 imprudent actions?

14 A. I believe they probably could, yes.

15 Q. Okay. I thought I heard, and please correct
16 me if I'm wrong, that in answer to a question from
17 Mr. Frey you stated that Ameren has not contemplated
18 transfer of transmission assets to the Alliance RTO?

19 A. I believe he was asking me about whether we
20 were contemplating that at the present time --

21 Q. Okay.

22 A. -- or had plans to look at that in the
23 future.

24 Q. Okay. You're not telling this Commission
25 that the idea hasn't been tossed around or analyzed as

1 to what it might mean financially or otherwise for the
2 Company if that were ever proposed?

3 A. I believe the way I answered the question is
4 that we continually analyze different aspects of our
5 business to make proper business decisions on a
6 going-forward basis. And, yes, we've looked at
7 different aspects of our transmission system in the
8 past, and we will probably do so in the future.

9 Q. So you have analyzed whether -- what the
10 impact might be if you were to transfer transmission
11 assets to the Alliance RTO?

12 A. Well, when you say "analyze," that might
13 imply a level of detail and rigor that we didn't go
14 to. In terms of consideration, yes, we've considered
15 it, but that's not something that we've decided to do
16 at the present time, nor do I believe we're precluded
17 from considering again in the future.

18 Q. So by "contemplation," you just meant it is
19 not a current proposal or current decision that you
20 decided to go forward with?

21 A. Correct.

22 Q. Okay. Thank you.

23 It's true that AmerenUE gave notice to the
24 Midwest ISO that it intended to withdraw, and that
25 notice was given on November 9 of 2000; is that

1 correct?

2 A. I believe that's correct.

3 Q. Okay. And AmerenUE requested FERC
4 permission to withdraw from the Midwest ISO on
5 January 16, 2001?

6 A. That's correct.

7 Q. Okay. Why didn't AmerenUE request
8 Commission -- permission from this Commission either
9 in November or in January?

10 A. Well, there's a couple of issues. You have
11 to consider the position that we were in in late 2000
12 in that the Midwest ISO did not look like it was a
13 viable entity for us going forward. There had been
14 two companies that had announced their withdrawals,
15 and for us to start a proceeding in Missouri, which
16 might take months, six months, nine months to resolve
17 timing-wise did not seem like it was something that we
18 could -- could tolerate, for one.

19 And, for two, the issue that we have
20 multiple jurisdictions, we have Illinois transmission
21 assets as well, and FERC approval is required for both
22 of those and seem to be the key link in any of the
23 approvals that we would be requiring. So it's a
24 matter of timing as to which approvals you ask for
25 first.

1 And in terms -- and in terms of our
2 situation, it seemed appropriate that we request
3 permission from the FERC first to see whether or not
4 both of our jurisdictions would be allowed to withdraw
5 from the Midwest ISO.

6 Q. Okay. Would it have been possible to seek
7 approval simultaneously at the federal and state
8 level?

9 A. No. It might have been. I don't know
10 whether you can -- you can do that or not. That's not
11 something that legally I would come up with the answer
12 to, but -- so I don't know if that's a possibility.

13 Q. Do you recall anyone from the Office of
14 Public Counsel contacting you around the January 2001
15 time frame asking when Ameren might be filing this
16 particular case requesting Missouri permission to
17 withdraw from the Midwest ISO?

18 A. I don't recall such a call.

19 Q. Or an e-mail?

20 A. Again, I don't recall an e-mail.

21 MR. COFFMAN: Permission to approach?

22 JUDGE MILLS: Yes.

23 BY MR. COFFMAN:

24 Q. I'm going to hand you a copy of an e-mail.
25 I'll ask you if that refreshes your recollection.

1 A. Yes, it's an e-mail from Ryan Kind to me
2 regarding such a filing, and I explain the status of
3 our FERC filing and that I would be sending him a copy
4 of that FERC filing. And I stated that Mr. Hennen was
5 working on our Missouri filing and that we expected to
6 file it within a week.

7 Q. And that was the Missouri Public Service
8 Commission case?

9 A. Working on the Missouri filing, yes, it
10 would be.

11 Q. Why did Ameren decide to delay that filing
12 from that January time frame to June 11 when it filed
13 the application initiating this case?

14 A. Very simply, the date on this e-mail is
15 January 23rd, and within two weeks, the FERC had
16 ordered a settlement conference that we were required
17 to participate in that potentially would moot any need
18 to file with the Missouri Commission, and being
19 dragged into the FERC settlement process seemed like
20 it would occupy our time that would better be spent in
21 that process rather than seeking a filing at Missouri
22 which may not ultimately be necessary.

23 Q. Is it your opinion that the settlement
24 agreement that resulted mooted this case?

25 A. Not with respect to the requirement from our

1 merger case.

2 Q. I'll get that (indicated).

3 A. Do you want this back?

4 Q. Sure.

5 Who is National Grid?

6 A. National Grid is an international owner and
7 operator of electric facilities. They own facilities
8 in the United Kingdom, England, as well as facilities
9 in the northeast part of the United States.

10 Q. And it's your proposal to the FERC that
11 National Grid be the managing partner of the Alliance
12 RTO?

13 A. Managing member, yes.

14 Q. Managing member.

15 And the Alliance RTO has certain practices
16 and protocols that have already been established or
17 approved; is that correct?

18 A. Well, there are -- there are some aspects of
19 the RTO filings that have been approved by FERC.
20 There are others that are pending --

21 Q. Okay.

22 A. -- such as the tariff, and there are other
23 issues that have not been resolved.

24 Q. Okay. Has the Alliance RTO entered into any
25 contract with National Grid, assuming that they are

1 permitted to become the managing member?

2 A. No, we've not executed a contract with
3 National Grid at the present time.

4 Q. Is there a letter of understanding and a
5 term sheet?

6 A. We have a letter of intent and a term sheet
7 with intent to develop definitive documents that would
8 be the contract that you refer to in the previous
9 question.

10 MR. COFFMAN: Okay. I have a document I
11 would like to mark.

12 JUDGE MILLS: Okay: We're up to No. 11.

13 (EXHIBIT NO. 11 WAS MARKED FOR
14 IDENTIFICATION.)

15 BY MR. COFFMAN:

16 Q. Mr. Whiteley, have I handed you a copy of
17 the term sheet we were mentioning?

18 A. I believe you have. The only question that
19 I have would be that it's somehow indicated that the
20 document you handed me only goes to page 17 of 35, and
21 I'm not sure what the remaining pages are, if this
22 constitutes the entire term sheet and those other
23 pages are something else.

24 Q. Okay. Would you be willing to accept that
25 these 17 pages at least comprise the first part, if

1 not all of the term sheet to which we're referring?

2 A. Yes.

3 Q. Let me ask you, if National Grid were
4 permitted to become the managing member of the
5 Alliance RTO, would it be able to re-examine or change
6 any of the practices or protocols that have already
7 been approved by FERC?

8 A. I believe they would have the right to file
9 with the Commission changes to any of the aspects of
10 RTO operation as the managing member of the Transco
11 but more importantly the operator of the Alliance RTO.

12 Q. Okay. Could I direct you to a line on this
13 term sheet, the second paragraph, the paragraph that
14 begins at the word "structure" there, and, if I could,
15 just ask you to read, I guess, the last sentence of
16 that second paragraph on the first page.

17 A. The last sentence of the first paragraph
18 under "structure" on the first page says, "Alliance
19 L.L.C. shall adhere to the protocols filed with FERC,
20 including a pricing protocol, operating protocol,
21 planning protocol and revenue distribution protocol."

22 Q. Okay. Could you identify for me, sir,
23 exactly what prot-- what are the protocols that have
24 been approved by FERC and are --

25 A. I don't know all of the ones in specific

1 that have already been approved by the Commission and
2 those that have not.

3 Q. Do you know if there is a pricing protocol
4 that's been approved?

5 A. I don't believe so because our tariff
6 proposal has just recently been filed, and I do not
7 believe FERC has acted on that yet.

8 Q. What about a revenue distribution protocol?

9 A. Again, I don't know the specific status of
10 FERC approval on the revenue distribution protocol.

11 Q. Okay. Okay. Just a second.

12 Can you tell me what protocols have been
13 filed at the FERC? Do you know that?

14 A. Actually, I do not know specifically the
15 entire list of protocols that have been filed.

16 MR. COFFMAN: I guess at this point I would
17 offer this exhibit, I guess Exhibit 11, into the
18 record.

19 JUDGE MILLS: Exhibit 11 has been offered.

20 Are there any objections?

21 (No response.)

22 JUDGE MILLS: Hearing none, it will be
23 admitted.

24 (EXHIBIT NO. 11 WAS RECEIVED INTO
25 EVIDENCE.)

1 BY MR. COFFMAN:

2 Q. I believe you answered this earlier, but if
3 I could ask you again, Mr. Whiteley, when exactly the
4 \$18 million exit fee was paid to the Midwest ISO?

5 A. Based on the previous document that was
6 presented to me, the date was May 15th, 2001.

7 Q. Okay.

8 A. I believe that timing is correct.

9 Q. Is it -- do you know if this fee is
10 refundable?

11 A. There are no conditions in the settlement
12 that -- other than -- there are conditions within the
13 settlement that would have nullified the settlement,
14 but we've not contemplated asking for a refund --

15 Q. Okay.

16 A. -- under any of those.

17 Q. Let me just ask, if this Commission, the
18 Missouri Public Service Commission, denies your
19 application in this case, how would AmerenUE revoke
20 its withdrawal from the Midwest ISO?

21 A. I don't frankly know at this point what
22 actions we might be forced to take if that is, indeed,
23 the result of this case. We've not considered, you
24 know, or come to a conclusion on what actions we would
25 take.

1 Q. Do you believe this Commission has the
2 authority to deny your application?

3 A. They certainly -- my understanding is they
4 have the authority to act as a case before them, yes.

5 Q. Do you believe that the withdrawal that --
6 or the steps that AmerenUE has taken to withdraw from
7 the Midwest ISO are reversible?

8 A. Not with respect to the settlement and the
9 time lines established within the settlement. I don't
10 think it's reversible in the near term.

11 Could at some point in time we file to
12 withdraw from the Alliance and rejoin or join the
13 Midwest ISO at some future date? I guess that's a
14 possibility, but not in the immediate sense.

15 Q. Okay. I mean, you didn't take an
16 irreversible step before asking this Commission for
17 approval, did you?

18 A. Well, we asked for the FERC's approval to
19 withdraw from the Midwest ISO, as I explained earlier.
20 That triggered or was part of a trigger of the
21 settlement which we were involved with, a party to,
22 and agreed with. That settlement called for our
23 withdrawal from the Midwest ISO with an exit fee
24 payment.

25 We're now before the Missouri Commission

1 with the same request.

2 Q. Okay. Let me change subjects for a second.

3 Who do -- who has the Alliance RTO
4 identified as who its security coordinator would be on
5 "Day 1"?

6 A. The Alliance RTO would be a security
7 coordinator for the Alliance region. They would be
8 their own security coordinator.

9 Q. Would the Alliance RTO be contracting to
10 anyone for those services?

11 A. They might. They have not entered into
12 contract for security coordination services, to my
13 knowledge.

14 Q. Okay. So are there no plans at this time to
15 contract with anyone else to provide those services,
16 or is that decision not --

17 A. My understanding of the present status of
18 the security coordination issue is that the Alliance
19 is going to perform its own security coordination and
20 not contract that service to another body.

21 Now, they may purchase or lease facilities
22 that they use in that effort, but they are going to
23 provide their own security coordination and not buy
24 that service from someone.

25 Q. Okay. There has been some mention about a

1 stakeholder discontent with regard to the Alliance
2 RTO. Are you aware of any stakeholders who have
3 requested FERC mediation with the Alliance RTO?

4 A. Yes. In fact, for the past several weeks,
5 it's probably bordering on several months, the FERC
6 mediation service has been actively involved with the
7 Alliance and a number of stakeholders on the
8 stakeholder process for the Alliance.

9 Q. Well, has this months long process borne any
10 fruit at all?

11 A. At the present time there is still
12 discussions on finalizing the stakeholder process.

13 Q. Can you tell me about the market development
14 advisory group, or MDAG?

15 A. I haven't been actively involved in that
16 group. My understandings are pretty much superficial
17 of what that group has been doing and the actions
18 they've been taking. I'm not actively involved
19 myself.

20 Q. Was this an entity set up by the Alliance
21 RTO?

22 A. The Alliance started an advisory group to
23 work on market issues and start to seek input from
24 stakeholders on market issues. That was the original
25 intent of starting the group up. But, again, I

1 haven't been actively involved in following what
2 they're doing.

3 Q. Do you ever -- have you ever attended a
4 meeting of this group?

5 A. Of the market develop-- no, I have not.

6 Q. All right. Are you aware of a resolution
7 that it -- that it approved at a meeting on
8 September 26, 2001?

9 A. Not directly.

10 Q. Okay. Can you tell me if the Alliance RTO
11 or the Alliance companies are opposed to pursuing a
12 single market design for long-term congestion
13 management?

14 A. I can't presume to speak for the other
15 Alliance companies. Ameren certainly is not objecting
16 to the pursuit of a single market design.

17 Q. Okay.

18 A. It doesn't mean that we'll agree to any
19 single market design, but we don't object to the
20 pursuit of a single market design.

21 Q. Okay. Does the issue of long-term
22 congestion management need to be resolved before the
23 Alliance RTO starts up?

24 A. Actually, the Alliance RTO is -- until we
25 have an independent board that's directing the

1 Alliance RTO, we're prohibited from making market
2 design decisions such as long-term congestion
3 management. While we can seek input and try and
4 develop options, the decision by order of the FERC has
5 been held until an independent entity is managing the
6 RTO.

7 Q. Okay. I'm going to ask you about another
8 one of these entities, and tell me if you have been
9 involved with it. And this entity is BridgeCo,
10 B-r-i-d-g-e-C-o.

11 A. Right. Yes.

12 Q. Can you tell me what that is?

13 A. BridgeCo is an entity that the Alliance
14 companies created to start the development process of
15 computer systems and software necessary for RTO
16 operations.

17 Recognizing the very short time frame that
18 the Alliance has between the end of the FERC
19 settlement in early May and the December 15th goal of
20 initial operations, pretty much an incredible
21 seven-month time span to try and bring an RTO in
22 operations, we knew -- "we," the Alliance companies,
23 knew that we needed to immediately start developing
24 those computer systems. And so the sole purpose of
25 the BridgeCo is to initiate the process with the

1 intent of turning that over to the Alliance RTO for
2 operations.

3 Q. Are you a member of this BridgeCo or on the
4 managing committee of this entity?

5 A. Ameren is a member of the BridgeCo, and I am
6 Ameren's representative to the BridgeCo.

7 Q. Does this BridgeCo have weekly meetings?

8 A. No. There are no actual BridgeCo meetings,
9 per se. When the Alliance companies meet to talk
10 about a host of issues, we do cover BridgeCo issues.
11 Those meetings are approximately every other week.

12 MR. COFFMAN: Okay. Permission to mark an
13 exhibit, a document?

14 JUDGE MILLS: Sure. We are up to No. 12.

15 (EXHIBIT NO. 12 WAS MARKED FOR
16 IDENTIFICATION.)

17 BY MR. COFFMAN:

18 Q. Can I ask you to identify the document I've
19 handed you, Mr. Whiteley?

20 A. Yes. The document that you've handed me is
21 my response to an Office of Public Counsel Data
22 Request No. 544, including the written response and
23 attachments.

24 Q. Okay. And does the response contain what's
25 called, I guess, BridgeCo management briefings for

1 three different briefings?

2 A. Yes. There are short, two-page documents
3 titled BridgeCo Management Briefings, three of which
4 are attached. Those are the three that I could find
5 in any of my files and attempt to be responsive to the
6 data request.

7 Q. Is this a document you prepared?

8 A. No. The BridgeCo Management Briefing is
9 prepared by the BridgeCo staff.

10 Q. Okay. And I assume that it's then supplied
11 to the Alliance company members?

12 A. It's supplied to the BridgeCo members.

13 Q. So this is something you receive on a
14 frequent basis?

15 A. Yeah. About every two weeks is when they
16 come out. And, again, it's typically in advance or at
17 our biweekly Alliance management committee meetings,
18 simply as a mechanism to provide an update on the
19 BridgeCo activities.

20 Q. I note that your response to this Public
21 Counsel data request does not, I guess, agree to
22 provide this information on a continued basis, but
23 would you be willing to supply this information to
24 Public Counsel for the next -- I guess through the end
25 of the year, further briefings that you receive?

1 A. Unless there is something that has to be
2 held confidential within the BridgeCo activities, and
3 I can't think of any of that -- those situations right
4 now, I wouldn't object to providing it to the Office
5 of Public Counsel.

6 Q. Thank you.

7 Let me just refer you to a couple of things.

8 Turn to the page 2, which is the BridgeCo
9 Management Briefing, October 3. And if you would,
10 read the first sentence under the paragraph entitled
11 "Operations Trials Difficulties."

12 A. Yes. The first sentence states, There have
13 been additional slippage -- "There has been additional
14 slippage caused by difficulty in loading available
15 flowgate capacity (AFC) information into OASIS."

16 Q. And this paragraph goes further on, I guess,
17 to talk about how this slippage has put the -- put
18 operations, I guess, behind schedule.

19 Do you believe that this slippage could
20 endanger meeting the December 15 deadline that the
21 Alliance RTO is hoping to meet for start-up?

22 A. Yes, it's possible we're going to miss the
23 December 15 date. We keep that goal -- and I think
24 the point of this report is that we keep that goal in
25 front of us for initial operations, but rather than

1 start operations poorly, we want to make sure we do it
2 right.

3 So while that's our goal, we are having
4 difficulty keeping up with the very aggressive
5 schedule that's been set, and there is a possibility
6 we'll miss the 15th of December.

7 Q. Okay. And does the last sentence of that
8 paragraph note that the market participant entry date
9 is one month behind schedule?

10 A. That's what it indicates, yeah, uh-huh,
11 approximately a month behind the original date, which
12 was October 15th.

13 MR. COFFMAN: Okay. That's all I have on
14 this document.

15 I would offer this into the record, please.

16 JUDGE MILLS: Is there any objections to the
17 admission of Exhibit 12?

18 (No response.)

19 JUDGE MILLS: Hearing none, it will be
20 admitted.

21 (EXHIBIT NO. 12 WAS RECEIVED INTO
22 EVIDENCE.)

23 BY MR. COFFMAN:

24 Q. Okay. Can you tell me, Mr. Whiteley, if the
25 Alliance RTO currently has facilities to do security

1 coordination on "Day 1"?

2 A. The security coordination issue is still
3 evolving. I stated earlier that we don't have a
4 contract to purchase that service. We're in the
5 process of trying to acquire the software and computer
6 systems that are necessary for ARTO employees to
7 actually run to perform the security coordination
8 services.

9 So in terms of our status, we're working on
10 developing and -- either purchasing or developing the
11 systems that we need to perform security coordination.

12 Q. But, currently, they are not in place; is
13 that what I understand you to be saying?

14 A. Currently, they are not in place, right. We
15 have not finalized exactly how the systems are going
16 to function. That's correct.

17 Q. Okay. And with regard to my previous
18 question about a single market design, for clarity,
19 you understood I was referring to a single market for
20 the Midwest ISO and the Alliance RTO region?

21 A. In terms of market design, yes.

22 Q. All right. You stated earlier that the
23 Alliance RTO was prevented from making market design
24 decisions at this time. Do you believe that the
25 Alliance RTO has or is in the process of deciding how

1 to provide balancing services on "Day 1"?

2 A. I believe any situations that -- or issues
3 that may be considered market design decisions, we're
4 making every attempt to maintain as much optionality
5 as possible and not make final decisions.

6 As far as imbalance on "Day 1," I don't know
7 if that -- if we've come to closure that there is only
8 one way we can possibly provide that "Day 1."

9 Q. Do you believe it's appropriate to have
10 Alliance RTO -- well, first of all, could you define
11 for me "optionality"?

12 A. Yeah. When there are two or three
13 techniques or systems that are available or ways of
14 doing things that -- part of the market development
15 working group, advisory working group was to, you
16 know, come up with what those ideas, those different
17 approaches might be, and to the extent that any of the
18 systems that are necessary to carry those functions
19 out require work now to meet an in-service date at the
20 end of the year, we've attempted to keep the options
21 open.

22 If there were two or three approaches that
23 were suggested or that were possible, we've not
24 finalized and only picked one of those. So that's
25 what I mean by optionality, that if -- if it is

1 necessary you could pick one of several options.

2 Q. Is there anything set in stone at this point
3 that could not be changed?

4 A. I don't think there is anything that is set
5 in stone that you cannot change. Whether or not at
6 this point in time since we're in early October and
7 we're talking about start-up operations -- December
8 15th is the goal -- toward the end of year or early
9 next, the time frame is very short. Whether or not
10 you could change it for actual "Day 1" operations, I
11 don't know. But you can always change the systems.

12 Q. What's to give an approving regulatory body
13 certainty about what they are approving?

14 A. Well, I -- I think the point here is that
15 the ARTO is not going to function until FERC has
16 approved it as an RTO, which means it's going to have
17 to meet all of the characteristics and requirements of
18 an RTO. And until that time, the Alliance RTO won't
19 function as an RTO.

20 So I guess the point would be that if there
21 are questions about what the Alliance has developed or
22 has submitted or filed, it's either going to get
23 approved or changed by FERC, meeting the same
24 standards that FERC would hold all of the RTOs to.

25 Q. And would you agree that the Missouri Public

1 Service Commission would also have to, at a minimum,
2 believe that the proposal was not detrimental to the
3 public interest before, I guess, Ameren could go
4 forward with the other Alliance companies?

5 A. I guess if you're asking do I believe it's
6 not detrimental to the public interest, I would say,
7 yes, it's not detrimental to the public interest.

8 Q. My question was whether this Commission has
9 the authority to grant approval or deny approval?

10 MR. HENNEN: Your Honor, we object.

11 That's asking for a legal opinion.

12 JUDGE MILLS: Well, this witness is not a
13 lawyer. He cannot give a legal opinion. He can give
14 his opinion, and the record will clearly reflect what
15 he is giving is not his opinion as a lawyer but as the
16 primary policy witness for Union Electric in this
17 case.

18 So the objection is overruled.

19 THE WITNESS: Given that I am not an
20 attorney, my opinion is that the Commission has the
21 right to act in whatever manner they see fit in this
22 case.

23 BY MR. COFFMAN:

24 Q. Okay. I have, I guess, just one more
25 clean-up question.

1 With regard to the MDAG I was referring to
2 earlier, the market design advisory group, are they
3 still providing input to the Alliance RTO on "Day 1"
4 imbalancing services?

5 A. I'm not sure of the present status of that
6 working group. I understand that at a recent meeting
7 they agreed to either disband or suspend their
8 meetings at the present time. And, presently, we're
9 trying to work with the Midwest ISO to figure out if
10 there is a way that we can accommodate a joint process
11 for looking at issues like imbalance and congestion
12 management.

13 Q. Is it your understanding that that issue
14 drove the market development advisory group to
15 disband?

16 A. I don't know why they took the action that
17 they did.

18 MR. COFFMAN: Okay. That's all I have.

19 Thank you.

20 JUDGE MILLS: Thank you.

21 The Municipal Electric Utilities Commission?

22 MR. KINCHELOE: No questions.

23 JUDGE MILLS: Missouri Industrial Energy
24 Consumers?

25 MS. VUYLSTEKE: Thank you.

1 CROSS-EXAMINATION BY MS. VUYLSTEKE:

2 Q. Good morning, Mr. Whiteley.

3 A. Good morning.

4 Q. Did the FERC or any other regulatory body
5 require Ameren to withdraw from the MISO?

6 A. FERC did not require us to withdraw. We
7 initiated a request to withdraw with the FERC, and
8 that request was approved as part of the settlement.

9 Q. Okay. In announcing to the MISO your
10 intentions to withdraw from it, did Ameren indicate
11 that its withdrawal was contingent from getting
12 approval from the Missouri PSC?

13 A. I don't believe our filing with the FERC had
14 any contingencies in it. We were simply asking for
15 the FERC's approval of that withdrawal.

16 Q. So you didn't mention the Missouri Public
17 Service Commission approval in that request to FERC?

18 A. I don't recall that in our request we
19 specifically culled that out as a separate item.

20 Q. Is it correct that Ameren only contributed
21 \$18 million out of total contribution of \$60 million
22 made by the departing members of the MISO?

23 A. That's correct. The three departing
24 companies contributed 60 million total, 18 of which
25 was from Ameren.

1 Q. If Ameren had remained in the MISO, would
2 its contribution to the MISO start-up costs have been
3 approximately equal to or less than the \$18 million
4 amount?

5 A. The MISO start-up costs were being handled
6 in a different mechanism. Our direct contribution was
7 to pay for essentially our portion of the development
8 costs to date, as well as a large enough sum to assure
9 financial viability of the Midwest ISO going forward.

10 You have to recognize that the Midwest ISO
11 was essentially borrowing money to get to operations.
12 They had borrowed \$100,000,000 already to start the
13 operation, to build a building, buy computer systems,
14 hire staff, and they needed at least another
15 60 million to get to operations. So if we had
16 remained -- and this is speculative -- within the
17 Midwest ISO, there is no direct payment we would have
18 made because they were essentially borrowing money to
19 fund their start-up operations.

20 Q. Okay. I'm sorry. I didn't catch the answer
21 to the question in your response.

22 A. Okay.

23 Q. If you had remained in the MISO, would your
24 contribution to the MISO start-up cost have been less
25 than the 18 million which you ended up paying, or

1 would it have been approximately equal to that amount,
2 or less than that amount?

3 A. Well, again, there is -- there is no direct
4 answer to your question because we would not have a
5 direct contribution to the Midwest ISO start-up costs.
6 They were borrowing money rather than getting it from
7 the member companies to start their operations.

8 The repayment of those loans would be
9 through the administrative fee on transmission service
10 going forward. So there is no direct payments.

11 Q. Okay. If Ameren had stayed within the MISO,
12 and the MISO received \$42 million from the departing
13 members, would the MISO have likely stayed financially
14 sound?

15 A. I don't know, but I believe that it would
16 not. At the time of the settlement, the numbers that
17 the Midwest ISO presented to us, which was that they
18 had \$100,000,000 of borrowing power, and they needed
19 roughly \$150 to \$160 million to reach start-up, the
20 additional 42 million would not have been enough.

21 Q. Is it correct that it is more likely that an
22 RTO that is attractive to transmission owners would be
23 more likely to attract and retain transmission owning
24 members?

25 A. Could you restate the question, please?

1 Q. Sure. Is it correct that it's more likely
2 that an RTO that is attractive to transmission owners
3 would be more likely to attract and retain
4 transmission owning members?

5 A. I think that logic would follow, yes.

6 Q. Okay. Is it correct that from Ameren's
7 perspective, the ARTO became more attractive than the
8 MISO?

9 A. Absolutely.

10 Q. Is it correct that when there is more than
11 one RTO available in a region, transmission owners
12 have a choice of which one they propose to participate
13 within?

14 A. I believe FERC's initial orders indicated
15 that RTO membership -- that not -- not that you be a
16 member of an RTO, but which RTO you're member of is
17 voluntary.

18 Q. Is it correct that in a region with two
19 RTOs, the one that is best able to attract and retain
20 members is the one most likely to survive in the
21 long-run?

22 A. That's probably true. The logic would
23 follow.

24 Q. Would you agree that an RTO that
25 accommodates the needs of transmission owners would

1 likely be more attractive to transmission owners than
2 one that does not?

3 A. Yes.

4 Q. Would you agree that most transmission
5 owners in the midwest region are still vertically
6 integrated?

7 A. Most of the owners in the midwest are still
8 vertically integrated, that's true.

9 Q. Would you agree that the needs of
10 transmission owners and transmission customers are not
11 always aligned?

12 A. Not always aligned? Absolutely. No, they
13 are not always aligned in every instance. I think
14 generally they are aligned, but not always.

15 Q. Would you agree that the needs of
16 transmission owners may run contrary to the needs of
17 transmission customers?

18 A. I think there I would start to disagree
19 because I think the needs of both entities do align
20 for many instances. So in terms of needs, I think
21 there is more alignment than not.

22 Q. But there is -- it's possible that they
23 would run contrary, that the needs of transmission
24 owners could run contrary to customers?

25 A. Because not in every case are they aligned.

1 I would agree with that.

2 Q. Would you agree that an RTO that is
3 concerned with retaining transmission owners must
4 weigh the needs of transmission owners against those
5 of transmission customers?

6 A. If there is a concern about retaining
7 ownership -- or, excuse me, membership, I would say
8 that's true. All of this has to be put in the context
9 that any change from one RTO to another is going to
10 require FERC approval, and that approval is not
11 guaranteed simply because an entity wants to move from
12 one RTO to another with no reason.

13 So in that context, I think the answer to
14 your question is yes.

15 Q. Okay. I'm going to ask you the converse of
16 that then.

17 Would you agree that an RTO that does not
18 have to be concerned with retaining transmission
19 owners does not need to weigh the concerns of
20 transmission owners against those of transmission
21 customers?

22 A. Well, yeah. If you don't have to worry
23 about your membership ever departing, then you don't
24 have to care what they think.

25 Q. Okay. Is it correct that Alliance member

1 Virginia Power has still not executed the letter of
2 intent to National Grid Company?

3 A. That's my understanding. They still have
4 not executed that letter. That's true.

5 Q. Is it correct that Virginia Power has
6 expressed concerns with National Grid Company's
7 independence?

8 A. I believe they have expressed those
9 concerns, yes.

10 Q. Is it correct that International
11 Transmission Company has proposed to leave the ARTO
12 and join the MISO in part because of concerns related
13 to the National Grid Company's independence?

14 A. I believe that reflects their filings and
15 press releases, yes.

16 Q. Have the final contract documents between
17 the Alliance companies and the National Grid Company
18 been finalized and executed?

19 A. No, they've not been finalized nor executed.

20 Q. Okay. Now, on "Day 1" of RTO operations, is
21 the RTO considering using three separate security
22 centers?

23 A. Yes, it is.

24 Q. Are these three the MAIN, MECS, and the ECAR
25 security coordinators currently associated with AEP?

1 A. The three satellite offices would be the
2 three -- that's what's under consideration, would be
3 the three that you've described.

4 As I mentioned earlier in response to one of
5 the other questions, that isn't finalized. That's the
6 concept at this point going forward.

7 MS. VUYLSTEKE: I have no further questions.

8 Thank you.

9 JUDGE MILLS: Thank you.

10 Missouri Energy Group?

11 MS. LANGENECKERT: No questions of this
12 witness.

13 JUDGE MILLS: Let's do questions from the
14 Bench.

15 Commissioner Murray?

16 COMMISSIONER MURRAY: Thank you.

17 QUESTIONS BY COMMISSIONER MURRAY:

18 Q. Good morning.

19 A. Good morning.

20 Q. I have a few questions for you,
21 Mr. Whiteley.

22 Would you please explain how you think that
23 UE's retention of transmission revenues from the ARTO
24 rates would benefit Missouri customers?

25 A. Yes. Basically, I believe that it benefits

1 Missouri customers because those revenues that come in
2 from third parties, from other companies, are
3 presented as part of our revenue stream. And in --
4 just about any way you look at rates, whether it's in
5 an alternative regulation plan, a traditional rate
6 case, those revenues go to offset Ameren's expenses
7 which eventually have to be covered by retail
8 customers.

9 So, essentially, the income, if you will,
10 from the sale of transmission service to third parties
11 goes to offset the costs that retail customers would
12 otherwise bear.

13 Q. Okay. Some of the arguments in opposition
14 to your application are that adverse rate effects can
15 result to Missouri ratepayers.

16 In your opinion -- and I'm sure you don't
17 agree with that, but, in your opinion, what would be
18 some of the potential adverse rate impacts?

19 A. Well, I guess you're correct. I don't agree
20 with it because I don't understand how there can be an
21 adverse rate effect from having outside companies
22 essentially provide money that offsets the expenses
23 that retail customers ultimately pay. I don't see how
24 there is a detrimental down side in that. So I have a
25 hard time explaining their position of what those

1 detrimental effects might be.

2 Q. In your Direct Testimony on page 18 you
3 reference the market monitoring plan and said that it
4 would be finalized in October, or was supposed to be.

5 Is that finalized yet?

6 A. Yeah. Yes, I believe it has been finalized
7 from the standpoint that the market monitor, which
8 market monitoring is one of the functions of an RTO,
9 the market monitor has been chosen.

10 I may have misspoke here. The plan itself I
11 don't believe is finalized. I know there has been
12 active discussion within the group led by the market
13 monitor, Potamic Economics, to actually develop that
14 plan. I don't know if it's actually been finalized,
15 but I know it's under active development.

16 But we do -- we have chosen a market monitor
17 that's the same market monitor for the Midwest ISO and
18 for the Southwest Power Pool.

19 Q. Okay. And that had been chosen at the time
20 you filed your Direct Testimony; is that correct?

21 A. Yes. The market monitor had been chosen at
22 that point. In fact, I believe the timing was that
23 that was a rather recent occurrence, and they had not
24 even really started the development of the plan at
25 that point, the October date being sort of an

1 estimated time for them to develop the plan.

2 Q. Is it your opinion that that is still fairly
3 much on schedule?

4 A. I believe the market monitoring plan is
5 reasonably on track.

6 Q. One of the conditions that was proposed by
7 MIEC is that UE agree to abide by the terms and
8 conditions of the Stipulation and Agreement in Case
9 No. EO-98-413 as if the ARTO were the MISO, and it's
10 my understanding that UE opposes this condition
11 because many of the conditions in the Stipulation and
12 Agreement wouldn't be relevant to UE's participation
13 in the ARTO.

14 Which of those conditions would not be
15 relevant?

16 A. The conditions within the original
17 Stipulation Agreement?

18 Q. Yes.

19 A. Honestly, I would have to go back and review
20 what those conditions are. I don't have them right on
21 the tip of my tongue.

22 Q. Okay. As far as entities that had not
23 joined the MISO or the ARTO by February 28th, 2001,
24 will the rate design and the IRCA apply to those
25 entities?

1 A. The rate design as filed would not. The
2 Inter-RTO Cooperation Agreement benefits any of the
3 systems that are covered within either of the RTOs
4 because the Inter-RTO Cooperation Agreement basically
5 outlines the manner in which the two RTOs work
6 together to form a seamless market across the entire
7 region, so from that standpoint, all of the systems
8 within either RTO benefit from the IRCA.

9 The specifics about the rate design came out
10 of or were borne of the Settlement Agreement which
11 basically said that the parties in the settlement
12 would agree that if you are in one or the other of the
13 RTOs at a given date, and that is the end of the
14 settlement process, then that Super-Regional rate, as
15 we call it, would apply to them.

16 FERC may or may not change that particular
17 provision, but that was the -- was borne of the
18 settlement, that particular provision.

19 Q. So is it accurate to say that pancaking of
20 rates is still possible for concerned entities?

21 A. Well, there will always be pancaking of
22 rates if you go far enough across the grid. Even if
23 there are only four large RTOs, the simple fact, if
24 you move from one RTO to another, you're going to pay
25 some form of a pancake.

1 The idea, concept, really is that you get
2 the region big enough so that there is enough
3 generation on a level playing field so that that
4 generation is all competitive with one another. And
5 when you look at the Super-Region as defined by the
6 MISO and the Alliance, you're looking at almost
7 200,000 megawatts of generation and end use load
8 that's served by that generation.

9 That's a very large region that would
10 comprise a very large number of generators and,
11 essentially, accomplish the goal of a competitive
12 generation market because the area is so big, as the
13 Super-Region is defined.

14 Q. If your application here were denied and you
15 were to remain in the MISO, would the Super-Regional
16 transmission rates still apply to AmerenUE then?

17 A. I don't know. The settlement which
18 established the Super-Regional rate also approved or
19 specified that we would be Alliance members, so what
20 would happen in a case that we at a later date chose
21 to or were forced to in some manner return to the
22 Midwest ISO, I think the rate picture is completely
23 unclear as to what the rates would be. I have no
24 basis to make a judgment on that.

25 COMMISSIONER MURRAY: I believe that's all I

1 have.

2 Thank you.

3 THE WITNESS: Thank you.

4 JUDGE MILLS: Commissioner Gaw?

5 COMMISSIONER GAW: Thank you, Judge.

6 QUESTIONS BY COMMISSIONER GAW:

7 Q. Good morning.

8 A. Good morning.

9 Q. If you -- maybe you've done this in some of
10 your filings. Can you give me a description of the
11 difference in the boundaries in Missouri of the
12 Midwest ISO as compared to the ARTO?

13 A. Yes. Actually, the Alliance RTO boundary is
14 reasonably easy, Ameren being the only participant in
15 the Alliance RTO, and so our service territory
16 boundaries would basically dictate the Alliance
17 boundaries.

18 Within Missouri the other electric systems
19 comprise both MISO, Southwest Power Pool, and also
20 non-jurisdictional entities, the co-op, Associated
21 Electric Co-op, in particular.

22 With the recent orders from FERC and
23 discussions that I understand are underway between the
24 Southwest Power Pool and the Midwest ISO, as well as
25 the announcements by some utilities to join the

1 Midwest ISO outright, I think what we'll end up with
2 is essentially the Alliance boundary would be Ameren;
3 the rest of the state other than the co-ops would be
4 Midwest ISO, and, of course, the co-ops may not be in
5 either of those two RTOs.

6 So the only boundary or seam, if you will,
7 between jurisdictional entities would be between
8 Midwest ISO and the Alliance. That's why the IRCA, or
9 the Inter-Regional Cooperation Agreement is so
10 important, because it essentially erases the seam
11 between those two RTOs in terms of electric market
12 functioning.

13 Q. And, again, what is the status of that?

14 A. The IRCA has a number of different
15 components that were outlined as part of the
16 settlement. Many of those have been filed -- many of
17 the results of those components have been filed with
18 FERC; some are under development, and, obviously, the
19 FERC looks to the IRCA to make the Super-Regional --
20 the Super-Region work, and it's my opinion that the
21 Alliance RTO won't be approved unless the IRCA is
22 functioning properly.

23 Q. It would be true, would it not, that if you
24 continued to be a member of MISO, then, that there
25 wouldn't be any seam in Missouri other than dealing

1 with Associated -- or the co-ops, rather?

2 A. If we were to be in the Midwest ISO, then
3 the ultimate end would be that all systems would be in
4 the Midwest ISO except for the co-op, and that seam
5 has existed for years. Again, that's why the
6 functioning of the IRCA is important because it erases
7 the seam between the Alliance and the MISO, so it
8 doesn't matter whether, quote, one entity is in the
9 MISO or the Alliance. The electricity market is going
10 to view that as one entity.

11 Q. But that's not completed yet?

12 A. Well, the IRCA is a -- it's really an
13 ongoing process. I mean, it's not only a series of
14 checkpoints, things that need to be done, but it also
15 calls for ongoing cooperation as the two RTOs enter
16 operation and go forward. Not all of the items within
17 the IRCA are finished. That's true.

18 Basically, starting in June with a six-month
19 time window to accomplish an awful lot of coordination
20 between two very large entities, it's just not all
21 done yet. I think we're on a very good track to have
22 the IRCA ready. And, again, if the terms, conditions,
23 intent of the IRCA are not met, I don't think the
24 Alliance is going to get approval from FERC. That's
25 my opinion.

1 Q. If you were a part of the Midwest ISO, you
2 would need no further approval in order for us to have
3 a seamless, Missouri; is that correct?

4 A. Well, at this point in time, if we were
5 still members of the Midwest ISO, and all of the other
6 things that occurred absent our leaving for the
7 Alliance had occurred, which I believe is totally
8 unlikely, then, the answer to your question would be
9 correct.

10 Q. Okay.

11 A. That assumes that an awful lot of other
12 things that happen would still happen even though we
13 didn't have the settlement; we didn't have the
14 realignment of systems within the different RTOs. I
15 think that's highly unlikely, though.

16 Q. Is it -- I'm -- I want you to help me to
17 understand Ameren's timing on its request to this
18 Commission.

19 The settlement that was approved by FERC was
20 done in January of this year; is that correct?

21 A. The settlement proceedings started from the
22 beginning of February, and I'm not sure of the exact
23 date. It was early, the 2nd, 3rd, something like that
24 of February, and the actual settlement discussions
25 continued through the end of February, and that's --

1 Q. When was it actually signed off on?

2 A. But then -- well, the parties signed the
3 settlement agreement at the end of February. However,
4 the FERC did not approve the settlement until May 8th.
5 So there was a time space in there when approval from
6 the Commission -- the FERC was pending, and, in fact,
7 their approval had a few changes to the settlement
8 which had to be reverified by the parties to the
9 settlement, which took an additional time space. And,
10 basically, the final approval wasn't until May 8th,
11 and then our payment as part of that settlement was
12 shortly thereafter.

13 Q. On May the 15th?

14 A. May the 15th.

15 Q. And was -- was Ameren aware during the time
16 it was involved in those settlement discussions of the
17 need to bring this issue in front of the Missouri
18 Public Service Commission?

19 A. Yes, I believe we -- we knew that that was
20 something we had to do. Again, the sequencing of
21 events unfolded such that the FERC action threw us
22 into a question whether or not we would receive FERC
23 settlement immediately, sort of putting on hold even
24 contemplation of a request to Missouri.

25 Q. And that request was filed on June the 11th

1 of this year; is that correct?

2 A. I believe that date is correct, yes.

3 Q. But it was earlier than that on May 15th
4 that you had already paid the \$18 million?

5 A. Yes. That was a requirement as part of the
6 settlement. We had signed the settlement believing
7 that -- as a party, believing that was in the best
8 interest of our company and our customers, and it
9 achieved our requirement to receive FERC approval to
10 make the move from the Midwest ISO to the Alliance.
11 The settlement as a package deal required that
12 payment, so as part of our signing onto the
13 settlement, we had to make that payment.

14 That time line was fixed as part of the
15 settlement. We could not hold our payment and say,
16 Well, wait a minute. We still need to go ask
17 Missouri. The timing was -- and the manner in which
18 payment was made was very well detailed in the
19 settlement, so we had no choice there.

20 Q. But you did know that you had to come in
21 front of this Commission at that point in time when
22 you were entering into those discussions and at the
23 time when you signed off on that agreement?

24 A. That's correct.

25 Q. And agreed to pay on May the 15th before you

1 had ever even asked permission to have this reviewed
2 in front of -- in front of the Missouri Public Service
3 Commission?

4 A. That's correct. The timing was such that
5 we -- the settlement process is a process of give and
6 take. I would have preferred to have been able to
7 say, Wait a minute. I have other Commission
8 approvals. I'll give you my \$18 million when we
9 receive those approvals, and then come to this
10 Commission and ask for that permission. But,
11 unfortunately, the black box nature of a settlement
12 like that requires you to give as well as to take.

13 Q. It also requires you, does it not,
14 Mr. Whiteley, to disclose the fact that you have other
15 Commissions involved that have to approve something
16 that you are doing before you have full authority to
17 execute that settlement. But you didn't do that in
18 this agreement, as I understand it.

19 You didn't even have any condition in this
20 Settlement Agreement that said that this is
21 conditioned upon approval of the Missouri Public
22 Service Commission; is that correct?

23 A. That's correct. It's not part of the
24 settlement.

25 Q. Mr. Whiteley, have you ever heard of the

1 expression that it's better to apologize for something
2 after the fact than ask permission and have somebody
3 say no?

4 A. Yes, I've heard that.

5 Q. Is that what Ameren has done in this case
6 with the Missouri Public Service Commission?

7 A. No, absolutely not. Absolutely not.

8 COMMISSIONER GAW: That's all of the
9 questions I have.

10 JUDGE MILLS: Commissioner Lumpe?

11 QUESTIONS BY COMMISSIONER LUMPE:

12 Q. Mr. Whiteley, Commissioner Gaw has just sort
13 of gone through some of my concerns there.

14 And I guess my -- what I wondered was, when
15 you knew that you were going to attempt to leave the
16 MISO and go to the ARTO, would that not have been a
17 more appropriate time then to start the case here of
18 asking for permission?

19 A. Well, when I -- I believe when you look at
20 the timing of what was going on in late 2000 when we
21 were considering options, trying to figure out what
22 would be in the Company's best interests, our
23 customers' best interests going forward, the way
24 things unfolded happened rather rapidly toward the end
25 of the year.

1 And when we finally made the decision that
2 we wanted to withdraw from the Midwest ISO, filed that
3 or sent them notice that we would withdraw, the issues
4 before us very quickly were that the Midwest ISO was
5 not going to survive very long. We had a question
6 about which jurisdiction to ask questions from first,
7 and very quickly the FERC threw us into a settlement
8 process.

9 Q. But knowing, as you were saying, that the
10 MISO in the midwest might not survive, would that not
11 have been an appropriate time, then, to say, We need
12 to look elsewhere, and ask for permission at that
13 point?

14 A. Well, again, the timing when you're looking
15 at six months or more for the entire case to unfold
16 and have a question that -- pending before this
17 Commission when you also need to seek other approvals,
18 namely from FERC because of our other jurisdictions in
19 Illinois, the timing became one where we had to make a
20 choice as to how you approach getting permission, and
21 it seemed appropriate at the time because of the other
22 companies' withdrawal and the pending financial crisis
23 within the Midwest ISO to try and seek resolution of
24 the FERC issues first before filing with this
25 Commission.

1 I suppose if we had filed in early January
2 with this Commission and also with the FERC, there
3 would be some question as to who's going to act first
4 and timing would be an issue, and so our choice was to
5 get the -- or seek and hopefully obtain, which we did,
6 the FERC approval before coming to the Missouri
7 Commission, not as a matter of trying to slight the
8 Missouri Commission, but as a matter of recognizing
9 the timing of approvals from both entities are
10 required and the timing of those approvals was
11 important to try and sequence.

12 Q. But there was a point where you, as your
13 attorney said, said the MISO looked like it was dead,
14 that everyone was gone. And given that, would that
15 not have been an appropriate time to come before this
16 Commission, even though things then were developing at
17 the FERC? Maybe hindsight is better than foresight,
18 but it --

19 A. Yeah. The --

20 Q. -- seems like the Company could have said --
21 knowing all of the things, that it knew it had to do
22 that, and it should have taken that into
23 consideration?

24 A. Yeah. From the standpoint of could we have
25 changed the sequence, well, clearly we could have

1 taken a different path. At the time it didn't seem
2 that that path was most appropriate from the
3 standpoint of essentially what permission would we be
4 asking for to withdraw from an entity that's going to
5 be dead by the time we finish the proceeding.

6 It was a difficult choice. Could there have
7 been other ways of approaching it? Yes. I'm not sure
8 everything would have unfolded the same way, so it's a
9 little difficult to turn back the clock and presuppose
10 that everything else would have stayed the same with a
11 different sequence.

12 Q. I just have some other questions here.

13 We talked about postage stamp rate and
14 license plate. Have you defined those while I've been
15 gone? Has anyone asked you to define what that means?

16 A. No, they haven't asked me to define.

17 My --

18 Q. Can you tell me what "postage stamp" means
19 and what "license plate" means?

20 A. Yeah. My understanding of a postage stamp
21 is that basically it's like the post office. For one
22 price you get to deliver your power anyplace. So you
23 effectively levelize the rates across the entire grid.

24 Q. And license plate?

25 A. And "license plate" simply means you have --

1 you pay a fee to drive within a certain area, and
2 license plate rates are essentially zonal in nature as
3 opposed to grid-wide.

4 Q. So if you crossed from one zone to another,
5 you would be paying one rate here and another rate
6 there? Is that something -- how is that different
7 from pancaking?

8 A. Well, my definition of those terms, "license
9 plate" is essentially what we have now. You have a
10 license plate to drive through Ameren's system or
11 drive into Ameren's system.

12 Q. The settlement talked about -- there has
13 been a lot of testimony about that somehow it allows
14 you to keep this 60 million -- there is a \$60 million
15 figure.

16 How does this settlement allow you to do
17 that?

18 A. Maybe I'm misunderstanding.

19 Q. Is there some revenue that you would be
20 losing --

21 A. Oh.

22 Q. -- under the MISO so that there is a
23 \$60 million figure somewhere in this settlement that
24 allows you to keep this money?

25 A. Well, there is a little coincidence in the

1 \$60 million.

2 The exit fee of the three companies --

3 Q. That's all --

4 A. -- is \$60 million. The roughly \$60 million
5 number that we've used in our statements and testimony
6 basically is the difference that we saw -- and you've
7 got to turn the clock back to late in the year 2000,
8 the difference that we saw between the proposed
9 Alliance tariff structure and revenue distribution
10 versus the Midwest ISO tariff and revenue distribution
11 where in the case of the Alliance the revenue
12 distribution and collection is much more balanced to
13 provide systems that actually are used in the
14 transport of the power. They actually get more of the
15 revenue. They get more of the share than in the
16 Midwest ISO tariff and distribution.

17 So, effectively, the difference, if you
18 projected what the Company would have received in
19 transmission revenues using an assumed Alliance tariff
20 structure versus the assumed MISO tariff structure,
21 the difference is about \$60 million we would receive
22 less in the MISO situation, \$60 million less that we
23 would use as revenue to offset expenses.

24 Q. Can you tell me how those tariffs were
25 structured then so that they were different and

1 allowed that difference?

2 A. Well, essentially the Midwest ISO tariff at
3 the time was a straight revenue requirement annual
4 true-up kind of tariff where every year you look at
5 the revenues that come in versus invested amount and a
6 revenue requirement, and you distribute revenues based
7 on that method.

8 The Alliance approach is basically what's
9 sometimes called a revenue maintenance or revenue
10 neutral tariff whereby from a test year systems
11 should -- if the business is the same, the amount of
12 electricity transferred is the same, the system should
13 earn the same amount of money in a future year than
14 they did in the test year.

15 Now, this is, again, only -- for the
16 Alliance case, it's only during a transition period
17 for -- as the Alliance had filed it through 2004. At
18 that point the RTO would file a new rate structure
19 that may be the same or it could be different. But
20 the proposal from the Alliance companies was for a
21 transition period of revenue maintenance through that
22 period.

23 So the difference being the fact that the
24 Ameren system is at a crossroads where a lot of power
25 moves across our system. We believe that our

1 customers and our company should be compensated by the
2 users of our system, and that's reflected in today's
3 revenues that we receive. We believe it ought to be
4 reflected in the future revenues as well.

5 Q. So the difference in the tariff, then, was
6 you received the amount of money you currently are
7 receiving under the Alliance; in other words,
8 maintenance -- is that what you mean by that?

9 A. Yes.

10 Q. -- whereas under the tariff in the MISO
11 there was sort of parceling out or a distribution
12 among the members of revenue?

13 A. Yeah. Yes. Essentially, the transmission
14 service revenues all went into one big pot --

15 Q. One pot.

16 A. -- and then was divided among the members on
17 a revenue-requirement basis. And in the case of
18 Ameren's system, we have a very highly connected,
19 highly utilized system that's also very cheap. When
20 you look at the book value or the value of our
21 transmission system, it's a lot less than other
22 systems.

23 So in the distribution, those other systems
24 capture the lion's share of the revenues, yet the
25 Ameren's system is the one that's carrying the

1 freight, and we didn't think that that was the best
2 way to look at things.

3 Q. Okay. On the issue of the independent board
4 in helping to form the structure, and there is still
5 contention about that, why did the Alliance not think
6 it was important to have an independent board to help
7 determine the design or structure of the --

8 A. I think we do believe that an independent
9 board is important, and --

10 Q. But not in forming the structure? In other
11 words, you're going to form the structure, and then
12 you're going to get an independent board, or --

13 A. Well, again, the Settlement Agreement ended
14 in May, mid-May, which basically said, Okay, Alliance,
15 you can move forward to an operational date target of
16 December 15th; basically, seven months to develop an
17 entire RTO. Midwest ISO had been working on it for
18 probably two years at that point.

19 So, necessarily, time-wise, the Alliance had
20 a very difficult challenge in front of it to try and
21 reach operations within seven months and the same
22 operational date as an entity that had been working on
23 it for a couple of years.

24 So, necessarily, some of the decisions had
25 to be short-circuited. Some of them had to move

1 faster. But in no case has the Alliance said we
2 should delay or defer seating an independent board.
3 Our filing at FERC clearly says we want to move
4 forward within an independent entity, and we're hoping
5 that they would, you know, approve our business plan
6 and that independent entity.

7 Q. So somewhere in the business plan that you
8 have now presented to the FERC is your discussion or
9 your willingness to set up an independent board, and
10 you're waiting on their approval, FERC's approval of
11 this?

12 A. I would say it goes beyond willingness.
13 It's desire. It's part of our business plan to have
14 the managing member be an independent entity.

15 Q. On page 10, I think it's of your
16 surrebuttal, line 6 -- are you there?

17 A. Yes, I believe I am.

18 Q. All right. You make the statement, "If you
19 rely on generation to relieve the transmission
20 constraint, the generator relieving the constraint
21 will by definition have market power."

22 Would you elaborate on that?

23 A. Well, essentially, if a generator locates on
24 the system and knows that when he operates he improves
25 the situation of the transmission system and relieves

1 the constraint, then by its very definition, if he
2 chooses not to operate, he causes a problem on the
3 system.

4 He now has market power from the standpoint
5 that he can go to the transmission entity and say, If
6 you don't pay me to run, then your system is going to
7 have a problem, and can effectively control a monopoly
8 price because he has control over constraints on the
9 system.

10 Q. So that generator then has leverage? Would
11 we say that he has leverage?

12 A. I would believe he would have incredible
13 leverage because other transactions couldn't flow
14 unless he was forced to operate.

15 Q. I think my last question is -- and if it's
16 already been asked, just tell me that too.

17 Staff has a number of conditions, and I
18 wondered if there are any of those that you accept,
19 and those that you reject, would you tell me why you
20 reject them?

21 A. Well, I guess I don't have before me the
22 entire list. I know we have been working with Staff
23 on reaching an accommodation on those conditions. I
24 believe we can reach agreement on some of the
25 conditions. Some of them it's just a matter of which

1 word you choose, and, yes, that might change the
2 intent a little bit, but not completely disagreeing
3 with the condition.

4 I don't have the list in front of me to go
5 through, and I know we have been and continue to work
6 with the Staff on reaching some kind of agreement on
7 the conditions that would be acceptable because
8 certainly some of them are acceptable to us.

9 Q. They are very close because some of them
10 have the dates about should the ARTO be accepted or
11 not should they meet the conditions? And if they
12 don't meet the conditions, you would not join them,
13 although you already have.

14 A. Well, our -- I guess our position would be
15 that we wouldn't have a problem at all with a
16 condition that says that we can't join the Alliance
17 until they are FERC approved. That makes total sense
18 to us, that this Commission could say, You're not
19 approved to even join the ARTO until they are approved
20 by the FERC.

21 Q. As an RTO?

22 A. As an RTO, meeting the functions that
23 they've outlined.

24 Q. And one of the others, I think, has to do
25 with should the FERC create a big midwest one and that

1 you would join that one.

2 A. Well, I guess if the FERC orders mediation
3 in the midwest, then certainly we're going to
4 participate in that mediation. And it's speculation
5 to know what the outcome of that mediation might be,
6 but, clearly, if it's one RTO for the midwest, then by
7 very definition, the FERC requirement is that we join
8 an RTO, and there is only one available, then I think
9 it would be pretty clear. We would be in that one
10 RTO.

11 You know, beyond the initial part of that
12 statement, it's pretty much speculation as to where
13 that might go, but, obviously, if there was a
14 mediation, we would participate in it.

15 Q. And one has to do with non-pancake
16 transmission, and you're not supporting pancaked
17 rates, are you?

18 A. Not at all. In fact, our participation in
19 the Alliance removes pancake rates, and the
20 participation in the settlement which resulted in the
21 Super-Regional rate, as it's called, further removes
22 pancaking across the combined region of the Midwest
23 ISO and the Alliance as if they were one RTO.

24 Q. And you've said that you are interested in
25 setting up an independent board. And do you have a

1 time line on that? And a stakeholder advisory board,
2 do you have a time line on that?

3 A. Our independent board -- managing member and
4 independent board have been filed with FERC, our
5 proposal, the Alliance's proposal for that, and that
6 action is pending before the FERC.

7 If they would approve what we filed, then it
8 would be very -- it would be a very short time period
9 before the independent board would take over and
10 essentially manage the ARTO. So, essentially, we're
11 waiting on a response as to whether or not our
12 business plan and the independent member --
13 independent board and managing member are appropriate
14 or not.

15 As far as the stakeholder process, you may
16 not have been here when I answered a question earlier
17 about the process. We're presently participating in a
18 FERC mediation service-sponsored discussion with broad
19 representation of stakeholders in the midwest to
20 establish the stakeholder committee and process.
21 Those meetings have been going on for several weeks,
22 and I believe we're coming -- it's my opinion we're
23 coming close to a process that would be acceptable.

24 Unfortunately, those discussions are kind of
25 taking their own life, if you will, and so I don't --

1 I can't guess at when they might come to a conclusion.
2 I think all along the Alliance companies, and in
3 particular Ameren, and I've been directly involved
4 with those discussions, have been very agreeable to
5 setting a process up.

6 Q. One last one, and that has to do with no
7 transfer unless UE agrees to withdraw from ARTO if
8 ARTO is granted a PBR incentive to take a position in
9 the energy market. Is that one you would agree with?

10 A. That one doesn't make a lot of sense to me
11 because on the one hand what we would be saying is
12 that FERC has approved the ARTO rate structure to have
13 some performance-based incentive that causes them to
14 take a position in the energy market. Now, that's
15 contrary to one of the requirements of an RTO that
16 they not be an energy market participant. So right
17 off the bat there is a conflict between what the FERC
18 is essentially requiring of RTOs and in the
19 hypothetical what they then granted to an RTO.

20 Even if that were the case, we would then be
21 before the FERC asking permission to withdraw from the
22 Alliance, and the reason being that they approved a
23 certain aspect of the Alliance. In other words,
24 Please let me withdraw from the Alliance because you
25 approved something that you believed was good for the

1 Alliance.

2 I don't think we would have an argument
3 before the FERC to get that withdrawal or that right
4 to leave the Alliance because our logic would be based
5 on something that they thought was a good idea.

6 So I have a little problem with that one,
7 and that's why I certainly can't just agree to that
8 because I -- I don't totally understand it and I have
9 a little problem with it.

10 Q. Is one --

11 A. There may be something we could craft along
12 those lines. I don't know. We need to talk further
13 with Staff if they would like to.

14 Q. Is this one that you're still discussing
15 with Staff?

16 A. I believe we can have further discussions
17 with them. On all of these issues there were comments
18 that we originally had and we've received some
19 additional thoughts, and I think that process time
20 line-wise didn't have enough time before we started
21 this hearing.

22 COMMISSIONER LUMPE: I think those are all
23 of my questions.

24 Thank you, Mr. Whiteley.

25 JUDGE MILLS: Okay. Commissioner Murray?

1 COMMISSIONER MURRAY: Thank you.

2 I just have a follow-up question.

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Commissioner Gaw was asking you about having
5 entered into the Stipulation and Agreement to withdraw
6 from the MISO and pay an exit fee without any
7 condition concerning the need for Missouri Public
8 Service Commission approval. Do you recall?

9 A. Yes, uh-huh.

10 Q. I thought that as I read the Settlement
11 Agreement that Article 11, Reservations, 11.1(b)
12 actually provided what you might call a condition.
13 And I'm referring there to the language that says,
14 "Should a final non-appealable order deny the right of
15 the departing companies to withdraw from the Midwest
16 ISO pursuant to Paragraph 4.11 above or modify or
17 condition such right in a manner unacceptable to the
18 departing companies in their sole discretion, this
19 Settlement Agreement shall be null and void except for
20 the provisions of this paragraph, 11.1, and the
21 Midwest ISO will be obligated to repay the settlement
22 amount paid pursuant to Paragraph 4.1 of this
23 Stipulation and Agreement to the departing companies."

24 Is that not a form of a condition?

25 A. I'm looking with reference back to 4.11, and

1 I believe the Commission that they are talking about
2 there is the FERC. And the situation would be that if
3 the FERC does not allow or does not include as part of
4 acceptance of the settlement the withdrawal or
5 movement of the three companies from the MISO to the
6 Alliance, then that condition applies.

7 Q. So the language, "Should a final
8 non-appealable order deny the right of the departing
9 companies to withdraw" --

10 A. Pursuant to 4.11, 4.11, and I believe the
11 reference there is to the FERC.

12 Q. Okay. So I read that meaning that if there
13 were an order from a state commission denying the
14 right to withdraw that that would be refunded?

15 A. I don't believe that was the situation, why
16 that paragraph was included. The concern was that if
17 the Commission's order, the FERC's order, did not
18 allow the -- the right to withdraw, then it
19 effectively would cause the -- the rest of the
20 paragraph to kick in.

21 Let me just say along those lines, the -- I
22 guess the -- the situation in the settlement was such
23 that if additional conditions had been -- and this is
24 my belief, that if the additional conditions had been
25 required by Ameren to be inserted, that there would

1 have been a significant risk that the settlement
2 couldn't have gone forward. We would have effectively
3 been holding up the settlement for our one condition.

4 So I don't think we tried to hide that we
5 needed Missouri approval. We did not essentially
6 stand up and say, We cannot agree to the settlement
7 unless we get that condition in here.

8 Q. All right. Then my follow-up question is,
9 if you were denied by this Commission the right to
10 withdraw from the MISO, is that exit fee that you have
11 paid just gone?

12 A. I don't know. I don't know what would
13 happen in that particular case. I don't know where
14 that puts us between two jurisdictions. FERC has
15 said, You should be in the Alliance. You're out of
16 the MISO, and Missouri is saying, You should be in the
17 MISO. So I don't have a good answer to that question
18 as to what would happen with the 18 million.

19 COMMISSIONER MURRAY: Okay. Thank you.

20 Thank you, Judge.

21 JUDGE MILLS: Commissioner Lumpe?

22 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

23 Q. One last one, Mr. Whiteley.

24 Did I hear correctly you say that you are a
25 non-divesting member in the ARTO?

1 A. That's correct. We would participate as a
2 non-divesting transmission owner in the ARTO.

3 Q. That means you keep your transmission, that
4 you own the transmission still then? Is that what
5 that means?

6 A. That's correct. We would still own the
7 asset. It would still be our transmission lines and
8 substations. We would still be responsible for
9 maintenance and upkeep and all of the aspects with
10 respect to the transmission system that we're required
11 today.

12 The ARTO would simply be our RTO that we
13 have an operating agreement with by which they have
14 certain jurisdiction over our transmission facilities.
15 They would have juris-- what we call jurisdictional
16 control. They would not have direct operating control
17 over our transmission facilities. They wouldn't
18 actually have the equipment and the people and the
19 personnel to actually run the transmission system. We
20 would still be the owners and operators.

21 Q. Is that different under -- from the MISO
22 where you were divesting?

23 A. MISO does not have a category for divesting
24 transmission owners. Their model is that they are
25 basically just the RTO operator. They are just the

1 jurisdictional entity. They don't own transmission
2 assets.

3 If under the MISO model we were to divest
4 our transmission assets, we would essentially be
5 selling that to another company, not the MISO.

6 Q. So really there isn't any difference. I
7 mean, you're non-divesting in the other one. Right?

8 A. That's correct. Basically, our relationship
9 is through an operating agreement with either one.
10 That's correct.

11 COMMISSIONER LUMPE: Okay. Thank you.

12 JUDGE MILLS: Let's take a recess for lunch
13 from now until 1:30.

14 We're off the record.

15 (A RECESS WAS TAKEN.)

16 JUDGE MILLS: We are finished with questions
17 from the Commissioners of AmerenUE witness Whiteley.

18 I've got just a couple of questions for Mr. Whiteley.

19 QUESTIONS BY JUDGE MILLS:

20 Q. Mr. Whiteley, are you familiar with the
21 Commission Case EO-98-413 in which the Commission
22 approved Ameren's participation in the ISO?

23 A. Familiar only with respect to that as the
24 result.

25 JUDGE MILLS: Okay. That's the only

1 question I had then.

2 Okay. We'll do redirect based on questions
3 from the Bench in the same order -- I'm sorry. We'll
4 do recross based on questions from the Bench in the
5 same order we originally did cross, followed by
6 redirect on all of it.

7 So redirect -- recross-examination from
8 Staff.

9 MR. FREY: Thank you, your Honor.

10 RECROSS-EXAMINATION BY MR. FREY:

11 Q. Just a very few questions, Mr. Whiteley.

12 I believe Commissioner --

13 JUDGE MILLS: Mr. Frey, the podium.

14 MR. FREY: I'm sorry.

15 BY MR. FREY:

16 Q. I believe Commissioner Lumpe asked you about
17 the \$60 million in revenues that you address in your
18 Surrebuttal Testimony that you state that AmerenUE
19 will be able to maintain under the ARTO rate design
20 but not under the MISO rate design; is that correct?

21 A. I believe she asked me about that issue,
22 yes.

23 Q. Is that \$60 million in revenues that you
24 testified that AmerenUE will be able to maintain under
25 the ARTO rate design, does that \$60 million include

1 retention of pancake transmission rates?

2 A. No. That \$60 million represents our --
3 continuation of our present revenue stream from
4 transmission service across and into the Ameren
5 system.

6 Q. Well, let me ask you, does it reflect at
7 least in part the affect of pancake transmission
8 rates?

9 A. No. I believe, again, it's the amount of
10 transmission service revenue that we presently receive
11 for use of our system and that amount would carry
12 forward into the transition period based on the ARTO
13 tariff and revenue distribution protocols.

14 Q. Do you presently experience any pancake
15 transmission rates, revenues from pancake transmission
16 rates, or have you?

17 A. Well, presently when power or energy moves
18 across the Ameren system, we receive under our open
19 access tariff revenues for the movement of that power
20 across our system.

21 I think what you're referring to in terms of
22 pancaking is, if you move across several systems, you
23 pay each of those systems their zonal charge. Under
24 the Alliance tariff, you can move power from one end
25 of the Alliance to the other end of the Alliance for

1 one rate.

2 And, in fact, if you move power into the
3 Ameren zone from as far away as Virginia Beach, it's
4 the same rate, which is Ameren's zonal rate, as if you
5 move power in from Illinois. So it's one flat rate
6 essentially for movement of power within the entire
7 Alliance region. There is no pancaking.

8 Q. Okay. But at the present time the answer to
9 my question would be yes then?

10 A. Well, at the present time the transmission
11 service business is a pancaked business because as
12 power moves across systems, you pay for each system
13 that you utilize.

14 Q. Okay. Thank you.

15 The ADR activity involving FERC, ARTO and
16 stakeholders, that I believe you addressed -- I think
17 it was in response to a question from Commissioner
18 Lumpe, ADR activity aimed at developing an independent
19 board and stakeholder process, do you know whether any
20 of the State Commissions are participating in that ADR
21 process?

22 A. Yes, there are State Commissions
23 participating in that process.

24 But I would correct one thing that's in your
25 question. The ADR process is not specifically to

1 establish independence of a board to control the ARTO.
2 The process was initiated as a stakeholder advisory or
3 stakeholder committee process --

4 Q. Okay.

5 A. -- and didn't start as, or didn't have as
6 one of its goals to establish an independent entity to
7 patrol the ARTO. That wasn't one of their goals.

8 Q. Okay. Thank you.

9 Do you know whether there are state RTO
10 proceedings pending before any of those State
11 Commissions that are participating in the ADR process?

12 A. Well, I believe in response to one of your
13 questions earlier, I'm vaguely familiar with Indiana
14 proceedings, but other than the fact that I believe
15 they are going on, I am not familiar with them, their
16 status, and, you know, how they are moving forward.

17 Q. One other question: Commissioner Murray
18 asked a question or two about pancake transmission
19 rates and particularly regarding this February 28,
20 2001 date by which utilities must join MISO or ARTO.
21 Do you recall that?

22 A. Yes, with respect to the Super-Regional rate
23 as part of the settlement.

24 Q. Okay. And would you agree that because it
25 is unclear at this time whether or not the rate design

1 in the Inter-RTO Cooperation Agreement, the IRCA, for
2 the Settlement Agreement will apply to entities not
3 joining the MISO or the ARTO by February 28, 2001,
4 that it is possible that the seam may result in
5 pancake transmission rates for Missouri transmission
6 customers other than UtiliCorp and AmerenUE?

7 A. Again, separating the IRCA from the Super-
8 Regional rate, I believe it's unclear that the Super-
9 Regional rate is going to apply to entities that
10 joined after February 28th. That part I agree with.

11 The IRCA part of the question, I believe all
12 of the entities that join either RTO, no matter when
13 they join, will benefit from the issues that are
14 resolved within the IRCA and the processes that go
15 forward between the two RTOs under the auspices of the
16 IRCA. The IRCA doesn't distinguish between joining --
17 what dates you join.

18 Q. Okay. Okay. So your testimony, then, is at
19 least as to the rates themselves it's possible that
20 entities -- other entities besides the UtiliCorp and
21 AmerenUE who are covered as a result of the
22 February 28th deadline might be subject to pancake
23 rates; is that correct?

24 A. The Super-Regional rate would not apply to
25 them, so there would be an additional charge moving in

1 and out of their zone.

2 MR. FREY: Thank you.

3 That's all I have, your Honor.

4 JUDGE MILLS: Thank you.

5 MR. FREY: Thank you.

6 JUDGE MILLS: Public Counsel?

7 MR. COFFMAN: Thank you.

8 RECROSS-EXAMINATION BY MR. COFFMAN:

9 Q. I'm just going to also follow up on
10 questions from Commissioner Murray regarding retention
11 of transmission revenues.

12 In those questions you were asked about
13 the possibility of those transmission revenues
14 flowing down to the benefit of consumers. And are
15 you aware of a filing that Ameren has made at FERC
16 on August 31st regarding transmission rates?

17 A. As part of the Alliance filings?

18 Q. Yes.

19 A. Yes, as -- right. We participate as part of
20 the Alliance filings, so that is, in essence, our
21 filing as well.

22 Q. Well, are you aware of what Ameren is
23 currently proposing for its transmission rates --

24 A. In terms --

25 Q. -- it's open access?

1 A. -- of the rates themselves?

2 Q. Yes.

3 A. I don't remember the specific numbers for
4 what the zonal rates are in the entire rate structure,
5 but I'm familiar with the approach that was filed. I
6 just don't remember the specific dollar figures.

7 Q. Would you agree that Ameren is currently
8 proposing to utilize the existing rates, the rates
9 that have been previously approved in the current
10 filing?

11 A. That's correct, yeah, our presently in place
12 zonal rate for use of the Ameren system.

13 Q. And if that proposal is approved, wouldn't
14 that deny consumers the benefit of retention of
15 transmission revenues? Wouldn't that deny consumers
16 the benefit of the increased revenues you receive
17 since the last time those transmission rates had been
18 set?

19 A. No, absolutely not, because the revenues
20 that we're presently receiving are in return for the
21 use of our system by third parties to move power into
22 and through the Ameren system. The rate that's filed
23 for our zonal rate is simply used for the rate for
24 bringing power into the Ameren zone.

25 In terms of the revenue distribution that we

1 receive, that is I believe in response to the
2 Commissioner's question, the revenues that we receive
3 would flow back to the consumers. The revenue
4 distribution is not the same as what our zonal rate
5 is. The fact that we're not changing our zonal rate
6 doesn't have anything to do with whether or not the
7 amount of revenue distributed to Ameren as part of the
8 tariff is the same or different.

9 Q. Well, I understand that.

10 A. They are two different things.

11 Q. But you could propose to change your -- you
12 could propose that your transmission rate be adjusted
13 to reflect an increase in transmission revenues, could
14 you not?

15 A. Yes, we could. At the present time we don't
16 believe that the rate is inappropriate. It's --

17 Q. Okay.

18 A. It's, A, not that old. It's not been that
19 long since it was filed. And, B, it seems to be
20 heavily utilized by customers across our system.

21 Q. Okay. Well, in relation to that thought, I
22 would like to direct your attention to an attachment
23 to Ryan Kind's testimony. Do you have a copy of that?

24 A. I don't have a copy of his testimony.

25 MR. COFFMAN: Okay. Thank you.

1 Permission to approach?

2 JUDGE MILLS: Yes, you may.

3 BY MR. COFFMAN:

4 Q. And I'm going to refer you to a page that is
5 proprietary, and I'm going to attempt not to reveal
6 anything that is proprietary, but I would direct you
7 to Attachment RK-2, page 3.

8 A. Okay.

9 Q. Okay.

10 A. I think I have it.

11 Q. And that page is -- is, indeed, designated
12 proprietary by Ameren?

13 A. Yes. It's stamped as such.

14 Q. Now, please stop me, or I'm sure Mr. Hennen
15 will, if I'm getting close to something that's
16 proprietary.

17 But if the Commission were wanting to get a
18 sense of how -- what is changed in your transmission
19 revenues over the past few years, would this page from
20 a presentation to your board -- the Ameren board of
21 directors, would this give the Commission an idea of
22 what has happened to your transmission revenues?

23 A. Yes. Under the today's tariff listing of
24 revenues received from transmission service, I think
25 they would get a picture of it.

1 Q. Okay. Thank you.

2 Just one more question, and this regards the
3 Commission questions regarding the time line of when
4 Ameren requested -- or when Ameren filed this
5 application in relation to when it decided that it
6 wanted to withdraw from the MISO, or the Midwest ISO.

7 Would it be fair to say that the actual
8 decision by AmerenUE to pursue withdrawal from the
9 MISO actually occurred in October of 2000?

10 A. The decision would have been finalized in
11 very late October 2000. I believe we filed our notice
12 with the Midwest ISO on November 9th, so the decision
13 obviously would have been made before we sent them the
14 letter.

15 MR. COFFMAN: Okay. Thank you very much.

16 That's all I have.

17 JUDGE MILLS: Thank you.

18 Municipal Energy Utility Commission, any
19 questions?

20 MR. KINCHELOE: No questions, your Honor.

21 JUDGE MILLS: MIEC?

22 MS. VUYLSTEKE: No questions.

23 JUDGE MILLS: MEG?

24 MS. LANGENECKERT: No questions.

25 JUDGE MILLS: Redirect based on the first

1 round of cross-examination, all of the questions from
2 the Bench, and the second round of cross-examination?

3 REDIRECT EXAMINATION BY MR. HENNEN:

4 Q. Mr. Whiteley, Staff asked a number of
5 questions regarding the level of Ameren's transmission
6 rate relative to the level of other Alliance RTO
7 company transmission rates, and you indicated that --
8 that Ameren's rates were lower than most of the other
9 Alliance companies' RTO transmission rates.

10 If we were still in the MISO, what would you
11 say our transmission rate level is compared to the
12 other MISO transmission owning companies?

13 A. Well, again, I don't have the specific
14 dollar figures in mind, but I know our rates are lower
15 than many others in the midwest. I believe I
16 speculated they might be half as -- as much as many
17 others in the midwest.

18 And, obviously, if you put our low rate in
19 with other higher rates, whether it's in the MISO or
20 in the Alliance, they're going to average out to a
21 higher rate.

22 Q. So if we were in the MISO and the MISO went
23 to a postage stamp rate, is it likely that the rate
24 for the Ameren zone would go up?

25 A. To the same extent that it would go up

1 within the Alliance.

2 Q. Staff asked a question regarding whether or
3 not the Company would need to seek the Commission's
4 approval regarding the transfer of control of its
5 assets to the Alliance RTO.

6 Are you familiar with the Missouri statutory
7 requirements in this regard?

8 A. No, I'm not.

9 Q. Several of the Commissioners asked some
10 questions regarding the timing of Ameren's withdrawal
11 notice with this Commission.

12 Isn't it true that Ameren intended to file
13 its notice of withdrawal with this Commission soon
14 after it filed its notice of withdrawal with the FERC?

15 A. Well, yes. We were determining where to
16 file with -- or when to file with FERC and with
17 Missouri. And I believe the e-mail from Ryan Kind
18 jogged my memory as to the specific dates and sequence
19 there, that we were contemplating filing with the
20 Missouri Commission immediately or just days before
21 the FERC ordered a settlement process.

22 And, you know, at that point filing with the
23 Missouri Commission didn't seem to be prudent based on
24 the fact that the Missouri Commission was
25 participating, or would be participating in the

1 settlement discussions.

2 Q. So the fact that FERC ordered the settlement
3 conference had an impact on Ameren's decision to hold
4 off filing its withdrawal request with this
5 Commission?

6 A. Oh, absolutely. If the FERC had not ordered
7 a settlement, we would have filed. Whether it would
8 have been days or weeks from the time of that e-mail I
9 reference, I don't know how quickly we would have, but
10 that was clearly what our path was until the
11 settlement was ordered.

12 Q. And the fact that the settlement conference
13 was called to bring all stakeholders to the table,
14 both market participants, transmission owners, state
15 regulators to the table because it was designed to do
16 that and we thought that the forum for resolving all
17 of the issues with the Midwest ISO and the Alliance
18 were best addressed on that forum, we elected to hold
19 off on our application with this Commission?

20 MR. DOTTHEIM: I object to the leading
21 question.

22 JUDGE MILLS: I agree. That was leading.

23 Could you please rephrase it?

24 BY MR. HENNEN:

25 Q. The fact that the FERC settlement conference

1 required or requested participation by the Alliance
2 companies, the state regulators, the fact that it did
3 that and they were participating, didn't that have an
4 impact on our decision to file our application with
5 this Commission?

6 MR. DOTTHEIM: I object to the leading
7 question again.

8 JUDGE MILLS: It's still leading.
9 The objection is sustained.

10 MR. HENNEN: May I confer with counsel,
11 please?

12 JUDGE MILLS: Sure.

13 MR. HENNEN: Sorry, your Honor.

14 BY MR. HENNEN:

15 Q. What was the effect of the State
16 Commission's participation in the settlement
17 conference on our application with this Commission?

18 A. Well, again, the settlement itself, the fact
19 that the settlement was initiated by FERC, caused us
20 to hesitate to file with the Missouri Commission,
21 again, because of sequencing of how you ask for a
22 request in one jurisdiction while there is a
23 proceeding in the other jurisdiction. And with the --
24 all of the parties in the FERC settlement, including
25 the Missouri Commission, it was unclear how we would

1 be able to proceed with both of those requests, one
2 with FERC and one with Missouri at the same time.

3 And so it impacted our decision to -- rather
4 than to file, to wait until the result of the
5 federal -- or the FERC-sponsored settlement concluded
6 before we would file with Missouri. Again, as I
7 pointed out earlier, it could be that the FERC
8 settlement would moot the need to even approach the
9 Missouri Commission.

10 MR. HENNEN: No further questions, your
11 Honor.

12 JUDGE MILLS: Thank you.

13 Mr. Whiteley, you may step down.

14 (Witness excused.)

15 JUDGE MILLS: Let's move on to Dr. Proctor.

16 MR. FREY: Staff calls Dr. Michael S.
17 Proctor.

18 JUDGE MILLS: Could you raise your right
19 hand, please.

20 (Witness sworn.)

21 JUDGE MILLS: Thank you.

22 You may be seated.

23 MICHAEL S. PROCTOR, Ph.D. testified as follows:

24 DIRECT EXAMINATION BY MR. FREY:

25 Q. Please state your name for the record, sir.

1 A. My name is Michael S. Proctor.

2 Q. And by whom are you employed and in what
3 capacity?

4 A. I'm employed by the Missouri Public Service
5 Commission as Manager of Economic Analysis in the
6 Energy Department.

7 Q. And did you prepare and cause to be filed in
8 this case what have been marked for purposes of
9 identification as Exhibits 3 and 4, respectively
10 Proctor Rebuttal and Proctor Cross-Surrebuttal
11 Testimony?

12 A. I did.

13 Q. Do you have any corrections or additions to
14 that testimony at this time?

15 A. I do not.

16 Q. If I asked you the same questions as are
17 contained in those documents, would your answers be
18 the same?

19 A. They would.

20 Q. And are those answers true and accurate to
21 the best of your knowledge, information, and belief?

22 A. They are.

23 MR. FREY: With that, your Honor, I offer
24 Exhibits 3 and 4 for admission into the record, and
25 would tender the witness for cross-examination.

1 JUDGE MILLS: Thank you.
2 Are there any objections to the admission of
3 Exhibits 3 or 4?
4 (No response.)
5 JUDGE MILLS: Hearing none, they will be
6 admitted.
7 (EXHIBIT NOS. 3 AND 4 WERE RECEIVED INTO
8 EVIDENCE.)
9 JUDGE MILLS: Cross-examination.
10 Mr. Coffman?
11 MR. COFFMAN: No questions.
12 JUDGE MILLS: Mr. Kincheloe?
13 MR. KINCHELOE: No questions.
14 JUDGE MILLS: MIEC?
15 MS. VUYLSTEKE: No questions. Thank you.
16 JUDGE MILLS: MEG?
17 MS. LANGENECKERT: No questions.
18 JUDGE MILLS: Mr. Hennen?
19 MR. HENNEN: No questions.
20 JUDGE MILLS: Questions from the Bench.
21 Commissioner Murray?
22 QUESTIONS BY COMMISSIONER MURRAY:
23 Q. Good afternoon, Dr. Proctor.
24 A. Good afternoon.
25 Q. I'd hate to have you come to the witness

1 stand and not have to answer any questions.

2 I wanted to ask you a question from the
3 document that is attached to Mr. Whiteley's Direct
4 Testimony, the Chief Judge's certification of
5 settlement.

6 A. Okay. I don't have a copy of that with me,
7 but --

8 MR. FREY: May I approach?

9 JUDGE MILLS: Yes. Thank you, Mr. Frey.

10 THE WITNESS: Thank you.

11 BY COMMISSIONER MURRAY:

12 Q. On page 29 of that document --

13 A. Yes.

14 Q. -- under the heading -- well, just at the
15 very beginning of that page, I'm going to read a
16 little bit from it, and then I'm going to ask you
17 about it.

18 "While several participants request
19 modification of the settlement in various material
20 ways, it must be kept in mind that the negotiation of
21 this settlement was extraordinarily difficult and
22 involved a tedious and arduous process. The end
23 result is a settlement that will provide enormous
24 public interest benefits."

25 I'll stop there and ask you, do you agree

1 that the end result is a settlement that will provide
2 enormous public interest benefits?

3 A. In the sense that it resolved a situation in
4 which there could have been two RTOs in the region,
5 and that region would have been balkanized in terms of
6 generation markets, it did resolve that particular
7 issue, and that -- that does provide benefits, yes.

8 Q. Okay. And then the Chief Judge goes on to
9 say, "Participants cannot have it both ways. They
10 cannot accept the substantial benefits provided by the
11 settlement and at the same time seek material
12 modifications to these provisions that make those
13 benefits possible."

14 Do you think that the position that Staff is
15 taking here in this proceeding is trying to have it
16 both ways?

17 A. I don't think so. I think what -- what I
18 attempted to do in my testimony was alert the
19 Commission to the problems I've seen with the Alliance
20 in the ARTO, okay, and at the same time recommend --
21 make certain recommendations if the Commission seeks
22 to go forward, if they believe that those conditions
23 can be rectified or they trust FERC to rectify those
24 conditions at some future date, set out some
25 conditions that should be added to that.

1 So if you base it on an historical record of
2 the ARTO, and you're looking at this in terms of which
3 of these two organizations do I really think is going
4 to benefit the midwest, I would have to say I have
5 some deep concerns about ARTO, and that's what I
6 expressed in my testimony.

7 But I really leave that decision up to the
8 Commission, if they want to base it on an historical
9 record. If they want to base it on the performance of
10 the ARTO in the past, I would say, no, they have not
11 performed. They have not put into place an
12 independent board. They know they had to, but they --
13 they've known that for three years, and they kept
14 putting it off.

15 Now, do you want to gamble and go forward
16 and say, Well, now they've finally come up with a
17 proposal for National Grid, USA, and that will rectify
18 this situation? Then go forward. But I just felt
19 like I had to be honest with the Commission in terms
20 of the Alliance's performance.

21 Q. And the Staff participated in the settlement
22 conference; is that correct?

23 A. We participated as an observer in the
24 settlement conference. We did not participate in
25 terms of reaching the settlement.

1 Q. During the settlement conference, did the
2 necessity to file with the Missouri Public Service
3 Commission come up to your recollection?

4 A. My recollection was in that period of time,
5 and I can't place it exactly, we had asked Ameren when
6 were they going to file? I believe I talked to
7 Mr. Cook about this.

8 And the response that we got was, Well, we
9 want to see what's going to come out of the settlement
10 conference. We think that's going to -- to clarify
11 some things that the Commission will need to know.
12 And so that was the response. That was the only
13 discussion that I had.

14 Q. Could that FERC settlement have mooted the
15 need to file before the Missouri Commission depending
16 on the outcome of it?

17 A. I think that's a legal question. I'm not
18 sure that it -- given the settlement that we had in
19 the MISO approval, I'm not sure that I see why or how
20 that it would.

21 Q. What if the settlement had involved Ameren
22 staying within the MISO?

23 A. That would have mooted it, because they only
24 need to come to the Commission if they decided to
25 withdraw in the MISO, according to the agreement in

1 the MISO approval here before the Commission.

2 Q. And was that possibility -- was that a
3 possibility or was that a possible result of the
4 settlement talks?

5 A. I suppose the word "possible" means under
6 some circumstances could that have happened, and the
7 answer is, I suppose it could have. Was it likely or
8 probable? The answer is no.

9 I don't think -- my understanding wasn't
10 that Ameren went into -- into this whole thing except
11 to leave MISO and join ARTO. I don't -- we never had
12 any discussions with them, but that's not the
13 impression that I have.

14 Q. Also in the -- I don't know the proper title
15 of it, the Chief Judge's certification of settlement,
16 he stated on page 30 that, "The agreement to a
17 Super-Region rate is a major and unprecedented
18 achievement in the electric utility industry promising
19 to provide substantial benefits to customers
20 throughout the entire midwest region and is a model
21 for other RTOs throughout the country."

22 Do you agree that the Super-Region rate is a
23 positive achievement?

24 A. It's an achievement from where it was at
25 prior to that point.

1 Do I agree it's a model for the rest of the
2 United States? No.

3 We had worked on inter-- we had worked on
4 seams issues and had settled -- or not -- "settled" is
5 not the right word.

6 The seams group had been meeting for many,
7 many months before this was ever ordered, and we had
8 resolved all of the Inter-RTO cooperative agreements,
9 not only between ARTO and MISO, but between ARTO and
10 MISO and Grid South and PJM and several of the RTOs
11 that were involved in it.

12 Almost all of those things had been agreed
13 to before we ever got to this so-called settlement
14 agreement, and that was -- that was a good
15 achievement. But there are two areas we could never
16 get resolved, and one was the elimination of
17 pancaking, pancaked rates between the RTOs because
18 that meant money to the -- to the transmission owners.
19 And, in particular, ARTO was -- was never really
20 willing to negotiate that in the seams discussions.

21 We also have not, and still have not
22 resolved, how they are going to coordinate congestion
23 management, which is really the heart of -- of -- in
24 my view, of what RTOs are going to achieve. These are
25 the markets. This is where the market is at. And

1 those are not yet resolved.

2 Both the MISO and the ARTO have "Day 1"
3 management systems which are basically fairly simple
4 generation redispatch types of things that will be
5 in place for a year if they both go on line
6 December 15th. But "Day 2," which is December 15th of
7 year 2002, they are supposed to have their market-
8 based congestion management systems on line.

9 And those are the things that -- to me, that
10 is the real heart of whether these markets are going
11 to function effectively or not, and that's -- right
12 now the MISO is -- has developed a straw proposal for
13 congestion management, and, as you heard earlier, the
14 market group within ARTO has voted to meet with MISO
15 and to -- and to set back any of their own separate
16 discussions about congestion management.

17 But what this achieved -- and I will agree,
18 what we could not achieve in our seams discussion and
19 what this did achieve was the elimination of pancaking
20 of rates between two RTOs.

21 Q. And if we were to deny this application,
22 where would we be?

23 A. Well, if we were to deny this application,
24 and assuming that as a part of that Ameren goes back
25 to MISO, returns to the MISO, I'm sure there's lots of

1 things that would have to be worked out. What it
2 might -- one of the possibilities is that FERC might
3 say, Look, this isn't going to work. We need to have
4 a single RTO in the midwest. This idea of a
5 Super-Regional rate just is not going to work if the
6 parties can't resolve it.

7 But they're going to have to -- they will
8 have to renegotiate at that point. I'm fairly certain
9 of that if they want to come up with a solution
10 because Ameren is a part of that solution. I mean,
11 their contribution of the \$18 million to MISO and the
12 way the rates are calculated, they would have to be
13 recalculated differently. Whether or not all of the
14 parties would agree to that, whether it would make any
15 difference to any party, I don't know.

16 I will tell you that the rates were -- one
17 of the things as we were observing the settlement,
18 there was not time within -- within the short period
19 of time that was given for this mediation for people
20 to come up with rates. There is just -- you cannot do
21 that within that period of time and determine what the
22 exact impact is going to be. So it was a
23 settlement initially in concept, and then August 31st,
24 I believe both the MISO and the Alliance companies
25 have filed their rates from the settlement with the

1 FERC. So it took from whenever it was, towards the
2 end of February, until August 31st for them to work
3 out and work through the numbers and -- to come up
4 with the specific forms of the rates.

5 And even at that time, right before
6 August 31st, the, Detroit Edison announces it's not
7 going to be in the Alliance. Does that impact the
8 settlement? I'm sure it impacts the calculation of
9 rates, but does it impact the settlement? I don't
10 know.

11 Ameren appears to believe that if they left
12 now, that that would impact the settlement. I'm not
13 sure why that impacts the settlement any more than
14 Detroit Edison's decision to leave the Alliance at
15 this point, but it could. I mean, I just don't know
16 the answers.

17 Q. Can you tell me if we -- if we were to
18 approve this application, would -- is it possible in
19 your opinion that the FERC would go ahead anyway and
20 say that there needs to be a single RTO?

21 A. I think that's a real possibility. The FERC
22 has announced this conference for next week, and they
23 state that in November they're going to come out and
24 say, These are the RTOs that we've approved or that we
25 are approving.

1 Frankly, I don't know. I can't forecast
2 where they're going with that one.

3 Q. I'm just asking your opinion.

4 A. But, clearly, one of the Commissioners,
5 Commissioner Massey, in the July orders that the FERC
6 issued with respect to the southeast and the northeast
7 ordered mediations in those areas.

8 Commissioner Massey -- this was in my
9 testimony -- wrote his opinion that they should have
10 included the midwest as an additional mediation and
11 have a single RTO there.

12 Q. And that was a minority opinion?

13 A. That was a minority opinion at that time,
14 yeah. But it's an indication that -- it's the only
15 strong indication that I have that there is at least
16 one commissioner that thinks there ought to be a
17 single RTO in the midwest.

18 In addition, we've got SPP now talking with
19 MISO about merger, so that SPP would be included as a
20 part of the MISO region, or -- I don't know exactly
21 how they are negotiating that, whether they would come
22 in as an independent transmission company under the
23 MISO or whether they would actually merge and become a
24 new organization. Those things aren't clear at this
25 point. We're really at a point in this whole process

1 where there are a lot of things that are still up in
2 the air.

3 Q. The conditions that you suggest if we were
4 to approve -- give our approval with conditions, the
5 dates, with the ARTO being approved by the FERC as
6 operational by December 15, 2001, why is -- why is
7 that important? And I ask you why is -- why is having
8 a date plugged in more acceptable than saying approval
9 only when ARTO is approved by the FERC as operational,
10 whenever that is?

11 A. Okay. The December 15th date is the
12 operational date that FERC has set for RTOs, and the
13 reason that the December 15th date was put in -- into
14 this testimony was because the Company had -- had both
15 indicated in its filing and also in testimony that it
16 needed to have an order from this Commission by
17 December 15th. And the reason it needed to have an
18 order from this Commission by December 15th was that
19 that was the operational date, and that if it didn't
20 get an order from this Commission, that it would
21 impact that date.

22 And so I was going by the date that I had
23 perceived that the Company had set for the Commission
24 to issue an order in this case. And the way I
25 explain that in my testimony is that prior to that

1 date, and we picked a date, December 5th, you could
2 have parties come in and tell you what -- what was
3 likely to happen at that point. And if it was
4 unlikely that the ARTO was going to be approved at
5 that point, by December 15th, they could make further
6 recommendations.

7 So I was -- I was giving you -- trying to
8 give you an alternative that would meet what the
9 Company set out as the operational date, but yet give
10 you the flexibility to say, Well, guess what?
11 December 15th is no longer the operational date. It's
12 no longer the date that moves this thing. And what
13 are your recommendations now if we want to approve
14 this? So that was the reason for the December 15th
15 date and my thinking about it.

16 Q. Okay. And you had proposed another -- was
17 it testimony on December 5 --

18 A. Yes.

19 Q. -- to relate to that?

20 A. Yes.

21 Q. And that would relate to all of the
22 December 15 dates and their conditions; is that right?

23 A. That's correct.

24 Q. And then your Condition No. 4, being
25 restricted from PBR, would you elaborate a little on

1 why you think that condition is important?

2 A. Yes, and I -- it is very clear in FERC Order
3 2000 that the FERC spends a great deal of discussion
4 in Order 2000 on performance-based rate-making and
5 giving transmission companies, or RTOs, or whatever,
6 incentives. It was also a discussion about Transcos
7 and for-profit RTOs, and while the order doesn't talk
8 about how those two relate, I tried to bring that up
9 in my testimony and discuss it.

10 My concern is the following, and here is
11 what I struggle with: I view the RTO much in the same
12 way that I view the New York Stock Exchange, that they
13 are there to facilitate markets. That is their
14 function. That is their purpose. And I think in
15 principle the FERC agrees. That is what they are to
16 do. If at any point the New York Stock Exchange was
17 even suspected of taking a position in the stock
18 market, the market would lose total confidence in
19 that -- in the New York Stock Exchange.

20 I have a fundamental problem with making
21 that entity a for-profit entity where it -- it may
22 take a position in the market. I'm also concerned
23 that as these -- right now, the most up-to-date
24 material that I can -- that I could get -- get my
25 hands on on what potential performance-based rate-

1 making might like at -- look like says, in essence,
2 this is going to be difficult to design. It's going
3 to be very difficult to design this in order to give a
4 for-profit entity an incentive to do something and at
5 the same time say, you can't take a position in the
6 market. So I want some assurance that that's not
7 going to happen.

8 Now, I heard the discussion earlier that,
9 Gee, FERC is not going to approve something that will
10 give an incentive because they don't want RTOs taking
11 positions in the market, and I hope that's right. I
12 hope that's right. But this is a very complex issue,
13 and I don't have real super confidence that that's
14 what's going to fall out of it, to be honest with you.

15 Q. Okay. Now, the condition that you're
16 suggesting, though, is not that the Ameren would apply
17 to FERC to withdraw from the RTO if it were granted
18 performance-based regulation, is it, or -- isn't it a
19 condition that -- well, maybe I should ask you to
20 explain it.

21 A. Well, as the condition is laid out, No. 4,
22 it's the overall condition that the ARTO is
23 restricted. But this Commission can't restrict the
24 ARTO, I mean, frankly. I mean, what it can tell the
25 ARTO, what it can send a signal to from the ARTO is,

1 if you do this, we're going to pull Ameren out,
2 because that's where the Commission has control.

3 On page 47 -- I don't know if that's where
4 you're at on my testimony --

5 Q. Yes.

6 A. -- but down at lines 18 through 21, I say --
7 in explaining what these conditions meant, I said, "If
8 the first three conditions are met, then the
9 Commission should issue its order granting conditional
10 approval in which it requires AmerenUE to agree to
11 withdraw from the ARTO if . . ." either 4 or 5
12 happens.

13 So, yeah, that is my recommendation, is
14 that -- is that the condition be that they withdraw.

15 Now, how would they implement that and --
16 they would have to file with FERC. I mean, FERC has
17 to approve their withdrawal from the ARTO, and I
18 understand that, but, still, you -- that would be a
19 part of the condition in the agreement. And I think
20 that would send a strong signal, and that's really the
21 purpose for it.

22 Q. Rather than thinking it would ever have to
23 be carried out?

24 A. I would hope it would never have to be
25 carried out, yes.

1 Q. All right. And as to Condition 5, if -- if
2 the FERC approved the ARTO as operational --

3 A. Yes.

4 Q. -- would it both do that and order a single
5 RTO in the midwest, or are those -- do those things
6 cancel each other out?

7 A. Well, immediately, they would cancel one
8 another out. I can't see the FERC at this point in
9 time doing both. But let me give you the scenario
10 that was going through my mind when I read this, is
11 the FERC approves the ARTO, becomes -- it becomes
12 operational, and after six months, after a year, it
13 determines that this Inter-RTO agreement is not
14 working. This -- this elimination of seams, this
15 Super-Region, there is just too much conflict.

16 There's -- people are not getting one-stop
17 shopping within the region, and it makes a difference
18 where they are placing their order. Did they place
19 their order with the MISO, or did they place it with
20 the ARTO? Did it -- did one case get approved and
21 another case not get -- you know, down the line the
22 FERC says, Wait a minute. This thing that we thought
23 was going to work isn't working and now we order a
24 single RTO. That's the scenario that was going
25 through my mind at that point.

1 COMMISSIONER MURRAY: I think that's all of
2 the questions that I have.

3 Thank you.

4 THE WITNESS: Thank you.

5 JUDGE MILLS: Commissioner Lumpe?

6 QUESTIONS BY COMMISSIONER LUMPE:

7 Q. Dr. Proctor, who represented us in the
8 settlement as an observer? Were you the --

9 A. No, I was not there.

10 Q. Can you --

11 A. We asked Scott Hempling to attend.

12 Q. Okay. So he was our representative?

13 A. Yes.

14 Q. Okay. And there was a suggestion that
15 perhaps we approve this settlement or what happened by
16 default since we didn't -- since we were represented
17 there. Do you agree with that?

18 A. No. I -- no, I do not agree with that. We
19 were there as an observer.

20 To give you kind of the history, recall that
21 there were three companies that filed, Illinois Power
22 Company, Commonwealth Edison Company, and then finally
23 Ameren filed to withdraw from MISO and join ARTO, and
24 it was sequenced. The Illinois Power Company petition
25 to withdraw was done much earlier than the other two.

1 When the Commission intervened in that case,
2 and we intervened and we put in comments in that case
3 to the effect that, FERC, do not permit this
4 withdrawal because this will put a big hole in the
5 middle of Illinois, in the middle of the MISO, and
6 things along that line.

7 Commonwealth Edison filed, I think it was
8 late December. Ameren sent a letter, as they
9 indicated, in November of their intention of
10 withdrawing, and we did not intervene in those cases
11 in terms of writing comments. We intervened in both
12 of those cases simply to observe. We did not protest,
13 I guess. We intervened, but we did not pro-- we did
14 not write a protest.

15 Q. Was part of our intervention that -- and
16 sometimes we talk about vanilla interventions --
17 simply because we knew there might be a case before
18 us, so that we wouldn't have made comments, et cetera,
19 because there might have been a case before us?

20 A. That's correct. Particularly on the Ameren
21 intervention, we did not submit comments on the part
22 of the Commission because we knew the Commission would
23 have the Ameren withdrawal before it. That's correct.

24 Q. One of the other issues is the revenue
25 issues, and I talked to Mr. Whiteley about that to

1 explain to me how they would have \$60 million more by
2 being with the ARTO than with the MISO, and how that
3 comes about that they have more revenue from one to
4 the other.

5 Do you have an opinion on that?

6 A. Yes.

7 Q. Would you explain it to me?

8 A. Yes. I'll try.

9 I think the key word in Mr. Whiteley's
10 explanation was revenue retention, and revenue
11 retention is a function of retaining the revenues that
12 they are currently earning from their -- from offering
13 their transmission service.

14 Okay. Now, that includes -- there is no
15 question that includes rate pancake transmission
16 rates. If somebody wants to do a transaction and go
17 through AmerenUE to get from one service territory or
18 one control area to another that's not AmerenUE, so
19 it's through service through AmerenUE, they have to
20 pay AmerenUE currently, and that is in part of the
21 current revenues that they collect today, and under
22 the MISO rate design that would be a pancaked
23 transmission revenue that gets eliminated.

24 Okay. Under the ARTO rate design, those
25 dollars -- and I tried to explain that in my

1 testimony, those dollars are put into this separate
2 pot of dollars, okay, that they are allowed to keep.

3 In my view, it's very clear Ameren hasn't
4 changed its rate since it did its 888 filing. To my
5 knowledge, they haven't changed the rate. They
6 haven't decreased that rate because of additional
7 revenues that they have received that they didn't
8 anticipate to receive at the time that they first
9 calculated that rate.

10 So what this rate retention or revenue
11 retention rate is is a way of keeping the revenues
12 that they are currently earning from pancake
13 transmission rates.

14 Now, there are -- to explain this a little
15 bit further, there are -- today there are three kinds
16 of transactions from Ameren. There's within
17 transactions. That would be their native load for the
18 most part. There would be out transactions,
19 transactions that a generator located within Ameren is
20 selling to someone outside of Ameren. Those
21 transactions are obviously increasing as more IPP
22 generation is coming into place. And as Ameren itself
23 sells more into the wholesale generation market, it,
24 too, has to pay that out service.

25 And then there is the through service that

1 we talked about before. You're going from A to C and
2 you have to go through Ameren. And I guess there is a
3 fourth one, which is the into service.

4 Well, the within and into, the revenues from
5 that Ameren would get to retain. Okay. But the out
6 and the through service, which are basically part of
7 the pancake-- pancaking of rates, under the MISO
8 design, those would get eliminated.

9 Okay. That customer would be paying the
10 into rates someplace else. That's all they would be
11 paying. They wouldn't be paying the additional out of
12 rate from Ameren. That's a pancake that gets
13 eliminated.

14 In the ARTO rate design, the revenues from
15 that are set apart in a separate pot and they are
16 allowed to retain those revenues for a period of time,
17 which is through the year 2004.

18 Q. This -- this revenue from the suggestion
19 that this was simply -- or this provision was a
20 transition, is that your understanding?

21 A. Well, I think it was proposed that way. In
22 the initial ARTO rate design, it was proposed as a
23 transition --

24 Q. As a transition.

25 A. -- for -- until the year 2004.

1 I think there were several reasons for it.
2 None of those directly affect AmerenUE, but where
3 companies had retail competition and where rates had
4 been adjusted downward -- well, I'm not -- where rates
5 had been adjusted and those revenues had been taken
6 into account in that rate adjustment. It may not have
7 been downward.

8 But that revenue stream was included as an
9 offset against costs, and you had retail competition,
10 and you had state legislatures freezing rates at those
11 levels. Okay. So now you've got a rate frozen at a
12 retail level for a period of time -- for a transition
13 period of time, and you've got a company facing a
14 situation where part of that revenue stream that's
15 included in that is going to get eliminated. This was
16 a way to compensate for that.

17 So in those cases, it was a way for FERC to
18 induce these folks to join RTOs, I suppose. At the
19 same time, if you had retail competition, the states
20 were telling them they had to join RTOs, but an
21 attempt to kind of counterbalance this rate freezing
22 that took place in certain retail -- where retail
23 competition was in place.

24 Q. You talk about the -- and I think you
25 implied you had a preference of it between the

1 not-for-profit and the for-profit, and was the issue
2 with the for-profit this performance-based issue, or
3 were there other issues that -- that you -- that went
4 along with your preference?

5 A. I think I -- I think my answer to your
6 question is yes, that my major concern with -- is not
7 whether it's for profit or not for profit. My major
8 concern is over the performance-based incentives that
9 might be put into place that would cause, perhaps
10 unintended, actions on the part of the RTO.

11 I think it's much more important that the
12 RTO perceive to be totally independent, totally not
13 taking a position in the market, doing exactly what it
14 has been set out to do, and that is to facilitate the
15 functioning of the market.

16 Q. Is that what you mean by -- you talked about
17 congestion management --

18 A. Yes.

19 Q. -- being that function, and that's what
20 you --

21 A. Yeah.

22 Q. That's what you're saying?

23 A. Congestion management is probably the area
24 where -- where I think the RTO is going to have the
25 biggest impact on facilitating the market, and, so,

1 yes.

2 COMMISSIONER LUMPE: Thank you, Dr. Proctor.

3 That's all I have.

4 JUDGE MILLS: Commissioner Gaw?

5 COMMISSIONER GAW: I don't have any

6 questions. Thank you.

7 QUESTIONS BY JUDGE MILLS:

8 Q. I have just a few, and I think this touches
9 on some of the questions you got earlier.

10 Where exactly will Ameren be if the
11 Commission denies their application in this case?
12 They can't simply say, Our application is turned down.
13 We're still a member of the Midwest ISO, because they
14 aren't any longer.

15 A. That's correct.

16 Q. So they would have to take some affirmative
17 steps to rejoin the Midwest ISO if that's what they
18 wanted to do?

19 A. Yeah. There are lots of scenarios that can
20 go out from such an order. I mean, obviously, one
21 scenario is that Ameren would appeal it, would appeal
22 the order, and would stay in the RTO until -- until
23 the appeal process was done.

24 But assuming that they didn't appeal it and
25 didn't -- then at that point they would have to join

1 an RTO. We've told them, no, you can't leave the
2 Midwest ISO, so from the Commission's standpoint here,
3 there is one RTO that we've approved that they can
4 join, and that's the Midwest ISO. So I assume they
5 would go back to Midwest ISO and say, Hey, our
6 application was denied. We need to join -- rejoin.
7 And they would have to file at FERC in order to have
8 the FERC approve that.

9 Q. And just so that I'm clear, it is Staff's
10 recommendation that we do deny their application to
11 withdraw from the MISO and join the ARTO?

12 A. Let me be very specific on that. If the
13 Commission's decision is based on the history of
14 performance by the ARTO, that's my recommendation.

15 If on the other hand the Commission wants to
16 allow Alliance the opportunity to turn it around, so
17 to speak, then that's where I lay out the conditions.
18 That's where the December 15th date came into play,
19 though that December 15th date was very much centered
20 or cued upon the Company's filing in this case that
21 they had to have a decision by December 15th.

22 I -- my -- my sense is the following: I
23 don't know very -- I know very little about National
24 Grid USA. I know probably enough to be dangerous
25 right now about who they are and what they've done in

1 the United Kingdom. I think their intention is to set
2 up an independent process, independent of the
3 transmission owners. I really believe that to be
4 their intention. And do I think they can turn this
5 around? You know, that is my hope.

6 But, again, if you -- how do you make
7 decisions? I tend to give people a second chance.
8 You know, the historical record was -- I don't think
9 was very good on the Alliance's part. So if you want
10 to make a decision based upon that, I think there is a
11 record to make that decision.

12 If you want to give them the chance to go
13 forward and prove themselves, then I would put in the
14 conditions that the Staff has specified.

15 Q. And I think when you earlier testifying
16 about that, you used the word "gamble" on their future
17 performance. Is that how you would characterize it?

18 A. Well, it depends on how you would do it. I
19 wouldn't gamble. What I would do is -- is follow my
20 recommendations and say, Okay, you know, we will come
21 back together at this date, December 5th, people will
22 file, and has it improved? Has it changed? If it
23 hasn't at that point, maybe at that point we set
24 another date.

25 But -- but if you're feeling a little bit

1 like you are gambling, you might want to do it
2 sequentially like that, and maybe at some point you
3 go, You know, this has gone on long enough. We've got
4 to -- we've got to make a decision at a certain point.

5 Q. So your primary recommendation is that we do
6 approve the withdrawal and condition it based on the
7 conditions in the List of Issues?

8 A. If you --

9 Q. I'm trying to pin you down here.

10 A. Yes, I know you're trying to pin me down.

11 In a sense it doesn't matter what I feel.

12 It matters what the Commission -- how they want to
13 make a determination in this case. Do they want to --
14 you know, some people want to make a decision based
15 upon historical performance, on how well you've
16 performed. Okay. I'm trying to give you a way to do
17 that on a going-forward -- on a going-forward basis.

18 Do I have a sense -- and that's all it is --
19 that National Grid, or whoever takes over, can turn
20 this thing around? My sense is that FERC is going to
21 force them to. Okay? It's -- it's -- it's going to
22 get turned around. I don't know how long it's going
23 to take. So if you're asking personally what my sense
24 is, that's it, if that helps.

25 JUDGE MILLS: I think that's all of the

1 questions I have.

2 If there is nothing further from the Bench,
3 we'll do further cross-examination based on the
4 questions from the Bench, beginning with Public
5 Counsel.

6 MR. COFFMAN: No questions.

7 JUDGE MILLS: Municipal Electric Utilities
8 Commission?

9 MR. KINCHELOE: No questions.

10 JUDGE MILLS: The MIEC?

11 MS. VUYLSTEKE: No questions.

12 JUDGE MILLS: The MEG?

13 MS. LANGENECKERT: No questions.

14 JUDGE MILLS: And Ameren?

15 MR. HENNEN: No questions.

16 JUDGE MILLS: Okay. Redirect from the Staff
17 based on all of the cross-examination and the
18 questions from the Bench.

19 MR. FREY: Thank you, your Honor, just a
20 couple of questions.

21 REDIRECT EXAMINATION BY MR. FREY:

22 Q. Dr. Proctor, in response to questions from
23 Commissioner Murray, you testified that the seams
24 group had been meeting for a period of months. Do you
25 recall that?

1 A. Yes, I do.

2 Q. Could you explain what seams group you were
3 referring to? Clarify that, please.

4 A. Yes. Out of -- after Order 2000 was issued,
5 the FERC went and held regional meetings, and they
6 held a meeting in Kansas City. They also held
7 meetings in Cincinnati, Atlanta, and other places.

8 But out of the Kansas City meeting, the
9 Missouri Commission offered to put together and
10 facilitate a group of people within this region that
11 would sit down and talk about seams. Apparently, that
12 same type of thing had occurred in the Cincinnati
13 meeting where ARTO had a much larger presence in
14 Cincinnati than they did in Kansas City.

15 And we initially met in St. Louis and had, I
16 don't know, a half a dozen meetings, and at the
17 same -- towards the end -- Southwest Power Pool was
18 participating in those meetings, and MISO, and I think
19 that was primarily the two groups that were meeting in
20 St. Louis at that time.

21 Southwest Power Pool got an invitation to
22 participate in seams meetings then that involved the
23 ARTO and Grid South and MISO. And so the meetings
24 that we were in transferred over to this -- this other
25 group. As those meetings proceeded, PJM joined that

1 group. We had people from NEPOOL -- I'm sorry -- New
2 England Power Pool that were attending as well.

3 And in the primary discussions in those
4 groups were things like one-stop shopping, coordinated
5 regional planning, dealing -- in fact, what
6 Mr. Whiteley said is where we're at on market
7 monitoring came out of that group.

8 MISO at one point -- we had come to an
9 agreement on market monitoring within that group, and
10 then MISO issued a RFP and invited any of the other
11 RTOs to join in in the evaluation of the RFP or join
12 in in hiring the independent market monitor. And so
13 that came -- the independent market monitor that was
14 hired by MISO is also the one that, I think, ARTO is
15 planning to hire on.

16 So all of those types of issues were being
17 discussed, and we had documents and settlement
18 documents relative to all of those issues, except for
19 elimination of pancake transmission rates among --
20 between RTOs and congestion management. And the only
21 reason on congestion management, no one was far enough
22 along in development of the congestion management
23 process to seriously sit down at that time and talk
24 about it. So that's kind of the history of that.

25 Q. Thank you.

1 Commissioner Murray also made reference to
2 the Chief Judge's statements about the accomplishments
3 of the Settlement Agreement. Do you recall that?

4 A. Yes.

5 Q. And I would just ask you if you consider the
6 Chief Judge's statements to be an overstatement?

7 A. Well, it made it appear that all of these
8 things had come out of this -- I don't know what it
9 was -- eleven-day, very short mediation period, and a
10 lot of those things were -- were in place or underway
11 before we ever got to the mediation. And so in that
12 sense, yeah, it was an overstatement.

13 I don't think it -- I don't think it did
14 anything in congestive management that we weren't
15 committed to as a seams group. It did resolve one
16 problem, and that was elimination of the pancake rates
17 between two RTOs. That's essentially what that
18 settlement did in terms of those things. I'm sure it
19 did other things in terms of providing money.

20 MR. FREY: Pardon me. If I could have a
21 minute, please.

22 JUDGE MILLS: Certainly.

23 BY MR. FREY:

24 Q. Does the settlement also address the problem
25 with the companies who might be -- who perhaps didn't

1 join the MISO or the ARTO prior to that February 20th
2 deadline?

3 A. I agree with Mr. Whiteley. In terms of
4 the -- in terms of the cooperation agreement, I think
5 it would apply to anyone. But in terms of that one
6 critical issue that we could never get resolved, and
7 that was elimination of pancake rates, it does not
8 settle that.

9 MR. FREY: Okay. Thank you.

10 That's all I have, your Honor.

11 JUDGE MILLS: Okay. Thank you.

12 Dr. Proctor, you may step down.

13 (Witness excused.)

14 JUDGE MILLS: Let's go ahead and take a
15 ten-minute recess. We'll be back at about two or
16 three minutes until 3:00.

17 We're off the record.

18 (A RECESS WAS TAKEN.)

19 JUDGE MILLS: Let's go back on the record.

20 Our next witness is Ryan Kind for the Office
21 of the Public Counsel.

22 All right. Step forward.

23 Raise your right hand.

24 (Witness sworn.)

25 JUDGE MILLS: Thank you.

1 You may be seated.

2 Mr. Coffman, please go ahead.

3 MR. COFFMAN: Thank you.

4 RYAN KIND testified as follows:

5 DIRECT EXAMINATION BY MR. COFFMAN:

6 Q. Please state your name and title for the
7 record?

8 A. My name is Ryan Kind, and I'm the Chief
9 Energy Economist at the Missouri Office of the Public
10 Counsel.

11 Q. Are you the same Ryan Kind that has caused
12 to be filed in this case prepared Rebuttal Testimony
13 which has been marked in both -- or marked as
14 Exhibit 5 and Exhibit 5P, 5P being the proprietary
15 version of the same testimony?

16 A. Yes, I am.

17 Q. Do you have any corrections to this
18 testimony?

19 A. Yes, I have just one correction.

20 On page 18, I just omitted one word in the
21 sentence that begins in line -- let's see, in line --
22 no, in line 17, so the sentence beginning in line 17
23 on page 18. The sentence reads, "On Page 7 of
24 Attachment RK-2, Ameren's senior management informed
25 its board of directors that the" --

1 Q. I should stop you.

2 A. Okay.

3 Q. Is this -- are you reading from testimony
4 that is, in fact, marked as proprietary?

5 A. I'm glad you did stop me.

6 Q. Sorry.

7 A. I guess I can't correct that.

8 MR. COFFMAN: Your Honor, I guess --

9 THE WITNESS: Unless I just talk about
10 inserting one word in between two words within that
11 sentence.

12 MR. COFFMAN: Your Honor, should I request
13 to go in camera?

14 JUDGE MILLS: No. I think Mr. Kind has the
15 solution. Let's do it that way.

16 THE WITNESS: Okay. The change is on
17 line 19, and after the first two words on line 19, we
18 should insert the word "one," o-n-e.

19 BY MR. COFFMAN:

20 Q. Okay. Great. With that one correction, if
21 I were to ask you the same questions as contained in
22 Exhibits 5 and 5P today, would your answers be the
23 same to your best information, knowledge, and belief?

24 A. Yes, they would.

25 MR. COFFMAN: I would now offer Mr. Kind for

1 cross-examination, and offer Exhibits 5 and 5P into
2 the record.

3 JUDGE MILLS: Exhibits 5 and 5P have been
4 offered.

5 Are there any objections?
6 (No response.)

7 JUDGE MILLS: Hearing none, they will be
8 admitted into the record.

9 (EXHIBIT NOS. 5 AND 5P WERE RECEIVED INTO
10 EVIDENCE.)

11 JUDGE MILLS: Cross-examination first by
12 Staff.

13 MR. FREY: No questions, your Honor.

14 JUDGE MILLS: The Municipal Electric Utility
15 Commission?

16 MR. KINCHELOE: No questions.

17 JUDGE MILLS: MIEC?

18 MS. VUYLSTEKE: No questions.

19 JUDGE MILLS: MEG?

20 MS. LANGENECKERT: No questions.

21 JUDGE MILLS: Ameren?

22 MR. HENNEN: No questions.

23 JUDGE MILLS: Questions from the Bench?

24 COMMISSIONER MURRAY: I'm going to pass
25 right now.

1 JUDGE MILLS: Commissioner Lumpe.

2 QUESTIONS BY COMMISSIONER LUMPE:

3 Q. Mr. Kind, is your major concern the lack of
4 independence -- a lack of an independent board? Would
5 you --

6 A. I would say it's the lack of independence
7 that has been in place up to now and the ramifications
8 that that lack of independence has had on the RTO
9 formation process in that that formation process has
10 resulted in a number of decisions being made solely by
11 transmission owners and, in my view, that solely will
12 further the interests of transmission owners and their
13 affiliated companies that are involved in power
14 marketing and unregulated generation.

15 Q. And if an independent board were to be
16 established, say, somewhere between now and
17 December 15th, or whatever, are you concerned about
18 the authority of that independent board, what it might
19 do or not be able to do, or --

20 A. Well, yes, I am. I'm concerned about, first
21 of all, just the independence. The applicant to be
22 their manager as an independent director has not shown
23 independence thus far. They have ownership interests
24 in generation and -- generation business in the
25 northeastern United States. And in addition to that,

1 I am concerned that even if it is a truly independent
2 board that they will not have the authority to undo
3 decisions that have already been made by transmission
4 owners.

5 And with respect to that problem on
6 limitations on undoing decisions that have already
7 been made by transmission owners, I would like to
8 refer you to Exhibit 11 that was entered into the
9 record today, or at least submitted. And there is a
10 key sentence in there. What that exhibit is, it says,
11 "Term Sheet, National Grid - Alliance RTO," and it's
12 an agreement that the Alliance transmission owners
13 have entered into with National Grid, the terms under
14 which National Grid would take over as an independent
15 director.

16 And if you look at the second paragraph on
17 the first page there, which is also the first
18 paragraph under the "Structure" section, and if you
19 look at the last sentence there, it says, "Alliance
20 shall adhere to the protocols filed with FERC, meaning
21 those filed previously up to this point by the
22 Alliance transmission owners without any independence
23 or input from stakeholders. They will adhere to the
24 protocols filed at FERC" -- it doesn't say filed and
25 approved by FERC. It just says "filed at FERC" --

1 including a pricing protocol, operating protocol,
2 planning protocol, and revenue distribution protocol.

3 And I would note that it's not all that
4 unusual for transmission owners to ask that their
5 pricing protocols and revenue distribution protocols
6 be accepted as a condition of their forming an RTO,
7 but I am not aware of any RTO so far that has tried,
8 as the transmission owners are trying in this
9 document, to have all of their operating protocols and
10 planning protocols not subject to any second-guessing
11 by an independent entity once it takes over. I find
12 that to be totally appalling they would even think to
13 propose such a thing.

14 Q. So the National Grid, or whatever that
15 entity is, what that independent entity might be,
16 would simply be following and managing the protocols
17 and agreements that have already been made? It
18 wouldn't come in and, say, you know, turn everything
19 over and change things? It would just simply follow
20 what has been already designed, structured, and
21 determined; is that -- yes or no?

22 A. That's basically the problem I have. There
23 will be some new protocols that have not even been
24 filed, and they could have some input on those, but
25 many of the crucial ones have already been filed.

1 Q. And you have a few other conditions. Do you
2 support the conditions that Staff recommended?

3 A. We support the intent of many of those
4 conditions. We -- I think we've probably made it
5 abundantly clear in our position statement that even
6 with the Commission's decision to order all of the
7 conditions that are suggested by the party we would
8 still be opposed to this application.

9 We -- we do support the intent of many of
10 those conditions. We are somewhat uncomfortable with
11 the idea of having the additional evidence and
12 additional hearings. We really don't see any need --
13 we think we've seen enough, frankly, of the Alliance
14 RTO and don't see the need to look at any further
15 developments in order to make a decision about the
16 merits of this application.

17 Q. So you're looking at the past history, as
18 Dr. Proctor said, and that's the record and that's --

19 A. No -- and things that are locked in for the
20 future because of the term sheet, as I've mentioned,
21 yeah.

22 And also just -- I'm just looking at -- I've
23 had an involvement in RTO formation efforts in the
24 midwest over the last few years, and I've seen
25 generally a defection of transmission owners from the

1 MISO to the Alliance, and it seems to be those
2 transmission owners that have the difficulty with
3 giving up control over their systems and those that
4 have difficulty with having independent governance.

5 Q. So even with the three additional conditions
6 that you have proposed, you would still be opposed; is
7 that correct?

8 A. That's correct. We would still be strongly
9 opposed.

10 COMMISSIONER LUMPE: Thank you.

11 That's all I have.

12 JUDGE MILLS: Commissioner Gaw?

13 COMMISSIONER GAW: Thank you, Judge.

14 QUESTIONS BY COMMISSIONER GAW:

15 Q. Good afternoon, Mr. Kind.

16 A. Good afternoon.

17 Q. Tell me what your -- what you believe the
18 result of this Commission approving Public Counsel's
19 position would be.

20 A. We -- well, we think -- it's quite possible
21 the immediate result, as Dr. Proctor alluded to, would
22 be an appeal of your decision. If your decision is
23 upheld, I think the result would be AmerenUE taking
24 some action to rejoin the Midwest ISO and get out of
25 the Alliance.

1 Now, that's based on the assumption that the
2 FERC doesn't act in early November to determine that
3 there should just be one RTO in the midwest region,
4 and we're getting a lot of indications at this point
5 that there is a significant possibility of that
6 occurring.

7 Q. Barring that contingency for a moment, if
8 you -- if we get to a point where there is requests to
9 rejoin MISO, what becomes of the money that was paid
10 on exit by Ameren, the 18 million or so that was paid
11 in March of this year? Do you know?

12 A. I really do not know. I think it would --
13 it would be subject to future FERC decisions,
14 obviously. Any rate-making treatment of that money
15 would be subject to decisions of this Commission.

16 For instance, I would suggest that Public
17 Counsel would likely have a position in future
18 rate-making cases that Ameren violated a condition of
19 the previous order by withdrawing from the MISO and
20 making that payment, so that it would really just be a
21 matter that their shareholders would have to deal
22 with.

23 Q. I want you to confine your analysis to
24 just -- first of all, just Ameren customers in
25 Missouri, and help me to understand what -- what the

1 advantage of Ameren rejoining MISO would be to them as
2 opposed to what they are requesting to join, the RTO.

3 A. Okay. As I mentioned in my testimony,
4 Missouri consumers at all Missouri utilities seem to
5 becoming increasingly dependent on outcomes from
6 wholesale power markets in terms of the reliability of
7 their service, as well as the cost of their service,
8 and Ameren is no exception to that.

9 Ameren -- one of their senior
10 vice-presidents made a statement last May that he did
11 not believe any Missouri utilities would build any
12 additional generation. Now, I think that was somewhat
13 of an exaggeration, and it turned out that just a very
14 short time thereafter Ameren itself ended up building
15 some -- making a commitment to build some new peaking
16 capacity in Missouri. I think that was probably --
17 the timing of that was linked to the failure of the
18 Genco bill passing.

19 But trying to get back to your question of
20 what is the impact, RTOs play a key role in both
21 reliability of the transmission grid and in
22 facilitating competitive wholesale power markets.

23 If utilities are not going to be building
24 new generation and instead relying on wholesale
25 markets to provide for future capacity needs,

1 whether -- there is always a question of whether no
2 matter what they do to provide for future capacity
3 needs, this Commission may decide, You went and relied
4 on a wholesale market; you could have built cheaper,
5 and we're not going to allow you to recover anything
6 greater than that.

7 But there is a possibility that other people
8 could build generation more cheaply than Ameren, and
9 that power through -- provided through wholesale
10 markets could be even cheaper than building it
11 themselves if you had the right RTO in place to
12 facilitate the formation of wholesale markets.

13 And what I have seen thus far in terms of
14 the Alliance making what I see to be market design
15 decisions absent any input from stakeholders, I don't
16 believe those wholesale power markets are going to
17 function as well for the benefit of consumers as they
18 could, and I think that if they are a member of the
19 MISO that they will be a part of an RTO that does a
20 better job of facilitating competition in wholesale
21 power markets.

22 Q. But that's sort of a conclusion, isn't it?
23 I want you to analyze for me why you come to that
24 conclusion.

25 A. Okay. Well, it's dependent on a lot of

1 ingredients. As Dr. Proctor mentioned earlier today,
2 congestion management is a key factor in facilitating
3 the development of wholesale power markets. Another
4 factor is just the -- the scope of -- of a market, and
5 the -- in other words, just the geographic size. And
6 we talked a little bit earlier today about Ameren said
7 they have a view that there should be a common market
8 design for the combined ARTO/MISO region.

9 Well, it's my impression that the rest of
10 the Alliance transmission owners don't agree with
11 that, and they seemed to make that very clear in an
12 MDAG meeting a couple of weeks ago.

13 And so what -- I know this sounds like a
14 very fine point, but you can -- there is a difference
15 between constructing congestion management systems
16 that are compatible and constructing congestion
17 management systems that are based on the same market
18 design.

19 By "compatible" it just means that, you
20 know, one -- the two can work together along side each
21 other. It does not mean that they -- the two are
22 going to -- you know, just by working along side each
23 other are going to do the most possible to facilitate
24 competition in wholesale markets. And so congestion
25 management is one of those ingredients.

1 Balancing markets is another big one.

2 Q. I'm going to stop you. I'm not sure you're
3 answering my question. You're giving me an analysis
4 of what factors to look at.

5 A. Okay.

6 Q. And I'm wanting you to get to the point of a
7 comparison of what MISO has to offer as opposed to the
8 ARTO. And if you're going there, and you're listing
9 the factors first, then I will -- I want you to
10 continue, but I want to make sure you understand what
11 I'm asking you. So I'll give it back to you and see
12 if you can address that for me.

13 A. Okay. Well, I'm not sure if I am completely
14 clear, but what I'm getting at are the ingredients
15 that lead to the outcomes from --

16 Q. I'm looking for a direct comparison of
17 benefit to the Missouri customers of AmerenUE for them
18 to remain in -- in this case, I'm not sure "remain" is
19 the right word. For them to be a member of MISO as
20 opposed to the ARTO that they are -- they are
21 requesting permission to be a member of.

22 A. Okay. I mentioned the future capacity needs
23 and increasing reliance on wholesale markets.

24 Ameren has future capacity needs of, like,
25 approximately 2,000, 2,500 megawatts over the next

1 ten years, and the cost that consumers in AmerenUE's
2 service territory will pay for that power if they
3 choose to acquire it through competitive markets
4 instead of building their own generation facilities, I
5 believe that AmerenUE's consumers will be better off
6 with the MISO -- with the competitive market that is
7 developed under the MISO than a competitive market
8 that is developed under the ARTO.

9 And those are -- you know, if you talk about
10 the difference -- even if you're just talking about
11 the difference between, say, paying an average price
12 of 4 cents and 4.1 cents per kilowatt hours, for all
13 of those kilowatt hours, it ends up being a
14 tremendous amount of money and would greatly overwhelm
15 the \$60 million figure that was discussed earlier
16 today.

17 And Mr. Proctor -- excuse me. Dr. Proctor
18 does a good job of discussing some of that in his
19 testimony and sort of putting in context the revenue
20 retention dollars compared to the dollars that are at
21 stake in having the most beneficial development of
22 competitive markets.

23 Q. Is there a difference in regard to Missouri
24 consumers not limited to Ameren customers if Ameren is
25 a part of the ARTO as opposed to the MISO?

1 A. There is.

2 Before I answer that, I remembered something
3 about your last question really that is an important
4 factor I should throw in.

5 Q. Go ahead. Go ahead.

6 We have a way to read back my question, if I
7 don't remember it. Go ahead.

8 A. I was talking about the impact on Ameren
9 customers under the assumption that we do not have
10 open access or retail competition in Missouri in the
11 near future.

12 If you do away with that assumption, if you
13 assume that we do because of legislative action have
14 open access in Missouri for either a limited portion
15 of the customers or all customers, then the dollars at
16 stake are much greater in terms of the outcomes from
17 competitive markets having an impact on AmerenUE's
18 customers.

19 And to kind of maybe transition into your
20 second question, that same factor would be at stake
21 when you're looking at all Missouri customers outside
22 of AmerenUE's service territory as well.

23 Currently, we have some -- some people in
24 Missouri, some utility customers that are relying
25 extensively on wholesale markets, and those are the

1 customers of municipal utilities, as an example, some
2 customers outside of AmerenUE's service territory.
3 Some of those customers actually would be surrounded
4 by their service territory but not, in fact, a part of
5 it, and those customers will be impacted to a great
6 extent by the -- by both the extent to which an RTO
7 facilitates the development of wholesale markets and
8 the extent to which an RTO maintains the reliability
9 of the grid as you're getting an increased number of
10 transactions due to the facilitation of wholesale
11 markets.

12 Q. Okay. And you believe that that is
13 something that is a factor attributable to just one of
14 the choices here, not both?

15 A. My review of the many components that both
16 of these RTOs have been involved in terms of
17 development of wholesale markets is that the MISO is
18 far ahead in -- they are far ahead in terms of what
19 they have done, and they are far ahead in terms of
20 processes that are underway right now to do more.

21 For instance, there -- you know, just the --
22 the input that stakeholders have at the MISO on market
23 decisions, the MISO is -- is act-- you know, what I
24 see the ARTO doing is sort of going through the
25 motions of getting some stakeholder input, and the

1 MISO I see as really making a sincere effort to do
2 that and actually acting upon that input, and I feel
3 like that -- and I feel that input from a broad range
4 of stakeholders is one of the things that's necessary
5 to make competitive markets work.

6 The only thing I haven't added is that in
7 addition to the municipal utilities that are dependent
8 on -- outside of AmerenUE's service territory on
9 wholesale markets that other Missouri investor-owned
10 utilities such as UtiliCorp and KCP&L and Empire also
11 rely to differing extents on acquiring power from
12 wholesale -- competitive wholesale markets, and the
13 RTO that Ameren is in will make a difference in terms
14 of the outcomes that they get from wholesale markets.

15 COMMISSIONER GAW: I believe that's all.

16 Thank you, Judge.

17 JUDGE MILLS: We'll do a round of further
18 cross-examination based on questions from the Bench,
19 beginning with Staff.

20 MR. FREY: No questions, your Honor.

21 JUDGE MILLS: Mr. Kincheloe?

22 MR. KINCHELOE: No questions.

23 JUDGE MILLS: The MIEC?

24 MS. VUYLSTEKE: No questions.

25 JUDGE MILLS: The MEG?

1 MS. LANGENECKERT: No questions.
2 JUDGE MILLS: Ameren?
3 MR. HENNEN: No questions.
4 JUDGE MILLS: Redirect. Mr. Coffman?
5 MR. COFFMAN: No redirect.
6 JUDGE MILLS: Mr. Kind, you may step down.
7 (Witness excused.)
8 JUDGE MILLS: At this time let's go ahead
9 with Mr. Dauphinais.
10 MS. VUYLSTEKE: MIEC calls James Dauphinais
11 to the stand.
12 JUDGE MILLS: Raise your right hand, please.
13 (Witness sworn.)
14 JUDGE MILLS: Thank you.
15 You may be seated.
16 JAMES R. DAUPHINAIS testified as follows:
17 DIRECT EXAMINATION BY MS. VUYLSTEKE:
18 Q. Will you please state your name and business
19 address for the record?
20 A. James R. Dauphinais, 12--
21 Q. Oh, I'm sorry.
22 A. 1215 Fern Ridge Parkway, Suite 208,
23 St. Louis, Missouri, 63141.
24 Q. Okay. By whom are you employed and in what
25 capacity?

1 A. I'm a senior consultant at the firm of
2 Brubaker & Associates, Inc.

3 Q. Okay. And did you prepare and cause to be
4 filed in this case the public and the highly
5 confidential versions of your Rebuttal Testimony,
6 which have been labeled as Exhibits 6 and 6HC?

7 A. Yes.

8 Q. Okay. Do you have any additions or
9 corrections to that testimony?

10 A. I have one correction.

11 Q. Okay. Could you, without disclosing any of
12 the proprietary information in that testimony, let us
13 know what that correction is?

14 A. Yes. On page 12, line 4, the word "all"
15 should be stricken.

16 Q. Thank you.

17 If I asked you now the same questions that
18 are set out in your testimony, would your answers
19 today be the same as those contained in your
20 testimony?

21 A. Yes.

22 Q. Okay. Are those answers correct -- true and
23 correct to the best of your knowledge and belief?

24 A. Yes.

25 MS. VUYLSTEKE: Okay. And at this time we

1 would like to offer Exhibits 6 and 6HC into the
2 record, and tender the witness for cross-examination.

3 JUDGE MILLS: Are there any objections to
4 the admission of Exhibit 6 or 6HC?

5 (No response.)

6 JUDGE MILLS: Hearing none, they will be
7 admitted.

8 (EXHIBIT NOS. 6 AND 6HC WERE RECEIVED INTO
9 EVIDENCE.)

10 JUDGE MILLS: Cross-examination. Mr. Frey?

11 MR. FREY: No questions, your Honor.

12 Thanks.

13 JUDGE MILLS: Mr. Coffman?

14 MR. COFFMAN: No questions, your Honor.

15 JUDGE MILLS: Mr. Kincheloe?

16 MR. KINCHELOE: No questions, your Honor.

17 JUDGE MILLS: Ms. Langeneckert?

18 MS. LANGENECKERT: No questions.

19 JUDGE MILLS: Mr. Hennen?

20 MR. HENNEN: No questions.

21 JUDGE MILLS: Questions from the Bench.

22 Commissioner Murray?

23 COMMISSIONER MURRAY: Thank you.

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. On page 3 of your testimony, you indicate
3 that -- I'm looking at line 6, and I'm in the highly
4 confidential version, but we're not in any highly
5 confidential material there -- if and when Ameren
6 transfers control of its assets to the ARTO that
7 Ameren abide by the terms and conditions of the
8 Commission approved Stipulation and Agreement in Case
9 No. EO-98-413 as if the ARTO was the MISO.

10 Can you tell me what those terms and
11 conditions are?

12 A. Yes. They resolved the previous proceeding
13 when Ameren was requesting to join the Midwest ISO.

14 One of the important provisions that's very
15 important to MIEC is a provision -- if I can find
16 it -- was paragraph 10 of the Stipulation, which
17 provided -- addressed issues related to the
18 independence of control area functions. This is
19 principally related to when and if retail access is
20 introduced into Missouri, and we think it's vital
21 that -- that a portion of the Stipulation be
22 preserved.

23 There are other portions as well that are
24 important in regard to notifying -- or requesting --
25 asking permission from this Commission first prior to

1 withdrawing from an RTO. We have seen what happened
2 with the Midwest ISO. They -- they gave notice to the
3 Midwest ISO before asking this Commission. And I
4 think it would be advisable to make sure that into the
5 future -- in that if this Commission allows Ameren to
6 go to the ARTO, that in the future if Ameren wants to
7 leave the ARTO, they come to this Commission first
8 once again. That's another important piece.

9 Q. Are there any terms and conditions in that
10 Stipulation and Agreement that would be irrelevant to
11 the ARTO?

12 A. Not irrelevant as much as there are certain
13 references to either specific provisions of MISO
14 agreements that probably could be stricken without
15 affecting the substance of the document. And there
16 also -- actually, that's principally what the issue
17 is. This reference is to MISO agreements. Those
18 references could be removed, and the content would
19 still be applicable to the ARTO though.

20 I can actually identify what those are if
21 it's helpful.

22 Q. Okay. Why don't you do that?

23 A. Paragraph -- paragraph 6 of the Stipulation,
24 the definition of the transition period would need to
25 be modified. This was originally tied to the

1 transition period for transmission pricing that was
2 applicable to the Midwest ISO. That period or the
3 comparable period for the ARTO is, I believe, the end
4 of 2004, so this provision would have to be modified
5 to reflect that transition period for pricing, for the
6 ARTO ends significantly sooner.

7 The next change I would have would be in
8 paragraph 11. There is a reference in the first
9 sentence where it says, "Pursuant to Article 5 or
10 Article 7 of the Midwest ISO agreement." I would
11 strike that clause "Pursuant to Article 5 or Article 7
12 in the Midwest ISO agreement."

13 Paragraph 12, there is a cite at the end of
14 paragraph 12 that states, "agreement, appendix G to
15 the ISO operating agreement." That would be stricken.

16 Otherwise, in general, wherever it says
17 "Midwest ISO," I believe the Alliance RTO could be
18 substituted.

19 Q. Thank you.

20 On page 6 of your testimony at line 3, the
21 question is posed, "Has Ameren demonstrated that a
22 switch from the MISO to the ARTO will be beneficial to
23 its retail customers in Missouri? And you answer,
24 "No, it has not."

25 My question is, wouldn't we only need to

1 require -- to find that Ameren has demonstrated that
2 the ARTO is no worse for customers than the MISO?

3 A. Well, if twelve-and-a-half-million dollars
4 wasn't paid, I would say that's correct. Twelve-and-
5 a-half million dollars has to be factored into the
6 equation.

7 Q. And that twelve-and-a-half-million dollars
8 would not be addressed until some future rate case; is
9 that correct?

10 A. That is correct.

11 Q. On page 7 of your testimony, you again speak
12 about whether the ARTO will provide more benefits to
13 retail customers than the MISO, and you go on to say
14 that, "It is my opinion the ARTO will provide
15 comparable benefits to the MISO provided the Alliance
16 companies fully comply with all of the requirements
17 placed upon them by the FERC and the Alliance
18 companies fully comply with the requirements of the
19 settlement agreement in FERC Docket No. ER01-123-000,
20 et al."

21 There again, are we not -- are you not
22 talking about a standard that is higher than what we
23 need to find?

24 A. No. CILCO, another utility in Illinois, it
25 is totally encircled by Illinois Power, Commonwealth

1 Edison and Ameren. It chose not to leave the Midwest
2 ISO and go to the Alliance, yet CILCO benefits from
3 the Super-Regional rate just as Ameren would under the
4 Alliance. It's quite plausible that Ameren could have
5 remained in the MISO while just Commonwealth Edison
6 and Illinois Power went to the ARTO.

7 Q. So you're going back to the comparison of
8 remaining in the MISO without paying an exit fee
9 versus becoming a part of the ARTO to get the same
10 benefits; is that --

11 A. I probably should lay them out side by side.
12 I guess what we're comparing is the MISO --
13 at least from my position, would be the MISO and the
14 Super-Regional benefits versus the ARTO plus Super-
15 Regional benefits, plus this twelve-and-a-half-
16 million-dollar expense.

17 Q. The -- on page 8 of your testimony, in
18 answer to the question, "Have the Alliance companies
19 complied with the Settlement Agreement," you speak
20 about the settlement in part calling for seamless
21 congestion management systems, and then go on to say,
22 "Yet the Alliance companies continue to pursue
23 development of a long-term congestion management
24 system through its own market development advisory
25 group rather than jointly with the MISO congestion

1 management working group."

2 Would you elaborate on why you think that is
3 an example of non-compliance with the settlement
4 agreement?

5 A. The Settlement Agreement requires compatible
6 congestion management systems. In the northeastern
7 part of this country, there are three power pools that
8 become ISOs, the ISO New England, the New York ISO,
9 and PJM. They each have adopted a form of locational
10 marginal pricing to handle congestion management.
11 However, there are subtle differences between each of
12 those three systems.

13 And what they have found, especially between
14 PJM and New York is that there have been some
15 incompatibilities that have developed, and largely
16 it's because subtle differences become major
17 differences due to the complexity of these congestion
18 management systems, that they are quite involved.

19 It is my belief, having been involved in
20 congestion management discussions in the Southwest
21 Power Pool in the Midwest ISO and within the Alliance
22 and the MDAG, that's the market development advisory
23 group, that it's -- you can go into -- it's very easy
24 to create subtle differences between your systems if
25 you each work in your own little cell or environment,

1 and that it makes a lot more sense to try to work
2 together on a system that's very close or very
3 similar, if not identical. If you do design nearly
4 identical systems, they will, in fact, be compatible
5 by default.

6 There is another issue as well. When you
7 have two very interlocked RTOs such as the Alliance
8 and the Midwest ISO, what you have is the same
9 stakeholders going to both the meetings of Midwest ISO
10 and the meetings of the Alliance, and it's very
11 inefficient and stretches the resources of
12 stakeholders, and it's just a very inefficient
13 process.

14 It also wastes the value that can be gained
15 which pooling the talents of the transmission owners
16 in the Alliance with the transmission owners in the
17 Midwest ISO. By pooling those talents, I'm sure we
18 would save time by developing a benefit from the
19 knowledge that exists separately in those two groups
20 of transmission owners.

21 Q. Are you saying that they cannot provide a
22 seamless congestion management without working
23 together rather than working in separate groups as
24 they are now?

25 A. That is correct. For congestion management,

1 that's what I'm saying.

2 COMMISSIONER MURRAY: That's all I have.

3 Thank you.

4 JUDGE MILLS: Commissioner Lumpe?

5 QUESTIONS BY COMMISSIONER LUMPE:

6 Q. Mr. Dauphinais, on page 2 of your testimony
7 at the bottom there you conclude that the decision to
8 move from MISO to ARTO was driven by the desire to
9 preserve transmission revenues.

10 A. Yes.

11 Q. And then I think you discuss that further
12 back on page 11 again towards the bottom of the page
13 where you say when Ameren joined MISO there was an
14 estimation of how much money it would lose, and then
15 for some reason there was a nearly five-fold increase
16 in point-to-point transmission revenues, and then the
17 reason for joining the ARTO was to preserve those
18 revenues; is that --

19 A. That's correct.

20 Q. That's correct.

21 Do you have any idea what caused that
22 five-fold increase?

23 A. It's the growth of the competitive wholesale
24 markets. Ameren's transmission system is in a keenly
25 strategic position in the midwest. It allows inter

1 connection of many utilities, and the growth was a
2 reflection of the growth in the wholesale market and
3 the parties taking advantage of removal of pancaking
4 between the -- UE and CIPS that existed prior to the
5 merger.

6 Q. Okay. On page 4, again towards the bottom,
7 you talk about critical components.

8 Are these -- are these conditions, or are --
9 that you would suggest need to be in place?

10 A. No. These were critical components of the
11 actual settlement agreement at the FERC. It contained
12 provisions that reflected these critical components.

13 Q. And as critical components, are they
14 components that need modifying or that are --

15 A. The settlement itself does not have a
16 problem. The settlement only provides a framework.
17 The settlement costs for the establishment of a number
18 of protocols they implement in the settlement, and
19 that's really where the issue has developed in regard
20 to whether the settlement is being complied with.

21 Q. Okay. So you don't have a set of
22 conditions, though, or do you agree with Staff's
23 conditions and Public Counsel's conditions, or do you
24 have a set of conditions on your own, or --

25 A. Yeah. I had summarized a set of

1 recommendations on page 3 of my testimony -- Direct
2 Testimony.

3 Q. Okay.

4 A. They are in many ways very similar to
5 Staff's with some slight differences.

6 Q. Okay. I see it. I see that on page 3.

7 And you have six --

8 A. That's correct.

9 Q. -- conditions there?

10 A. That's correct. Probably the two very
11 important differences are that I'm looking for Ameren
12 to -- that Ameren be required to abide by the terms
13 and conditions of the Stipulation from previous cases
14 as if ARTO was the MISO, consistent with the changes I
15 recently just spoke of a few minutes ago.

16 And the additional thing is a concern about
17 the twelve-and-a-half-million dollars, which, of
18 course, would be in another proceeding.

19 Q. And I think you have some conversation with
20 Commissioner Murray about why -- why staying with the
21 MISO would be better for customers than transferring
22 to the ARTO?

23 A. I laid out what we would have to weigh on
24 each side.

25 Q. And would you -- can you briefly go through

1 that?

2 A. Sure. Let's start at -- let's put the
3 Settlement Agreement aside, and let's put to the side
4 of twelve-and-half-million dollars. We just have the
5 MISO as it exists today and the ARTO as it exists
6 today.

7 The MISO as it exists today is a
8 FERC-approved independent system operator.
9 Independent system operator conditions were set in
10 Order 888. It proceeded Order 2000. But the Midwest
11 ISO is in conformance with those requirements.

12 The Midwest ISO has a pending application
13 for RTO approval at the FERC right now. The FERC has
14 not ruled either way on that.

15 Q. You mean the ARTO has a pending application,
16 or the MISO?

17 A. The MISO does.

18 Q. So they have FERC approval or --

19 A. They have FERC approval as an ISO, and they
20 can begin operations as an ISO. An ISO provides
21 benefits -- similar benefits as an RTO would. There
22 are slightly stiffer requirements to be considered an
23 RTO by the FERC.

24 Q. I see. Okay. So they are an ISO, but they
25 have a pending application to become an RTO?

1 A. And they can start up operations without RTO
2 approval because they already have ISO approval.

3 Q. Okay.

4 A. It's another important difference, or
5 consideration, rather.

6 To contrast that -- let's contrast that now
7 with the ARTO. The ARTO has approval for some of the
8 four characteristics' innate functions that are
9 required by FERC under Order 2000 for RTOs, but the
10 ARTO does not have complete approval. The ARTO has
11 not been approved either as an ISO, so the ARTO right
12 now is not an RTO. In fact, it is especially not an
13 RTO because it does not have an independent staff;
14 it's overseen by an independent board; it's advised by
15 a stakeholder advisory committee, and the FERC has
16 said that the -- independence is the bedrock of ISOs
17 and RTOs.

18 So as it stands today, the ARTO is not an
19 RTO.

20 Q. Okay. And based on those items, it would be
21 better for customers under the MISO than under the
22 ARTO?

23 A. As it stands today, yes, it would be better
24 to be under the MISO.

25 COMMISSIONER LUMPE: Okay. Thank you.

1 That's all I have.

2 JUDGE MILLS: Commissioner Gaw?

3 COMMISSIONER GAW: Thank you.

4 QUESTIONS BY COMMISSIONER GAW:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Is it possible for this Commission in your
8 opinion to -- to not order Ameren to stay in the MISO
9 but also specifically not allow it to join the ARTO?

10 A. Well, it's somewhat complex because -- I
11 guess there's three parts to this. One is that
12 they've already withdrawn. They didn't ask the
13 Commission, but they've already withdrawn.

14 Q. Yes, sir.

15 A. Number two, they've actually already joined
16 the Alliance.

17 But they haven't done the last thing. The
18 last thing is the most important and most critical.
19 They have not transferred control of the transmission
20 assets to the ARTO, and it's in that last step that I
21 have recommended they not be allowed at this time.

22 Q. So your recommendation is that -- is what
23 then, that we not -- well, let me -- let me back up.

24 What is your recommendation right now
25 again --

1 A. Okay.

2 Q. -- with this Commission's action?

3 A. I several -- I had several conditions laid
4 out, but to simplify it in regard to the -- it's
5 principally not to approve the transfer of Ameren's
6 transmission -- I'm sorry. Let me start that from the
7 top -- not to approve the transfer of control of
8 Ameren's transmission facilities to the ARTO at this
9 time, not until -- and to the extent that the
10 Commission did eventually allow that, it would not
11 allow that until the ARTO has been found by the FERC
12 to meet all of the start-up requirements for RTOs and
13 that the FERC has found that the settlement agreement
14 has been fully complied with by the ARTO.

15 Q. Do you believe that question is currently in
16 front of this Commission --

17 A. Yes, I do.

18 Q. -- transfer of those assets?

19 A. Yes, I do.

20 Q. All right. Now, the reality being that
21 there has been a withdrawal from MISO and that there
22 has been a joining with the proposed RTO, does the
23 Commission have the ability to effectuate a reversal
24 of both of those things with an order?

25 A. I also indicate in my recommendations that

1 if the ARTO did not meet the FERC's start-up
2 requirements by December 31st, 2002, and also did not
3 comply with the Settlement Agreement by December 31,
4 2002, that this Commission order Ameren to return to
5 the Midwest ISO. The basis of that day is a provision
6 in the FERC Settlement Agreement that requires Ameren
7 to remain within the Alliance until December 31, 2002.

8 I will say that if that provision was not in
9 the Settlement Agreement, I would be -- I would not --
10 I would be recommending outright that the application
11 be rejected, that Ameren be directed to return to the
12 MISO.

13 Q. And what -- would you carry that analysis
14 one step farther for me and explain to me the
15 importance of that provision in regard to this
16 Commission's ability to rule or to effectuate anything
17 in regard to rejoining of the -- of Ameren with MISO
18 at the present time?

19 A. There is a concern -- my concern would be it
20 is unclear what it would have done to the FERC
21 Settlement Agreement.

22 Now, when -- when this testimony was
23 written, it was before FERC Chairman Pat Wood, III
24 issued his memo to his fellow commissioners laying out
25 a framework to go forward, a framework that much more

1 aggressively would pursue consolidation of the RTO
2 proposals and ensuring that all utilities participate
3 in RTOs. It is probably now much more likely that if
4 the Settlement Agreement was disturbed that the FERC
5 would order the Alliance and MISO utilities to operate
6 within a single RTO.

7 Q. So are you suggesting that -- that it is
8 your opinion that if this Commission made an order for
9 Ameren to return to the MISO at the present time that
10 that would precipitate a greater likelihood of FERC
11 ordering a single RTO to operate in the regions of the
12 current MISO and the ARTO? Is that what -- I'm not
13 sure I understand you correctly.

14 A. I'm saying that -- what I said when I wrote
15 this testimony is I think it was less likely that that
16 would happen.

17 Since I've written the testimony, because of
18 new developments at the FERC, I think it is now more
19 likely that if this Commission ordered Ameren to
20 return to the MISO immediately, that it would, of
21 course, disturb the settlement and FERC would -- it's
22 much more likely now than before that FERC would order
23 the Alliance and Midwest ISO utilities to merge into a
24 single RTO.

25 COMMISSIONER GAW: Thank you very much.

1 Thank you, Judge.

2 JUDGE MILLS: Let me ask a few follow-up
3 questions here.

4 QUESTIONS BY JUDGE MILLS:

5 Q. First of all, if this Commission were to
6 order that, would not the FERC have to approve
7 Ameren's withdrawal from ARTO?

8 A. Yes, it would.

9 Q. Would it also have to approve Ameren's bid
10 to rejoin the Midwest ISO?

11 A. Yes, it would.

12 Q. And would the Midwest ISO itself have to
13 approve Ameren's bid to get back in?

14 A. Yes.

15 Q. Okay. All right. Now, let me -- something
16 else that you said made me think of this, but Ameren
17 has asked in their application that we -- actually,
18 they asked in their application that we approve it by
19 September 15th, which, obviously, is not going to
20 happen. I think currently they are hoping that we
21 approve it by December 15th, which is the hopeful
22 start-up date.

23 Why wouldn't it make more sense for this
24 Commission to wait and see whether the ARTO was
25 approved by FERC before we say it's a good idea or not

1 for Ameren to join it?

2 A. We don't oppose Staff's proposal in that
3 regard.

4 JUDGE MILLS: That's all of the questions I
5 have.

6 We'll do further cross-examination based on
7 questions from the Bench beginning with Staff.

8 MR. FREY: No questions, your Honor.

9 Thanks.

10 JUDGE MILLS: OPC?

11 MR. COFFMAN: Thank you.

12 I have a couple of questions.

13 I'm sorry. I should go up to the appointed
14 podium.

15 RECROSS-EXAMINATION BY MR. COFFMAN:

16 Q. Let's see. You were asked some questions, I
17 believe, by Mr. Gaw about whether transfer of control
18 of transmission assets was at issue in this case.

19 You understand the distinction that is made
20 is by Ameren between jurisdictional and functional
21 control?

22 A. Yes -- well, the difference between
23 jurisdictional and functional? I'm not aware of what
24 the difference would be.

25 Q. Yeah. Well, I didn't know either. That's

1 why I was asking you.

2 Okay. But with regards to your
3 recommendation, as far as what you're talking about,
4 transfer of control is at issue in this case, and for
5 that reason you are asking the Commission to deny the
6 application?

7 A. Yeah. At this time, yeah.

8 Q. Yes. Okay. And you discussed with
9 Commissioner Murray some inefficiencies with having
10 two entities in the midwest that are RTOs, or
11 purporting to some day be RTOs. And -- and then I
12 believe in your more recent questions and answers with
13 Mr. Gaw, Commissioner Gaw, you were referring to the
14 fact that it wasn't likely when you wrote your
15 testimony that the FERC would order one -- one RTO in
16 the midwest. But I wanted to make sure if I
17 understood what you believe at this time.

18 If the Commission were to deny the
19 application, would that possibly send a message to the
20 FERC and encourage the FERC to proceed with ordering
21 one RTO in the midwest?

22 A. Yes.

23 Q. And just one other series of questions in
24 response to Commissioner Murray's questions on
25 congestion management, and this is a follow-up to a

1 question you had earlier, and, hopefully, this will
2 make sense.

3 Is there an additional level of difficulty
4 involved in developing congestion management systems
5 in RTOs that have multiple control areas?

6 A. Oh, yes. The only functional market base
7 congestion management systems that exist today are in
8 ISOs that operate as a single control area. It is far
9 more complex to develop congestion management systems
10 when there are multiple control areas.

11 Q. And to be clear, the situation between the
12 Midwest ISO and the Alliance RTO is what you consider
13 a multiple control area?

14 A. Well, even inside the Midwest ISO and inside
15 the ARTO, there are multiple control areas, so it is
16 an even more -- this is more complex than just trying
17 to get New York and PJM to do something compatible,
18 because in New York and PJM they each run just one
19 control area. Here we're dealing with two entities
20 that within those two entities they are multiple
21 control areas.

22 Q. Okay. Is it fair to say that the situation
23 that is now developing as a result of the IRCA is the
24 most complex of these type transmission organizations
25 in the country?

1 A. Yes.

2 Q. Does the situation lead to even greater need
3 for the development of identical or very similar
4 congestion management systems when you have multiple
5 control areas?

6 A. Well, I guess the -- that question is going
7 to be framed in the sense that we would allow multiple
8 congestion management systems within the MISO, for
9 example, and I would say that would be very
10 undesirable and would be very complex because each of
11 those could be subtly different, and they may not
12 work. It just rebalkanizes the market, because it may
13 be difficult to get power between those control areas
14 because of the subtle differences.

15 MR. COFFMAN: Okay. That's all of the
16 questions I have. Thanks.

17 JUDGE MILLS: Mr. Kincheloe?

18 MR. KINCHELOE: No questions, your Honor.

19 JUDGE MILLS: Thank you.

20 Ms. Langeneckert?

21 MS. LANGENECKERT: No questions.

22 JUDGE MILLS: Ameren?

23 MR. HENNEN: No questions.

24 JUDGE MILLS: Okay. Redirect?

25 MS. VUYLSTEKE: Just a couple.

1 REDIRECT EXAMINATION BY MS. VUYLSTEKE:

2 Q. Mr. Dauphinais, Commissioner Murray asked
3 you about recovery of the \$12.5 million MISO exit fee,
4 whether that would be addressed in a rate case perhaps
5 in the future or in the current complaint case.

6 Is it your recommendation that the
7 Commission make any finding in this case which could
8 impact on the future recovery of that amount?

9 A. Well, if the Commission were to find that
10 it's not in the public interest for Ameren to transfer
11 its transmission assets to the MISO and that Ameren is
12 to return to the MISO, I think they should say
13 something about the twelve-and-a-half-million dollars,
14 because it goes to the prudence of Ameren incurring
15 the twelve-and-a-half-million-dollar expense.

16 Q. Okay. And then just one other follow-up in
17 response to the Commissioner's questions about what
18 would happen if the Missouri Commission required
19 Ameren to return to the MISO.

20 You had speculated that it seemed likely
21 that the FERC -- would be more likely that the FERC
22 would order one single midwest RTO. Correct?

23 A. Yes.

24 Q. And do you think the FERC would welcome that
25 opportunity?

1 A. I believe the current majority would.

2 MS. VUYLSTEKE: Okay. Thank you.

3 JUDGE MILLS: Thank you, Mr. Dauphinais.

4 You may step down.

5 (Witness excused.)

6 JUDGE MILLS: That's all of the witnesses we
7 have for this hearing because Dr. Lissik is not taking
8 the stand.

9 We need to talk, among other things, about a
10 briefing schedule.

11 Mr. Coffman?

12 MR. COFFMAN: Yes. I have a couple of
13 requests for administrative notice and late-filed
14 exhibits, if this would be an appropriate time to make
15 those requests.

16 JUDGE MILLS: You can make requests.

17 MR. COFFMAN: Okay. I first would request
18 that the Commission take administrative notice of
19 filings that have been made in the current earnings
20 complaint case filed by the Commission Staff,
21 EC-2002-1.

22 JUDGE MILLS: What specifically?

23 MR. COFFMAN: I could -- I could limit it
24 specifically to AmerenUE's Answer to the Complaint.

25 JUDGE MILLS: And the relevance of that is

1 what?

2 MR. COFFMAN: As is mentioned in Mr. Kind's
3 testimony, and perhaps others, the defenses that
4 Ameren has raised in its Answer and as that relates to
5 the likelihood or certainty of the benefits of
6 transmission revenues flowing through to consumers.

7 JUDGE MILLS: Does anyone have objection to
8 the Commission taking administrative notice of
9 Ameren's Answer to the Complaint in EC-2002-1?

10 MS. COOK: May I speak?

11 JUDGE MILLS: Yes.

12 MS. COOK: The Company would not have any
13 objection, of course, to the Commission taking
14 administrative notice of other filings that have been
15 made without agreeing that there is any relevance
16 whatsoever to the pleading that the counsel has
17 requested.

18 JUDGE MILLS: Okay. All right. We will
19 take administrative notice of Ameren's Answer to the
20 Complaint filed in Case No. EC-2002-1.

21 MR. COFFMAN: I have two questions for the
22 opportunity to make late-filed exhibits, and I'm not
23 sure. The timing of one of them may depend on the
24 briefing schedule, but I would say the first one I
25 believe would be pretty easy.

1 The -- there were, I believe, scheduled
2 status reports to be filed at the FERC on behalf of
3 both the Midwest ISO and the Alliance RTO, and those
4 were, I believe, to be filed yesterday, on October 9.
5 And we have not received copies of those, but it's
6 possible they could be relevant to the issues in this
7 case, and we'd like the opportunity, if we receive
8 those, to file them with the Commission or another
9 party.

10 JUDGE MILLS: And these are reports on the
11 status of what specifically?

12 MR. COFFMAN: RTO formation.

13 JUDGE MILLS: Okay. What's the other
14 late-filed exhibit?

15 MR. COFFMAN: The other was in reference to
16 my cross-examination regarding Exhibit 12. Those were
17 the BridgeCo reports. Mr. Whiteley agreed that
18 perhaps they would -- that Ameren would continue to
19 update that -- that RTO for some -- I'm sorry. Would
20 update their response to that data request for some
21 time into the future, and I would request that there
22 be a late-filed exhibit reserved for any additional
23 BridgeCo briefing papers up through the end of this
24 month, of October.

25 JUDGE MILLS: And what -- what will those

1 documents show in the record?

2 MR. COFFMAN: I don't know exactly the
3 content of those documents, but they do also relate to
4 the further development of the Alliance RTO and the
5 many elements that we've talked about that are still
6 not in place and are constantly developing, and they
7 would presumably be very relevant, but I'm not sure of
8 the exact -- what the content of those would be.

9 MR. DOTTHEIM: Even addressing the
10 December 15th date as to whether that's actually going
11 to occur or not.

12 MR. COFFMAN: I mean, Ameren may know more,
13 but, presumably, they would address, you know, the
14 likelihood as we -- of meeting the December 15th date
15 and whatever components are in place or not in place.

16 MS. COOK: Your Honor, I would be reluctant
17 to agree at this time to a blanket agreement that
18 those are relevant at all, but certainly we'll commit
19 to the Commission that we intend to keep the parties
20 and the Commission totally up-to-date on that question
21 of the December 15th deadline.

22 JUDGE MILLS: Okay. Here is what I'm going
23 to do: In terms of the status reports filed with
24 FERC yesterday, I'm going to allow those to be
25 late-filed. I think it is relevant, certainly, the

1 status of the RTO approval at FERC of both of these
2 organizations.

3 I'm not going to reserve a late-filed
4 exhibit for a document that does not yet exist, and
5 it's my understanding from what you just explained
6 that these are BridgeCo report-- BridgeCo briefing
7 reports to be done in the future.

8 I don't -- I don't think there is any way to
9 lay a foundation for that, but I'll tell you this:
10 There are provisions in the Commission's rules for
11 reopening the record in certain instances, and if
12 there is -- if Ameren does provide in a continuing
13 fashion responses to that DR that include additional
14 BridgeCo briefing documents that do contain relevant
15 information, you can move to reopen the record to
16 accept those.

17 So I will assign Exhibit No. 13 for a
18 late-filed exhibit for the status reports that were to
19 have been filed at the FERC yesterday. We'll need --
20 I'll need eight copies to me, not filed with the
21 records room, and you'll need to serve one copy on
22 each of the other parties in the case.

23 And if those -- when do you anticipate
24 having those in hand?

25 MR. COFFMAN: I'm not exactly sure. I'm

1 sure in just a matter of a few days, a week. I'm sure
2 we would normally receive those. Perhaps Ameren would
3 at least have the Alliance RTO status report. That
4 might -- they could provide it quicker.

5 JUDGE MILLS: Let's set a date of a week
6 from today for filing. If they are not available,
7 you can ask for more time. And a week after that
8 for any objections to the admission of those
9 documents.

10 MR. COFFMAN: That will be fine.

11 JUDGE MILLS: So that will be Exhibit 13,
12 the status reports, will be filed October 17th. Any
13 party that has any objection to the admission of those
14 exhibits needs to file that by October 24th.

15 Is there anything further in terms of
16 additional matters for the record?

17 (No response.)

18 JUDGE MILLS: Okay. Let's talk about the
19 briefing schedule.

20 If the parties are interested in having the
21 Commission reach a final decision in this case by
22 December 15th, I think we need to have briefing
23 concluded probably by the end of October to give the
24 Commission about four weeks to consider the matter and
25 a ten-day effective date before December 15th.

1 And if we're going to try to work in -- and
2 I don't know that anyone has filed a pleading
3 proposing this yet, but if we're going to try to work
4 in additional hearings and additional evidence,
5 that's going to make it all the much -- you know what
6 I mean. That's going to impinge upon the amount of
7 time that the Commission has to reach a decision on
8 the stuff we've already heard.

9 We can get transcripts back basically on
10 one-day turnaround. That would be -- to be safe, we
11 could say we could have them on Friday, the 12th, and
12 if we do that, you know, I guess -- I guess you can do
13 ten days for initial brief and ten days for reply
14 brief, and that basically gets you out to the end of
15 the month.

16 Who wants to be the first to object to that
17 proposal? We can probably stretch that by a week, but
18 not much more than that.

19 MR. COFFMAN: I'll object.

20 JUDGE MILLS: Okay.

21 MR. COFFMAN: I mean, I certainly know that
22 my brief will be more thorough and adequate if I have
23 more time than ten days.

24 If it was extended a week, the initial would
25 be due 17 days from Friday, or ten -- ten days --

1 actually --

2 JUDGE MILLS: Something like that. Then we
3 could do two weeks and two weeks, probably, and end up
4 about -- I don't know. Won't that make this the 7th
5 or 8th of November.

6 MR. COFFMAN: Well, that doesn't sound
7 necessarily oppressive.

8 MR. COOK: Ten days plus a week might be,
9 like, the 26th of October, which is two full weeks
10 after -- after we get the transcript on this Friday.

11 MR. COFFMAN: I would prefer more time for
12 the initial than the reply if time could be -- as I
13 understand, your deadline, Judge, would be the -- the
14 end of the reply briefs?

15 JUDGE MILLS: Right.

16 MR. COFFMAN: That would be most important
17 to you.

18 MS. COOK: Your deadline on that would be
19 November what?

20 JUDGE MILLS: The absolute deadline, I
21 think, would have to be November 7th in order to begin
22 briefing the Commission in an agenda meeting on
23 November 8th.

24 MR. COFFMAN: For me a week between initial
25 and reply is plenty, if that time could be given for

1 the initial, a tradeoff.

2 MR. Cook: A week before the 7th is the
3 31st, and that gives us two working weeks plus three
4 days.

5 MS. LANGENECKERT: Judge, excuse me, we
6 already had briefing dates set up in this.

7 MR. DOTTHEIM: Well, they were proposed. I
8 don't think they were set.

9 MS. LANGENECKERT: Oh, they were never
10 approved?

11 MR. DOTTHEIM: The Staff proposed some
12 briefing dates, and I don't know that these are all
13 that far off. I'm looking for the file right now.

14 JUDGE MILLS: I believe the Staff's proposal
15 was briefs filed -- initial briefs October 26th and
16 reply briefs November 7th in the Commission order
17 issued December 5th. And, you know, I think that -- I
18 think that's doable from my perspective as being for
19 me and the Commission, but I -- I don't see any way
20 that we could do it having reply briefs any later than
21 the 7th.

22 MR. KINCHELOE: Suppose we move the -- it's
23 an easier job here. I don't know why I care.

24 MR. DOTTHEIM: That's going to raise a
25 question. What does the schedule mean to you?

1 MR. KINCHELOE: I was just going to suggest
2 giving a weekend -- additional weekend for initial
3 briefs.

4 MR. COFFMAN: What date would that be?

5 MR. KINCHELOE: The 29th.

6 MR. COFFMAN: The 29th and the 7th.

7 JUDGE MILLS: The 29th and the 7th. Is that
8 better than the 26th and the 7th?

9 All right. Well, I'm going to go ahead and
10 do that. Since nobody seems to have any strong
11 feelings one way or the other, let's make it Monday
12 the 29th for initial briefs and Wednesday the 7th for
13 reply briefs.

14 MR. COOK: 4:00?

15 JUDGE MILLS: I was just getting to that,
16 Mr. Cook, and, unfortunately, no.

17 For the initial brief, I'm not that
18 concerned about it. For the reply brief I want it by
19 noon on the 7th, so the Commissioners -- so it can get
20 through filing and get to the Commissioners in time
21 for them to have a chance to look at it, and then I'll
22 begin briefing the next morning in agenda.

23 And maybe the status reports that are going
24 to come in as already late-filed exhibits will answer
25 some of these questions, but as things develop at

1 FERC, we're not likely to officially know about that
2 unless you-all file that in the case. So as
3 developments occur that may have an impact on the way
4 this case is resolved, please file things here and let
5 us know.

6 MR. DOTTHEIM: And if it's not going to be
7 before early November, the case will probably be
8 briefed anyway. It may save you and the
9 Commissioners some effort, which I'm quite sure will
10 be welcome.

11 JUDGE MILLS: Absolutely.

12 MS. COOK: Likewise, if a decision is made
13 that the December 15th date is not going to be met --
14 reached or met, then we will notify everyone
15 immediately and discuss what that means at the time.
16 Again, the briefing may be done by then, but, if not,
17 we can do something about it. We'll let everyone know
18 immediately.

19 I hasten to add that that is a decision is
20 made as opposed to, Gee, it looks like --

21 MR. DOTTHEIM: Yeah.

22 MR. COOK: There will have to be a decision
23 before we do that, but we'll let you know.

24 JUDGE MILLS: Is there anything further we
25 need to address on the record?

1 (No response.)

2 JUDGE MILLS: Hearing nothing, we're
3 adjourned.

4 WHEREUPON, the hearing of this case was
5 concluded.

6

7

8 oOo

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	I N D E X	
2	Opening Statement by Mr. Hennen	13
3	Opening Statement by Mr. Frey	24
	Opening Statement by Mr. Coffman	33
4	Opening Statement by Ms. Vuylsteke	43
	Opening Statement by Mr. Kincheloe	44
5		
6	AMERENUE'S EVIDENCE:	
	DAVID A. WHITELEY:	
7	Direct Examination by Mr. Hennen	49
	Cross-Examination by Mr. Frey	52
8	Cross-Examination by Mr. Coffman	81
	Cross-Examination by Ms. Vuylsteke	105
9	Questions by Commissioner Murray	112
	Questions by Commissioner Gaw	118
10	Questions by Commissioner Lumpe	125
	Further Questions by Commissioner Murray	141
11	Further Questions by Commissioner Lumpe	143
	Questions by Judge Mills	145
12	Recross-Examination by Mr. Frey	146
	Recross-Examination by Mr. Coffman	151
13	Redirect Examination by Mr. Hennen	156
14	STAFF'S EVIDENCE:	
	MICHAEL S. PROCTOR, Ph.D.:	
15	Direct Examination by Mr. Frey	160
	Questions by Commissioner Murray	162
16	Questions by Commissioner Lumpe	179
	Questions by Judge Mills	186
17	Redirect Examination by Mr. Frey	190
18	OPC'S EVIDENCE:	
	RYAN KIND:	
19	Direct Examination by Mr. Coffman	195
	Questions by Commissioner Lumpe	198
20	Questions by Commissioner Gaw	202
21	MIEC'S EVIDENCE:	
	JAMES R. DAUPHINAIS:	
22	Direct Examination by Ms. Vuylsteke	212
	Questions by Commissioner Murray	214
23	Questions by Commissioner Lumpe	222
	Questions by Commissioner Gaw	227
24	Questions by Judge Mills	231
	Recross-Examination by Mr. Coffman	232
25	Redirect Examination by Ms. Vuylsteke	236

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S I N D E X

Marked Received

Exhibit No. 1 Direct Testimony of David A. Whiteley	11	51
Exhibit No. 2 Surrebuttal Testimony of David A. Whiteley	11	51
Exhibit No. 3 Rebuttal Testimony of Michael S. Proctor, Ph.D.	11	162
Exhibit No. 4 Cross-Surrebuttal Testimony of Michael S. Proctor, Ph.D.	11	162
Exhibit No. 5 Rebuttal Testimony of Ryan Kind	11	197
Exhibit No. 5P Rebuttal Testimony of Ryan Kind, Proprietary	11	197
Exhibit No. 6 Rebuttal Testimony of James R. Dauphinais	11	214
Exhibit No. 6HC Rebuttal Testimony of James R. Dauphinais, HC	11	214
Exhibit No. 7 Alliance Company's Order No. 2000 compliance filing, dated January 16th, 2001 in FERC Docket No. RT01-88-000	76	77
Exhibit No. 8 Comments of the MPSC, et al, filed March 30th in FERC Docket No. ER01-123-000, et al	76	79

